THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2016-001839
Case No. 2016-CP-40-3102

Richland County, South Carolina,..... Appellant-Respondent,

Central Midlands Regional Transit Authority, ... Respondent,

v.

The South Carolina Department of Revenue and Rick Reames, III, in his official capacity as its Director,..... Respondents-Appellants,

v.

Richland PDT, a joint venture consisting of M.B. Kahn Construction Co., Inc., ICA Engineering, Inc., and Brownstone Construction Group, LLC, as a unit and Individually,..... Third-Party Defendants.

RECORD ON APPEAL

ANDREW F. LINDEMANN
DAVIDSON & LINDEMANN, P.A.
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-822

Counsel for Appellant-Respondent Richland County

JOHN S. NICHOLS
BLUESTEIN NICHOLS THOMPSON & DELGADO, LLC
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599

Counsel for Respondents-Appellants South Carolina Department of Revenue and Rick Reames, III

BENJAMIN E. NICHOLSON, V
M. ELIZABETH CRUM
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

RAY N. STEVENS
RAY E. JONES
PARKER POE ADAMS
& BERNSTEIN, LLP
1221 Main Street, Suite 1100
Post Office Box 1509
Columbia, South Carolina 29202
(803) 255-8000

LARRY SMITH
Richland County Attorney
2020 Hampton Street
Post Office Box 192
Columbia, South Carolina 29202
(803) 576-2075

Counsel for Appellant-Respondent Richland County

JAMES E. SMITH, JR.
DYLAN W. GOFF
JAMES E. SMITH, JR., P.A.
1422 Laurel Street
Columbia, South Carolina 29201
(803) 933-9800

MILTON G. KIMPSON
DANA R. KRAJACK
NICOLE M. WOOTEN
LAUREN ACQUAVIVA
SOUTH CAROLINA DEPARTMENT
OF REVENUE
Post Office Box 12265
Columbia, South Carolina 29211
(803) 898-1531

Counsel for Respondents-Appellants South Carolina Department of Revenue and Rick Reames, III

ELIZABETH VAN DOREN GRAY
ROBERT E. TYSON, JR.
ALEXIS K. LINDSAY
SOWELL GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street
Columbia, South Carolina 29201
(803) 929-1400

Counsel for Respondent Central Midlands Regional Transit Authority

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016-CP-40-03102

Richland County, South Carolina	South Carolina Department of Revenue, et al.
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THIS CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court

RICHLAND COUNTY FILED 2016 JUN 24 PM 3:15 JEANETTE W. McBRIDE C.C.P. & G.S.

ORDER INFORMATION

This case is hereby designated as a complex case and is assigned to Judge G. Thomas Cooper, Jr., to hear all matters arising out of the civil litigation of this matter.

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge G. Thomas Cooper **Judge Code** 2118 **Date** 6/23/2016

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 27 day of June, 20 16 to attorneys of record or to parties (when appearing pro se) as follows:

Mary Elizabeth Crum	Benjamin Edward Nicholson, V	Milton Gary Kimpson
Ray E. Jones	Larry Cornell Smith	James Emerson Smith
Ray Nelson Stevens		
ATTORNEY(S) FOR THE PLAINTIFF(S)		**ATTORNEY(S) FOR THE DEFENDANT(S)**

Court Reporter _____ **Clerk of Court** Jeanette W. McBride

SCRCP Form 4C (10/2011)

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STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT
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) Plaintiff.)) v.)) Richland PDT, a joint venture consisting) of M.B. Kahn Construction Co., Inc.,) ICA Engineering, Inc.,) And Brownstone Construction) Group, LLC, as a unit and individually,)) Third Party Defendants.)	Docket No.: 2016-CP-40-3102 **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**

RICHLAND COUNTY
FILED
2016 JUN 30 PM 5:12
JEANETTE W. McBRIDE
C.C.C.P. & G.S.

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, SCRCP, 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 their 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

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

[1] Presumably this interpretation would apply to any other counties adopting a sales and use tax ordinance pursuant to the Transportation Act.

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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.[2] 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

[2] 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.

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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 their 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.

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, SCRCP sets out the procedure for issuing a Mandamus. A Mandamus is a remedial writ that courts issue to order a governmental official or

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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:

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

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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 Bazzle 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. Cty. 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

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amortize all debts related to the approved projects" (§4-37-30(A)(5)).[3] 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 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. Cty. 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.

[3] 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.

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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. <u>DEFENDANTS MUST PERFORM THEIR DUTIES UNDER THE TRANSPORTATION ACT.</u>

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

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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).

1. 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

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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 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 (Ct. App. 1989) (Court of Appeals cited Act's preamble as "expressly stating" legislative intent). I find that the legislative intent of the Transportation Act

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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.

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 their 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 directing SCDOR and the Director to remit the Penny Tax Revenues for the quarter ending June 2016 to the Treasurer as it routinely has since the Ordinance became effective pursuant to Rule 65, SCRCP.

II. DEFENDANTS HAVE STANDING TO ASSERT THEIR MOTION, COUNTERCLAIMS, AND THIRD-PARTY COMPLAINT.

"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 (Ct. 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 (Ct. 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 is 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).

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

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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]." Finally, SCDOR and the Director claim to have certain fiduciary duties owed to the citizens and taxpayers of the State and specifically Richland County. 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 Motion, Cross Claims, and Third Party Complaint.

Furthermore, SCDOR and the Director have standing based on the public importance exception.[4] 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 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.*

[4] 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 *Sloan 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.

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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 their 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 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 (ftnts. 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 (ftnts. 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.

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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); s*ee 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 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 injection:

> Enjoining Plaintiff, and Third-party Defendants, from making any further payments, expenditures, funding, contracts, or other obligations of Penny Tax

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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 show there is no other adequate remedy at law 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 the 2016 second quarter Penny Tax Revenues to the Treasurer. 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 their 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

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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[5] 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.

[5] The Director had not yet been appointed as the director of SCDOR and became agency director in January 2014.

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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 statues 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. 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 their duties under the Transportation Act.

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

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IT IS FURTHER ORDERED THAT:

A Writ of Mandamus is issued against the Director requiring him to direct the Department to remit the 2016 second quarter Penny Tax Revenues to the Treasurer.

AND IT IS SO ORDERED.

Judge G. Thomas Cooper, Jr.
Fifth Judicial Circuit

June 30, 2016
Columbia, SC

SCANNED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Richland County, South Carolina,	)	Civil Action No. 2016-CP-40-3102
Plaintiff,	)	
vs.	)	
The South Carolina Department of Revenue, and Rick Reames, III, in his official capacity as its Director,	)	**ORDER**
Defendants/Third Party Plaintiff,	)	
vs.	)	
Richland PDT, a joint venture consisting of M. B. Kahn Construction, Co., Inc., ICA Engineering, Inc., and Brownstone Construction Group, LLC, as a unit and individually,	)	
Third Party Defendants.	)	

RICHLAND COUNTY
FILED
2016 JUL 15 PM 4:39
JEANETTE W. McBRIDE
C.C.P. & G.S.

On July 7, 2016, Central Midlands Regional Transit Authority ("CMRTA") moved to intervene as a plaintiff-intervenor in the above-captioned matter. CMRTA informs the Court that all parties either consent or do not object to the motion; thus, the Court having considered this Motion, finds that it is meritorious and should be granted.

THEREFORE IT IS ORDERED that CMRTA is permitted to intervene in this action as a plaintiff. CMRTA shall file and serve the pleading attached as Exhibit A to its motion.

AND IT IS SO ORDERED.

G. Thomas Cooper, Jr.
Presiding Judge, Fifth Judicial Circuit

Columbia, South Carolina
July 15, 2016

SCANNED

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	Docket No.: 2016-CP-40-3102
Richland County, South Carolina,)	
)	
Plaintiff,)	
)	
v.)	
)	
The South Carolina Department of Revenue,)	
and Rick Reames, III in his official)	
capacity as its Director,)	**ORDER GRANTING PLAINTIFF'S MOTION TO STRIKE**
)	
Defendants/Third Party)	
Plaintiff.)	
)	
v.)	
)	
Richland PDT, a joint venture consisting)	
of M.B. Kahn Construction Co., Inc.,)	
ICA Engineering, Inc.,)	
And Brownstone Construction)	
Group, LLC, as a unit and individually,)	
)	
Third Party Defendants.)	

RICHLAND COUNTY FILED
2016 JUL 15 PM 4:39
JEANNETTE W. GRAMBLING CLERK OF C.C.P. & G.S.

This matter came before the Court on June 28, 2016, by way of Plaintiff's Motion to Strike certain portions of the Affidavits of Tim Donovan and Jerilynn VanStory (collectively "Affidavits") filed by Defendants, the South Carolina Department of Revenue ("SCDOR" or "Department") and Rick Reames, III in his official capacity as the Director of SCDOR ("the Director") (collectively "Defendants") on June 21, 2016. Specifically, Plaintiff moved to strike on the grounds that the Affidavits contain statements that lack evidentiary foundation for admission into evidence, inadmissible hearsay in violation of S.C. Rule of Evidence Rule 801, and inadmissible legal opinions.

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

LEGAL ANALYSIS

A. Rule 65 Requirements

Rule 65, SCRCP, specifically states that Temporary Restraining Orders (TRO) must be based on "specific facts shown by affidavit or by a verified complaint" and that requirement does not change once the TRO moves to the Temporary Injunction phase. Thus, the standard for Rule 65 relief evidence is no different from that of Rule 56(e), SCRCP. Rule 56(e), SCRCP, provides that "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." *See Saro Invs. V. Ocean Holiday P'ship*, 314 S.C. 116, 121, 441 S.E.2d 835, 838 (Ct. App. 1994). The Court will consider only those portions of the Affidavits that contain admissible evidence.

The Affidavits contain statements that lack evidentiary foundation for admission into evidence, inadmissible hearsay in violation of Rule 801 S.C. Rule of Evidence ("SCRE"), and legal opinions. Rule 602, SCRE, states in pertinent part that "[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." By definition, any statement by a witness "upon information and belief" is not admissible as that qualification does not allow a court to determine that the witness has personal knowledge of the statement.

Rule 801, SCRE defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." *See Bowers v. Bowers*, 349 S.C. 85, 561 S.E.2d 610 (Ct. App. 2002).

B. Legal Conclusions

It is well established in South Carolina that legal arguments are not proper in an affidavit. The responsibility to make such a legal conclusion is within the exclusive authority of the court, and testimony offered by a witness which purports to make a legal conclusion should be properly excluded as evidence. *O'Quinn v. Beach Associates*, 272 S.C. 95, 107, 249 S.E.2d 734, 740 (1978). *See also Dawkins v. Fields*, 354 S.C. 58, 65, 580 S.E.2d 433, 437 (2003) (an affidavit primarily consisting of legal arguments and conclusions "inappropriately attempted to usurp the trial court's role" and was thus properly excluded by the trial court); *Adalman v. Baker, Watts & Co.*, 807 F.2d 359, 366 (4th Cir. 1986) ("under our system is it the responsibility – the duty – of the court to state . . . the meaning and applicability of the appropriate law"); *and Green v. State*, 351 S.C. 184, 198, 569 S.E.2d 318, 325 (2002) (holding that expert's opinion as to inadequacy of trial counsel's actions was legal argument, not testimony within the scope of Rule 702, SCRE).

Specifically, the admissibility of opinions of law affidavits similar to the VanStory Affidavit was addressed by the Supreme Court in *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003). In *Dawkins*, the Court held that an affidavit of John Freeman, a law professor at the University of South Carolina School of Law, on the topics of corporations and securities "primarily contained legal arguments and conclusions," and as such, was properly rejected by the trial court. *Id.* at 65, 580 S.E.2d at 437. Such an affidavit "inappropriately attempted to usurp the trial court's role in determining whether petitioners were entitled to summary judgment" and

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read "as if it could have been respondents' oral argument to the trial court at the summary judgment hearing." *Id.* at 65-66, 580 S.E.2d at 437.

C. Conclusion

Based on the above legal conclusions, I find that the following portions of the Affidavits should be stricken:

1. <u>The Donovan Affidavit.</u>

The following sentences of the Donovan Affidavit are ordered stricken for stating legal conclusions:

Paragraph 4 – Second and Third Sentences.

Paragraph 8 – First Sentence.

Paragraph 9 – Third, Fifth, and Sixth Sentences.

Paragraph 10 – Second and Third Sentences.

Paragraph 13 – First and Third Sentences.

Paragraph 14 – First Sentence.

Paragraph 15 – First and Second Sentences.

The following sentences of the Donovan Affidavit are ordered stricken because they are not based on personal knowledge and are inadmissible:

Paragraph 9 – Seventh and Eleventh Sentences.

Paragraph 11 – Eighth Sentence.

Paragraph 14 – Second and Third Sentences.

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2. **The VanStory Affidavit.**

The following sentences of the VanStory Affidavit are ordered stricken for stating legal conclusions:

Paragraph 4 – First, Second, and Third Sentences.

Paragraph 5 – Second Sentence.

Paragraph 7 – First Sentence.

Paragraph 8 – First Sentence.

Paragraph 9 – First and Fourth Sentences.

Paragraph 10 – First, Second, and Third Sentences.

Paragraph 11 – First, Second, Third, Fourth, Fifth, and Sixth Sentences.

Paragraph 12 – First Sentence.

Paragraph 13 – First Sentence.

AND IT IS SO ORDERED.

Judge G. Thomas Cooper, Jr.
Fifth Judicial Circuit

June 15, 2016
Columbia, SC

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT
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, LLC, as a unit and individually, Third Party Defendants.	Docket No.: 2016-CP-40-3102 **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**

RICHLAND COUNTY
FILED
2016 AUG -2 PM 2:37
JEANETTE W. WALKER
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), SCRCP, 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:

SCANNED

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, SCRCP, 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[1] 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 E. Nicholson, IV, Esquire, M. Elizabeth Crum, Esquire, Ray N. Stevens, Esquire and Ray E. Jones, Esquire, appeared for Richland County. James E. Smith, Esquire,

[1] Presumably this interpretation would apply to any other counties adopting a sales and use tax ordinance pursuant to the Transportation Act.

SCANNED

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

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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.[2] 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.

[2] 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.

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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, SCRCP 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

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> 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 Bazzle 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. Cty. 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

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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)).[3] 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

[3] 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.

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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. Cty. 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.

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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).

1. 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

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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

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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 (Ct. 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 (Ct. 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 (Ct. 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 is has some special interest from which it is charged with responsibility that may be adversely affected

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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.[4] 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

[4] 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 *Sloan 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.

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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 (ftnts. omitted). Further, "[i]njunctions against government agencies will be granted when

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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 (ftnts. 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 injection:

> 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.

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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,

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2013. Defendants do not dispute that SCDOR began collecting and administering the Penny Tax in May 2013[5] 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 statues 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.

[5] 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

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Richland County, South Carolina, Plaintiff, Central Midlands Regional Transit Authority, Intervenor Plaintiff, v. The South Carolina Department of Revenue, and Rick Reames, III in his official capacity as its Director, Defendants/Third Party Plaintiff, v. Richland PDT, a joint venture consisting of M.B. Kahn Construction Co., Inc., ICA Engineering, Inc., and Brownstone Construction Group, LLC, as a unit and individually, Third-Party Defendants.	)	CIVIL ACTION NO.: 2016-CP-40-3102 **ORDER GRANTING THIRD-PARTY DEFENDANTS' MOTIONS TO DISMISS THE THIRD-PARTY COMPLAINT**

RICHLAND COUNTY
FILED
2016 AUG 16 PM 4:11
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter comes before the Court by way of four (4) Motions to Dismiss, pursuant to Rules 12(b)(6), and 9(b), SCRCP, filed by Third-Party Defendants Richland PDT, M.B. Kahn Construction Co., Inc., ICA Engineering, Inc., and Brownstone Construction Group, LLC.[1] The Court held a hearing on these motions on August 4, 2016. Keith M. Babcock, Esquire, and David L. Paavola, Esquire, appeared for Richland PDT. Robert T. Strickland, Esquire, and Catherine Ava Kopiec, Esquire, appeared for M. B. Kahn Construction Co., Inc. Erik T. Norton, Esquire,

[1] Richland County, Plaintiff, also filed a motion to dismiss that is addressed in a separate Order.

appeared for ICA Engineering, Inc. John Julius Pringle, Jr., Esquire, and Kirby D. Shealy, III, Esquire, appeared for Brownstone Construction Group, LLC. James E. Smith, Jr., Esquire, Milton G. Kimpson, Esquire, Dana R. Krajack, Esquire, and Lauren Acquaviva, Esquire, appeared for the South Carolina Department of Revenue and Rick Reames, III in his official capacity as its Director (collectively referred to as "SCDOR").

For the reasons set forth below, I GRANT Third-Party Defendants' Motions to Dismiss because I find that SCDOR lacks standing to pursue a third-party complaint against Richland PDT or its individual members—M.B. Kahn Construction Co., Inc., ICA Engineering, Inc., and Brownstone Construction Group, LLC (collectively "PDT Members").[2] As alternative grounds, SCDOR's third-party complaint is dismissed for the following reasons: (1) SCDOR's third-party complaint is improper under Rule 14, SCRCP; (2) SCDOR's third-party complaint does not allege any wrongdoing by the PDT Members in their individual capacities.

LAW/ANALYSIS

I. SCDOR Does Not Have Standing to Proceed Against the Private Parties in this Action.

In order for SCDOR to institute and maintain a lawsuit against Richland PDT and the PDT Members, it must demonstrate that it has the legal standing to do so. *South Carolina Pub. Interest Found. v. South Carolina Dep't of Transp.*, 412 S.C. 18, 24, 770 S.E.2d 399, 402 (Ct. App. 2015). Standing is the fundamental legal requirement that a party bringing a lawsuit must have a personal stake in the subject matter of the lawsuit, *id.*, also known as being the real party in interest. "A real party in interest is one with a real, material, or substantial interest." *Baird v. Charleston Cnty.*, 333 S.C. 519, 530, 511 S.E.2d 69, 75 (1999). SCDOR has the burden of proving that it has

[2] The PDT Members have joined Richland PDT's Motion to Dismiss in full. As such, this Order addresses all four (4) motions together except where specifically noted.

standing to bring this lawsuit. *South Carolina Pub. Interest Found. v. South Carolina Transp. Infrastructure Bank*, 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013).

In reviewing a motion to dismiss, this Court considers "only the allegations set forth on the face of the plaintiff's complaint." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (citation omitted). Richland PDT is a joint venture of the three PDT Members. Richland PDT is a private entity formed for the purpose of contracting with Richland County to perform program development and program management services for Richland County's transportation improvement program ("Transportation Penny Program"). Richland PDT was awarded a contract with Richland County pursuant to Richland County's designated penny sales tax procurement process. SCDOR does not allege any facts showing a relationship between it and Richland PDT, or between it and the PDT Members.

SCDOR's third-party complaint against Richland PDT and the PDT Members is based entirely on contractual representations made by Richland PDT to Richland County. While SCDOR asserts that in entering the contract with Richland County, Richland PDT made certain representations to SCDOR, I find no factual or legal support for this conclusion from the allegations in the third-party complaint. The absence of any allegation concerning a direct connection between Richland PDT's contractual representations to Richland County and SCDOR is fatal to SCDOR's attempt to maintain a lawsuit against Richland PDT and the PDT Members. Richland County is the proper party to enforce the contractual obligations owed to it by Richland PDT, not SCDOR.

During the hearing on this matter, SCDOR argued that Richland PDT owes a duty directly to SCDOR because Richland PDT is paid with, or is expending, public funds pursuant to its contract with Richland County. Standing premised on this basis alone could conceivably extend

to any private entity contracting with any public entity in South Carolina. SCDOR has provided no authority, and this Court has found none, that would grant SCDOR such expansive oversight over the expenditure of public funds.

Additionally, while this Court has ruled that SCDOR has standing as against Richland County based upon a "special interest" in Richland County's use of the Penny Tax Revenue,[3] I find that this special interest does not extend to private entities contracting with Richland County. This Court has also ruled that the public importance exception gives SCDOR standing concerning the limited purpose of the resolution of the unique issues concerning Richland County raised by this case.[4] I find that the public importance exception does not grant standing to SCDOR to sue a private entity (or its members) based solely on the private entity's contract with a separate public body.

SCDOR has failed to allege the existence of a relationship between it and Richland PDT or the PDT Members from which could arise a legal duty necessary to maintain tort causes of action. Accordingly, SCDOR does not have standing to maintain a third-party complaint against Richland PDT or the PDT Members.

II. Richland PDT and the PDT Members Are Not Proper Third-Party Defendants Under Rule 14, SCRCP.

Richland PDT and the PDT Members are not properly named third-party defendants in this action. Rule 14, SCRCP, permits the defendant (SCDOR) as a third-party plaintiff to "cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him." SCDOR has not alleged that

[3] 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 14 (August 2, 2016).
[4] *Id.* at 15.

Richland PDT would be liable to SCDOR if SCDOR is ultimately liable to Richland County. *First Gen. Servs. Of Charleston, Inc. v. ServiceMaster, Inc.*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994) ("Under Rule 14, the third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability."). Accordingly, dismissal of the third-party complaint against Richland PDT and the PDT Members is alternatively granted on this basis.

III. CONCLUSION

ACCORDINGLY, THIS COURT FINDS:

1. SCDOR does not have standing to institute and maintain a lawsuit against Richland PDT or the PDT Members.
2. Richland PDT and PDT Members are improper third-party defendants in this action under Rule 14, SCRCP.

THEREFORE,

Richland PDT's and the PDT Members' motions to dismiss are **GRANTED.**

AND IT IS SO ORDERED.

Judge G. Thomas Cooper, Jr.
Fifth Judicial Circuit

August 16, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
Richland County, South Carolina, Plaintiff, v. The South Carolina Department of Revenue and Rick Reames, III, in his official capacity as its Director, Defendants.	)	Civil Action No. 2016-CP-40-3102 **ORDER DENYING PLAINTIFF RICHLAND COUNTY'S MOTION TO DISMISS COUNTERCLAIMS**

RICHLAND COUNTY
FILED
2016 AUG 8 PM 2:26
JEAN H. TOAL MCBRIDE
CLERK OF COURT
G.S.

This matter is before this Court on Richland County's Motion to Dismiss Counterclaims of the South Carolina Department of Revenue ("DOR") and Rick Reames, III dated July 20, 2016. A hearing was held with all counsel of record present on August 4, 2016. After a review of the pleadings, the motion, the written submissions by the parties, and the oral arguments of counsel, this Court denies the Plaintiff's Motion to Dismiss for the reasons discussed below.

"In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint." *Plyler v. Burns*, 373 S.C. 637, 645 (citing *Stiles v. Onorato*, 318 S.C. 297, 300 (1995)). "A 12(b)(6) motion should not be granted if 'facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.'" *Id.* "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Id.* (citing *Toussaint v. Ham*, 292 S.C. 415, 416 (1987)). "A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably

deducible therefrom would entitle the plaintiff to relief on any theory of the case." *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003).

After careful and thorough consideration of the record and arguments of counsel, the Court finds that Defendants' Counterclaims, when taken in the light most favorable to Defendants, properly states claims for relief under South Carolina law. It is therefore **ORDERED** that the Plaintiff's Motion to Dismiss Counterclaims is hereby **DENIED**.

AND IT IS SO ORDERED.

Judge G. Thomas Cooper, Jr.
Fifth Judicial Circuit

August 17, 2016

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Docket No.: 2016-CP-40-_____
Richland County, South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**COMPLAINT**
	)	(Declaratory Judgment)
The South Carolina Department of Revenue, and Rick Reames, III in his official capacity as its Director,	)	(Writ of Mandamus)
	)	(Injunctive Relief)
	)	
Defendants.	)	
	)	
	)	

The Plaintiff, Richland County, South Carolina ("Richland County" or "County") complains of the Defendants, the South Carolina Department of Revenue ("SCDOR") and Rick Reames, III in his official capacity as the Director of SCDOR ("the Director") as follows:

INTRODUCTION

1. This lawsuit has been brought by Richland County against SCDOR and the Director because SCDOR, through the Director, has engaged in unlawful interference with the receipt by Richland County of Penny Tax Revenues (as defined below) thereby resulting in a gross overreach of SCDOR's authority.

2. Richland County has and continues to ensure that the use of the Penny Tax Revenues by Richland County benefits the residents of Richland County by reviewing various aspects of the programs set up by Richland County for use of the Penny Tax Revenues pursuant to the express statutory authority granted to it in the general law of the State of South Carolina pursuant to Article VIII of the South Carolina Constitution.

3. However, SCDOR, has exceeded its authority by the directives of its Director that if not stopped will destroy much of the benefit Richland County has derived thus far from the Penny Tax Revenues, and will set a dangerous precedent for the micro-management by SCDOR not just of the affairs of Richland County, but also the affairs of any county in this State that has a penny sales tax program.

4. If permitted, these actions by SCDOR would result in SCDOR, an agency of the Executive Branch of the State of South Carolina, without any legal authority, directing the expenditure of Penny Tax Revenues collected on the county level for use by Richland County, thus usurping the authority of Richland County Council, the duly elected and qualified representatives of the residents of Richland County.

5. The purpose of this Complaint is to immediately stop the overreach of SCDOR and vindicate the rights of Richland County and its residents to receive and expend Penny Tax Revenues without unlawful interference from SCDOR.

THE PARTIES

6. Plaintiff, Richland County, is one of the forty-six counties of the State of South. Richland County is a body politic and corporate pursuant to S.C. Const. Art. VII, sec. 9; S.C. Code Ann. § 4-1-10 (Supp. 2015).

7. Defendant South Carolina Department of Revenue is an agency of the State of South Carolina and is organized pursuant S.C. Code Ann. §12-4-10, *et seq.* (2014). The SCDOR is located in Lexington County, South Carolina.

8. Defendant Rick Reames, III is the Director of SCDOR appointed pursuant to S.C. Code Ann. § 12-4-30, a resident of Richland County, and is named herein in his official capacity thereof.

JURISDICTION AND VENUE

9. This is an action for a declaratory judgment, pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10, *et seq.* (2002), specifically including § 15-53-30.

10. Richland County also seeks a Writ of Mandamus pursuant to Rule 65, SCRCP requiring that this Court determine that Defendants have a ministerial duty to remit the Penny Tax Revenues they have administered and collected to the South Carolina State Treasurer and ordering Defendants to carry out their ministerial duty to remit the Penny Tax Revenues to the State Treasurer.

11. Additionally, Richland County seeks injunctive relief pursuant to Rule 65, SCRCP and/or a Writ of Prohibition prohibiting Defendants from interfering with the payment of the Penny Tax Revenues to the State Treasurer for disbursement to Richland County.

12. This Court has personal jurisdiction over the parties as each is located in, or does business in Richland County, South Carolina and has subject matter jurisdiction over this action.

13. Venue is proper in Richland County pursuant to S.C. Code Ann. § 15-77-50.

THE PENNY TAX ENABLING LEGISLATION

14. The South Carolina General Assembly in 1995 first enacted and then subsequently over the years amended S.C. Code Ann. §§ 4-37-10 *et seq.* (Supp. 2015) which is entitled "Optional Methods of Financing Transportation Facilities" (herein, "the Act").

15. Broad powers are specifically and exclusively granted to counties, including Richland County, pursuant to S.C. Code Ann. § 4-37-20. Specifically, Richland County's broad powers include:

without limitation, all the rights and powers *necessary or convenient to manage the business and affairs of the author*ity[1] and to take action as it may consider advisable, necessary, or convenient in carrying out its powers *including, but not limited to*, the following rights and powers:

(1) to have perpetual succession;

(2) to sue and be sued;

(3) to adopt, use, and alter a seal;

(4) *to make and amend bylaws for regulation of its affairs consistent with the provisions of this chapter*;

(5) to acquire by gift, deed or easement, purchase, hold, use, improve, lease, mortgage, pledge, sell, transfer, and dispose of any property, real, personal, or mixed, or any interest in any property, or revenues of the authority as security for notes, bonds, evidences of indebtedness, or other obligations of the authority;

(6) to borrow money, make and issue notes, bonds, and other evidences of indebtedness; to secure the payment of the obligations or any part by mortgage, lien, pledge, or deed of trust, on any of its property, contracts, franchises, or revenues;

(7) *to make contracts, including service contracts with a person, corporation, or partnership including, without limitation, the South Carolina Department of Transportation, to provide the facilities and services provided herein*; and

(8) execute all instruments necessary or convenient for the carrying out of business.

(Italics added.) Section 4-37-20 expressly states that the enumerated powers of Richland County with reference to the Transportation Penny Program (as herein defined) are: "including, *but not limited to*..." those functions outlined in subsections (1)-(8) below. (Italics added.)

16. S.C. Ann. § 4-37-30(A) provides, in pertinent part: "[s]ubject 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."

17. S.C. Code Ann. § 4-37-30(A)(1)(a)(i) provides that a county wishing to impose such a tax should include in its ordinance "highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects..."

[1] Richland County is itself the "authority" as defined in the Act for purposes of the Transportation Penny Program.

18. As part of the process by which the Act directs a county to enact an ordinance authorizing such a tax, pursuant to S.C. Code Ann. § 4-37-30(A)(4)(b), the county election commission must certify that "the maximum cost of the project or projects or facilities to be funded in whole or in part from the proceeds of the tax...," among other things.

19. S.C. Code Ann. § 4-37-30(A)(8) provides, in pertinent part, simply: "[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."

20. S.C. Code Ann. § 4-37-30(A)(15) provides, in pertinent part: "[t]he revenues of the tax collected in each county pursuant to this section must be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund of the State." (Emphasis added.)

21. S.C. Code Ann. § 4-37-30(A)(16) provides in pertinent part: "[t]he Department of Revenue shall furnish data to the State Treasurer and to the counties receiving revenues for the purpose of calculating distributions and estimating revenues. The information which must be supplied to counties upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers."

RICHLAND COUNTY'S PENNY TAX ORDINANCE

22. Pursuant to the Act, in July 2012, Richland County enacted Ordinance No. 039-12HR ("the Ordinance") whereby Richland County scheduled a referendum on November 6, 2012 ("the Referendum") for the purpose of seeking approval by the residents of Richland County of a penny sales and use tax authorized by the Act (herein, the penny sales and use tax is referred to as "the Penny Tax.")

23. As provided in Section 1(c) of the Ordinance, the Penny Tax was to generate tax revenues (herein, "the Penny Tax Revenues") for the purposes of the following:

> Richland County Council finds that a one percent sales and use tax should be levied and imposed within Richland County, for the following projects and purposes: For financing the costs of highways, roads, streets, bridges, greenways, pedestrian sidewalks, and bike paths and lanes and other transportation-related projects facilities, and drainage facilities related thereto, and mass transit systems operated by Richland County or (jointly) operated by Richland County, other governmental entities and transportation authorities.
>
> ....

24. Section 2(c) of the Ordinance provided:

> The maximum cost of the projects to be funded from the proceeds of the Sales and Use Tax shall not exceed, in the aggregate, the sum of $1,037,900,000, and the maximum amount of net proceeds to be raised by the Sales and Use Tax shall not exceed $1,070,000,000, which includes administrative costs and debt service on bonds issued to pay for the projects. The estimated principal amount of initial authorization of bonds to be issued to pay costs of the projects and to be paid by a portion of the Sales and Use Tax is $450,000,000. The proceeds of these bonds shall be used for a portion of the following projects:
>
> Project: 1: Improvements to highways, roads (paved and unpaved), streets, intersections, and bridges including related drainage system improvements. Amount: $656,020,644
>
> Project 2: Continued operation of mass transit services provided by Central Midlands Regional Transit Authority including implementation of near, mid and long-term service improvements. Amount: $300,991,000
>
> Project 3: Improvements to pedestrian sidewalks, bike paths, intersections and greenways. Amount: $80,888,356
>
> A list of the 2012 Roadway Projects and the 2012 Pedestrian/Bike/Greenway Projects are attached hereto as Appendix A and incorporated herein by reference."
>
> (Emphasis added.)

25. Section 3(b) of the Ordinance provided in pertinent part: "County Council shall adopt annually prior to the beginning of each fiscal year a budget for expenditures of Sales and Use Tax revenues."

26. Pursuant to the Act, on November 6, 2012, the voters in Richland County approved the imposition of the Penny Tax and a comprehensive list of projects to be funded by the Penny Tax that was attached to the Referendum.

27. The legality of the Referendum was challenged and upheld by Order of the South Carolina Supreme Court in *Letts v. Richland County et al*, Appellate Case No. 2012-213679 filed March 21, 2013.

THE RICHLAND COUNTY PENNY TRANSPORTATION PROGRAM

28. Following the approval by the voters in Richland County of the Penny Tax Referendum, Richland County began establishing the framework for the implementation of the transportation improvement program to be paid for by the Penny Tax Revenues. This County program is herein called the "Transportation Penny Program."

29. The Penny Tax became effective on May 1, 2013.

30. In February 2014, Richland County approved a Cooperative Intergovernmental Agreement between Richland County and the South Carolina Department of Transportation ("SCDOT"), which enabled Richland County and the SCDOT to work together on projects funded in whole or in part by the Penny Tax Revenues.

31. Richland County determined that it did not have the infrastructure in place to administer the potential billion dollar Transportation Penny Program. Rather than attempting to hire dozens of specially qualified personnel familiar with the complex method of administering the construction of roadways, which would have created a large additional department and added dozens of employees, Richland County elected to outsource the implementation of the Transportation Penny Program, but retain administrative control over the Transportation Penny

Program. Richland County decided to do so through the procurement of a "Program Development Team."

32. In July 2014, Richland County issued an intent to award a contract for a Program Development Team. In October 2014, Richland County and the Program Development Team (hereinafter, "the PDT") executed a Program Management Agreement effective November 3, 2014 for the implementation of the portion of the Transportation Penny Program related to those paved road, sidewalk and greenway projects as provided in the Referendum.

33. Paving dirt roads is another part of the Transportation Penny Program, but was a separate scope of work from that assigned to the PDT. Richland County signed a Program Management Agreement effective May 7, 2015 with a separate company ("the Dirt Road Paving Team") for the Program Development, Program Management, and Other Services related to the paving of dirt roads.

34. Since the Transportation Penny Program began, Richland County, using mostly Penny Tax Revenues, has awarded approximately $50,000,000 in design and construction contracts, completed evaluating and prioritizing all 550 miles of County paved roads for resurfacing, and paved or resurfaced 76 roads.

35. Active projects, including in many cases design and construction, for the Transportation Penny Program presently include, but are not limited to: Atlas Road Widening, Bluff Road Widening, Clemson Road Widening, Hardscrabble Road Widening, North Main Street Widening, Pineview Road Widening, Shop Road Widening, Summit Parkway and Summit Ridge Drive Intersection, Broad River Rd. and Rushmore Rd. Intersection, Clemson Rd. and Rhame Rd./North Springs Rd. Intersection, Clemson Rd. and Sparkleberry Ln. (to Mallet Hill Rd.) Intersection, Farrow Rd. and Pisgah Church Rd. Intersection, Kennerly Rd. and Coogler

Rd./Steeple Ridge Rd. Intersection, North Springs Rd. and Risdon Way Intersection, Broad River Neighborhood Improvements, Southeast Richland Neighborhood Improvements, Ridge Drive Intersection, Riverbanks Zoo Transportation-Related Projects, Innovista Greene Street Phase 1, Lincoln Tunnel Greenway, Gills Creek Greenway, Three Rivers Greenway, Various Sidewalks, Bikeways, Resurfacing Projects and various Dirt Road Paving Team Projects.

36. Formal procurement and construction for major Transportation Penny Program projects that are scheduled to be started in the next few months include the North Main Street Widening Project (contains $10,000,000 in federal TIGER grant money only if Penny Tax Revenues are used for primary financing), the Hardscrabble Road Widening Project (Penny Tax Revenues of approximately $27,000,000 and another $28,000,000 from the SCDOT only if Penny Tax Revenues also applied), and the Bluff Road Widening Project (on a $4,500,000 project, $1,000,000 in federal funding and $800,000 in CTC funding only if Penny Tax Revenues used for the remainder of the funding.)

37. Richland County is statutorily mandated to receive from the State Treasurer approximately $16,100,000 (based on prior quarterly allocations) in Penny Tax Revenues in July of 2016 for the time period of April through June of 2016. Per the Act, the State Treasurer has disbursed Penny Tax Revenues consistently on a quarterly basis. Richland County is relying on the Penny Tax Revenues to continue to fund current and future operations under the Transportation Penny Program, including the PDT and Dirt Road Paving Team management contracts.

38. Richland County does not have a source of revenue for the projects in the Transportation Penny Program absent the Penny Tax Revenues. Thus, without the continued

disbursement of the Penny Tax Revenues to Richland County, Richland County's Transportation Penny Program will effectively cease to function.

THE PENNY TAX AND THE CMRTA

39. Because the Act allows Penny Tax Revenues to fund, among other things, "mass transit systems," the Ordinance, specifically at Section 1(c), provided that the Penny Tax was to be used for mass transit systems. Section 2(c) provided that the mass transit system would be the Central Midlands Regional Transit Authority ("CMRTA") and that the CMRTA would receive $300,991,000 to fund "implementation of near, mid and long-term service improvements."

40. The Penny Tax Revenues are the most important source of funding for the CMRTA. The initial funding for the operation of the CMRTA, which was established in 2002, was provided from a number of sources, including funds from public entities and a public utility.

41. However, the then-existing sources of revenue were insufficient for CMRTA to maintain a full service public transit system, and by 2012, the CMRTA was in serious financial difficulty and had reduced its service hours to the public by 45%.

42. However, as a result of the successful Penny Tax Referendum, the CMRTA was able to restore full services and now has a dedicated source of revenue for the continued operation of mass transit services, including implementation of near, mid and long-term service improvements in the maximum amount of $300,991,000 to be provided over not to exceed 22 years (which amount is approximately 29% of the available projected proceeds of the Penny Tax Revenues).

43. Thus, the Penny Tax provided for the first time a stable source of revenue for CMRTA and enabled CMRTA to provide significantly greater and more efficient services seven days a week to the residents of Richland County and beyond.

44. To facilitate the enhanced operations of The COMET transit system operated by the CMRTA, Richland County, the City of Columbia, the City of Forest Acres, Lexington County, and the CMRTA entered into an Intergovernmental Agreement ("the Intergovernmental Agreement") whereby the CMRTA agreed to provide public transportation services to the citizens of the parties to that agreement, and that the CMRTA would annually make a written request to Richland County for a distribution of 29% of the available proceeds of the Penny Tax Revenues. The Intergovernmental Agreement further provides at Section 5.01:

> The CMRTA agrees that all funding from the Transportation Penny shall be used only for budgeted costs of operations, capital and other expenses of providing Transit Services within or directly benefiting Richland County, the City of Columbia, the City of Forest Acres and other municipalities wholly within Richland County. Richland County shall make quarterly payments to the CMRTA no later than the 30th day (or as soon thereafter as practicable) of each month in which it receives a quarterly distribution from the State Treasurer.

(Emphasis added.)

45. The Intergovernmental Agreement, however, provides in Section 8.01 that "[t]his Agreement shall remain in full force and effect so long as the dedicated source of funding provided for here is available." Therefore, should Richland County not have the Penny Tax Revenues because such funds are withheld by SCDOR or another entity, then Richland County would cease funding the CMRTA pursuant to the Intergovernmental Agreement, as Richland County cannot fund the CMRTA without the Penny Tax Revenues.

46. The continued existence and operation of the CMRTA is dependent on Richland County's uninterrupted receipt of Penny Tax Revenues.

THE SCDOR CLAIMS IT HAS AUTHORITY OVER THE COUNTY'S USE OF THE PENNY TAX REVENUES

47. Defendants have engaged in a gradual but deliberate escalation of claimed authority and power over Richland County's ability to exercise the authority granted to Richland County, not to SCDOR, by the Act. Defendants' began this course of conduct with a request for an audit, but within months Defendants' request for an audit transformed to requests for changes in the way Richland County exercised its statutory authority over the Transportation Penny Program. Defendants' requests in time turned into demands, ultimatums, and finally a position that SCDOR would violate its statutorily required duty to remit the Penny Tax Revenues to the State Treasurer.

48. SCDOR first engaged with Richland County regarding the Penny Tax by letter of April 15, 2015 (see a true and correct copy at **Exhibit A** attached hereto). SCDOR advised Richland County that SCDOR was initiating a review of the Penny Tax, but did not cite any statutory or regulatory authority for its review.

49. In an effort to be cooperative with SCDOR and as a courtesy, Richland County provided substantial information to SCDOR over the next several months regarding the operation and financing of the Transportation Penny Program.

50. Defendant Reames sent a letter dated December 3, 2015 (see a true and correct copy at **Exhibit B** attached hereto) on behalf of SCDOR to Richland County which demonstrated that Defendants were intent on usurping Richland County Council's authority. Defendant Reames in this letter requested that Richland County "correct" its actions "prospectively and by reimbursement for previously paid amounts." To wit, Defendants were instructing Richland County how to use, account for, and disburse the Penny Tax Revenues.

51. Richland County by letter of December 9, 2015 (see a true and correct copy at **Exhibit C** attached hereto) responded to SCDOR's December 3, 2016 letter, noting among other things, "Richland County's intent is not just to cooperate with whatever your scope of authority may be..."

52. Richland County followed up its prior letter with another letter to SCDOR, this one dated December 31, 2015 (see a true and correct copy at **Exhibit D** attached hereto), further clarifying Richland County's position in response to the SCDOR December 3, 2015 letter.

53. Richland County officials subsequently met with Defendants in early 2016 and verbally requested that Defendants provide Richland County with South Carolina law that gave Defendants authority to mandate that Richland County take certain actions as directed by Defendants with respect to the use of the Penny Tax Revenues.

54. Following the meetings, Defendants sent a letter dated February 25, 2016 (see a true and correct copy at **Exhibit E** attached hereto) to Richland County which, among other things, provided a list of items that the Defendants alleged were either "(1) expenditures not permitted by the state tax statutes authorizing transportation taxes and (2) numerous conflicts of interest found in the program." The Defendants' letter stated "the Department's obligation is to ensure compliance with the state's tax statutes."

55. Attached to Defendants' February 25, 2016 letter (see **Exhibit E**) was a "Report on Sales and Use Tax for Transportation Facilities in Richland County" ("the Report") to the outlining SCDOR's demands that Richland County take specific actions. The Defendants' demands in the Report are attempts to usurp the authority of Richland County over the Transportation Penny Program granted to it by the Act.

56. In particular, the Report under a section titled "Action Required," stated that SCDOR required Richland County within thirty days to: (1) Repay Penny Tax Revenues used to set up and staff the Small Local Business Enterprise Program (SLBE) from Richland County's General Fund; (2) Repay Penny Tax Revenues used for Public Information Office expenses not directly related to "transportation facilities" (as SCDOR unilaterally defined such facilities) from Richland County's General Fund; (3) Engage an independent accounting firm to conduct independent audits for all prior years of the Penny Tax; and (4) "Immediately take corrective action to insure that future expenditures of Penny Tax funds are made solely for capital costs associated with transportation facilities and provide the public with information as to how those capital costs are to be determined."

57. As if SCDOR's demands in the Report were not enough, on April 1, 2016, SCDOR sent yet another letter to Richland County with additional demands and increased its list of "required" actions by Richland County to twelve items. (See a true and correct copy at **Exhibit F** attached hereto.) These twelve items are: (1) Provide how capital costs are determined under General Accountings Standards and how this differs from Internal Revenue Code § 263; (2) Implement SCDOR "approved" standards for expenses charged to the penny tax; (3) Reimburse penny for SLBE start-up costs; (4) Review all SLBE costs and reimburse those "not directly related to acquisition, building or improvement of specific capital assets;" (5) All SLBE costs should come from general fund in the future; (6) Convert PIO [Public Information Office] to task by task model; (7) Adopt SCDOT schedule as modified by SCDOR for tasks related to acquisition, building or improvement of capital project; (8) Assign reasonable costs to tasks using a recognized guideline; (9) Reimburse all costs to date not attributable to scheduled tasks; (10) Arrange for an independent audit of the PDT contract with RC to include

overcharges/overspending for services, gratuities, kickbacks, conflicts of interest and other improper relationships between parties; (11) Make results of audit of PDT contract available to the public; and (12) Adopt appropriate standards acceptable to SCDOR to guard against conflicts of interest and correct any current conflicts.

58. Also in its April 1, 2016 letter (see **Exhibit F**), SCDOR signaled its intent to attempt to exercise the right to control the use of Richland County's Penny Tax Revenues by pointing to its overall goal: "[w]e believe that these changes will bring Richland County's Penny Tax Program into compliance with state law and potentially serve as a template for the administration of transportation funds for other counties to follow." Thus, SCDOR is attempting to regulate the usage by all counties of South Carolina of their respective transportation penny tax funds where implemented pursuant to S.C. Code Ann. § 4-37-10, *et seq.*

SCDOR DEMANDS THAT THE COUNTY ACCOUNT FOR COSTS BY A METHOD THAT DEPARTS FROM NATIONAL PUBLIC ACCOUNTING STANDARDS

59. SCDOR's April 1, 2016 letter (see **Exhibit F**), among other things, also demanded that Richland County utilize Federal Internal Revenue Code Section 263A ("IRC § 263A") to determine how Richland County may and may not spend Penny Tax Revenues. (IRC § 263A is a federal law that governs when expense deductions are allowed in the payment of federal income taxes; *it has nothing to do with how revenue is spent after taxes are collected.*) However, Richland County has followed and continues to follow standards promulgated by the Governmental Accounting Standards Board ("GASB"), which are uniformly used throughout South Carolina and nationally by public bodies. Richland County is unaware of any public entity ever using IRC § 263A as SCDOR now attempts to mandate.

60. Richland County is statutorily entitled to determine that in its discretion it should use the GASB standards as part of the authority granted to it by the Act. The Ordinance at

Section 1(c) and at Section 2(d) specifically provided that among the costs that the Penny Transportation Program would pay for were "payment of administrative costs of the projects"

61. Further, the grant of authority to Richland County by S.C. Code Ann. § 4-37-20 expressly includes at subsection (7) the power "to make contracts, including *service* contracts...to provide *the facilities and services* provided herein.." (Italics added.) Thus, among other things, Richland County has express authority to contract with parties to build facilities and to contract with parties to provide services. The IRC § 263A standards that SCDOR attempts to impose on Richland County do not apply to services, and therefore contradict the grant of power issued to counties by the Act to contract for services.

62. SCDOR's assertion that Richland County must use IRC § 263A would result in Richland County being unable to pay Transportation Penny Program administrative costs with Penny Tax Revenues, thereby impairing the ability of Richland County to implement the Transportation Penny Program by requiring Richland County to use general revenues for such costs. SCDOR, as stated below, has no statutory authority to take these actions.

63. Clearly, Richland County has the express statutory authority to enter into contracts for services to implement the facilities, roads, green-ways and other capital projects funded by the Penny Tax. It is axiomatic that costs of "services" are not capital costs as generally defined.

64. Defendants interpret "facilities" as used in the Act to mean only capital costs for projects, but Defendants ignore that the word "project" is independent of the word "facilities." See S.C. Code Ann. § 4-37-30(A)(2)(b) ("maximum cost of the project or projects or facilities.") Thus, a "project" must include administrative costs beyond just capital costs. Defendants' interpretation of the Act to limit the expenditure of revenues raised from the Penny Tax first

ignores the General Assembly's use of the word "services" and second, would reach the absurd result that Penny Tax funds can pay for infrastructure but not the means to put them in place.

65. Notwithstanding the lack of statutory authority for this type of regulation, SCDOR just issued notice of Proposed Regulation 117-338 which would specify how Penny Tax Revenues are to be used by applying IRC § 263A instead of GASB. SCDOR's issuance of the Proposed Regulation indicates that SCDOR knows it does not have authority to demand the actions of Richland County as outlined herein. The Proposed Regulation seeks retroactively to empower SCDOR to attempt to assert illegal control over all counties with a transportation penny sales tax and to direct the accounting standards that they use. Regardless, as demonstrated herein, SCDOR has no authority to make the Proposed Regulation or enforce it on Richland County.

66. SCDOR's attempt to impose IRC § 263A standards ignores the statutorily granted authority to Richland County to make such determinations in the Act, ignores the language of the Ordinance and the Referendum that specifically included administrative costs and was approved by the voters in Richland County, and is another indication of SCDOR's violation of Home Rule (as defined *infra*).

67. Robert Schneider, Ph.D, Executive Director CMRTA sent a letter dated May 12, 2016 to Defendant Reames inquiring whether SCDOR would allow the Penny Tax funds remitted to CMRTA for the operations of the transportation system to continue even if the County's funding was halted. In response to the CMRTA letter, on May 19, 2016, SCDOR (see true and correct copy at **Exhibit I**) responded to the CMRTA letter, stating in pertinent part:

> It is not the Department's intent, however, to restrict the use of Penny Tax funds for operation of the (sic) COMET bus system. As such, in the event the Penny Tax fund allocations are still being halted at the time of the normal July 2016 distribution, the Department will issue to Richland

> County the 29% of the revenue specified for (sic) COMET bus system operations.

68. Indeed, SCDOR's May 19, 2016 letter (see **Exhibit I**) contradicts its own interpretation of the Act and Proposed Regulation. Defendants' decision to impose IRC § 263A on the County (not allowing operations expenses to be funded through the Penny Tax) and to allow the CMRTA to expend Penny Tax funds on operations is directly contrary to Defendants' stated interpretation of the Act, concluding that only "capital expenses" may be paid from Penny Tax funds.

69. Monies expended on "operations" are not accounted for as a capital expenditure. Defendants' determination that the Act only allows Richland County to pay for capital expenses from proceeds of the Penny Tax funds, yet apparently allowing of Penny Tax Revenues for use by the CMRTA bus system ("The COMET") to pay for operational expenses and not restrict the CMRTA to capital expenses, is arbitrary and capricious.

70. The CMRTA, like the County, uses Governmental Accounting Standards to report its financial activities, including the receipt and expenditure of the Penny Tax Funds. The CMRTA's financial statements are also annually subject to audits which are conducted in accordance with Government Auditing Standards, as required by the Comptroller General of the United States. Neither of these standards are directly related to the Internal Revenue Code Section 263.

71. Defendants' contradictory application of the Act clearly demonstrates the absurdity of its interpretation of the Act as it applies to Richland County.

72. Richland County regularly examines the Transportation Penny Program to see if there are areas in which it should be improved. Richland County in the discretion granted to it under the Act may or may not make changes to the Transportation Penny Program and should

Richland County do so, it will be only after Richland County has fully evaluated such changes. However, SCDOR cannot mandate Richland County to make changes in the Transportation Penny Program or perform actions where SCDOR does not have the authority to make and enforce such demands.

SCDOR STATES IT WILL WITHHOLD THE PENNY TAX REVENUE FROM THE COUNTY AT ITS SOLE DISCRETION

73. After receipt of the April 1, 2016 letter, representatives of Richland County met with Defendants once again to discuss the matters alleged by SCDOR and see if a compromise could be reached.

74. However, by letter of April 27, 2016 (see a true and correct copy at **Exhibit G** attached hereto), Defendants informed Richland County that:

> absent further action, the Department's monthly allocation and the resulting July distribution of Penny Tax Funds will be zero. Should emergency funding become necessary for continued operation of the COMET bus system, I invite your staff to communicate with Department staff so that limited emergency funding may be allocated for scheduled distribution to ensure uninterrupted service of the bus system.

(Emphasis added.) Thus, Defendants by their April 27, 2016 letter exercised the ultimate attempt to take control of the Transportation Penny Program by refusing to remit the Penny Tax Revenues unless Richland County succumbed to their demands.

75. Notwithstanding the statement by Defendants that SCDOR may provide "emergency" funding for the CMRTA's COMET system, the funding of CMRTA is clearly in jeopardy as SCDOR's position by necessity is that it has the discretion to parcel out some of the Penny Tax Revenues to Richland County, and such alleged discretion means that SCDOR can hold Richland County hostage with the threat of withholding CMRTA funding should Richland County not capitulate to SCDOR's illegal demands.

76. Richland County also sent a letter to Defendants on May 4, 2016 (see a true and correct copy at **Exhibit H** attached hereto), again demanding SCDOR's authority to take these actions and warning SCDOR that SCDOR's unwarranted actions would have serious financial consequences for the citizens of Richland County.

77. Finally, SCDOR sent a letter on May 19, 2016 (see true and correct copy at **Exhibit I**) whereby it affirmed that it has already "halted" allocations of Penny Tax Revenues from Richland County, with the exception of certain monies that SCDOR stated were to fund "COMET bus systems operations."

SCDOR DOES NOT HAVE THE AUTHORITY TO WITHHOLD THE PENNY TAX REVENUE

78. Defendants' actions reflect an unprecedented abuse of power by a state agency attempting to wrest control of funds generated by taxes paid for the specific use of Richland County, and dictate how those tax revenues should be spent, without input from the citizens of Richland County. Defendants attempt to override the authority of the duly elected Richland County Council, the governing body of Richland County.

79. SCDOR is created by statute. An agency or officer of the state has only that statutory authority provided by express or necessary implication. Defendants can only exercise "those powers that are conferred expressly or by reasonable necessary implication, or are merely incidental to powers expressly granted." *Brooks v. South Carolina State Bd. of Funeral Serv.*, 271 S.C. 457, 461, 247 S.E.2d 820, 822 (1978). SCDOR is created pursuant to S.C. Code Ann. § 12-4-10 and its general powers are found in S.C. Code Ann. § 12-4-310.

80. Defendant Reames' position as the Director of the SCDOR is created by statute, namely S.C. Code Ann. § 12-4-30.

81. Defendants' powers and duties with regard to revenues collected pursuant to the

Optional Methods for Financing Transportation Facilities are set forth in Title 4, Chapter 37.

82. Neither Defendant Reames nor SCDOR have the statutory authority to make a determination to withhold the SCDOR's monthly remittances to the State Treasurer either by express provision of law or necessary implication therefrom.

83. SCDOR does not have the authority to withhold the Penny Tax Revenues is readily apparent from the lack of any statutory authority indicating that SCDOR can dictate how Penny Tax Revenues are spent, that SCDOR can withhold Penny Tax Revenues or what SCDOR is supposed to do with the Penny Tax Revenues if SCDOR refuses to continue to remit the Penny Tax Revenues rightfully due Richland County.

84. S.C. Code Ann. 4-37-10 *et seq.*, the Act, is the general law passed by the General Assembly and signed by the Governor authorizing counties pursuant to Home Rule to adopt, subject to public referendum approval, the use of transportation penny sales tax.

85. The Act contains a number of provisions, many related to how a county is to set up the ordinance and referendum authorizing a transportation penny sales tax.

86. The Act provides limited references to SCDOR and to the State Treasurer, generally regarding the mechanics of collecting and distributing the penny sales tax revenues to the proper county.

87. While the Act has limited reference to SCDOR, most of SCDOR's regulatory authority is found in statutes in Title 12 of the South Carolina Code of Laws. Consequently, SCDOR's authority is both enabled and limited by Title 12.

88. S.C Code Ann. §4-37-30(A)(8) grants SCDOR the authority to administer and collect the tax levied in the same manner as other sales and use taxes are collected. S.C. Code Ann. §12-36-2660 grants SCDOR the authority to "administer and enforce" the sales and use tax

provisions of Chapter 36. The statutes governing such enforcement authority are found in Chapter 54 of Title 12 and grant SCDOR the authority to enforce the requirement to file returns and to collect the tax.

89. As explained below, SCDOR does not have the authority in either the Act or Title 12 to direct the County how to use Penny Tax Revenues or to withhold Penny Tax Revenues from Richland County.

90. SCDOR claimed in the Report enclosed with the February 24, 2016 letter that it was authorized to make these demands of Richland County pursuant to S.C. Code Ann. §§ 12-4-10, 12-4-310 *et seq*, and 12-54-100. However, nothing in these South Carolina statutory code sections provides any authority for the proposition that SCDOR can either tell Richland County how to use the Penny Tax Revenues or that SCDOR can withhold remittance of the Penny Tax Revenues for any reason. Notably, SCDOR does not cite to any provision of S.C. Code Ann. §§ 4-37-10, *et seq*.—the Act.

91. Under the rules of statutory construction followed by South Carolina courts, a statute providing for a specific matter controls over a general statute. "Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect. *Spectre, LLC v. South Carolina Dept. of Health and Environmental Control*, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010) (citations omitted.)

SCDOR Has No Authority Over Richland County Pursuant to S.C. Code § 12-4-10

92. S.C. Code Ann. § 12-4-10 grants the SCDOR no enforcement authority over the transportation sales and use tax.

93. In precatory language, S.C. Code Ann. § 12-4-10 states the reason the SCDOR was created was "to administer and enforce the revenue laws of this State."

94. Contrary to the suggestions of SCDOR, S.C. Code Ann. § 12-4-10 is not an unfettered grant of enforcement authority to the SCDOR. The general language of § 12-4-10 cannot be construed to grant enforcement authority as such has not otherwise been granted regarding a specific tax.

95. Art. VIII, S.C. Constitution, Home Rule, and the Act 52 place the ability to raise revenue through a county transportation tax in the hands of Richland County and its citizens following a referendum.

96. Under S.C. Code Ann. § 12-4-10, Richland County is under no duty to follow Defendants' orders or directives on how to spend the Penny Tax Revenues.

97. Under S.C. Code Ann. § 12-4-10, the Defendants have no authority to order or direct Richland County how to account for and/or spend the Penny Tax Revenues.

SCDOR Has No Authority Over Richland County Under S.C. Code § 12-4-310(9)

98. S.C. Code Ann. § 12-4-310(9) grants the SCDOR no enforcement authority over the transportation sales and use tax.

99. In precatory language, S.C. Code Ann. § 12-4-310(9) states the SCDOR will "exercise and perform other powers and duties as granted to it or imposed upon it by law."

100. S.C. Code Ann. § 12-4-310(9) is not an affirmative grant of enforcement authority to the SCDOR.

101. No statute grants to the SCDOR, and no statute imposes upon the SCDOR, any power or duty to enforce the provisions of the transportation sales and use tax related to the expenditure of tax revenues collected by a transportation sales and use tax.

102. Under S.C. Code Ann. § 12-4-310(9), Richland County is under no duty to follow Defendants' orders or directives on how to spend the Penny Tax Revenues.

103. Under S.C. Code Ann. § 12-4-310(9), the Defendants have no authority to order or direct Richland County how to spend the Penny Tax Revenues.

SCDOR Has No Authority Over Richland County Under S.C. Code § 12-54-100

104. S.C. Code Ann. § 12-54-100 grants the SCDOR no enforcement authority over the provisions of the transportation sales and use tax related to the expenditure of tax revenues collected by a transportation sales and use tax.

105. The SCDOR in S.C. Code Ann. § 12-54-100 has only the authority for "the purpose of ascertaining *the correctness of a return* or making a determination of or *fixing tax liability*," neither of which apply to Richland County. (Italics added.)

106. The demands made of Richland County by the Defendants do not examine or investigate a tax return or fix a taxpayer's tax liability. The only persons that file a return or have a tax liability under the Penny Tax are retailers and consumers, not Richland County.

107. Under S.C. Code Ann. § 12-54-100, Richland County is under no duty to follow Defendants' orders or directives on how to spend the transportation sales and use tax funds.

108. Under S.C. Code Ann. § 12-54-100, the Defendants have no authority to order or direct Richland County how to spend the transportation sales and use tax funds.

SCDOR Has No Authority Over Richland County Under S.C. Code § 12-36-2660

109. SCDOR asserts in the Report it has enforcement authority (including the authority to promulgate regulations) "to implement the transportation tax," citing S.C. Code Ann. § 4-37-30 and S.C. Code Ann. § 12-36-2660.

110. SCDOR is granted the power to administer and enforce the provisions of the South Carolina Sales and Use Tax Act, S. C. Code Ann. §§12-36-5, *et seq.*, pursuant to S.C. Code Ann. §12-36-2660. Its enforcement authority is found in Chapter 54 of Title 12. For purposes of sale and use taxes, its enforcement authority is limited to the filing of returns and the collection of the tax. S.C. Code Ann. §4-37-30(A)(9) makes this statutory structure applicable to the Transportation Sales and Use Tax. Thus, SCDOR is authorized to enforce the filing of returns and the collection of the transportation sales and use tax; but has no enforcement authority after the taxes are disbursed to Richland County.

111. Thus, § 12-36-2660 grants the SCDOR no enforcement authority over the accounting for and expenditure of transportation sales and use tax, a tax in Title 4, Chapter 37 of the South Carolina Code of Laws. Rather, § 12-36-2660 states the SCDOR "shall administer and enforce the provisions of this chapter"(which is Chapter 36 of Title 12, not Chapter 37 of Title 4.) (Emphasis added.)

112. To date, Defendants have provided no legal authority granting SCDOR the legal right to direct Richland County to take any action with respect to the accounting for and use of the Penny Tax Revenues.

SCDOR Has No Authority Over Richland County Under S.C. Code § 4-37-30(A)(8)

113. S.C. Code Ann. § 4-37-30(A)(8) simply states in pertinent part that "[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." (Italics added.)

114. S.C. Code Ann. § 4-37-30(A)(8) further requires the SCDOR to administer and collect the Penny Tax "in the same manner that other sales and use taxes are collected."

115. No other sales and use taxes collected by SCDOR are subject to the type of action of action SCDOR attempts to assert with respect to the Penny Tax. Just as SCDOR has no authority to dictate to the General Assembly how it can spend the sales and use taxes SCDOR has collected for use by the General Assembly in enacting the appropriations Act, Defendants cannot dictate to Richland County how it can expend the Penny Tax Revenue.

116. No other sales and use taxes collected by SCDOR are subject to the type of action SCDOR attempts to assert with respect to the Penny Tax. For example, the SCDOR does not have the authority to order the recipient of sales and use tax funds to reimburse the fund for start-up costs and general operational and administrative costs under the South Carolina Sales and Use Tax Act (which is what the SCDOR demands of Richland County).

117. No other sales and use taxes collected by SCDOR are subject to the type of action SCDOR attempts to assert with respect to the Penny Tax. For example, the SCDOR does not have the authority to order the recipient of sales and use tax funds to adopt a guideline to determine a reasonable amount the fund recipient should spend on specific tasks under the South Carolina Sales and Use Tax Act (which is what the SCDOR demands of Richland County).

118. No other sales and use taxes collected by SCDOR are subject to the type of action SCDOR attempts to assert with respect to the Penny Tax. For example, the SCDOR does not have the authority to order the recipient of sales and use tax funds to perform an independent audit of the sales tax fund under the South Carolina Sales and Use Tax Act (which is what the SCDOR demands of Richland County).

119. Under S.C. Code Ann. § 4-37-30(A)(8), Richland County is under no duty to follow Defendants' orders or directives on how to spend the Penny Tax Revenues.

120. Under S.C. Code Ann. § 4-37-30(A)(8), the Defendants have no authority to order or direct Richland County how to spend the Penny Tax Revenues.

SCDOR Has No Authority Over Richland County Under S.C. Code § 4-37-30(A)(5)

121. S.C. Code Ann. § 4-37-30(A)(5) grants the SCDOR only the authority to determine if the transportation sales and use tax has raised revenues sufficient to provide for the cost of the projects as approved in the referendum and to determine if the transportation sales and use tax has raised revenues sufficient to amortize all debts related to the approved projects.

122. Under S.C. Code Ann. § 4-37-30(A)(5), Richland County is under no duty to follow Defendants' orders or directives on how to spend the Penny Tax Revenues.

123. Under S.C. Code Ann. § 4-37-30(A)(5), the Defendants have no authority to order or direct Richland County how to spend the Penny Tax Revenues.

SCDOR Has No Authority Over Richland County Under S.C. Code § 4-37-30(A)(17)

124. The SCDOR in S.C. Code Ann. § 4-37-30(A)(17) has only the authority to promulgate regulations necessary to implement the transportation sales and use tax.

125. The SCDOR has been assigned limited duties in S.C. Code Ann. § 4-37-30 related to the implementation of the transportation sales and use tax. To wit, the SCDOR is responsible under S.C. Code Ann. § 4-37-30 only for determining when the tax has raised sufficient revenues under subsection (A)(5)(b), collecting and administering the tax levied under subsection (A)(8), remitting revenues to the State Treasurer under subsection (A)(15), and providing data to the State Treasurer and counties under subsection (A)(16).

126. S.C. Code Ann. § 4-37-30(A)(17) does not authorize or require the SCDOR to enforce all provisions of S.C. Code Ann. § 4-37-30.

127. SCDOR has promulgated no regulations regulating the Penny Tax.

128. Under S.C. Code Ann. § 4-37-30(A)(17), Richland County is under no duty to follow Defendants' orders or directives on how to spend the Penny Tax Revenues.

129. Under S.C. Code Ann. § 4-37-30(A)(17), the Defendants have no authority to order or direct Richland County how to spend the Penny Tax Revenues.

SCDOR Cannot Interfere with Richland County's Constitutional Right to Home Rule

130. 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. Article VIII established home rule ("Home Rule") for local government in South Carolina so that counties and other local governments can govern themselves and not be subject to direction and control by the State legislative delegations or state government. See: *Knight v. Salisbury*, 262 S.C. 565, 206 S.E. 2d 875 (1974).

131. Chapter 9 of Title 4 encompasses the general law adopted by the General Assembly for county government Home Rule. Specifically, S.C. Code Ann. § 4-9-25 provides for the Home Rule of counties, including Richland County:

> All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

(Emphasis added).

132. S.C. Code Ann. § 4-9-30 was adopted to implement the Home Rule provisions vis a vis South Carolina counties.

133. S.C. Code Ann. § 4-9-30(3) authorizes Richland County to enter into contracts. Defendants are attempting to substitute their judgment for that of Richland County as to the wisdom of particular contracts and the allocation and distribution of monies. The plain and unambiguous language of the Home Rule provision indicates the General Assembly's intent to empower Richland County and not the Defendants to determine the contracts Richland County will execute and how Richland County will allocate and disburse funds.

134. Pursuant to Home Rule, Richland County has the express authority "to provide for an accounting and reporting system whereby funds are received, safely kept, allocated and disbursed." S.C. Code Ann. § 4-9-30(8). The plain and unambiguous language of the Home Rule provision indicates the General Assembly's intent to empower Richland County and not the Defendants to dictate to Richland County the decision as to which accounting standard to will following in allocating and disbursing funds.

135. Defendants' actions in withholding monthly remittances to the State Treasurer unless Richland County accounts for and distributes funds to pay for existing contracts between Richland County and its vendors in the manner directed and demanded by Defendants directly infringes on the legislative authority vested in Richland County under Home Rule, and constitutes an usurpation of authority in violation of Article VIII of the South Carolina Constitution and S.C. Code Ann. § 4-9-30(8).

136. Thus, SCDOR's actions are a gross violation of Richland County's rights under Home Rule.

SCDOR HAS A DUTY TO REMIT THE PENNY TAX REVENUES

137. By statutory directive of S.C. Code Ann. § 4-37-30(A)(15), the Penny Tax Revenues collected by Defendants for Richland County must be remitted to the State Treasurer.

138. The Defendants per SCDOR's May 19, 2016 letter has taken action to deny to Richland County the upcoming July 1, 2016 distribution of Penny Tax Revenues authorized in clear and unambiguous language by S.C. Code Ann. § 4-37-30(A)(15).

139. The Defendants' duty to remit to the State Treasurer the Penny Tax Revenues collected for Richland County is a ministerial duty.

140. Richland County, by the general statutory law of South Carolina, is given the legal right to use the Penny Tax Revenues for the purposes stated in the Ordinance.

141. SCDOR at Defendant Reames illegal direction has improperly withheld Penny Tax Revenues and will improperly withhold additional Penny Tax Revenues to the State Treasurer to distribute to Richland County.

IF THE SCDOR WITHHOLDS THE PENNY TAX REVENUE, THE CONSEQUENCES FOR THE PENNY TAX PROGRAM WILL BE DISASTROUS AND THE COUNTY AND ITS CITIZENS WILL SUFFER IRREPARABLE HARM

142. Richland County will suffer irreparable harm if the relief requested in this Complaint is not granted.

143. The Defendants suffer no harm if the relief requested in the Complaint is granted.

Defendants' Actions Interfere with Efforts to Make Richland County Safer

144. It is no secret that the roads and highways of the state of South Carolina are in a deteriorating condition, creating dangerous driving conditions that impose both a health and financial toll on the users of road in South Carolina, including residents of Richland County.

145. The Transportation Penny Program is one way for Richland County to address some of these road safety issues faced by the residents of Richland County.

146. An interruption of services by the Transportation Penny Program would impact the health and safety of the residents of Richland County by interrupting and delaying the

resurfacing or road, the paving of dirt roads, and the construction of additional roads to relieve congestion and potentially dangerous driving conditions along County roads.

Defendants' Actions May Expose Richland County to Significant Additional Costs

147. Richland County has executed contracts for tens of millions of dollars for road resurfacing, repair, design and construction.

148. Richland County has executed contracts for tens of millions of dollars for the implementation of the Transportation Penny Program with the PDT and Dirt Road Paving Team. The administrative infrastructure created by the these contracts for the implementation of the Transportation Penny Tax Program is a necessary function in order for the Transportation Penny Tax Program to exist.

149. Richland County does not have revenues to allocate outside of the Penny Tax Revenues to pay for the Transportation Penny Tax Program.

150. Without receipt and use of the Penny Tax Revenues, Richland County will likely have to shut down significant portions of or all of the Transportation Penny Tax Program. Should that occur, Richland County will owe substantial additional money to the PDT and to the Dirt Road Paving Team as those entities demobilize and wind down their operations.

151. Further, should Richland County have to terminate the PDT and the Dirt Road Paving Team, there likely would be a substantial interruption in Richland County's ability to provide services to the residents of Richland County under the Transportation Penny Program, as Richland County does not have the personnel or infrastructure to take over the administration of the Transportation Penny Program, assuming that the Transportation Penny Program continues at all.

152. Even if Richland County only suspended the services of the PDT and the Dirt Road Paving Team under their contracts for some period of time, Richland County would owe substantial additional money to these entities which have ongoing overhead and other costs that would be owed by Richland County until and unless their contracts were terminated.

153. Moreover, SCDOR's withholding of Penny Tax Revenues will eliminate Richland County's option to borrower funds in the bond market as planned and take advantage of the current historically low interest rates. The impact of Richland County not being able to avail itself of these low interest rates will have the effect of significantly increasing the cost of the Transportation Penny Program projects.

154. Finally, SCDOR's actions imperil Richland County's overall financial stability; thereby, increasing the perceived risk of purchasing Richland County's bonds, resulting in higher interest costs for any form of borrowing by Richland County. The very threat of SCDOR withholding funds has already required Richland County to file a public disclosure to put the bond market on notice and required responses to numerous telephone calls from bondholders.

Defendants' Actions Will Create Financial Uncertainty for County Revenues

155. Further, if there is uncertainty in the delivery of the Penny Tax Revenues, Richland County to continue any services for the Transportation Penny Program would likely have to set new millage rates for County residents by September 1, 2016 for rates in 2017. Richland County would be forced, ironically, to raise taxes on its residents to finish ongoing projects that rely on the Penny Tax Revenues and thus impose the tax burden for this program solely on the residents of Richland County, as compared to the Penny Tax Revenue, which is derived from any person living anywhere who purchases items in Richland County that are taxable under the Penny Tax.

156. Without knowing that the Penny Tax Revenues will be provided to Richland County, Richland County will have difficulty in budgeting for the next fiscal year as the Transportation Penny Program has obligated Richland County to millions of dollars in construction projects that must be completed. To be completed, Richland County must find a way to pay for the completion of these projects. This would prove to be a difficult exercise, resulting in either the cutting of current County services such as law enforcement and fire protection or the raising of taxes.

Defendants' Actions May Negatively Impact Services by the CMRTA

157. The Defendants have previously threatened to withhold Penny Tax Revenues that Richland County would use to fund the CMRTA through the Intergovernmental Agreement. Defendants have exercised their alleged discretion to state that SCDOR will remit funds to Richland County to be distributed to the CMRTA. At this point, there is nothing to prohibit Defendants from reversing course and withholding remittance of Penny Tax Revenues.

158. If Richland County cannot guarantee payments of the share of Penny Tax Revenues to CMRTA, Richland County may not be able to fulfill its obligation under the Intergovernmental Agreement.

159. If the flow of Penny Tax Revenues to the CMRTA is stopped, the CMRTA will be forced to suspend its services, and will be unable to provide public transportation services as needed by the residents of Richland County and other areas served by The COMET bus system.

160. The CMRTA cannot maintain contracts and promises of services if its flow of revenue from the Penny Tax is subject to the whim of the Director on whether or not he chooses to remit Penny Tax Revenues to be distributed to Richland County for the use of CMRTA.

161. If the flow of Penny Tax Revenues is interrupted, the Defendants' actions likely will significantly impair, if not terminate, the ability of CMRTA to provide transportation services to those residents of Richland County most in need of transportation to go to work, travel to obtain health care, and buy food for their families. The COMET provides fixed route bus services to residents of Richland County and to Lexington Medical Center. The buses run seven (7) days per week and make 47,115 fixed route bus trips per week with each bus trip carrying varying numbers of passengers. The COMET provides paratransit services for people with disabilities, using Americans with Disabilities Act ("ADA") equipped vans. The paratransit vehicles make 961 trips per week with each vehicle carrying varying numbers of passengers. If Defendants change their position as stated in SCDOR's May 19, 2016 letter, and again decide to withhold the remittance of Penny Tax Revenues, such an action could have disastrous repercussions for these Richland County citizens relying on The COMET system.

CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

162. Richland County incorporates herein by reference thereto the allegations of the foregoing paragraphs.

163. This cause of action is brought pursuant to the South Carolina Declaratory Judgment Act, S.C. Code §15-53-10 *et. seq.*

164. Richland County requests a Declaration from the Court of the following:

a. That SCDOR, and thus the Director, does not have the statutory authority to withhold Penny Tax Revenues from Richland County;

b. That SCDOR, and thus the Director, does not have the statutory authority to regulate the use of Penny Tax Revenues collected for use by Richland County;

c. That SCDOR's Proposed Regulation 117-338 is unenforceable against Richland County; and

d. That Defendants' actions in attempting to direct how Richland County expends the Penny Tax Revenues and Defendants' actions in withholding Penny Tax Revenues from Richland County violate Art. VIII, S.C. Constitution, Home Rule, and Act 52, 1995 Acts of the General Assembly.

FOR A SECOND CAUSE OF ACTION
(Writ of Mandamus)

165. Richland County incorporates herein by reference thereto the allegations of the foregoing paragraphs.

166. 1 Art. V, § 20 of the South Carolina Constitution and under the common law equity authority of the Court authorize Writs of Mandamus.

167. Richland County has no other remedy but that this Court direct the Defendants to carry out their ministerial duty by seeking a mandamus pursuant to Rule 65.

168. The Defendants have a ministerial duty to remit the Penny Tax Revenues. 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 statutory use of the words "must" and "shall" indicate that the legislative intent in passing the statute is to mandate, *e.g.* leave no discretion, that the SCDOR remit the Penny Tax Revenue collected by SCDOR to the State Treasurer.

169. Richland County is statutorily entitled to the collected Penny Tax Revenues from the Penny Tax within Richland County.

170. The Defendants have a ministerial duty to remit the amount of Penny Tax Revenues to the State Treasurer for distribution to Richland County from the collected Penny Tax Revenues for tax transactions within Richland County.

171. The Defendants have a ministerial duty to remit to the Treasurer the collected Penny Tax Revenues for tax transactions within Richland County in July 2016.

172. The Defendants have "halted" the remittance to the State Treasurer for the July 2016 distribution of the collected Penny Tax Revenues for tax transactions within Richland County for April through June, 2016, and thereafter.

173. Richland County has no adequate remedy at law upon which to seek relief from the actions of the Defendants.

174. Richland County requests a Writ of Mandamus ordering the Defendants to on the first day of July 2016, as provided in the Act, remit the collected Penny Tax Revenues for tax transactions within Richland County for April through June, 2016, and that Defendants shall continue to carry out their ministerial duty with respect to the Penny Tax Revenues thereafter.

FOR A THIRD CAUSE OF ACTION
(Injunctive Relief/Writ of Prohibition)

175. Richland County incorporates herein by reference thereto the allegations of the foregoing paragraphs.

176. The Defendants' demands, orders, and actions directed to Richland County have caused and will continue to cause irreparable harm as above alleged.

177. Richland County has no adequate remedy at law upon which to seek relief from the actions of the Defendants.

178. Richland County is entitled to an injunction and/ or writ of prohibition prohibiting the Defendants from ordering or directing Richland County how to spend the Penny Tax

Revenues and prohibiting the Defendants from taking any action not expressly allowed by this Court during the term of an injunction that interferes with the payment of the Penny Tax Revenues to Richland County on the first day of July 2016, as provided in the Act..

FOR A FOURTH CAUSE OF ACTION
(Attorney's Fees and Costs)

179. Richland County incorporates herein by reference thereto the allegations of the foregoing paragraphs.

180. Pursuant to S. C. Code Ann. § 15-77-300(A), Richland County is entitled to an award of its attorney's fees and costs because SCDOR in the matters above alleged acted without substantial justification and no special circumstances exist that would make an award of attorney's fees unjust.

181. Richland County is entitled to this remedy even though Richland County is the plaintiff. See *Layman v. State*, 368 S.C. 631, 630 S.E.2d 265 (2005).

182. Richland County requests that it be awarded its costs and attorney's fees arising out of and related to this action from SCDOR pursuant to S.C. Code Ann. § 15-77-300(B).

PRAYER FOR RELIEF

WHEREFORE, Richland County prays that:

1. The Court issue 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;
2. The Court enjoin or otherwise prohibit the Defendants from issuing directives, demands, or orders on any matter related to Richland County's spending of the Penny Tax Revenues;
3. The Court issue a mandamus directing the 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;

4. The Court award to Richland County it's reasonable attorney's fees and costs; and

5. The Court award to Richland County any other such relief as it may find just.

Respectfully submitted,

By: _____

Benjamin E. Nicholson, V
M. Elizabeth Crum
McNAIR LAW FIRM, P.A.
1221 Main Street (29201)
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800
nnicholson@mcnair.net
lcrum@mcnair.net

By: _____

Ray N. Stevens
Ray E. Jones
Parker Poe Adams & Bernstein LLP
1201 Main St., Ste. 1450 (29201)
PO Box 1509
Columbia, SC 29202
Telephone: (803) 255-8000
Facsimile: (803) 255-8017
raystevens@parkerpoe.com
rayjones@parkerpoe.com

Of Counsel
Larry C. Smith
Richland County Attorney
P.O. Box 192
Columbia, SC 29202

Attorneys for the Plaintiff, Richland County

May 20, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Docket No.: 2016-CP-40-_____
Richland County, South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**VERIFICATION**
	)	
The South Carolina Department of Revenue, and Richard Reames, III in his official capacity as its Director,	)	
	)	
Defendants.	)	
	)	

PERSONALLY APPEARED before me, Torrey Rush, who first being duly sworn, deposes and says: That he is the Chair of Richland County, a party in the foregoing action; and that he has read the Summons and Complaint in this action, and the matters therein are true to his own knowledge, that being the knowledge of Richland County, except those matters and things therein that may be alleged on information and belief, and as to those, he believes them to be true, that being the belief of Richland County.

Richland County, South Carolina

By: _____

Its: Chair

Sworn to and subscribed before me

this 20th day of May, 2016

_____

Notary for South Carolina

My Commission Expires: February 7, 2023

COLUMBIA 1268753v6

Exhibit A

State of South Carolina

Department of Revenue

NIKKI R. HALEY
Governor

RICK REAMES III, ESQUIRE
Director

300A OUTLET POINTE BOULEVARD
POST OFFICE BOX 125
COLUMBIA, SOUTH CAROLINA 29214
Telephone: (803) 898-5040
Facsimile : (803) 896-3023
Director@dor.sc.gov

April 15, 2015

Mr. W. Anthony McDonald
Richland County Administrator
Post Office Box 192
Columbia, SC 29202

Re: Richland County Transportation Sales Tax

Dear Mr. McDonald:

It was a pleasure to talk with you today. As we discussed, the South Carolina Department of Revenue is initiating a review of the Richland County Transportation Sales Tax that was passed by voter referendum in November, 2012. Pursuant to our statutory and regulatory authority, this review is to ensure public accountability and transparency regarding the collection and expenditures of revenue generated by the tax.

We request that you have the appropriate personnel from Richland County contact my office by Friday, April 24 to establish a convenient time and process so that Department of Revenue employees can gain access to County records. The Department of Revenue is committed to conducting the review in a manner most convenient to the County and can work at your location, or alternatively, the County can simply provide the records to our personnel for review at our office.

Thank for your cooperation and your attention to this matter. If you have any questions, I invite you to contact me at any time. We look forward to working with you.

Very truly yours,

Rick Reames III
Director

RRRIII/afw
CC: The Honorable David A. Adams, Richland County Treasurer

Exhibit B

State of South Carolina

Department of Revenue

NIKKI R. HALEY
Governor

RICK REAMES III, ESQUIRE
Director

300A OUTLET POINTE BOULEVARD
POST OFFICE BOX 125
COLUMBIA, SOUTH CAROLINA 29214
Telephone: (803) 898-5040
Facsimile : (803) 896-0023
Director@dor.sc.gov

December 3, 2015

RECEIVED
2015 DEC -4 AM 9:13
RICHLAND COUNTY
ADMINISTRATOR'S OFFICE

Mr. W. Anthony McDonald
Richland County Administrator
2020 Hampton Street, Room 4058
Columbia, SC 29202

RE: Richland County Penny Transportation Program

Dear Mr. McDonald:

As you know, on April 15, 2015, the South Carolina Department of Revenue (the "Department") initiated a review of the Richland County Penny Transportation Program (the "Penny") for the period May 1, 2013 – October 31, 2015. The Department appreciates Richland County's cooperation throughout the review. The purpose of this letter is to update you on the matter. The review has given rise to three general areas of concern.

First, the manner in which the Project Development Team (the "PDT") was procured, including but not limited, to Council's adoption of exemptions from established procurement procedures, and certain payments by or to the PDT raises questions of potential public corruption and fraud. Public corruption and fraud are beyond the scope of the Department's mission and, therefore, the Department has referred these matters to law enforcement.

Second, the Department has discovered multiple instances of illegal activity by individuals and/or companies associated with the Penny Program. These activities are within the scope of the Department's mission, and the Department is proceeding with these cases as is appropriate.

Finally, certain expenditures appear to fall outside the parameters of both the transportation tax statutes and the Richland County ordinance authorizing the program. Additional details regarding these areas of concern are outlined below.

Expenditures Outside the Transportation Tax Statute and Ordinance

Small Local Business Enterprise (SLBE) Program

Despite clear indication by both the referendum and ordinance that Penny revenue expenditures be limited to specific transportation-related projects, records outline Council's use of Penny revenue to fund the County's Small Local Business Enterprise (SLBE) program.

Council passed an ordinance creating the SLBE initiative in September 2014 to "provide a race and gender neutral procurement tool…to ensure that all segments of its local business community have a reasonable and significant opportunity to participate in County contracts for construction, architectural & engineering services, professional services, nonprofessional services, and commodities." Rich. Cnty. Code §2-639(a).

While this expressed purpose may be laudable, it falls outside the legally permitted expenditures established by the Penny referendum and ordinance because the SLBE is a countywide program applying to all facets of county operations – not just Penny expenditures. Therefore, the expenditures are not specifically for transportation projects as required by law.

An estimated $619,457 in Penny revenue appears to have been used as the exclusive funding source for the SLBE personnel and program start-up costs outlined below.

$219,378	in estimated personnel costs
$250,231	in attorney fees to draft ordinance
$122,760	for software management system
$13,000	for website development
$4,296	for assistance from Charleston County
$9,792	for related consulting

These figures are from the audit period which was limited to the first 24 months of collections of the Penny Program. The Penny Program is scheduled for a 22-year term, and many of the recurring expenditures related to the SLBE program will likely increase over time.

In addition, the estimated personnel costs represent the annual salary cost for five full-time employees hired by Council to work exclusively for the SLBE, including: two Certification and Compliance Specialists; Assistant Procurement Director; Outreach Specialist; and Education Specialist. It should be noted that this estimate is based on annual salaries. As positions were filled at various points during the year, the full annual salary expenditure may not be relevant for all five positions.

Public Information Services

The PDT contract awards $3 million over a period of five years for public information services. Two firms each receive monthly payments of $25,000, or $300,000 per year, for a combined expenditure of $600,000 per year for public information services. This includes personnel costs only and does not account for additional amounts to be paid to both firms as reimbursement for such items as brochures, mailings, business cards, website maintenance, catering, mileage, and computer and cell phone allowances.

Firm invoices offer a breakdown of employee hours spent on public information activities related to the Penny Tax. One of the firms purportedly has one full-time employee dedicated to Penny Tax projects. One additional person from each firm records an average of 10-15 hours per week for a combined total of approximately 20-30 hours per week. It is unclear exactly what work has been actually performed as no documentation detailing the work has been provided.

In effect, the Penny Tax program is paying $50,000 per month, $600,000 per year, and $3 Million over five years (before reimbursements) for the equivalent of fewer than two full-time employees – when an entire public information office already exists within Richland County government and other PDT members also provide public relations services.

In comparison, according to US Bureau of Labor statistics, the annual mean wage for a Public Relations and Fundraising Manager in South Carolina is $85,890; the mean wage for a Public Relations Specialist salary is $49,200 per year. The total annual cost for both employees would be $135,090, excluding taxes and benefits.

As outlined above, Council has misappropriated a significant amount of Penny revenue and is scheduled to spend millions of additional dollars over the next several years for expenditures falling outside the parameters of the transportation tax laws. The County should take action to correct these expenses both prospectively and by reimbursement for previously paid amounts.

Thank you again for Richland County's cooperation on this matter. Please call me if you have any questions or wish to further discuss these issues. Of course, the Department will be unable to comment on ongoing criminal investigations.

Yours very truly,

Rick Reames III
Director

RRIII/afw
CC: The Honorable David A. Adams, Richland County Treasurer
The Honorable Torrey Rush, Chairman, Richland County Council

Exhibit C

RICHLAND COUNTY
GOVERNMENT
A Division of the County Administrator's Office

December 9, 2015

VIA HAND DELIVERY

Rick Reames III, Esquire
Director
South Carolina Department of Revenue
300A Outlet Pointe Boulevard
Post Office Box 125
Columbia, South Carolina 29214

S.C.
DEPT. OF REVENUE
DEC 09 2015
RECEIVED COLUMBIA
TAXPAYER'S ASSISTANCE

Re: Richland County Penny Sales Tax Transportation Program

Dear Mr. Reames:

We received your letter dated December 3, 2015, on Friday, December 4, 2015, regarding a South Carolina Department of Revenue ("DOR") review of Transportation Penny Sales Tax (the "Penny Tax") expenditures, which we understand commenced in April 2015.

We are both shocked and alarmed that DOR has found potential evidence of public corruption and fraud along with other illegal activities. As part of this response, we are requesting additional information regarding your findings such that we can immediately invoke measures to protect and preserve county money and assets. In addition, we want to make clear that Richland County stands ready fully to cooperate with any criminal investigation. Finally, upon further review, if Richland County has mistakenly used the Penny Tax to fund inappropriate expenses, the county will immediately reimburse the transportation tax fund.

The letter raises three areas of concern: 1) "...the manner in which the Project Development Team (the "PDT") was procured, including but not limited, (sic) to Council's adoption of exemptions from established procurement procedures, and certain payments by or to the PDT raises questions of potential public corruption and fraud"; 2) "...the Department has discovered multiple instances of illegal activity by individuals and/or companies associated with the Penny Program"; and 3) "...certain expenditures appear to fall outside the parameters of both the transportation tax statutes and the Richland County ordinance authorizing the program." We address these three areas of concern below.

We appreciate your acknowledgement of the County's cooperation in this matter, the County's intent is not just to cooperate within whatever your scope of authority may be, but to also provide whatever assistance it can regarding uncovering and addressing any potential criminal conduct. While we understand there may be limitations in what you may be able to discuss with us regarding your investigation, as addressed further below, we request the opportunity to meet with you, at the appropriate time, to better understand the allegations of criminal activity and how we can assist you in your investigation.

2020 Hampton Street • P.O. Box 192 • Columbia, SC 29202 • Phone: (803) 576-2050
Fax: (803) 576-2137 • TDD: (803) 748-4999

Further, if a criminal investigation is ongoing, please advise us if there are any matters, including matters addressed in your letter, that are intended to be confidential so as not to compromise the investigation.

1. PDT Procurement and Allegations of Corruption/Fraud

In addressing the manner in which the PDT was procured, the procurement and resulting contract complies with both the South Carolina Consolidated Procurement Code ("Procurement Code") and the Richland County Ordinance, Article X, Procurement. The Council did not "exempt" the PDT from established procurement procedures but, as authorized under State law, it established a procurement procedure applicable to certain procurements funded by the Penny.

The Procurement Code requires that political subdivisions, such as the County, "shall adopt ordinances or procedures embodying sound principles of appropriately competitive procurement". S.C. Code Ann. § 11-35-50 (Supp. 2014). The Procurement Code also expressly allows the Board[1] of the State Fiscal Accountability Authority to exempt any purchase from the Procurement Code. The Procurement Code provides:

> upon the recommendation of the designated board office, may exempt governmental bodies from purchasing certain items through the respective chief procurement officer's area of responsibility. The board may exempt specific supplies, services, information technology, or construction from the purchasing procedures required in this chapter ..... .

S.C. Code Ann. § 11-35-710 (Supp. 2014) (emphasis added).

Richland County Ordinance, Article X prescribes the County purchasing procedures ("Procurement Ordinance"). Section 2-598 provides, in pertinent part:

> (a) All public purchases shall be made in a manner which provides for the greatest economy for the taxpayer, the fairest selection of vendor, and the prevention of conflicts of interest. Towards this end, it shall be the policy of the county that, whenever practical, leases, goods, and services required by county agencies shall be procured through a competitive purchasing policy which may be achieved through competitive bidding or through requests for proposals; provided, however, contracts that are specifically approved by a county ordinance are exempt from the provisions of this Article.

If Council had desired to "exempt" solicitations funded by the Penny Tax from the Procurement Ordinance, it could have simply adopted an ordinance to that effect. Just as the Procurement Code authorizes the board to exempt a purchase from the purchasing procedures, Section 2-598, authorizes the Council to exempt ANY contract from the County purchasing procedures. Therefore, contrary to the inference raised in your letter, Council could have exempted the PDT from the Purchasing Ordnance totally and been in compliance with Article X.

[1] Effective July 1, 2015, "Board" means the board of the State Fiscal Accountability Authority.

Instead of exempting the PDT acquisition from the Procurement Ordinance, the Council adopted an ordinance (Section 2-591) to be used only for purchases deemed significant by the Council and when only proceeds of the Penny Tax are used in conjunction with a competitive solicitation ("Penny Ordinance"). The Penny Ordinance requires competition. Under the Penny Ordinance, the County Administrator appoints an evaluation committee composed of persons he deems qualified to evaluate proposals received pursuant to the solicitation. The evaluation committee reviews the proposals and sends a short list (not to exceed 8) to Council for decision. While Council can make the final determination to whom it may award a particular contract, it may only choose a contractor after the offerors have gone through a competitive procurement process and are deemed qualified by the evaluation committee. This process under the Penny Ordinance is used for professional services otherwise acquired through Sections 2-600 and 2-601, services acquired through competitive sealed proposals. The process used by the County is quite like the process used by the State under the Procurement Code to hire architectural and engineering services.

In addition to what we perceive as your concern about the legislative action taken by Council in adopting Section 2-591, you also advise that "certain payments by or to the PDT [raise] questions of potential public corruption and fraud". From your letter, we cannot tell whether you are concerned about payments before contract award or after contract award and implementation of the program, or both. We would appreciate the opportunity to meet with you, to discuss these concerns, and to offer whatever assistance we can.

You also state that "[p]ublic corruption and fraud are beyond the scope of the Department's mission and, therefore, the Department has referred these matters to law enforcement." Again, the County wishes to cooperate fully with all law enforcement officials and in any investigation.

2. Allegations of Illegal Activity

As to the second concern expressed in your letter involving the alleged "multiple instances of illegal activity by individuals and/or companies associated with the Penny Program", you advise that the "activities (described therein) are within the scope of the Department's mission, and the Department is proceeding with these cases as is appropriate." The County stands ready and willing to provide any additional information or assistance to DOR that it can.

3. Expenditures Outside the Scope of Transportation Tax and Penny Tax Laws

Regarding the last area of concern that "expenditures appear to fall outside the parameters of both the transportation tax statutes and the Richland County ordinance authorizing the program", you indicate on page 3 of your letter that "Council has misappropriated a significant amount of Penny revenue and is scheduled to spend millions of additional dollars over the next several years for expenditures falling outside the parameters of the transportation tax laws." We read this statement, your concern and the use of the word "misappropriated" to mean that Council has used Penny Tax revenue to pay for staffing, goods and services outside

the scope of the Penny Ordinance and state statutes, and not that any funds have monies have been stolen or embezzled. Please advise us if our understanding is incorrect.

Specifically, you express concern that since the County's Small Business Local Enterprise ("SLBE") program is a county-wide ordinance, its development and implementation should not have been funded "entirely from Penny funds". You are correct that the SLBE will ultimately be utilized county-wide. Rather than expand its mission in an *ad hoc* fashion through potentially numerous legislative amendments, however, the County established its SLBE Program to be flexible and scalable enough to accommodate all endeavors and enterprises that small local business may undertake now and in the future. To date, the SLBE Program has been applied only to procurements through the Penny Tax. Additionally, the SLBE Program has not been funded entirely with Penny Tax revenue. For example, renovations and up-fit costs for the SLBE offices have been funded through county general bond proceeds.

The County's long-term plan is for the SLBE Program to support other undertakings in addition to Penny Tax projects, but, to-date, the Program has been used for Penny Tax projects, with *de minimis* non-transportation expenses potentially embraced in the start-up costs of the Program. We welcome the opportunity to discuss Penny Tax expenditures regarding the SLBE and to provide you with any information you seek concerning these expenditures and the source of the funding. The County is certainly willing to reconcile any Penny Tax spending through general fund reimbursement as part of the reconciliation process continually undertaken through the County audit process.

We would appreciate the opportunity to meet with you to understand what matters and in what amounts DOR believes that Penny Tax revenues may have been used for non-transportation projects or the support thereof. This will help us ensure that each funding source - Penny Tax revenue and the County's general fund - are accurately maintained.

Regarding Public Information Services, the County is committed to keeping the public informed of transportation projects, as well as receiving public input on Penny Tax programs. While DOR might question the amount of expenditures dedicated to Public Information Services, which Richland County will review, we are confident that using proceeds of the Penny Tax to generate public engagement is well within the scope of the ordinance and applicable state law.

With regard to the allegation of public corruption, fraud, and illegal activities, as we stated earlier, we are very concerned that the allegations are that county money and/or assets are being compromised. The county must address this immediately. Accordingly, we respectfully request the following information so that we can better address these allegations and take appropriate action to protect the taxpayers of Richland County:

1. The letter addresses "certain payments by or to the PDT". Please clarify whether these payments are:

a) before or after the PDT contract award;

b) made by the county to PDT members and, if so, to whom the payments are made and the nature of the payments;

c) made by the PDT member(s) and, if so, the name of the PDT member and to whom the payment was made at the county, including employees and/or elected officials; and

d) were the payments made as part of the PDT program?

2. The letter indicates that the matters involving the procurement procedures and the PDT payments have been referred to law enforcement. Please identify the law enforcement agency that these issues have been referred to.

3. The letter states that DOR "has discovered multiple instances of illegal activity by individuals and/or companies associated with the penny tax". Please identify the specific illegal activities you are referring to and the individuals/companies involved in such activities. If such activities involve illegal payments made from county funds or any other unauthorized use of county funds, please indicate the amounts involved.

4. Are other state, federal, or county agencies involved in this investigation? If so, please specify the agencies involved.

5. The letter states that Council's adoption of Section 2-591 (the Penny Tax procurement ordinance) provided exemptions from established procurement procedures which were not proper. Richland County employed independent counsel to draft the procurement ordinance. We would respectfully request that you provide the following information so that we can fully understand DOR's concerns.

a) Does DOR contend that there is a problem with the legislative procedure used to adopt the ordinance enacting section 2-591, e.g. insufficient number of readings, etc. and, if so, what is the problem(s) specifically and what is the legal basis for that problem(s)?

b) Does DOR contend that the Council does not have the legal authority to adopt the ordinance and if so, what is the legal basis of that contention?

c) Does DOR contend that Council cannot adopt additional methods of procuring county goods and services and, if so, what is the legal basis for that contention?

d) Does DOR contend that Council lacks legal authority to exempt a procurement from the county procurement processes and if so, what is the legal basis for that contention?

e) Has the adoption process of the procurement ordinance been referred to law enforcement?

6. The letter states that DOR is concerned with "the manner in which the Project Development Team (the 'PDT') was procured". Please identify the concerns that DOR has regarding the manner in which the [PDT] was procured and provide the legal basis for those concerns.

To reiterate, the answers to these questions are critical to our ability to protect the county from further loss. We respect the need for confidentiality in the investigation of criminal matters and we will work with DOR to insure that confidentiality is maintained.

With regard to the expenditures that DOR asserts are outside of the scope of the transportation tax and the ordinance, the County is currently researching these expenditures and will respond to your concerns upon completion of our review.

We would appreciate a prompt response to the above questions as time is of the essence. We look forward to working with you to resolve all matters identified in the audit.

Sincerely,

Tony McDonald

W. Anthony McDonald
County Administrator

Cc: Hon. Torrey Rush
Hon. David Adams

Exhibit D

RICHLAND COUNTY
GOVERNMENT
Office of the County Administrator

HAND DELIVERED

December 31, 2015

Rick Reames, III, Esquire
Director
South Carolina Department of Revenue
300A Outlet Pointe Boulevard
Columbia, SC 29214

S.C
DEPT. OF REVENUE
DEC 31 2015
RECEIVED COLUMBIA
TAXPAYER'S ASSISTANCE

Re: Audit of Richland County Penny Transportation Program

Dear Mr. Reames:

This letter is intended to address the portions of the audit dealing with the Small Local Business Enterprise (SLBE) expenditures and the expenditures for public information services. We have had the opportunity to examine both of these issues and we feel strongly that Richland has done nothing in error. Each issue is addressed below.

Use of Penny Tax Revenue to Fund Administrative Expenses of Penny Tax Projects

Although the Department's letter does not specifically allege that it is improper to use Penny tax revenue to fund administrative expenses of the Penny tax program, such is implied. Accordingly, the County would like to address this issue first since the expenditures in question are administrative expenditures. Ordinance No. 039-12HR, the ordinance imposing the Penny Transportation tax, provides that the Penny tax can be used to pay administrative costs of the projects. Specifically, Section 1(c) provides:

> Subject to annual appropriations by County Council, sales and use tax revenues shall be used for the costs of the projects established in this Ordinance, as it may be amended from time to time, **including, without limitation, payment of administrative costs of the projects**, and such sums as may be required in connection with the issuance of bonds, the proceeds of which are applied to pay costs of the projects. (Emphasis supplied herein).

As the ordinance expressly allows for administrative expenses, the County has restricted its administrative costs in support of the Penny Program to those expenses prescribed by the U.S. Government (USG) in, *e.g.*, Code of Federal Regulations parameters such as are found in 20 CFR 667.220, which sets forth permitted administrative functions as including:

- Accounting, budgeting, financial and cash management;
- Procurement and purchasing;
- Personnel and property management;

- Payroll, audit and general legal services;
- Oversight and monitoring of administrative activities; and
- Developing information systems and procedures related to administrative functions.

As such, the County's use of Penny tax revenue for the ordinary and reasonable administrative costs attendant to construction projects approved by voter referendum, such as those relating to recruitment of qualified contractors and public information services to disseminate information about the projects to the public, are squarely embraced in the administrative oversight of the Program, consistent with the USG definition of administrative costs and functions. Therefore, the expenses cited by the Department audit are ordinary and reasonable administrative expenses properly chargeable to the Penny Transportation tax. Below is a detailed review of those expenses.

SLBE Expenditures

The Department's audit references the County's exclusive use of the Penny Transportation tax to fund the SLBE program. As noted in your letter, the SLBE initiative was created by ordinance in September 2013 to provide a race and gender neutral procurement tool whereby small local firms that are located in Richland County and paying Richland County taxes will get a better opportunity to participate in County contracts such as those relating to the Penny Transportation tax. This program not only benefits small business owners in Richland County, but it also provides a larger and more diversified pool of qualified, skilled contractors in the marketplace available to the County.

Critically, to date, all contracts awarded through the SLBE Program have been solely related to the Penny tax. Thus, the use of the Penny tax to fund it. It is Richland County's plan to expand the use of the SLBE program to all procurements within the County, following its initial use on transportation projects. It is also Richland County's plan to allocate the costs of the SLBE program once its use is expanded to other procurements, and ultimately to support the SLBE Program through cost allocation across the range of SLBE efforts.

Tools to aid in the recruitment of qualified contractors are an ordinary and necessary administrative expense to any project the County undertakes. The Penny Transportation Tax Program has currently completed 74 construction projects and has 11 projects ongoing. Approximately 40% of certified SLBE firms are participating in a Richland County Penny Transportation contract. This has allowed the County to concurrently engage in a number of transportation initiatives, thereby bringing these improvements to fruition in an expeditious manner.

While the County's use of the Penny tax to fund only those SLBE Program contracts directly related to Penny Projects is proper under the County's ordinance, the voter referendum and the above-cited CFR administrative costs and functions definitions, the County shares the Department's opinion that it is appropriate for public expenditures to be paid from appropriate funding sources. To that extent, as is the case with all County expenditures, SLBE Program expenses will continue to be monitored to ensure that only Penny-related efforts will be paid for from Penny tax revenue, and to the extent any non-Penny expenses are incurred, especially as the

Program develops additional procurement areas, such expenses will be paid for from the County's general fund or other appropriate non-Penny sources. In this regard, it is important to note that the Penny Transportation tax did not fund all of the SLBE start-up costs as the Department suggests. For example, the cost for renovation of the office space being used by the SLBE Program was paid for from the County's general fund, and not from the Penny tax. The County will continue to fund the operating expenses of the SLBE program with the Penny tax until the Program is expanded to include procurements outside of the Penny tax. When that occurs, the operating expenses of the SLBE program will be allocated proportionately.

Public Information Services

The Department's letter references payments to two companies for public information services that it believes to be excessive and outside of the parameters of the transportation tax laws, admitting, however, that it is unclear what work has been performed in that no documentation detailing the work was provided. As we understand it, the Department never requested documentation detailing the work. Thus, it is understandable that the Department would be unable to determine the degree, if any, of excessiveness or departure from the relevant tax law parameters.

After the passage of the Penny tax ordinance and the referendum, the County began to look at its current staffing and resources to determine what functions could be handled in house and what functions would need to be provided for through contract. Given the breadth of the twenty-two year omnibus Penny Transportation Program, the County quickly realized that the public information needs relating to these transportation projects would be massive and would overwhelm the County's small in-house public information office.

It was also the intent of Richland County to pursue federal funding to accompany the Penny tax for these major transportation projects. Federal funding necessitates that the projects be developed to federal standards which encompass compliance with the National Environmental Policy Act (NEPA), Federal Regulations found at 23 CFR Parts 771 and 772, as well as any related guidance promulgated by Federal Highway Administration (FHWA). These various federal laws and regulations require public involvement such as multiple public outreach meetings on individual projects, public interaction for specified comment periods, responses to comments received as a result of public meetings prior to the commencement of right of way acquisition efforts, and interagency coordination with SCDOT, FHWA, DHEC, DNR, SHPO, and USACE. The sheer volume of work that this level of public involvement necessitates is well above that of a typical county or municipality. Further, the public information work is of a defined duration rather than ongoing and, therefore, could best be handled on a contract basis. It should be noted that the County successfully applied for federal funding and has thus far acquired in excess of twelve million dollars for the program. It should also be noted that it is not uncommon to hire outside public relations personnel to assist with defined projects. This practice of outsourcing work is common for other programs, municipalities, counties, and state agencies in an effort to accomplish these additional duties without permanently or temporarily increasing in-house staff.

To meet its staffing needs for the transportation projects, Richland County thereafter entered into a Management Agreement with the Program Development Team (PDT), which, in turn,

contracted with the public information firms and others. Please be aware that Richland County contracted with the PDT, not with the public information firms individually. Richland County essentially contracted for a package of services from the PDT and the PDT negotiated and entered into contracts with various contractors, including the public information firms at issue. Pursuant to the PDT agreement, the following are the public information duties relating to the Penny Transportation tax:

A. Management
   1. Develop a public information plan for communicating the program to the public and stakeholders, providing timely information on program issues, fostering public participation, and encouraging public input.
   2. Develop a Crisis Communication Plan that will be used in the case of an emergency.
   3. Develop an Internal Communication Plan for this program.
   4. Provide monthly program reports.
   5. Coordinate and respond to public inquiries and public records requests.
   6. Coordinate with the Comet and their use of the transportation penny funds.
   7. Coordinate with Richland County Clerk of Council Office and the County's Ombudsman Office to address questions and/or comments from the general public.
   8. Coordinate with Richland County Public Information office on all public relations activities.

B. Public Relations
   1. Utilize multiple forms of print and electronic media to inform the public.
   2. Develop and maintain comprehensive mailing and contact lists for use in distributing project materials and informing stakeholders.
   3. Prepare a monthly contribution regarding the penny program for use in the County's newsletters.
   4. Develop and maintain website for the CTIP.
   5. Develop and implement display sign program for announcement of project area public meetings.
   6. Provide and maintain a dedicated contact (toll-free) phone with a message machine for public constituents.
   7. Produce short, high-impact videos when requested by the County.
   8. Coordinate, manage and oversee ribbon cuttings and any other events.
   9. Develop, implement, and manage an information center within the program team office location.
   10. Maintain a database of media personnel for use to distribute press releases, breaking news and program highlights.

C. Community Relations
   1. Develop plan for community meetings.

2. Moderate meetings and, as necessary, provide written responses to comments received.
3. Coordinate with Richland County staff in presenting information to community, civic and special interest groups.
4. Develop and implement communication plan for residents and businesses in project areas to include discussion of construction activities; gathering comments; and addressing concerns.
5. Conduct networking meetings with prime contractors and DBE/local contractors.

D. Media Relations
1. Utilize partnerships with media outlets, including the County's government access channel.
2. Maintain positive relationships with media outlets to ensure accurate messaging and publicity of the program.

E. Coordination of Public Meetings and Public Hearings
1. Develop a public involvement plan that will:
    a. Inform the public about all aspects of the program and where they can turn for answers.
    b. Educate the public about specific projects and how they will impact them.
2. Coordinate with County staff and other agencies as needed to schedule and plan public meetings, public hearings, groundbreaking ceremonies, and other events and meetings as requested by County.
3. Identify stakeholders for public meetings and public hearings.
4. Meet with members of County Council to provide updates on public meetings and public hearings and receive input on which stakeholders to invite, which venues to use and the role of the councilmember on each agenda.
5. Advertise/publicize public meetings and public hearings a minimum of 14 days prior to meeting.
6. Coordinate participation of required speakers for public meetings and hearings.
7. Conduct public meetings and public hearings.
8. Record public meetings and public hearings upon request of the County.
9. Prepare reports from public meetings and public hearings.
10. Develop written responses to comments from public meetings and public hearings.

F. Stakeholder Meetings
1. Develop and coordinate a Core Stakeholder Working Group consisting of PDT, Richland County Government, Greater Columbia Chamber of Commerce, Citizens for a Greater Midlands, Transportation Penny Advisory Committee, SCDOT, the City of Columbia, and other key stakeholders.

2. Provide presentations to members of Core Stakeholder Working Group.

The County's contract with the PDT was a lump sum contract to provide 29 positions, of which the public information component comprised 4 of those positions (not 3 as described in the audit report). All payments are made directly to the PDT and the PDT is responsible for paying the contractors and for insuring that the contractor provides the deliverables identified in the management agreement. In negotiating the contract for the PDT, County officials estimated a fair market value salary for each of the 29 positions. To those estimated salaries, it then added a multiplier of 2.4 to account for benefits and overhead and then added a 15% profit to the PDT. These amounts are industry standards and have frequently been used by state agencies in contract negotiations. The salaries estimated for the 4 positions ranged from $55,000 to $95,000 which is approximately within the range of salaries identified in the Department's letter. Thus, the $25,000 monthly amounts billed by the PDT for the public information component were not exclusively salaries. It should also be noted that there is now a 5th position working in the public information arena at no additional charge to the county. Two of the five positions are subcontractors to the public information firms, and thus, do not report hours to the county. One can easily see evidence of their work by visiting www.richlandpenny.com. It should be noted that the website shows only a part of the work that has actually been performed. Therefore, it is our hope that this clarification of the number of positions working on this component of the PDT contract and man-hours associated with it will address the Department's initial concerns.

Conclusion

We hope that this addresses the Department's concerns relative to the two audit issues identified in the Department's letter. We will be happy to address any additional questions you may have or meet with you at your convenience. Richland County worked very hard to gain the public's trust in the Penny tax referendum and it is of utmost importance to the County that public trust and confidence are maintained. As such, we greatly appreciate the Department's thoughtful consideration of the detailed response set forth herein, and trust that it will review the Penny Program in the light of a fuller understanding this amplifying information is intended to provide.

Very truly yours,

Tony McDonald

Tony McDonald
County Administrator

cc: Hon. Torrey Rush
Hon. David Adams

Exhibit E

State of South Carolina

Department of Revenue

NIKKI R. HALEY
Governor

RICK REAMES III, ESQUIRE
Director

300A OUTLET POINTE BOULEVARD
POST OFFICE BOX 125
COLUMBIA, SOUTH CAROLINA 29214
Telephone: (803) 898-5040
Facsimile : (803) 896-0023
Director@dor.sc.gov

February 24, 2016

Mr. W. Anthony McDonald
Richland County Administrator
Post Office Box 192
Columbia, SC 29202

Dear Mr. McDonald:

This letter is in response to your letter dated December 31, 2015, and to the Department's meetings with Richland County officials held on January 19, 2016 and February 11, 2016. The purpose of this letter is to summarize our discussions and to further inform Richland County Council about the Department's concerns over the Richland County Transportation Penny Program. The enclosed report provides additional details, a more technical analysis of the issues and corrective action plans. Please note that all facts cited in this letter or in the enclosed report are found in publicly available records provided by the County or are otherwise available to the general public. No confidential tax information is discussed herein.

The Department's review of the Penny Tax program has uncovered millions of dollars of potential fraud, waste and abuse. These problems result from (1) expenditures not permitted by the state tax statutes authorizing transportation taxes and (2) numerous conflicts of interest found in the program.

As you know, concerns about public corruption were forwarded to law enforcement which is actively conducting its own investigation. Regardless of whether law enforcement agencies bring charges in this matter or whether other individuals or companies are charged with failing to pay state taxes, the Department's obligation is to ensure compliance with the state's tax statutes.

- **Failure to Perform Required Audits**
  The County apparently has failed to conduct audits as required by its own ordinance. Had the required audits been conducted, perhaps the County could have identified and addressed many of the problems outlined in this letter.

- **Administrative Expenses Prohibited by Law**
  Many of the administrative expenses paid as part of the Penny Tax program are prohibited by the state tax statutes that authorize and govern transportation sales taxes. The Department is providing the County with information on tax capitalization of expenses that will provide parameters for payment of administrative costs. This information will allow the County to determine which administrative expenses may be paid with Penny Tax revenue and which types must be paid with general fund revenue.

To be clear, the Department has concerns with payment of many administrative expenses which would be addressed by the implementation of the tax capitalization approach. Concerns with some specific administrative expenses are discussed in more detail below.

- **Small Local Business Enterprise Expenditures Prohibited by Law**
  During just the first two years of a scheduled 22-year tax, Richland County has paid hundreds of thousands of Penny Tax dollars to fund a "Small Local Business Enterprise" program which has nothing to do with capital transportation tax projects. It appears many of these expenses will continue throughout the life of the Penny Tax program.

  While a Small Local Business Enterprise program may be laudable, it is simply not allowed under the state laws governing this type of tax. If Council wants to encourage small and local business participation in County projects it should do so with general fund dollars – not with dollars approved by voter referendum for an earmarked purpose.

- **Excessive Public Relations Expenditures**
  Richland County has allowed contracts with two firms totaling $3M (before reimbursements which are numerous) in public relations expenses over the next five years. The two firms include the below described lobbying firm and an additional firm, both of which received $1.5M contracts.

  Despite contracting for $3M with these two firms, additional payments totaling nearly $900,000 appear to have been paid to other public relations firms for presumably more public relations services. As expressed in our December 3, 2015 letter, the Department remains concerned about the amounts of these contracts compared to work actually performed, as well as the fact that Richland County has its own public information office.

- **Insufficient Procurement Procedures**
  After failing to follow procurement law in its initial award of management contracts – which resulted in a protest by the highest ranked bidder – Richland County Council passed an ordinance that exempted Penny Tax projects from established procurement law and procedures, including the right of an aggrieved bidder to protest. This exemption effectively allowed Council to award tens of millions of dollars in contracts without sufficient objective bidding and scoring – and has resulted in numerous conflicts of interest in the program as discussed below.

- **Conflicts of Interests Involving Public Relations Expenditures**
  The Department understands that each of the firms receiving the above described $1.5M public relations contracts was involved in efforts to pass the Penny Tax. These firms are now being paid with the Penny Tax revenue they helped secure.

- **Lobbying, Public Relations, and COMET Bus System Conflicts**
  Additional conflicts of interest exist with one of the firms contracted to provide public relations services and whose clients have secured contracts worth millions of Penny Tax dollars.

  The owner of the lobbying firm owns a 1/3 interest in one of the lead Project Development Team ("PDT") members. This lead PDT member is scheduled to receive millions of Penny Tax dollars.

  Despite this 1/3 ownership of a lead PDT member, this lobbyist's firm also received the above described $1.5M contract to perform public relations services for the PDT as well as a separate and additional public relations contract for the bus system.

In effect, it appears that the lobbyist or his firm is paid with Penny Tax dollars in at least three different ways, and possibly more, despite having a client or clients also paid with Penny Tax dollars.

- **COMET Bus System Conflicts Involving Legal Services**
  The COMET Board controls $300M in Penny Tax revenue. The chairman of that Board – a local attorney who also served as a City of Columbia Councilman at the time – received a nearly $400,000 contract paid with Penny Tax dollars to provide legal services related to real estate and right-of-way acquisition. Despite that his stated practice areas had nothing to do with real estate and right-of-way acquisition, the chairman was awarded the contract and a vague mentor-mentee arrangement – funded by Penny Tax dollars – to learn the legal services he was contracted to perform.

- **More Mentor-Mentee Expenses**
  A local realtor was paid with Penny Tax dollars to provide right-of-way services for Penny Tax projects. Like the COMET board chairman, this realtor also received mentor-mentee payments to learn how to perform the right-of-way services she was contracted to provide. Mentee payments to learn a trade are in no way related to capital transportation projects.

In summary, while Richland County indicated in its December 31, 2015 letter that it felt "strongly that Richland has done nothing in error," the Department maintains that the Penny Tax program as it exists today fails to comply with state law and is full of wasteful expenditures and conflicts of interest created by inadequate procurement safeguards. As a result, millions of dollars of Penny Tax revenue is being spent improperly.

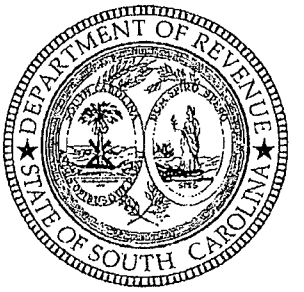
As is discussed in more detail in the report, the Department is providing Richland County Council with 30 days to begin action to resolve these issues and bring the program into compliance. The actions to resolve the problem must include reimbursement for impermissible expenses and prospective corrective action on tainted contracts and payments. In the event that Richland County does not take official action to address all of these concerns, the Department is prepared to enforce the state's tax laws.

Thank you for your attention to this matter. The Department looks forward to working with the County to help restore public trust to the Penny Tax program.

Yours very truly,

Rick Reames III
Director

RRIII/afw
Enclosures



Report on Sales and Use Tax for Transportation Facilities in Richland County

Background

The SC Department of Revenue (the "Department") exists "to administer and enforce the revenue laws of" South Carolina. S.C. Code Section 12-4-10. The General Assembly vested the Department with broad authority to facilitate tax administration, regulation, and enforcement. S.C. Code Section 12-4-310 *et seq*. The General Assembly further provided the Department authority to carry out investigations and examinations involving state taxes. S.C. Code Section 12-54-100.

In November of 2012, voters in Richland County passed a sales and use tax for transportation facilities. This tax is a state tax that is collected and administered by the Department and is ultimately remitted by the Department to the County for a restricted use – to build transportation facilities. In the statutes governing sales and use taxes and in the specific statute providing for the transportation sales and use tax, the General Assembly expressly provided that the Department is the proper party to administer and enforce the tax. The General Assembly further delegated authority to the Department to promulgate regulations to implement the transportation tax. S.C. Code Section 4-37-30 and S.C. Code Section 12-36-2660. The Department has begun the process of issuing regulations to provide additional guidance on the collection, administration, and enforcement of the transportation sales and use tax.

In April of 2015, the Department audited Richland County to determine compliance with the provisions of the state's tax statutes, and in particular Code Section 4-37-30(A) (the sales and use tax provision). The County raised no objections to the audit. We appreciate the County's full cooperation and its willingness to work with the Department to resolve all matters identified in the audit, as stated in the County's December 9, 2015 letter. The audit revealed a number of concerns relating to Richland County's compliance with the law which are discussed in detail below.

Procurement of PDT Contracts

In November 2013, Richland County Council ("Council") issued a request for proposal ("RFP") to procure professional services for a project development team ("PDT") to help administer the Penny Tax program. At the time, Richland County law required that RFP submissions be reviewed and ranked by an independent selection committee ("Committee"). See Richland County Code, Section 2-600. The Richland County law required the Council to negotiate with the firm ranked highest by the Committee and if these negotiations failed, the Council would

then negotiate with qualifying firms in order of descending rank. Richland County law also provides for protest procedures. See Richland County Code 2-621.1.

The Committee performed its responsibility and ranked Team CESC the highest (90.6 ranking) with Team Baker as the second selection (73.8). Team ICA (66.8), Team MB Kahn (53) and Team Enviro (46.4) were scored third, fourth and fifth, respectively. The three firms ultimately chosen as the PDT were not scored first or second by the Committee. One of the firms – Brownstone – appears not even to have submitted a response to the RFP. Instead of beginning negotiations with the first or second highest scoring firms as required by Richland County's own ordinance, on January 7, 2014, after two rounds of voting, the Council selected the third ranked team, Team ICA. Team CESC protested and Council subsequently withdrew the PDT contract award from Team ICA.

On May 6, 2014, Council amended the Richland County law granting itself the authority to exempt Penny Tax expenditures, and only Penny Tax expenditures, from the standard procurement rules. See Richland County Code, Section 2-591. While the amended RFP process does require an evaluation committee to determine and submit a short list of qualified firms to the Council for consideration, the process appears to be substantially abbreviated and does not include the rigorous scoring of the original procurement procedure. Further, the law specifically exempts contracts granted (or not granted) using this procedure from the protest provisions of the Richland County law. See Richland County Code, Section 2-591, subsection (f).

Under this second procedure, Council, on the first round of voting, awarded Team ICA/Brownstone/MB Kahn the PDT contract. The effect of the May 6, 2014 amendment and subsequent contract award is that Council awarded a $31 million contract for project management without independent scoring by an impartial scoring committee. Without independent scoring, sufficient oversight regarding conflict of interest, efficiency of costs, or experience and qualification of service providers cannot properly exist. In fact, Team ICA/Brownstone/MB Kahn's level of experience related to building actual transportation facilities is questionable in comparison to the experience of other applicants. The elimination of any procedure to protest the awarding of the contract to another party essentially eliminates any scrutiny of how the winner of the contract was chosen. This is particularly true since the Council has refused to grant the Transportation Penny Advisory Committee any oversight role with respect to the Penny Tax. The Council also appears to have failed to conduct an annual independent audit of Penny Tax funds despite the transportation sales and use tax ordinance requiring such audits and similar audits for any company participating in the Penny Tax program. See Richland County Ordinance No. 039-12HR, Section 1, paragraph 2 and Section 3, subsection (b), paragraph 3. A review of recent financial statements of Richland County also does not reveal that such an audit was performed or made available to the public as required by the ordinance. As mentioned, the Department's review of the Penny Tax program began in April 2015. Since that time, the County has not produced to the Department a copy of any audits. Furthermore, there do not appear to be any independent audits of the financial records and transactions of the agencies or organizations receiving an appropriation of the Penny Tax as required by the ordinance.

While Richland County's letter from December 9, 2015 points out that the County may circumvent the normal procurement process contained in Richland County Code 2-600 by approving any contract by ordinance, Richland County did not do that. Instead, Richland County chose to pass the ordinance allowing Penny Tax fund contracts to be subject to the lesser scrutiny of Richland County Code Section 2-591 with no protest rights. Furthermore, if Richland County were to use the ordinance method to approve a contract, the protest procedures contained in Richland County Code 2-621.1 would still be applicable as well as the possible referral of the protest to the county's independent procurement review panel as provided in Richland County Code 2-621.4.

For your convenience the relevant sections of the Richland County ordinances are included.

Concerns Regarding the Awarding of Contracts under the Penny Tax Program

Concerns also exist about some of the relationships between the PDT, the COMET bus system and parties who have been granted contracts associated with Penny Tax funds. For example, the Comet Board is scheduled to receive at least $300 million of Penny Tax dollars over the life of the Penny Tax program to run the Midlands' bus system. The company which received the contract to operate the bus system is represented by a lobbyist who owns a one-third equity interest in one of the three lead firms that comprise the PDT granted the contract to oversee the Penny Tax program. That same lobbyist's company received a contract to perform public relations services for the Comet bus system and/or the client company running the bus system. Finally, the PDT (again, of which this lobbyist owns a one-third interest in one of the three lead PDT firms) awarded a $1.5 million contract to the lobbyist's company for $1.5 million for public relations work potentially associated with the Penny Tax program. Thus, this person and his firms are potentially being paid three times from Penny Tax funds: (1) through the contract involving the COMET bus system, (2) through his one-third ownership in one of the three lead firms awarded the PDT contract, and (3) through the $1.5 million dollar public relations contract awarded through the PDT. The Department further understands that the lobbyist and/or his company were paid to assist in the passage of the Penny Tax itself.

Additionally, the chair of the Comet Board was hired as a member of the PDT and received a nearly $400,000 contract to perform "right-of-way" closings. At the same time, the chair received $200 an hour to be "mentored" on how to perform "right-of-way" closings. In total, he received over $38,000 as a "mentee." Similarly, a local real estate broker was hired to provide immediate service regarding "right-of-way" matters for one of the firms hired by the PDT to work on Penny Tax projects. This broker also received "mentee" payments to be trained in the various activities of the "right-of-way acquisition" process.

Failure of Oversight and Substantiation

The use of Penny Tax funds to establish and staff the County's Small Local Business Enterprise ("SLBE") Program is inconsistent with the statute's specification that Penny Tax revenue be limited to transportation-related projects. Even though, as stated in Richland County's letter dated December 31, 2015, all contracts awarded to date through the SLBE "have been solely

related to the Penny Tax," the SLBE Program was established as a countywide program intended to support all facets of county operations – not just Penny Tax projects. Expenditures – including more than $200,000 for legal services related to "SLBE Program Administration" to a Maryland law firm; approximately $219,000 in estimated personnel costs; $122,000 for a software management system; and $13,000 for website development – are to support the entire SLBE program not specific Penny Tax projects and therefore should not be paid for using Penny Tax revenue earmarked specifically for transportation-related projects.

The use of Penny Tax revenue to pay for public relations services and "mentoring" also seems inappropriate and inconsistent with the statute's requirement that funds be used specifically for transportation facilities. The public relations contract paid for from Penny Tax funds appears to be excessive in relation to similar services offered by substantially similar firms. With respect to much of this work, there also appears to be a lack of any kind of documentation that would verify what services were provided and the amount of hours spent on these projects. While Richland County's December 31, 2015 letter sets forth what the public relations firms were supposed to do for their $1.5 million dollar contracts, it did not present documentation as to what services were actually performed for these fees or how much each service cost.

In addition, some entities included as part of the PDT have compliance issues according to Secretary of State records. Richland County allowed these entities to be paid with Penny Tax dollars despite noncompliance.

Concerns about Allowance of Administrative Expenses

Richland County's Penny Tax ordinance, Ordinance No. 039-12HR, exceeds the scope of the state statute because the ordinance seeks to allow broad payment of expenses that the underlying statute does not permit. Neither S.C. Code Section 4-37-30 (the state statute authorizing the tax) nor any part of Chapter 37, Title 4 ("Transportation Facilities Law") makes any mention of administrative expenses being allowed for transportation projects.[1] The law does mention administrative expenses or costs for administering the tax in other contexts. Specifically, the Department may claim its expenses for administering the tax and the county must pay the expenses of conducting the referendum.

Nothing allows a county to use the money for unlimited or unrelated administrative expenses. The statute specifically states that the ordinance to impose the Penny Tax provides that Penny Tax funds are to be used for projects such as "highways, roads, streets, bridges, mass transit systems, greenbelts, and other **transportation-related projects *facilities***, including, but not limited, to, drainage facilities, relating to highways, roads, streets, bridges, and other transportation related projects;..." Code Section 4-37-30(A)(1)(a) [emphasis added]. The law also requires that the ordinance state the "estimated ***capital cost*** of the project or projects to be funded in whole or part from the proceeds of the tax...." Code Section 4-37-30(A)(1)(c) [emphasis added]. Specifically, under the terms of the transportation facilities law, the

[1] There is one reference to expenses in 12-37-30(A)(3) that provides that "If the referendum on the question relating to the issuance of general obligation bonds is approved, the county may issue bonds in an amount sufficient to fund the expenses of the project or project." However, since it does not indicate what the term expenses means, it appears it refers to capital expenses.

expenditures must be used for facilities (tangible assets) and not general county operating expenses, and the expenses incurred must be related to the facilities themselves.

While some administrative costs may be appropriate expenditures under the transportation facilities law, the use of the term "capital costs" in the statute gives some guidance on what administrative costs may be properly allowable under the law. The term "capital cost" is not defined in the law. However, "capital costs" are generally considered one-time costs incurred for the creation or improvement of tangible property, either real or personal, such as buildings, infrastructure and equipment. Often such costs are referred to as "capital expenses" or "capital expenditures."

The concept of "capitalized costs" for tax purposes is described in detail in Internal Revenue Code (IRC) §§ 263, 263A, and the accompanying regulations. South Carolina tax law conforms to these provisions.

In short, these sections require that a taxpayer capitalize all direct costs and an allocable portion of indirect costs and mixed costs associated with the purchase, creation, or improvements of property into what is called the basis of that property. Any costs that are traceable to the construction, purchase or improvement of property, such as a building or road, must be capitalized into the basis of that asset. These costs generally include the cost of labor to create the property, pensions for employees working to create the property, accounting and legal services, and other items associated with the creation, construction or purchase of the property. For example, the labor costs incurred in building an office building and the legal fees associated with acquiring the land on which the building was constructed would be capitalized into the basis of the office building. However, costs for an attorney to learn how to do a real estate closing would generally not be considered a "capital cost" to be included in the basis of the property. Since the statute does not define "capital costs," these Internal Revenue Code principles can be used to provide guidance as to which costs are properly allowable under the transportation facilities law. Included in this memo is more information directly from the Internal Revenue Service on these Internal Revenue Code provisions which may be helpful in determining what "capital costs" are allowable.

In its December 31, 2015 letter, Richland County attempts to rely primarily on federal Workforce Investment Act (WIA) regulations concerning administrative expenses (20 C.F.R. 667.220) to justify the expenditures of Penny Tax funds on the SLBE program and public information. Unfortunately, there is no basis in the transportation facility law for using this standard in light of the specific language in the law that requires the funds be used to pay for facilities. Even if the workforce regulations, as opposed to tax provisions governing capitalization, are the proper standard for determining which costs may be paid using Penny Tax funds, Richland County's administrative expenditures associated with public relations and the set-up and staffing of the SLBE program do not, *for the most part*, fall under any of the nine categories provided for in 20 C.F.R. 667.220.

Action Required

The Department has set forth its concerns and position concerning Richland County's use of transportation facility funds for improper purposes as outlined above. Pursuant to the Department's authority to collect, administer and enforce the state's tax laws, including the laws governing the Penny Tax funds, the Department is requesting that Richland County take the following actions within thirty (30) days of the date of this letter.

1. Repay from Richland County's general fund the amounts paid from Penny Tax funds for the set-up and staffing of the Small Local Business Enterprise Program, all of which is an operating expenditure of the County and does not specifically relate to transportation facilities.

2. Repay from Richland County's general fund that portion of public relations expenditures that were paid from Penny Tax funds that do not specifically relate to transportation facilities. To the extent the County determines that part of the public expenditures were related to specific transportation facilities and not general public relations concerns or advertising, the County should provide the Department with substantiation and the basis on which it believes such expenditures are associated with transportation specific projects.

3. As required by Richland County ordinance No. 039-12HR, Section 1, paragraph 2 and Section 3, subsection (b), paragraph 3, Richland County should immediately engage an independent accounting firm to conduct independent audits for all prior years in which Penny Tax funds were expended and require companies who received funds under the Penny Tax program to provide Richland County with independent financial audits concerning such funds as well.

4. Immediately take corrective action to assure that future expenditures of Penny Tax funds are made solely for capital costs associated with transportation facilities and provide the public with information as to how those capital costs are to be determined.

Exhibit F

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211-9979

April 1, 2016

VIA ELECTRONIC MAIL

Robert Coble, Esquire
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201

Re: Richland County Penny Tax

Dear Mr. Coble:

Thank you for your March 24, 2016 communication. We have carefully evaluated your proposal and request that the following be implemented:

A. Proper Expenditure of Penny Tax Funds

The Department believes that the March 24, 2016 proposal as stated lacks specificity with regard to the permissible purposes for which Penny Tax money may be used. S.C. Code Ann. § 4-37-30, the enabling statute for the Penny Tax Program, specifically provides that Penny Tax money may be used for:

> highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects;

The statute continues to require that any proposed ordinance for the implementation of the Penny Tax must set forth:

> the estimated capital cost of the project or projects to be funded in whole or in part from proceeds of the tax and the principal amount of bonds to be supported by the tax;

Id. (emphasis added).

This is the basis for the Department's proposal that Richland County (County) utilize the same principles as those provided in IRC § 263 and IRC § 263A for determining what costs qualify as capital costs of the transportation project assets and as a template for how Penny Tax funds are to be spent. Simply put, there should be no money expended out of the Penny Tax Fund for costs other than those costs that are considered capital costs of a specific transportation-related project. It is important to realize that the IRC § 263 and IRC § 263A standards are to be used to determine when an expenditure of Penny Tax Funds is appropriate.[1] No matter what accounting method/system for reporting purposes is used, the expenditure of funds must adhere to these spending guidelines.

The County seeks to continue to rely upon Governmental Accounting Standards (GAS) as the standard for how Penny Tax Funds can be spent under the statute. To that end, please provide us with any information on how capital cost is determined under GAS and how the treatment of capital assets and capital costs under GAS may differ from IRC 263 and IRC 263A principles.

Going forward, Penny Tax Funds should only be used for the acquisition, building and improvement of capital infrastructure assets as specified in § 4-37-30 (highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related project facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects) and for expenditures/costs that would be considered capital costs associated with the transportation related facilities.

Action Items:

1. Provide any information on how capital costs are determined under GAS and how the treatment of capital assets and capital costs under GAS may differ from IRC 263 and IRC 263A principles;

2. Implement Department-approved standards to ensure that Penny Tax Funds are only being used for the acquisition, building and improvement of capital infrastructure assets as specified in § 4-37-30 and for expenditures/costs that would be considered capital costs associated with the transportation related facilities.

B. Small Local Business Enterprise Program (SLBE)

SLBE program-wide costs, to include start-up costs and general operational and administrative costs cannot be made to fit within the capitalization model. Therefore, SLBE start-up costs such as program administration ($200,000 for legal services paid to Maryland law firm); acquisition of a software management system ($122,000), and website development ($13,000) should be reimbursed from the General Fund and the penny tax fund credited with

[1]The five page Capitalization Period of Direct and Indirect Costs guide from the IRS furnished earlier provides an excellent guideline for determining what expenditures qualify as capital costs under these standards. Note that we are not addressing how expenditures are reported for financial reporting purposes but are addressing the proper standard to determining what qualify as capital costs associated with transportation projects (as stated in the statute) for purposes of determining proper expenditures to be paid out of Penny Tax funds.

such amounts. This list of "general" costs is not exhaustive. For instance, "mentoring" costs incurred as part of the SLBE program should largely be repaid. The estimated $219,000 in personnel costs incurred at the time of the audit should be reviewed and any costs not directly related to a specific capital project should be reimbursed from the General Fund. It is too broad to say that "SLBE operating expenses" will be reviewed and "expenses not attributable to the Transportation Penny will be refunded." Allowable Penny Tax costs must relate directly to the acquisition, building or improvement of specific capital assets in order to be paid out of Penny Tax funds. With this template in mind for Penny Tax funds, the Department appreciates the County's commitment to ensure that "future funding for the SLBE program will come from the general fund, with cost allocations to departments utilizing the program."

Action Items:

1. Reimburse the Penny Tax Fund for SLBE start-up costs, including but not limited, to program administration ($200,000 for legal services paid to Maryland law firm), acquisition of a software management system ($122,000) and website development ($13,000) from the General Fund;

2. Review all SLBE personnel costs charged to-date to the Penny Tax Fund, to include costs attributable to "mentoring," and any costs which are not directly related to the acquisition, building or improvement of specific capital assets should be reimbursed from the General Fund;

3. Future funding for the SLBE program should come from the General Fund. No cost may be allocated to the Penny Tax Fund unless the costs directly relate to the acquisition, building or improvement of specific capital assets.

C. Public Information

As a general rule, marketing, advertising and public relations costs are not considered capital costs. However, some of these expenses may be considered mixed-use costs that may be included in capital costs. While some adjustments are necessary, the proposal to convert the Public Information component of the PDT contract to a task-by- task expense may be acceptable to the extent that such expenses would be considered capital costs. In order to be an appropriate expenditure of Penny Tax Funds, a task must relate to the acquisition, building or improvement of a specific capital project as provided in S.C. Code Ann. § 4-37-30(A)(1)(a) and must be part of the estimated capital cost of such project as provided in § 4-37-30(a)(1)(c) using the standard set forth above. As such, the list of tasks contained in Attachment A to the County's proposal must be scrubbed to only encompass those tasks that can readily be identified with a specific project and that might be of the type that would be capitalized. For instance, the expense associated with a Public Information meeting for a particular project may be an acceptable expenditure while costs associated with "update and maintain website and toll free phone" are too amorphous and general. Further, the activities listed under the heading "Program Specific Functions" all appear to be very general and not easily relatable to a specific capital project. Nevertheless, as the excessive amounts of money the County was projected to spend on Public Information contracts was a major concern; this "task oriented" approach is a great improvement. To guard against excessive expenditures, however, some recognized guideline should be consulted to determine a reasonable amount the County should spend on

the identified tasks. The Department appreciates the County's commitment to review public information expenses incurred to date and reimburse for expenses not attributable to specific transportation projects.

Action Items:

1. Convert the existing Public Information component of the PDT contract to the task-by-task model as proposed;

2. Adopt the modified Schedule A ("scheduled tasks") attached hereto for the listing of allowable public information tasks to the extent the task relates to the acquisition, building or improvement of a specific capital project and further, to the extent the cost of that task was part of the estimated capital cost of such project as provided in S.C. Code Ann. § 4-37-30(a)(1)(c);

3. Assign reasonable costs to be allowed for each scheduled task using a recognized guideline;

4. Review Public Information costs charged to the Penny Tax Fund to date and reimburse the Penny Tax Fund for costs not attributable to scheduled tasks from the General Fund; even if a cost can be attributed to a scheduled task, reimburse the Penny Tax Fund for any amounts paid which exceed the allowable cost for a scheduled task.

D. Independent Audit

The proposal regarding an independent audit is largely acceptable provided that the financial audit of the Project Development Team (PDT) contract strictly adhere to those provisions contained in the contract between the PDT and County relating to the existence of overcharges/overspending for services (F. 1-8), gratuities or kickbacks, conflicts of interest or other improper relationships between parties. (See, Section XV, General Provisions, subsections, F. 1-8; G. 1-2). The PDT contract also makes the books and records of the PDT's subcontractors subject to this same scope of review and any audit must extend to those subcontractors.

Further, we recommend that the County enact an Ethics Policy, (or revise any existing ethics policy) acceptable to the Department, to prohibit conflicts of interest and commit to correct any contractual relationships that violate the policy.

Action Items:

1. Arrange for the conduct of an independent financial audit of the PDT contract with the County, the scope of which includes the contract provisions addressing the existence of overcharges/overspending for services (F. 1-8), gratuities or kickbacks, conflicts of interest or other improper relationships between parties. (See, Section XV, General Provisions, subsections, F. 1-8; G. 1-2) and extends to the books and records of the PDT's subcontractors;

2. Make the results of any independent financial audit of the PDT contract available to the public;

3. Adopt appropriate standards (or revise existing standards), acceptable to the Department, to guard against conflicts of interest. The County must commit to correct any contractual relationships that violate these standards.

Provided the above proposals are acceptable, the Department envisions a thirty (30) day implementation period to make the necessary changes to the Penny Tax Program. We believe that these changes will bring the County's Penny Tax Program into compliance with state law and potentially serve as a template for the administration of transportation funds for other counties to follow. More importantly, these changes should give the citizens of Richland County a level of confidence that county government is working to bring transparency to the Penny Tax Program. If the needed changes are made by the end of the implementation period, the Department will be willing to work with the County on some public statement regarding the progress made by the County.

Please advise whether the aforementioned Action Items are acceptable as soon as possible.

Yours truly,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

Milton G. Kimpson
General Counsel for Litigation

Modified
Attachment A

Public Information Scope of Work and Fee
Restructuring

Convert the lump sum Public Information portion of the PDT contract to individual task order assignments. Each of the following items would have individual scopes and pre-negotiated, established fees based upon SCDOT guidelines. Based on project development and schedules, specific items would be authorized on an as-needed basis.

Project Specific Functions

- Public Information Meetings
- Speakers Bureau presentations
- Press releases/media notices
- Groundbreaking events/ribbon cuttings
- Prepare videos Update and maintain mailing lists
- ~~Update and maintain website, toll-free phone~~
- Prepare and provide bi-weekly and monthly reports
- ~~Manage social media tools to include Facebook and Twitter~~
- Paid advertisements

Program Specific Functions

- ~~Annual State of the Penny Meeting~~
- ~~Quarterly Report~~
- ~~Annual Report~~
- ~~Paid advertisements~~

Exhibit G

State of South Carolina

Department of Revenue

NIKKI R. HALEY
Governor

RICK REAMES III, ESQUIRE
Director

300A OUTLET POINTE BOULEVARD
POST OFFICE BOX 125
COLUMBIA, SOUTH CAROLINA 29214
Telephone: (803) 898-5040
Facsimile : (803) 896-0023
Director@dor.sc.gov

April 27, 2016

Mr. W. Anthony McDonald
Richland County Administrator
Post Office Box 192
Columbia, SC 29202

Dear Mr. McDonald:

This letter is in response to your letter dated April 8, 2016, as well as to the several meetings and discussions held with you, your staff and Chairman since that date. The Department appreciates the cooperation of your staff during the review of the Richland County Transportation Penny Tax Program.

Unfortunately, the response authorized by Council as outlined in your letter fails to bring the Penny Tax Program into compliance with the state's tax laws. While some of the proposed changes will improve accountability, the contemplated actions do not rectify a core problem of the County's Penny Tax Program – the absence of a uniform standard for determining qualifying expenditures to ensure all Penny Tax revenue is spent specifically on transportation-related projects.

The Department began its review of the County's Penny Tax Program in April of 2015, reported its findings in December of 2015, and has continued to hold discussions and work with the County, including initiating and participating in two meetings as recently as April 11 and April 13. Council has had adequate time and opportunity to enact reform, yet Council has not acted to implement a common uniform standard to ensure appropriate expenditures of Penny Tax funds as recommended by the Department.

As such, the Department must take action to enforce the state's tax laws and will immediately cease allocations of revenue to the Richland County Transportation Penny Tax fund until such time as Council brings the program into compliance. As you are aware, these allocations are made monthly using state sales and use tax revenue and data collected by the Department. Under state tax law, actual distributions of funds are made quarterly, with the next distribution scheduled for early July for allocations made during April, May and June.

Fortunately, Council can easily resolve this matter by simply adopting a uniform standard as recommended by the Department. As outlined and discussed with Chairman Rush and County staff during our meeting on April 13, Council's adoption of a uniform standard that ties expenditures to the projects would remedy the majority of non-compliance concerns.

I understand that at its meeting on April 19, 2016, Council authorized staff to review the tax capitalization approach the Department set forth as the common accounting practice to ensure expenditures are tied to the actual projects. While this is a positive step, Council has neither committed to nor provided a timeline for adopting a uniform standard. The effect is the continued expenditure of Penny Tax funds without the safeguard and assurance the standard would provide.

It is the Department's intention to be open and available and to continue to work with the County on this point to achieve compliance. However, the Department has a responsibility under the law to monitor Penny Tax collections, and absent further action, the Department's monthly allocation and the resulting July distribution of Penny Tax funds will be zero. Should emergency funding become necessary for continued operation of the COMET bus system, I invite your staff to communicate with Department staff so that limited emergency funding may be allocated for scheduled distribution to ensure uninterrupted service of the bus system.

I regret the Department has been forced to take this step as a result of the Richland County Transportation Penny Program's continued violation of the express laws as passed by the General Assembly. The Department is obligated to uphold the state tax laws, yet stands ready to work together with Council to bring the program into compliance as expeditiously as possible.

I appreciate your attention to this matter. I am available to discuss the details at any time and to continue to facilitate actions that promote compliance with the law.

Yours very truly,

Rick Reames III
Director

RRIII/afw
Cc: The Honorable Torrey Rush, Chairman, Richland County Council
The Honorable Greg Pearce, Vice Chair, Richland County Council
The Honorable Bill Malinowski, Member, Richland County Council
The Honorable Joyce Dickerson, Member, Richland County Council
The Honorable Damon Jeter, Member, Richland County Council
The Honorable Paul Livingston, Member, Richland County Council
The Honorable Seth Rose, Member, Richland County Council
The Honorable Jim Manning, Member, Richland County Council
The Honorable Julie-Ann Dixon, Member, Richland County Council
The Honorable Norman Jackson, Member, Richland County Council

Exhibit H

RICHLAND COUNTY COUNCIL

SOUTH CAROLINA

FROM THE DESK OF DISTRICT 7 REPRESENTATIVE TORREY RUSH

May 4, 2016

Rick Reames III, Director
South Carolina Department of Revenue
300A Outlet Pointe Blvd
Post Office Box 125
Columbia, South Carolina 29214

Re: Richland County Transportation Penny Program

Dear Director Reames:

I write in response to your letter of April 27, 2016. As the Chairman of the Richland County Council, I take these matters very seriously. Accordingly, upon receipt of your letter, I called an emergency meeting of the Richland County Council on April 29, 2016, and had subsequent discussions with the County Council on May 3, 2016. This letter represents a unified response of the County Council in defense of our citizens and taxpayers.

We feel like we must defend ourselves because you have singled out Richland County in a manner unlike any of the counties in this State that also collect a Transportation Penny ("Penny"). We have repeatedly requested that you provide us with the legal authority serving as a basis for your positions and actions and, despite those requests, the Department has refused to provide us with that legal authority. So, therefore we must conclude that, despite the absence of legal authority, you are attempting to overturn the Richland County Transportation Penny Program ("Program") as approved by the voters of the County. I remind you that the referendum question included authorization to spend penny proceeds on administrative costs, which you have consistently questioned during this process.

As a County Council, it is our job to maintain the covenant with our voters: we must not deviate from the referendum question. If we were to abide by your requests, we would be forced to pay administrative costs from the County's General Fund, which would require us to raise taxes. We cannot impose that kind of burden on our citizens.

We also must defend the County's credit rating, its contractual obligations and the jobs created by the Program. If you refuse to allocate to us the Penny collected in our County, then you put all of these things in great peril. We have issued debt dependent on the Penny, we have signed contracts

dependent on the Penny and many of our citizens are employed in construction positions funded by the Penny.

You have suggested we follow a "uniform standard" that has not been applied to any other county in South Carolina. That is just not reasonable. We follow the standards required by the Government Accounting Standards Board (GASB), which is a uniform standard applied to all local governments.

We appreciate your recognition that the COMET bus system is almost totally dependent on the receipt of Penny funds. On behalf of the system and its users, we would not be comfortable relying on your decision regarding what is or is not needed in the way of "emergency funding." Again, we do not believe you have the authority to do so and we must protect our citizens who rely on the system for daily transportation.

It is our duty to protect our citizens and the Richland County Transportation Penny Program. Therefore, we are left with little choice but to pursue our legal options to confirm our position that you do not have the authority to overrule this County Council, our voters or State law.

Sincerely,

Torrey Rush
Chairman

Exhibit I

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211-9979

May 19, 2016

VIA HAND DELIVERY
Robert Schneider, Ph.D.
Executive Director
Central Midlands Regional Transit Authority
3613 Lucius Road
Columbia, SC 29201

Re: Continued Funding for the Central Midlands Regional Transit Authority COMET Bus System

Dear Dr. Schneider:

I am in receipt of your May 12, 2016, letter to Director Reames inquiring whether funding from the Richland County Penny Transportation Tax for the COMET bus system will continue, while tax allocations for Richland County have been temporarily halted.

As outlined in the Department's April 27, 2016, letter to County Administrator McDonald, the Department is concerned that Richland County has failed to adopt a uniform standard to govern its expenditure of Penny Tax funds. The Department's audit revealed a number of improper expenditures and without the adoption of such a standard, the use of funds for purposes inconsistent with state law remains unchecked.

It is not the Department's intent, however, to restrict the use of Penny Tax funds for operation of the COMET bus system. As such, in the event the Penny Tax fund allocations are still being halted at the time of the normal July 2016 distribution, the Department will issue to Richland County the 29% of the revenue specified for COMET bus system operations.

Yours very truly,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

Milton G. Kimpson
General Counsel for Litigation

c: CMRTA Board of Directors
The Honorable Torrey Rush, Richland County Council Chair (via email)
Mr. Anthony W. McDonald, Richland County Administrator (via email)
The Honorable David A. Adams, Richland (via email)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	Docket No.: 2016-CP-40-_____
Richland County, South Carolina,)	
)	
Plaintiff,)	
)	
v.)	**PETITION FOR WRIT OF MANDAMUS AND MOTION FOR TEMPORARY INJUNCTION**
)	
The South Carolina Department of Revenue,) and Richard Reames, III in his official) capacity as its Director,)	
)	
Defendants.)	
)	
_____)	

TO THE DEFENDANTS NAMED ABOVE:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff will move before the Presiding Judge in the Richland County Court of Common Pleas, within ten (10) days hereof, or at such other time as the Court may decree, at the Richland County Judicial Center, or other such place as the Court may direct, for an Order pursuant to Rule 65, SCRCP, granting Plaintiff's Petition for Writ of Mandamus against the Defendants, and/or alternatively, an Order pursuant to Rule 65, SCRCP, granting Plaintiff a temporary injunction prohibiting Defendants from causing harm to the Plaintiff as allege in the Complaint.

The basis of this Motion are the claims for Declaratory Relief, Writ of Mandamus, and Injunctive Relief as stated in the Complaint. The Plaintiff relies on the Complaint, affidavits filed in support of this Motion, any legal memorandum to submitted in support herewith, and the law of the State of South Carolina.

Respectfully submitted,

By: _____

Benjamin E. Nicholson, V
M. Elizabeth Crum
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800
nnicholson@mcnair.net
lcrum@mcnair.net

By: _____

Ray N. Stevens
Ray E. Jones
Parker Poe Adams & Bernstein LLP
1201 Main St., Ste. 1450 (29201)
PO Box 1509
Columbia, SC 29202
Telephone: (803) 255-8000
Facsimile: (803) 255-8017
raystevens@parkerpoe.com
rayjones@parkerpoe.com

Of Counsel
Larry C. Smith
Richland County Attorney
P.O. Box 192
Columbia, SC 29202

Attorneys for the Plaintiff, Richland County

May 20, 2016
Columbia, South Carolina
COLUMBIA 1269335v1

STATE OF SOUTH CAROLINA)
) SS
COUNTY OF RICHLAND)

AFFIDAVIT OF ROB PERRY

PERSONALLY APPEARED before me, Rob Perry, who being duly sworn, deposes and says as follows:

1. I am 39 years old, competent to make the statements herein, and have personal knowledge of the statements herein.

2. I am the Director of Transportation for Richland County. I am a registered engineer in the State of South Carolina and I previously worked for the South Carolina Department of Transportation ("SCDOT.")

3. As the Director of Transportation for Richland County, I manage all items related to the Richland County Transportation Improvement Program ("CTIP"), including the management and oversight of program management firms. For the CTIP, I administer contracts and provide in-house project management from design to completion, and I supervise design work as necessary. I plan, organize and implement the program within major organizational policies, reporting program progress to executive-level administration and Council through reports and conferences. I report to the County Administrator.

4. Attached at **Exhibit A** to this affidavit is a true and correct copy of the latest CTIP. The CTIP was adopted by Richland County Council on March 15, 2016.

5. As noted in **Exhibit A**, the CTIP describes the projects, major activities and authorization schedules, and funding to guide the implementation of the Transportation Penny Program for all projects and programs approved in the Richland County November 2012 transportation penny sales tax referendum. The CTIP specifically addresses overall program

funding, cash flow modeling, alternate funding sources, and project authorization schedules. The CTIP also shows project ranking and projects by Council district. The CTIP also includes, for the projects included in the referendum, any other funding such as the State Transportation Infrastructure Bank, state or federal grants and federal-aid transportation funding that may supplement the funds from the transportation penny.

6. The CTIP is a project authorization program document; it is not a plan. The projects in the CTIP have already been approved by the Referendum.

7. The CTIP describes the projects and their authorization schedules anticipated to be accomplished over the next five (5) calendar years (CY 2016 through CY 2020). The remaining projects, or portions of projects, that are not authorized in the five-year period of the CTIP are shown for information with the estimated remaining cost to complete the entire project included. Also shown are the projects and/or project activities that have been authorized and work begun in CY 2015.

8. A detailed financial cash flow plan was developed to ensure funding will be available to implement the CTIP and the expected schedule of authorizations. Richland County's finance advisors provided the estimates of sales tax revenues as well as bonding and debt service requirements for the cash flow plan. Table 1 of **Exhibit A** at page 9 describes the expected revenues from the penny sales tax and bonds that are adequate to cover expected expenditure authorizations for the CY 2016 – 2020 CTIP period.

9. Table 2 starting at page 11 of **Exhibit A** contains each project or project group and shows the project phase and expected total cost to be authorized for that phase in the calendar year when that activity is expected to be authorized and begin. Those phases and costs

to complete that are expected to occur after calendar year 2020 are shown as an entry following the five-year CTIP period.

10. Attached at **Exhibit B** is a true and correct copy of a spreadsheet listing design and construction projects currently procured through the CTIP. As noted in Exhibit B, Richland County has awarded over $8,000,000 of full contract value in design contracts and over $36,000,000 of full contract value in construction contracts, all in reliance on penny sales tax revenues being paid to Richland County as forecasted. (These contracts are collectively called hereafter "the Penny Design/Construction Contracts.")

11. **Exhibit B** at the bottom under "Management" also lists the Program Development Team ("PDT") contract that manages the daily administration and some of the design and inspection functions for the County for all non-dirt road projects, as well as the separate Dirt Road Paving Program Management team contract. (These two contracts are hereafter called "the Penny Management Contracts.")

12. Should penny sales tax revenues from the penny sales tax implemented for the CTIP not be provided to Richland County, I do not know of another source of funding for the projects outlined in **Exhibit A**, the ongoing Design/Construction Contracts, or the Penny Management Contracts. While some funding for some projects in the CTIP relies on other sources of funds, such as matching federal grants, the vast majority of the CTIP is funded exclusively through the penny sales tax and the financial transactions utilized by Richland County to maximize the benefits of the CTIP.

13. If Richland County cannot fund the Design/Construction Contracts, Richland County may have to suspend and/or terminate those contracts. Should Richland County be forced to do so, Richland County would likely incur tens of thousands, if not hundreds of

thousands, of dollars in costs of the designers and contractors already under contract. Projects that are well underway would not be completed, and the possibility exists that absent a source of funding, they may never be completed by Richland County, which would be a waste of hundreds of thousands of taxpayer dollars already paid for work on these contracts.

14. Further, if Richland County cannot fund the Penny Management Contracts, again Richland County may have to suspend and/or terminate those contracts. Should Richland County be forced to do so, Richland County would likely incur tens of thousands of dollars in unrecoverable costs from those contractors when they are forced to demobilize. Further, the mere suspension of the Penny Management Contracts could create a substantial disruption of the CTIP because existing contracts would be put on hold, the procurement of future contracts listed in the CTIP would be stopped, and the contractors on the Penny Management Contracts may elect to terminate their contracts if there is a long suspension, rather than incurring costs and not having any work for their respective employees to do.

15. Replacing the contractors for the Penny Management Contracts without a sure source of revenue, specifically the transportation penny sales tax revenues, would likely make it hard for Richland County to find replacement contractors, and any replacement contractor would demand a premium, i.e., higher pricing to offset against the uncertainty of the future of the CTIP.

16. Additionally, there are several major projects in the CTIP that Richland County is on the verge of procuring. Substantial coordination with the SCDOT and other governmental entities, including the federal government, has been required to move these projects to the procurement stage. For example, the following three projects in the CTIP are scheduled to proceed:

a. North Main Street Widening Project. This project has $10 million in Federal TIGER grants that need to be obligated in May immediately following Plans, Specifications, and Estimates (PS&E) approval and prior to advertisement. The next key date is construction award in September. Richland County for this project has already signed an amendment/supplemental agreement to Richland County's intergovernmental agreement with SCDOT.

b. Hardscrabble Road Widening Project. Richland County has agreed to pay the SCDOT $27,239,199 broken into three installments for this project, and the Richland County is keeping $2,620,801 to fund its Construction, Engineering, * Inspection (CE&I) inspectors while on the job. The first installment of $9,079,733 will be due to SCDOT upon notification of award which would be September of this year. SCDOT has already advertised this project, and is set to receive bids this July. SCDOT itself separate from the Richland County penny tax funds has approximately $28 million dedicated for construction, and another $8.4 million towards right of way procurement. Richland County for this project has already signed an amendment/supplemental agreement to Richland County's intergovernmental agreement with SCDOT.

c. Bluff Road Widening Project. Richland County needs to bid this job by the end of this summer so that it can be constructed between USC football seasons. If Richland County misses this window, it at a minimum will have to wait another year. The County has obtained $1 million in federal funding, and $800,000 in CTC funding towards this project. Our estimates right now place construction for the project at $6.2 million.

17. Again, as I stated before, delay in implementation of these projects could result in greater costs to Richland County. Further, delay in these projects could endanger funding for some of these projects by the SCDOT and the federal government, thereby costing the taxpayers in Richland County even more money.

18. I do not know any way that Richland County can maintain the CTIP without the transportation penny sales tax revenues. Without the steady source of revenue provided by the transportation penny sales tax revenues, the County cannot promise to finish certain projects that it would ordinarily bid under the CTIP. In such a case, Richland County most probably would not be eligible for state or federal funding either.

19. Further, in my experience, construction costs for roadways and other similar projects have been going up in recent years. A delay in procuring CTIP projects because of questions about the funding for the CTIP projects will likely result in an inflationary increase in the overall costs to Richland County for the CTIP projects that are procured later.

20. Finally, in my experience, I do not know that any contractors would bid on a CTIP job if Richland County takes contractual measures to protect itself from a lack of transportation penny tax revenue funding for those projects. Contractors are businesses and like all businesses try to minimize risk. Taking a job from Richland County without guarantee of payment is a risk that I do not believe many contractors would take. Therefore, should the transportation sales tax revenues not be available to fund the CTIP, I think it unlikely that the CTIP would survive.

[Witness Signature Next Page]

FURTHER AFFIANT SAYETH NOT!

Rob Perry

Rob Perry

Sworn to and subscribed before me

this 20th day of May, 2016

Notary for South Carolina
My Commission Expires: Feb. 17, 2019

LATITIA GARNETT
NOTARY PUBLIC
SOUTH CAROLINA

COLUMBIA 1269001v4

Exhibit A

March 15, 2016

RICHLAND COUNTY TRANSPORTATION IMPROVEMENT PROGRAM (CTIP)

CALENDAR YEAR 2016 THROUGH CALENDAR YEAR 2020

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DATES OF ADOPTION AND AMENDMENT ACTIONS

- Adopted by Richland County Council March 15, 2016

INTRODUCTION

The Richland County Transportation Improvement Program (CTIP) describes the projects, major activities and authorization schedules, and funding to guide the implementation of the Transportation Penny Program for all projects and programs approved in the Richland County November 2012 transportation penny sales tax referendum. The CTIP will specifically address overall program funding, cash flow modeling, alternate funding sources, and project authorization schedules. The CTIP will also show project ranking and projects by Council district. The CTIP will also include, for the projects included in the referendum, any other funding such as the State Transportation Infrastructure Bank, state or federal grants and federal-aid transportation funding that may supplement the funds from the transportation penny.

The CTIP is a five-year project authorization program document; it is not a plan. The CTIP only includes projects for which there is funding expected to be available over the period covered by the CTIP, and therefore, is fiscally constrained.

BACKGROUND AND HISTORY OF THE SALES TAX PROGRAM

Richland County Council established a 39 member citizen Transportation Study Commission in 2006. This Commission held numerous public input meetings and completed a comprehensive study. The study addressed failing roads, the lack of sidewalks and greenway infrastructure, and the unstable bus system. Three transportation modes and the projects needed were addressed: (1) transit (buses), (2) roadway, and (3) bicycle, pedestrian and sidewalks, and greenways. The projects included in this initial study appeared on the ballot on November 2, 2010 but did not pass.

In 2012, the original study was revised which resulted in a reduction in the number of projects and a shorter program timeline. On November 6, 2012, the Richland County voters approved the revised plan of projects funded through a 22-year, $1.07 billion transportation penny local option sales tax. The "Transportation Penny" will be used to complete major road, bike, pedestrian and greenway projects and fund bus services during that time span.

In April 2013, Richland County Council appointed the Transportation Penny Advisory Committee (TPAC). The function of the TPAC is to review the use of the sales tax. The TPAC is composed of 15 Richland County citizens representing Arcadia Lakes, Blythewood, Columbia, Eastover, Forest Acres, Irmo, and unincorporated areas of Richland County.

The Richland County Council established and, in 2013, staffed a County Transportation Department to oversee and implement the projects approved in the referendum. Council also

selected a Program Development Team in July of 2014 to assist the County's Transportation Department in the delivery of the program.

The Sales and Use Tax collections began on May 1, 2013 and Richland County received the first revenue from the collections in October 2013. The tax revenues are collected by the state and distributed quarterly to the County.

FUNDING SUMMARY

The Richland County Transportation Improvement Program (CTIP) is subject to time and funding constraints as identified and approved by voters in the November 2012 referendum. Specifically, the 1% Sales Tax is to be imposed for not more than 22 years or until a total of $1,070,000,000 in sales tax revenues has been collected, whichever occurs first. These revenues are to be used to pay the costs of administrative expenses, currently estimated to be $32,100,000, any debt service should bonds be issued, and the following categories of projects:

ROADWAY

The penny tax program includes widening highways, major intersection improvements, paving dirt roads, and resurfacing local roads. Also included in this category are the identified neighborhood improvement plans, specific "special" projects, and the interchange at Broad River Road and I-20.

Amount: $656,020,644

TRANSIT

The continued operation and improvements of mass transit services provided by Central Midlands Regional Transit Authority including implementation of near, mid and long-term service improvements are included. These funds are sent directly by the County to the Central Midlands Regional Transportation Authority for their use in providing and increasing transit service in Richland County. These transit funds and any transit projects are not a part of the Richland County Transportation Improvement Program (CTIP), but are administered by the Board of the Transit Authority.

Amount: $300,991,000

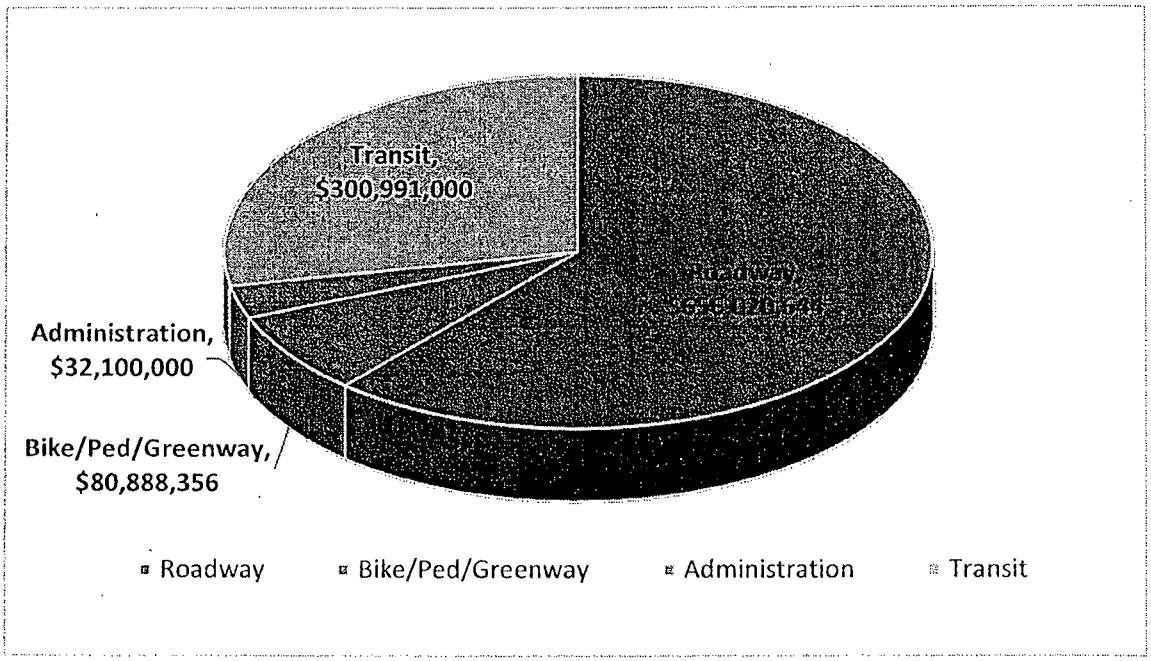
BIKEWAYS, PEDESTRIAN IMPROVEMENTS AND GREENWAYS

The category also includes significant improvements for pedestrians and bicyclists by adding sidewalks and bike paths, improving pedestrian access at intersections and constructing greenways.

Amount: $80,888,356

These funding allocations among the three categories identified in the 2012 referendum are also shown in chart form in Figure 1.

FIGURE 1. TRANSPORTATION PENNY FUNDING SUMMARY



The referendum also allows Richland County to issue up to $450,000,000 in general obligation bonds to support the program. These bonds may mature over a period not to exceed 22 years, to support the completion of the program.

I. CTIP ADOPTION PROCESS AND PROCEDURES

A five-year CTIP will be adopted annually by County Council at a regular or called meeting. Council may include the review and comments from the TPAC in its adoption decision. Council may have review and recommendations from Council committees prior to adoption by the full Council.

TYPES OF CHANGES TO THE CTIP

There are two types of CTIP changes: adjustments and amendments. As a general rule, significant changes to the cost, scope and schedule of a project result in an amendment to the CTIP, and will require approval by Council. Minor adjustments in fund sources, description, lead agency, project

limits, etc. will be made by the Director of Transportation. The following sections provide a summary of the two types of changes that may be made at any time during the period of the approved CTIP.

AMENDMENTS

Amendments are major changes to a project that alters the scope or cost and will require Council approval. The following changes are examples of changes made through an amendment:

- Adding or modifying project(s)
- Adding or modifying a project phase
- Significant changes in project scope or cost, so as to alter the original intent of the project.

ADJUSTMENTS

The following changes illustrate examples of adjustments that may occur and be approved by the Director of Transportation, as long as the change occurs within the approved timeframe of the approved CTIP, and the change does not adversely affect the timely implementation of any project:

- Change in project sponsor
- Splitting or combining projects for purposes of awarding contracts
- Change or clarification of project description-as long as the change does not significantly alter the original project intent as identified through the project development process
- Redirection of funds between existing phases-as long as a phase is not added or deleted

II. THE CY 2016 – CY 2020 RICHLAND COUNTY TRANSPORTATION IMPROVEMENT PROGRAM (CTIP)

The CTIP describes the projects and their authorization schedules anticipated to be accomplished over the next five (5) calendar years (CY 2016 through CY 2020). The remaining projects, or portions of projects, that are not authorized in the five-year period of the CTIP are shown for information with the estimated remaining cost to complete the entire project included. Also shown are the projects and/or project activities that have been authorized and work begun in CY 2015.

The CTIP is a project authorization program document; it is not a plan. The projects listed in the CTIP are those included in the referendum approved in November of 2012 as well as any projects

added as a result of supplemental funding received from such sources as the State Infrastructure Bank, federal funding, or other grants or awards. All costs for roadway widening and major intersection improvements shown for authorization in the CTIP are the updated and most current estimates for the projects, with construction costs adjusted for expected inflation. The exception to this current or updated cost for roadway projects are the "special" projects, including neighborhood plans, identified in the referendum. The "Special" projects, neighborhood plans, as well as bike, pedestrian, and greenway project costs will be those identified in the list of projects included in the referendum.

The five-year CTIP only includes projects for which there is sufficient funding available from sales tax revenues, bonds, and special awards or grants. Table 2 summarizes the breakdown of the project categories and expected financial authorizations for the five year CTIP period.

Of the "Roadway" projects in this five-year CTIP, almost 62% would be authorized for the widening projects included in the referendum. About 4% is expected to be authorized for major improvements to 15 intersections in the County. Other significant authorizations included in the CTIP include about 11% for those special projects contained in the referendum, as well as about 9% for planned neighborhood improvements identified in the individual adopted neighborhood plans. Dirt road paving has $36,000,000 authorized and local road resurfacing projects total $38,000,000 in the CTIP.

The total amount planned to be authorized for Bike/Pedestrian/Greenway projects in the CY 2016 – 2020 CTIP is divided between greenways (24%), bikeways (31%) and sidewalks (40%). The remaining 5% of the projects are pedestrian improvements to enhance walkability at identified intersections.

CASH FLOW PLAN

A detailed financial cash flow plan was developed to ensure funding will be available to implement the CTIP and the expected schedule of authorizations. The Richland County finance advisors provided the estimates of sales tax revenues as well as bonding and debt service requirements for the cash flow plan. The Program Development Team developed the project schedules and expenditures that could be done within the tax and bond revenue cash flow information provided by the County.

A cash flow plan will be maintained throughout the life of the Richland County Transportation Improvement Program (CTIP) and the sales tax program period. Program and project cost and schedule information will be regularly updated to ensure accurate cash needs. These needs will be monitored against current revenue collections and forecasts and additional sources of funds obtained for projects to determine bond needs. Bond and debt will be structured to take advantage of timing and rates in order to minimize borrowing costs.

It is expected that additional funding from federal, state, or other sources will be needed to fully implement all projects as they were envisioned in the referendum. The sales tax revenues and expenditures for roadways, bicycle-pedestrian-greenways, and transit are defined from the referendum and subsequent ordinances adopted to implement the referendum. As project costs are expected to increase over time, it appears essential that additional funding be found to supplement the sales tax and bond revenues – if all projects are to be implemented as planned.

As summarized in Table 1, the expected revenues from the sales tax and bonds are adequate to cover expected expenditure authorizations for the CY 2016 – 2020 CTIP period.

TABLE 1. PROJECTED REVENUES AND EXPENDITURES BY YEAR (CY 2016 – CY 2020)

Richland County Transportation Sales Tax - Proforma

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)
Period	Date Ending	Total Sales Tax Collections (2016 Proforma)	Transit Allocation (28.13%)	Tax Allocation	Debt Cash Flow		Estimated Project Expenditures		Admin.	Balance
				Roads, Greenway, Admin. Portion	Bond Proceeds (2015 Preforma)	Debt Service (2015 Proforma)	Roadway Projects	Bike/Ped/ Greenway Projects	Admin. Allocation (3%)	Cumulative Balance
1	12/31/2013	$26,493,296	$7,452,564	$19,040,732	$0	$0	$0	$0	$794,799	$18,245,933
2	12/31/2014	$54,915,375	$15,447,695	$39,467,680	$49,998,418	$0	$14,973,458	$0	$1,647,461	$91,091,112
3	12/31/2015	$58,914,223	$16,572,571	$42,341,652	$50,306,770	$50,500,000	$15,654,497	$500,883	$1,767,427	$115,316,728
4	12/31/2016	$59,503,000	$16,738,194	$42,764,806	$50,000,000	$50,750,000	$73,457,705	$12,273,500	$1,785,090	$69,815,239
5	12/31/2017	$60,251,000	$16,948,606	$43,302,394	$110,000,000	$50,997,222	$93,768,150	$11,577,700	$1,807,530	$64,967,030
6	12/31/2018	$60,854,000	$17,118,230	$43,735,770	$250,000,000	$112,200,000	$93,209,300	$12,138,600	$1,825,620	$139,329,280
7	12/31/2019	$61,463,000	$17,289,542	$44,173,458	$255,000,000	$259,743,833	$81,577,000	$8,588,300	$1,843,890	$86,749,715
8	12/31/2020	$62,077,000	$17,462,260	$44,614,740	$0	$11,385,200	$59,947,400	$8,908,800	$1,862,310	$49,260,745
9	12/31/2021	$62,698,000	$17,636,947	$45,061,053	$0	$11,385,200	$48,726,400	$5,819,100	$1,880,940	$26,510,158
10	12/31/2022	$63,324,000	$17,813,041	$45,510,959	$0	$11,385,200	$41,079,100	$5,000,000	$1,899,720	$12,657,097
11	12/31/2023	$63,957,000	$17,991,104	$45,965,896	$0	$11,385,200	$0	$0	$1,918,710	$45,319,082
12	12/31/2024	$64,597,000	$18,171,136	$46,425,864	$0	$41,095,200	$0	$0	$1,937,910	$48,711,836
13	12/31/2025	$65,243,000	$18,352,856	$46,890,144	$0	$41,116,800	$0	$0	$1,957,290	$52,527,890
14	12/31/2026	$65,895,000	$18,536,264	$47,358,737	$0	$41,310,000	$0	$0	$1,976,850	$56,599,777
15	12/31/2027	$66,554,000	$18,721,640	$47,832,360	$0	$41,347,500	$0	$0	$1,996,620	$61,088,017
16	12/31/2028	$67,219,000	$18,908,705	$48,310,295	$0	$41,392,250	$0	$0	$2,016,570	$65,989,492
17	12/31/2029	$67,891,000	$19,097,738	$48,793,262	$0	$41,439,750	$0	$0	$2,036,730	$71,306,274
18	12/31/2030	$38,151,106	$10,731,906	$27,419,200	$0	$41,485,500	$0	$0	$1,144,533	$56,095,441
19	12/31/2031	$0	$0	$0	$0	$0	$0	$0	$0	$56,095,441
20	12/31/2032	$0	$0	$0	$0	$0	$0	$0	$0	$56,095,441
21	12/31/2033	$0	$0	$0	$0	$0	$0	$0	$0	$56,095,441
22	12/31/2034	$0	$0	$0	$0	$0	$0	$0	$0	$56,095,441
Totals		$1,070,000,000	$300,991,000	$769,009,000	$765,305,188	$858,918,855	$522,393,010	$64,806,883	$32,100,000	

Notes:	E = C - D
	K = (E + F) - G - H - I - J

PROJECTS AND AUTHORIZATION SCHEDULES

The following tables show the individual projects or groups by project type that are included in the calendar year 2016 through calendar year 2020 CTIP. Also shown is the remaining cost required after CY 2020 to complete all projects, if they are not scheduled for completion during the CY 2016 through CY 2020 period of this CTIP. Individual projects included in the referendum are grouped as follows:

- Roadway widening
- Major intersection improvements
- Special projects (except neighborhood plans)
- Neighborhood improvements
- Interchange at Broad River Road and I-20
- Greenways

Groups of improvements for the projects in the referendum are shown as a single line item for the following types of projects:

- Sidewalk improvements
- Bikeway improvements
- Pedestrian improvements at intersections
- Dirt road paving
- Local road resurfacing

CTIP PROJECT TABLES (CY 2016 – CY 2020)

Table 2 contains each project or project group and shows the project phase and expected total cost to be authorized for that phase in the calendar year when that activity is expected to be authorized and begin. Those phases and costs to complete that are expected to occur after calendar year 2020 are shown as an entry following the five-year CTIP period.

The initial page shown in Table 2 includes a program summary by year and project category.

TABLE 2. CTIP PROJECTS AND AUTHORIZATION SCHEDULES (CY 2016 – CY 2020)

CTIP Program Summary by Calendar Year and Project Category

Project Authorization Summary - CY 2016 CTIP

All Costs in $1,000s

Type Project	2016	2017	2018	2019	2020	Total Authorizations in CTIP	Cost to Complete (after 2020)	TOTAL COST
Widenings	$75,593	$29,713	$72,519	$43,485	$44,580	$265,890	$48,720	$314,610
Intersections	$1,712	$2,900	$9,588	$2,200	$0	$16,400	$0	$16,400
Special	$21,645	$19,000	$5,558	$974	$0	$47,177	$65,651	$112,828
Spec. NIP	$2,906	$10,472	$10,761	$3,511	$12,309	$39,959	$22,308	$62,267
Resurfacing	$6,750	$5,950	$4,900	$4,900	$4,900	$27,400	$10,600	$38,000
Dirt Roads	$12,000	$12,000	$12,000	$0	$0	$36,000	$0	$36,000
I-20 Interchange	$0	$0	$0	$0	$0	$0	$52,500	$52,500
Total Roadway	*$120,606*	*$80,035*	*$115,326*	*$55,070*	*$61,789*	*$432,826*	*$199,779*	*$632,605*
Greenways	$6,525	$3,811	$926	$2,471	$0	$13,733	$6,243	$19,976
Sidewalks	$3,000	$5,000	$5,000	$5,000	$5,000	$23,000	$2,000	$25,000
Bikeways	$2,500	$4,000	$3,500	$4,000	$4,000	$18,000	$3,000	$21,000
Ped. Intersection	$123	$906	$1,806	$0	$0	$2,835	$0	$2,835
Total B/P/G	*$12,148*	*$13,717*	*$11,232*	*$11,471*	*$9,000*	*$57,568*	*$11,243*	*$68,811*
Total All Projects	*$132,754*	*$93,752*	*$126,558*	*$66,541*	*$70,789*	*$490,394*	*$211,022*	*$701,416*

Table 2 (a) - Roadway Widening Projects

All costs are shown in thousands of dollars and represent the calendar year the work is programmed to begin

Project Ranking	Council District or Districts	Project	Activity	Work Authorized Prior to CY 2016	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL PROJECT COST
					Roadways - Widenings							
1	7, 8, 9	Hardscrabble Road (1)	Engr. & Design	SCDOT						$0		$0
		Farrow Road to Lake Carolina Blvd.	ROW	SCDOT						$0		$0
		(County funding only, project is managed by SCDOT)	Construction		$9,953	$9,953	$9,954			$29,860		$29,860
			Total		*$9,953*	*$9,953*	*$9,954*	*$0*	*$0*	*$29,860*	*$0*	*$29,860*
2	9, 10	Clemson Road	Engr. & Design	Authorized						$0		$0
		Near Two Notch to Sparkleberry Crossing	ROW		$3,700					$3,700		$3,700
			Construction			$12,600				$12,600		$12,600
			Total		*$3,700*	*$12,600*	*$0*	*$0*	*$0*	*$16,300*	*$0*	*$16,300*
3	11	Leesburg Road (2)	Engr. & Design	SCDOT						$0		$0
		Fairmont Road to Lower Richland Blvd.	ROW	SCDOT						$0		$0
		(County funding only, project is managed by SCDOT)	Construction			$4,000				$4,000		$4,000
			Total		*$0*	*$4,000*	*$0*	*$0*	*$0*	*$4,000*	*$0*	*$4,000*
4	4	N. Main Street (3)	Engr. & Design	Authorized						$0		$0
		Anthony Avenue to Fuller Avenue	ROW	Authorized						$0		$0
		(Note:County Funds Only. Additional funding will be TIGER grant and federal earmark.)	Construction		$25,500					$25,500		$25,500
			Total		*$25,500*	*$0*	*$0*	*$0*	*$0*	*$25,500*	*$0*	*$25,500*
5	10	Bluff Road Phase One (4)	Engr. & Design	Authorized						$0		$0
		Fairgrounds entrance to George Rogers Blvd.	ROW		$1,350					$1,350		$1,350
		(Note:County Funds Only. Additional $1.8 million is federal and CTC.)	Construction		$4,400					$4,400		$4,400
			Total		*$5,750*	*$0*	*$0*	*$0*	*$0*	*$5,750*	*$0*	*$5,750*
5	10	Bluff Road Phase 2	Engr. & Design	Authorized						$0		$0
		National Guard Road to S. Beltline	ROW		$16,000					$16,000		$16,000
		(ROW may be authorized over a 2 year period)	Construction				$15,600			$15,600		$15,600
			Total		*$16,000*	*$0*	*$15,600*	*$0*	*$0*	*$31,600*	*$0*	*$31,600*

Activity Key: Engr. Design is all project engineering and project design; ROW is right-of-way acquisition; Construction is all construction activities to include utilities and construction inspection

Table 2 (a) - Roadway Widening Projects

All costs are shown in thousands of dollars and represent the calendar year the work is programmed to begin

Project Ranking	Council District or Districts	Project	Activity	Work Authorized Prior to CY 2016	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL PROJECT COST
6	10	Shop Road Widening	Engr. & Design	Prel. Design (30% plans) Authorized	$2,300					$2,300		$2,300
		George Rogers Blvd to I-77	ROW				$15,000			$15,000		$15,000
		(ROW may be authorized over a 2 year period)	Construction						$19,200	$19,200		$19,200
			Total		*$2,300*	*$0*	*$15,000*	*$0*	*$19,200*	*$36,500*	*$0*	*$36,500*
7	10, 11	Atlas Road	Engr. & Design	Authorized						$0		$0
		Bluff Road to Garners Ferry	ROW		$3,500					$3,500		$3,500
			Construction				$19,600			$19,600		$19,600
			Total		*$3,500*	*$0*	*$19,600*	*$0*	*$0*	*$23,100*	*$0*	*$23,100*
8	10, 11	Pineview Road	Engr. & Design	Authorized						$0		$0
		Bluff Road to Garners Ferry	ROW		$5,000					$5,000		$5,000
			Construction					$23,900		$23,900		$23,900
			Total		*$5,000*	*$0*	*$0*	*$23,900*	*$0*	*$28,900*	*$0*	*$28,900*
9	2, 7	Blythewood Road	Engr. & Design		$660					$660		$660
		I-77 to S. Mill	ROW				$4,100			$4,100		$4,100
		Include circle at Cobblestone in this project	Construction					$5,240		$5,240		$5,240
			Total		*$660*	*$0*	*$4,100*	*$5,240*	*$0*	*$10,000*	*$0*	*$10,000*
10	1	Broad River Road	Engr. & Design		$2,980					$2,980		$2,980
		Royal Tower to I-26 (Peak Interchange)	ROW				$7,500			$7,500		$7,500
			Construction						$22,020	$22,020	$0	$22,020
			Total		*$2,980*	*$0*	*$7,500*	*$0*	*$22,020*	*$32,500*	*$0*	*$32,500*
11	9, 10	Spears Creek Church Road	Engr. & Design			$3,160				$3,160		$3,160
		Two Notch to Percival Road	ROW					$7,400		$7,400	$0	$7,400
			Construction							$0	$23,440	$23,440
			Total		*$0*	*$3,160*	*$0*	*$7,400*	*$0*	*$10,560*	*$23,440*	*$34,000*

Activity Key: Engr. Design is all project engineering and project design; ROW is right-of-way acquisition; Construction is all construction activities to include utilities and construction inspection

Table 2 (a) - Roadway Widening Projects

All costs are shown in thousands of dollars and represent the calendar year the work is programmed to begin

Project Ranking	Council District or Districts	Project	Activity	Work Authorized Prior to CY 2016	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL PROJECT COST
12	11	Lower Richland Blvd.	Engr. & Design				$440			$440		$440
		Rabbit Run Road to Garners Ferry	ROW					$2,300		$2,300	$0	$2,300
			Construction						$3,360	$3,360	$0	$3,360
			Total		*$0*	*$0*	*$440*	*$2,300*	*$3,360*	*$6,100*	*$0*	*$6,100*
13	8, 9, 10	Polo Road	Engr. & Design					$1,020		$1,020		$1,020
		Mallett Hill Road to Two Notch	ROW							$0	$1,300	$1,300
			Construction							$0	$7,480	$7,480
			Total		*$0*	*$0*	*$0*	*$1,020*	*$0*	*$1,020*	*$8,780*	*$9,800*
14	2, 7	Blythewood Road (S)	Engr. & Design					$400		$400		$400
		I-77 to Main Street	ROW							$0	$500	$500
		Include the circle at Creech with widening from I-77 to Main	Construction							$0	$2,100	$2,100
			Total		*$0*	*$0*	*$0*	*$400*	*$0*	*$400*	*$2,600*	*$3,000*
14	2, 7	McNulty (S)	Engr. & Design					$300		$300		$300
		Main Street to Blythewood Rd.	ROW							$0	$200	$200
			Construction							$0	$1,700	$1,700
			Total		*$0*	*$0*	*$0*	*$300*	*$0*	*$300*	*$1,900*	*$2,200*
14	2, 7	Creech Road (S)	Engr. & Design					$250		$250		$250
		Extension to Main Street	ROW							$0	$150	$150
			Construction							$0	$1,400	$1,400
			Total		*$0*	*$0*	*$0*	*$250*	*$0*	*$250*	*$1,550*	*$1,800*
14	2, 7	Blythewood Road (S)	Engr. & Design					$1,500		$1,500		$1,500
		Fulmer to Syrup Mill	ROW							$0	$750	$750
			Construction							$0	$8,450	$8,450
			Total		*$0*	*$0*	*$0*	*$1,500*	*$0*	*$1,500*	*$9,200*	*$10,700*

Activity Key: Engr. Design is all project engineering and project design; ROW is right-of-way acquisition; Construction is all construction activities to include utilities and construction inspection

Table 2 (a) - Roadway Widening Projects

All costs are shown in thousands of dollars and represent the calendar year the work is programmed to begin

Project Ranking	Council District or Districts	Project	Activity	Work Authorized Prior to CY 2016	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL PROJECT COST
14	2, 7	Blythewood Rd. Traffic Circle (5)	Engr. & Design		$250			$250		$500		$500
		Add roundabouts at Intersections with Creech and Cobblestone	ROW				$325			$325	$325	$650
		Include the circle at Cobblestone with widening from I-77 to Syrup Mill in CY 2016. Circle at Creech is shown for design in CY 2019.	Construction					$925		$925	$925	$1,850
			Total		*$250*	*$0*	*$325*	*$1,175*	*$0*	*$1,750*	*$1,250*	*$3,000*

Project	Activity	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL PROJECT COST
Total All Roadway Widening Projects	Engr. & Design	$6,190	$3,160	$440	$3,720	$0	$13,510	$0	$13,510
	ROW	$29,550	$0	$26,925	$9,700	$0	$66,175	$3,225	$69,400
	Construction	$39,853	$26,553	$45,154	$30,065	$44,580	$186,205	$45,495	$231,700
	Total	*$75,593*	*$29,713*	*$72,519*	*$43,485*	*$44,580*	*$265,890*	*$48,720*	*$314,610*

Footnotes:

(1) - Hardscrabble Road was developed by SCDOT. The cost shown is the Richland County commitment to assist in the project funding.

(2) - Leesburg Road is being developed by SCDOT. The cost shown is the Richland County commitment to assist in the project funding.

(3) - North Main Street was initially developed by the City of Columbia. Richland County is managing the project after design is completed.
The cost shown is the Richland County commitment to assist in the project funding. Additional funding includes a $10 million TIGER grant and a $1.3 million earmark.

(4) - This section of Bluff Road was initially developed by SCDOT as a sidewalk project. SCDOT requested the County to assume the lead and make all ultimate improvements.
The cost shown includes $1 million from SCDOT and $800 thousand from the CTC for construction.

(5) - Blythewood area alternate projects approved by Council on March 17, 2014 to replace Blythewood Road widening from Syrup Mill to US 321.
This action was authorized as shown in the list of widening projects included in the November 2012 referendum.

Activity Key: Engr. Design is all project engineering and project design; ROW is right-of-way acquisition; Construction is all construction activities to include utilities and construction inspection

Table 2 (b) - Major Intersection Improvement Projects

All costs are shown in thousands of dollars and represent the calendar year the work is programmed to begin

Project Ranking	Council District or Districts	Project	Activity	Work Authorized Prior to CY 2016	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL REMAINING PROJECT COST
					Roadways - Widenings							
1 (a)	1,7, 8, 9	Six Design Build Intersections (1)	Engr. & Design	Authorized						$0		$0
		(six intersections are includes in one design build contract approved in 2015)	ROW	Authorized						$0		$0
			Construction	Authorized						$0		$0
			Total		*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$0*
1	7	Wilson & Pisgah Church Road	Engr. & Design	SCDOT						$0		$0
		(project was completed by SCDOT)	ROW	SCDOT						$0		$0
			Construction	SCDOT						$0		$0
			Total		*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$0*
1	7	Wilson & Killian	Engr. & Design	SCDOT						$0		$0
		(project to be constructed by SCDOT)	ROW	SCDOT						$0		$0
			Construction	SCDOT						$0		$0
			Total		*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$0*
2	9,10	Clemson & Sparkleberry	Engr. & Design	Prel. Design Authorized	$1,200					$1,200		$0
		Includes to Mallet Hill on Sparkleberry	ROW			$2,200				$2,200		$2,200
			Construction				$6,200			$6,200		$6,200
			Total		*$1,200*	*$2,200*	*$6,200*	*$0*	*$0*	*$9,600*	*$0*	*$8,400*
3	4	Bull & Elmwood	Engr. & Design			$300				$300		$300
		(coordinate with Commons development)	ROW				$300			$300		$300
			Construction					$2,200		$2,200		$2,200
			Total		*$0*	*$300*	*$300*	*$2,200*	*$0*	*$2,800*	*$0*	*$2,800*
4	4	North Main & Monticello	Engr. & Design							$0		$0
		(to be done as a part of the N. Main Widening)	ROW							$0		$0
			Construction							$0		$0
			Total		*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$0*

Activity Key: Engr. Design is all project engineering and project design; ROW is right-of-way acquisition; Construction is all construction activities include utilities and construction inspection.

Table 2 (b) - Major Intersection Improvement Projects

All costs are shown in thousands of dollars and represent the calendar year the work is programmed to begin

Project Ranking	Council District or Districts	Project	Activity	Work Authorized Prior to CY 2016	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL REMAINING PROJECT COST
5	2,9	Hardscrabble & Kelly Mill	Engr. & Design							$0		$0
		(to be done as a part of the Hardscrabble Road Widening)	ROW							$0		$0
			Construction							$0		$0
			Total		*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$0*
6	11	Garners Ferry & Harmon	Engr. & Design		$150					$150		$150
			ROW			$100				$100		$100
			Construction				$750			$750		$750
			Total		*$150*	*$100*	*$750*	*$0*	*$0*	*$1,000*	*$0*	*$1,000*
7	8,9	North Springs & Harrington	Engr. & Design		$120					$120		$120
			ROW			$200				$200		$200
			Construction				$680			$680		$680
			Total		*$120*	*$200*	*$680*	*$0*	*$0*	*$1,000*	*$0*	*$1,000*
8	9,10	Screaming Eagle & Percival	Engr. & Design		$242					$242		$242
			ROW			$100				$100		$100
			Construction				$1,658			$1,658		$1,658
			Total		*$242*	*$100*	*$1,658*	*$0*	*$0*	*$2,000*	*$0*	*$2,000*

Project	Activity	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL PROJECT COST
Total All Intersection Improvement Projects	Engr. & Design	$1,712	$300	$0	$0	$0	$2,012	$0	$2,012
	ROW	$0	$2,600	$300	$0	$0	$2,900	$0	$2,900
	Construction	$0	$0	$9,288	$2,200	$0	$11,488	$0	$11,488
	Total	*$1,712*	*$2,900*	*$9,588*	*$2,200*	*$0*	*$16,400*	*$0*	*$16,400*

Footnotes:

(1) - The six intersections to be improved under the design build contract are:

1 - Clemson Road & Rhame Road / North Springs Road; 2 - Broad River Road and Rushmore Road; 3 - Farrow Road and Pisgah Road; 4 - North Springs Road and Risdon Way; 5 - Summit Parkway and Summit Ridge; and 6 - Kennerly Road and Coogler / Steeple Ridge Road

Activity Key: Engr. Design is all project engineering and project design; ROW is right-of-way acquisition; Construction is all construction activities include utilities and construction inspection.

Table 2 (c) - Special Projects As Identified in the Referendum

All costs are shown in thousands of dollars and represent the calendar year the work is programmed to begin

Project Ranking	Council District or Districts	Project	Activity	Work Authorized Prior to CY 2016	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL REMAINING PROJECT COST
					Roadways - Widenings							
1	5	Riverbanks Zoo - Phase 1	Engr. & Design	Authorized						$0		$0
		(pedestrian access bridge over the railroad)	ROW	Authorized						$0		$0
			Construction	Authorized						$0		$0
			Total		*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$0*
2	5	Innovista - Phase 1	Engr. & Design	Authorized						$0		$0
		(Greene St. and Foundation Square)	ROW	Authorized						$0		$0
			Construction	Authorized						$0		$0
			Total		*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$0*
3	10	Shop Road Extension - Ph.1	Engr. & Design	Authorized						$0		$0
		(Pineview Road to Longview)	ROW	Authorized						$0		$0
			Construction		$18,645					$18,645		$18,645
			Total		*$18,645*	*$0*	*$0*	*$0*	*$0*	*$18,645*	*$0*	*$18,645*
4	5	Innovista - Phase 2	Engr. & Design	Authorized						$0		$0
		(Greene Street from Phase 1 to Huger Street)	ROW		$3,000					$3,000		$3,000
			Construction			$19,000				$19,000		$19,000
			Total		*$3,000*	*$19,000*	*$0*	*$0*	*$0*	*$22,000*	*$0*	*$22,000*
5	10	Shop Road Extension - Ph.2	Engr. & Design				$5,332			$5,332		$5,332
		(Longview to Garners Ferry)	ROW							$0	$7,000	$7,000
			Construction							$0	$36,351	$36,351
			Total		*$0*	*$0*	*$5,332*	*$0*	*$0*	*$5,332*	*$43,351*	*$48,683*
6	5	Riverbanks Zoo - Phase 2	Engr. & Design				$226			$226		$226
		(other transportation improvements near the Zoo)	ROW					$60		$60		$60
			Construction				$0	$914		$914		$914
			Total		*$0*	*$0*	*$226*	*$974*	*$0*	*$1,200*	*$0*	*$1,200*
7	2,9	Kelly Mill Road	Engr. & Design							$0	$500	$500
		(Hardscrabble to school - coordinate with Hardscrabble widening project)	ROW							$0	$1,000	$1,000
			Construction							$0	$3,000	$3,000
			Total		*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$4,500*	*$4,500*

Activity Key: Engr. Design is all project engineering and project design; ROW is right-of-way acquisition; Construction is all construction activities to include utilities and comstruction inspection

Table 2 (c) - Special Projects As Identified in the Referendum

All costs are shown in thousands of dollars and represent the calendar year the work is programmed to begin

Project Ranking	Council District or Districts	Project	Activity	Work Authorized Prior to CY 2016	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL REMAINING PROJECT COST
8	10	Commerce Drive Imp.	Engr. & Design							$0	$500	$500
			ROW							$0	$1,000	$1,000
			Construction							$0	$3,500	$3,500
			Total		*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$5,000*	*$5,000*
9	5	Innovista Phase 3	Engr. & Design							$0	$1,800	$1,800
		(Williams Street area improvements)	ROW							$0	$1,500	$1,500
			Construction							$0	$9,500	$9,500
			Total		*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$12,800*	*$12,800*

Project	Activity	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL REMAINING PROJECT COST
Total Special Improvement Projects	Engr. & Design	$0	$0	$5,558	$0	$0	**$5,558**	$2,800	$8,358
	ROW	$3,000	$0	$0	$60	$0	**$3,060**	$10,500	$13,560
	Construction	$18,645	$19,000	$0	$914	$0	**$38,559**	$52,351	$90,910
	Total	*$21,645*	*$19,000*	*$5,558*	*$974*	*$0*	*$47,177*	*$65,651*	*$112,828*

Note: Neighborhood Improvement Plans were included in the referendum under Special Projects. The Neighborhood Plan Improvements are shown as Table 2 (d).

Activity Key: Engr. Design is all project engineering and project design; ROW is right-of-way acquisition; Construction is all construction activities to include utilities and comstruction inspection

Table 2 (d) - Special Projects - Neighborhood Improvement Plans

All costs are shown in thousands of dollars and represent the calendar year the work is programmed to begin

Project Ranking	Council District or Districts	Project	Activity	Work Authorized Prior to CY 2016	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL REMAINING PROJECT COST
					Roadways - Widenings							
1	11	Southeast Richland	Engr. & Design	Authorized						$0		$0
			ROW		$424					$424		$424
			Construction			$6,073				$6,073		$6,073
			Total		*$424*	*$6,073*	*$0*	*$0*	*$0*	*$6,497*	*$0*	*$6,497*
2	4	Broad River Neighborhoods	Engr. & Design	Authorized						$0		$0
			ROW		$6					$6		$6
			Construction		$1,368					$1,368		$1,368
			Total		*$1,374*	*$0*	*$0*	*$0*	*$0*	*$1,374*	*$0*	*$1,374*
3	8	Decker Boulevard	Engr. & Design		$841					$841		$841
			ROW			$741				$741		$741
			Construction				$10,761			$10,761		$10,761
			Total		*$841*	*$741*	*$10,761*	*$0*	*$0*	*$12,343*	*$0*	*$12,343*
4	8	Candlewood	Engr. & Design		$268					$268		$268
			ROW			$10				$10		$10
			Construction			$1,572				$1,572		$1,572
			Total		*$268*	*$1,582*	*$0*	*$0*	*$0*	*$1,850*	*$0*	*$1,850*
5	7	Crane Creek	Engr. & Design			$2,076				$2,076		$2,076
			ROW					$14		$14		$14
			Construction						$12,295	$12,295		$12,295
			Total		*$0*	*$2,076*	*$0*	*$14*	*$12,295*	*$14,385*	*$0*	*$14,385*
6	3	Trenholm Acres / Newcastle	Engr. & Design					$697		$697		$697
			ROW						$14	$14	$0	$14
			Construction							$0	$4,096	$4,096
			Total		*$0*	*$0*	*$0*	*$697*	*$14*	*$711*	*$4,096*	*$4,807*

Activity Key: Engr. Design is all project engineering and project design; ROW is right-of-way acquisition; Construction is all construction activities to include utilities and construction inspection.

Table 2 (d) - Special Projects - Neighborhood Improvement Plans

All costs are shown in thousands of dollars and represent the calendar year the work is programmed to begin

Project Ranking	Council District or Districts	Project	Activity	Work Authorized Prior to CY 2016	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL REMAINING PROJECT COST
7	2, 4, 5, 7	Broad River Road Corridor	Engr. & Design					$2,800		$2,800		$2,800
			ROW							$0	$5,600	$5,600
			Construction							$0	$12,612	$12,612
			Total		*$0*	*$0*	*$0*	*$2,800*	*$0*	*$2,800*	*$18,212*	*$21,012*

Project	Activity	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL REMAINING PROJECT COST
Total Neighborhood Improvement Projects	Engr. & Design	$1,109	$2,076	$0	$3,497	$0	$6,682	$0	$6,682
	ROW	$429	$751	$0	$14	$14	$1,208	$5,600	$6,808
	Construction	$1,368	$7,645	$10,761	$0	$12,295	$32,069	$16,708	$48,778
	Total	*$2,906*	*$10,472*	*$10,761*	*$3,511*	*$12,309*	*$39,959*	*$22,308*	*$62,267*

Note: Neighborhood Improvement Plans were included in the referendum under Special Projects. The Neighborhood Plan Improvements are listed individually in Table 2 (d).

Activity Key: Engr. Design is all project engineering and project design; ROW is right-of-way acquisition; Construction is all construction activities to include utilities and construction inspection.

Table 2 (e) - Other Roadway Improvement Projects

All costs are shown in thousands of dollars and represent the calendar year the work is programmed to begin

Project Ranking	Council District or Districts	Project	Activity	Work Authorized Prior to CY 2016	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL REMAINING PROJECT COST
					Roadways - Widening							
Districtwide		INTERCHANGE	Engr. & Design							$0	$5,250	$5,250
		I-20 and Broad River Road Interchange	ROW							$0	$12,500	$12,500
			Construction							$0	$34,750	$34,750
			Total		*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$52,500*	*$52,500*
Countywide		LOCAL ROAD RESURFACING	Engr. & Design	Authorized	$600	$500	$400	$400	$400	$2,300	$1,200	$3,500
			ROW		$0	$0	$0	$0	$0	$0	$0	$0
		(as projects are designed, it is intended that construction begin as soon as feasible)	Construction	Authorized	$6,150	$5,450	$4,500	$4,500	$4,500	$25,100	$9,400	$34,500
			Total		*$6,750*	*$5,950*	*$4,900*	*$4,900*	*$4,900*	*$27,400*	*$10,600*	*$38,000*
Countywide		LOCAL DIRT ROAD PAVING	Engr. & Design	Authorized	$900	$900	$900			$2,700	$0	$2,700
			ROW	Authorized	$700	$700	$700			$2,100	$0	$2,100
		(as projects are designed, it is intended that construction begin as soon as feasible)	Construction	Authorized	$10,400	$10,400	$10,400			$31,200	$0	$31,200
			Total		*$12,000*	*$12,000*	*$12,000*	*$0*	*$0*	*$36,000*	*$0*	*$36,000*

Project	Activity	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL REMAINING PROJECT COST
Total Other Roadway Projects	Engr. & Design	$1,500	$1,400	$1,300	$400	$400	$5,000	$6,450	$11,450
	ROW	$700	$700	$700	$0	$0	$2,100	$12,500	$14,600
	Construction	$16,550	$15,850	$14,900	$4,500	$4,500	$56,300	$44,150	$100,450
	Total	*$18,750*	*$17,950*	*$16,900*	*$4,900*	*$4,900*	*$63,400*	*$63,100*	*$126,500*

Activity Key: Engr. Design is all project engineering and project design; ROW is right-of-way acquisition; Construction is all construction activities to include utilities and construction inspection.

Table 2 (f) - Greenway Projects

All costs are shown in thousands of dollars and represent the calendar year the work is programmed to begin

Project Ranking	Council District or Districts	Project	Activity	Work Authorized Prior to CY 2016	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL PROJECT COST
					Greenways							
1	5, 10	Three Rivers Greenway	Engr. & Design	Authorized		$250				$250		$250
		Lexington County to Broad River	ROW	Authorized						$0		$0
			Construction		$6,000	$1,550				$7,550		$7,550
			Total		*$6,000*	*$1,800*	*$0*	*$0*	*$0*	*$7,800*	*$0*	*$7,800*
2	4, 5	Lincoln Tunnel	Engr. & Design	Authorized						$0		$0
		Taylor Street to Elmwood	ROW	Authorized						$0		$0
			Construction	Authorized						$0		$0
			Total		*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$0*
3	6, 10	Gills Creek A	Engr. & Design	Prelim. Design Authorized	$325					$325		$325
		Lake Katherine to Bluff Road	ROW			$250				$250		$250
			Construction			$1,671				$1,671		$1,671
			Total		*$325*	*$1,921*	*$0*	*$0*	*$0*	*$2,246*	*$0*	*$2,246*
4	4	Smith - Roacky Branch C	Engr. & Design		$200					$200		$200
		Rocky Branch to Harden	ROW			$90				$90		$90
			Construction				$611			$611		$611
			Total		*$200*	*$90*	*$611*	*$0*	*$0*	*$901*	*$0*	*$901*
5	6, 11	Gills Breek B	Engr. & Design				$315			$315		$315
		Wildcat Creek and Ft. Jackson Perimeter	ROW					$280		$280		$280
			Construction					$2,191		$2,191		$2,191
			Total		*$0*	*$0*	*$315*	*$2,471*	*$0*	*$2,786*	*$0*	*$2,786*
6	4	Smith - Rocky Branch B	Engr. & Design							$0	$225	$225
		Clement Road to Colonial Drive	ROW							$0	$200	$200
			Construction							$0	$990	$990
			Total		*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$1,415*	*$1,415*
7	4	Smith - Rocky Branch A	Engr. & Design							$0	$95	$95
		Three Rivers to Clement Road	ROW							$0	$30	$30
			Construction							$0	$306	$306
			Total		*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$431*	*$431*

Activity Key: Engr. Design is all project engineering and project design; ROW is right-of-way acquisition; Construction is all construction activities to include utilities and construction inspection.

Table 2 (f) - Greenway Projects

All costs are shown in thousands of dollars and represent the calendar year the work is programmed to begin

Project Ranking	Council District or Districts	Project	Activity	Work Authorized Prior to CY 2016	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL PROJECT COST
8	6	Gills Creek C (North)	Engr. & Design							$0	$50	$50
		Trenholm Rd. to Lake Katherine	ROW							$0	$15	$15
			Construction							$0	$280	$280
			Total		$0	$0	$0	$0	$0	$0	$345	$345
9	4	Crane Creek A	Engr. & Design							$0	$220	$220
		Monticello Rd. tp Three Rivers	ROW							$0	$100	$100
			Construction							$0	$1,222	$1,222
			Total		$0	$0	$0	$0	$0	$0	$1,542	$1,542
10	4	Crane Creek B	Engr. & Design							$0	$80	$80
		to Smith Branch	ROW							$0	$26	$26
			Construction							$0	$354	$354
			Total		$0	$0	$0	$0	$0	$0	$460	$460
11	3, 8	Columbia Mall Greenway	Engr. & Design							$0	$100	$100
			ROW							$0	$25	$25
			Construction							$0	$524	$524
			Total		$0	$0	$0	$0	$0	$0	$649	$649
12	3, 8	Polo Rd. - Windsor Lake Blvd. Conn.	Engr. & Design							$0	$65	$65
		Alpine Road to Windsor Lake	ROW							$0	$20	$20
			Construction							$0	$301	$301
			Total		$0	$0	$0	$0	$0	$0	$386	$386
13	11	Woodbury - Old Leesburg Connector	Engr. & Design							$0	$25	$25
			ROW							$0	$10	$10
			Construction							$0	$81	$81
			Total		$0	$0	$0	$0	$0	$0	$116	$116
14	7	Crane Creek C	Engr. & Design							$0	$95	$95
		Crane Forest	ROW							$0	$50	$50
			Construction							$0	$649	$649
			Total		$0	$0	$0	$0	$0	$0	$794	$794

Activity Key: Engr. Design is all project engineering and project design; ROW is right-of-way acquisition; Construction is all construction activities to include utilities and construction inspection.

Table 2 (f) - Greenway Projects

All costs are shown in thousands of dollars and represent the calendar year the work is programmed to begin

Project Ranking	Council District or Districts	Project	Activity	Work Authorized Prior to CY 2016	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL PROJECT COST
15	4	Dutchman Boulevard Conn.	Engr. & Design							$0	$20	$20
		Dutchman Blvd. to Broad River Road	ROW							$0	$5	$5
			Construction							$0	$80	$80
			Total		*$0*	*$0*	*$0*	*$0*	*$0*	*$0*	*$105*	*$105*

Project	Activity	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL PROJECT COST
Total All Greenway Projects	Engr. & Design	$525	$250	$315	$0	$0	$1,090	$975	$2,065
	ROW	$0	$340	$0	$280	$0	$620	$481	$1,101
	Construction	$6,000	$3,221	$611	$2,191	$0	$12,023	$4,787	$16,810
	Total	*$6,525*	*$3,811*	*$926*	*$2,471*	*$0*	*$13,733*	*$6,243*	*$19,976*

Activity Key: Engr. Design is all project engineering and project design; ROW is right-of-way acquisition; Construction is all construction activities to include utilities and construction inspection.

Table 2 (g) - Other Sidewalk, Bikeway and Pedestrian Improvement Projects

All costs are shown in thousands of dollars and represent the calendar year the work is programmed to begin

Project Ranking	Council District or Districts	Project	Activity	Work Authorized Prior to CY 2016	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL REMAINING PROJECT COST
					Roadways - Widenings							
Countywide		SIDEWALKS	Engr. & Design	Authorized	$500	$500	$500	$500	$500	$2,500		$2,500
		(design & construction authorized for 2015 work)	ROW	Authorized	$250	$250	$250	$250	$250	$1,250		$1,250
			Construction	Authorized	$2,250	$4,250	$4,250	$4,250	$4,250	$19,250	$2,000	$21,250
			Total		*$3,000*	*$5,000*	*$5,000*	*$5,000*	*$5,000*	*$23,000*	*$2,000*	*$25,000*
Countywide		BIKEWAYS	Engr. & Design	Authorized	$500	$500	$500	$500	$400	$2,400		$2,400
		(design & construction authorized for 2015 work)	ROW	Authorized	$250	$250	$250	$250	$200	$1,200		$1,200
		(as projects are designed, it is intended that construction begin as soon as feasible)	Construction	Authorized	$1,750	$3,250	$2,750	$3,250	$3,400	$14,400	$3,000	$17,400
			Total		*$2,500*	*$4,000*	*$3,500*	*$4,000*	*$4,000*	*$18,000*	*$3,000*	*$21,000*
Countywide		PEDESTRIAN INTER. IMP.	Engr. & Design		$120	$0	$0			$120		$120
			ROW		$3	$3	$0			$6		$6
		(as projects are designed, it is intended that construction begin as soon as feasible)	Construction			$903	$1,806			$2,709		$2,709
			Total		*$123*	*$906*	*$1,806*	*$0*	*$0*	*$2,835*	*$0*	*$2,835*

Project	Activity	Programmed - 2016	Programmed - 2017	Programmed - 2018	Programmed - 2019	Programmed - 2020	Total Cost in CTIP (2016 - 2020)	Cost to Complete - Beyond 2020	ESTIMATED TOTAL REMAINING PROJECT COST
Total Other Sidewalk, Bikeway and Pedestrian Intersection Projects	Engr. & Design	$1,120	$1,000	$1,000	$1,000	$900	$5,020	$0	$5,020
	ROW	$503	$503	$500	$500	$450	$2,456	$0	$2,456
	Construction	$4,000	$8,403	$8,806	$7,500	$7,650	$36,359	$5,000	$41,359
	Total	*$5,623*	*$9,906*	*$10,306*	*$9,000*	*$9,000*	*$43,835*	*$5,000*	*$48,835*

Activity Key: Engr. Design is all project engineering and project design; ROW is right-of-way acquisition; Construction is all construction activities to include utilities and construction inspection.

END OF PROJECT TABLE SHEETS

Exhibit B

				FORECASTED CASH FLOW														
Consultant)		Contract	To-Date	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	Remaining	TOTAL
CECS (Civil Engineering	Pineview Rd Widening	$ 2,180,747	$ 220,206	$ 150,811	$ 150,811	$ 150,811	$ 150,811	$ 150,811	$ 150,811	$ 150,811	$ 150,811	$ 150,811	$ 150,811	$ 150,811	$ 150,811	$ 150,811		$ 2,180,747
Cox & Dinkins, Inc.	Atlas Rd Widening	$ 1,801,336	$ 893,941	$ 90,739	$ 90,739	$ 90,739	$ 90,739	$ 90,739	$ 90,739	$ 90,739	$ 90,739	$ 90,739	$ 90,739					$ 1,801,336
Holt Consulting Company,	Bluff Rd Widening Ph. 1	$ 63,446	$ -		$ 21,149	$ 21,149	$ 21,149											$ 63,446
Holt Consulting Company,	Clemson Rd Widening	$ 916,256	$ 234,867	$ 94,820	$ 53,324	$ 53,324	$ 53,324	$ 53,324	$ 53,324	$ 53,324	$ 53,324	$ 53,324	$ 53,324	$ 53,324	$ 53,324			$ 916,256
Holt Consulting Company,	Gills Creek A Greenway	$ 97,452	$ 73,887	$ 16,366	$ 7,199													$ 97,452
Kenneth B. Simmons	Three Rivers Greenway Extension Ph. 1	$ 99,194	$ 85,983	$ 13,211														$ 99,194
Mead & Hunt, Inc.	2015 OET Sidewalk Projects	$ 1,134,517	$ 330,215	$ 18,543	$ 112,251	$ 112,251	$ 112,251	$ 112,251	$ 112,251	$ 112,251	$ 112,251							$ 1,134,517
Parrish & Partners, LLC	Bluff Rd Widening Ph. 1	$ 341,346	$ 196,227	$ 48,373	$ 48,373	$ 48,373												$ 341,346
Parrish & Partners, LLC	Bluff Rd Widening Ph. 2	$ 1,285,472	$ 12,200	$ 10,000	$ 105,273	$ 105,273	$ 105,273	$ 105,273	$ 105,273	$ 105,273	$ 105,273	$ 105,273	$ 105,273	$ 105,273	$ 105,273	$ 105,273		$ 1,285,472
Parrish & Partners, LLC	Broad River Neighborhood Improvements	$ 27,284	$ 24,863	$ 2,420														$ 27,284
Parrish & Partners, LLC	Broad River Neighborhood Improvements	$ 218,238	$ 26,650	$ 63,863	$ 63,863	$ 63,863												$ 218,238
Total		$ 8,165,286	$ 2,099,040	$ 509,146	$ 652,981	$ 645,783	$ 533,547	$ 512,399	$ 512,399	$ 512,399	$ 512,399	$ 400,147	$ 400,147	$ 309,408	$ 309,408	$ 256,083		$ 8,165,286

Construction		Contract	To-Date	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	Remaining	TOTAL
Lane Construction	2014 Dirt Road Paving Package "B"	$ 1,174,078	$ 1,066,721	$ 107,358														$ 1,174,078
Eagle Construction	2014 Dirt Road Paving Package "C"	$ 1,079,265	$ 1,062,234	$ 17,032														$ 1,079,265
Lane Construction	2014 Dirt Road Paving Package "D"	$ 760,548	$ 718,658	$ 41,889														$ 760,548
C.R. Jackson, Inc.	2014 Dirt Road Paving Package "E"	$ 553,215	$ 494,521	$ 58,694														$ 553,215
Sloan Construction	2014 Resurfacing Package "A"	$ 972,979	$ 966,172	$ 6,808														$ 972,979
Sloan Construction	2014 Resurfacing Package "B"	$ 1,252,839	$ 1,204,394	$ 48,445														$ 1,252,839
Carolina Bridge Company	2014 Resurfacing Package "C"	$ 1,345,621	$ 1,175,687	$ 169,934														$ 1,345,621
Armstrong Contractors, Inc.	2015 Dirt Road Package "F" (Jouster St.)	$ 137,604			$ 68,802	$ 68,802												$ 137,604
Armstrong Contractors, Inc.	2015 Sidewalk Package "S1"	$ 93,670			$ 88,987	$ 4,684												$ 93,670
CBD, Inc.	2015 Sidewalk Package "S2"	$ 144,264			$ 72,132	$ 72,132												$ 144,264
Orion Construction	2015 Sidewalk Package "S4"	$ 74,775			$ 24,925	$ 24,925	$ 24,925											$ 74,775
Lane Construction	2016 Resurfacing Package "H"	$ 5,640,931				$ 296,891	$ 296,891	$ 296,891	$ 296,891	$ 296,891	$ 296,891	$ 296,891	$ 296,891	$ 296,891	$ 296,891	$ 296,891	$ 2,375,129	$ 5,640,931
C.R. Jackson, Inc.	Design-Build Intersections	$ 9,000,000	$ 2,231,275	$ 564,060	$ 564,060	$ 564,060	$ 564,060	$ 564,060	$ 564,060	$ 564,060	$ 564,060	$ 564,060	$ 564,060	$ 564,060	$ 564,060			$ 9,000,000
LAD Corporation	Innovista Greene Street Phase 1	$ 12,725,046	$ 3,413,585	$ 1,268,885	$ 1,851,581	$ 1,851,581	$ 1,851,581	$ 1,851,581	$ 636,252									$ 12,725,046
AOS Specialty Contractors	Lincoln Tunnel Greenway	$ 1,230,330	$ 507,740	$ 213,812	$ 254,389	$ 254,389												$ 1,230,330
Total		$ 36,185,166	$ 12,840,986	$ 2,496,917	$ 2,924,876	$ 3,137,464	$ 2,737,457	$ 2,712,532	$ 1,497,204	$ 860,952	$ 860,952	$ 860,952	$ 860,952	$ 860,952	$ 860,952	$ 296,891	$ 2,375,129	$ 36,185,166

Management	Contract	To-Date	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	Remaining	TOTAL
Dirt Road Paving Program Management	$ 4,193,380	$ 1,333,344	$ 35,760	$ 235,356	$ 235,356	$ 235,356	$ 235,356	$ 235,356	$ 235,356	$ 235,356	$ 235,356	$ 235,356	$ 235,356	$ 235,356	$ 235,356		$ 4,193,380
*Program Development Team (PDT)	$ 36,346,789	$ 16,846,789	$ 1,500,000	$ 1,500,000	$ 1,500,000	$ 1,500,000	$ 1,500,000	$ 1,500,000	$ 1,500,000	$ 1,500,000	$ 1,500,000	$ 1,500,000	$ 1,500,000	$ 1,500,000	$ 1,500,000		$ 36,346,789
Total	$ 40,540,169	$ 18,180,133	$ 1,535,760	$ 1,735,356	$ 1,735,356	$ 1,735,356	$ 1,735,356	$ 1,735,356	$ 1,735,356	$ 1,735,356	$ 1,735,356	$ 1,735,356	$ 1,735,356	$ 1,735,356	$ 1,735,356		$ 40,540,169

** Contract value includes future projected authorizations for Program Management, Design, Right-of-Way Acquisition Services, Construction, Engineering and Inspection Services, Construction Resource Management, Utility Coordination and Mitigation Bank Maintenance Services.*

GRAND TOTAL	Contract	To-Date	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	Remaining	TOTAL
Total	$ 84,890,622	$ 33,120,159	$ 4,541,823	$ 5,313,213	$ 5,518,603	$ 5,006,361	$ 4,960,288	$ 3,744,959	$ 3,108,707	$ 3,108,707	$ 2,996,455	$ 2,996,455	$ 2,905,716	$ 2,905,716	$ 2,288,331	$ 2,375,129	$ 84,890,622

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF DAVID ADAMS
COUNTY OF RICHLAND)

PERSONALLY APPEARED before me, David Adams, who being duly sworn, deposes and says as follows:

1. I am 45 years old, competent to make the statements herein, and have personal knowledge of the statements herein.

2. I am the duly elected treasurer for Richland County and have held this position for 13 years.

3. As Richland County Treasurer, I am responsible for the collection of all taxes and fees owed to the County; payment of debts and expenses authorized by the Chief Financial Officer; maintenance of investments; enforcement of delinquent property taxes, and the remittance of funds to the state.

4. In my official capacity as Richland County Treasurer, I have determined that the refusal of the South Carolina Department of Revenue (SCDOR) and the State Treasurer to remit to Richland County its revenue from the Transportation Penny will have a variety of negative effects on this County and other counties throughout this State.

5. Lending institutions holding Richland County debt instruments constantly monitor all county news and activities (political, financial, and other). As such, I believe that any decision by SCDOR to withhold the penny tax revenue would be viewed by these lending institutions as a "black eye" on the County. Accordingly, such institutions would want assurances that their debt was being covered, even if unconnected to the penny transportation program. Further, it would increase the rates at which the County could refinance or borrow money in the future.

6. The County's relationship with its taxpayers will be irreparably damaged in that they trusted the County to use the transportation penny to pay for needed transportation projects. These taxpayers did not contemplate or anticipate the need to also increase property taxes or fees to cover the same transportation projects due to funds being withheld by SCDOR. Taxpayer distrust and displeasure are already evident given the constant media attention this matter has received. I have spent the last 13 years attempting to build a relationship of trust with our taxpayers. It will be very difficult to rebuild the trust that is lost by this situation. Unfortunately, the actions Richland County will need to take to mitigate the loss of these funds will further erode taxpayer relations and prevent the county from doing other beneficial projects in the future. It should be noted that the taxpayer's loss of trust will not be limited to Richland County, but will be felt throughout the state thereby negatively impacting the ability of other communities to fund large projects.

7. Increases in property taxes and fees that could result from state actions will burden our citizens and increase the tension that tax offices (the assessor, the auditor, and the treasurer) will endure as they attempt to perform their legally mandated duties.

8. SCDOR's actions against Richland County may also negatively impact other counties in arranging debt financing. Lending institutions observing SCDOR's actions against Richland County will soon realize that SCDOR could arbitrarily take such actions against any county or political subdivision. Lending institutions may consider this a risk, not worthy of their investment, effectively shutting out other counties that need debt financing for their operations or increasing their cost to borrow.

FURTHER AFFIANT SAYETH NOT!

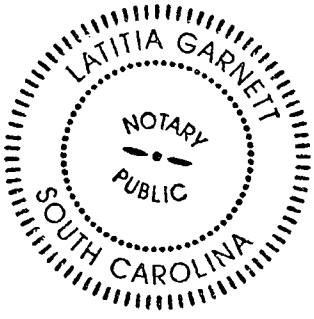
David Adams

Sworn to and subscribed before me

this 20 day of May, 2016

Notary for South Carolina

My Commission Expires: Feb. 17, 2019



STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF DANIEL DRIGGERS
COUNTY OF RICHLAND)

PERSONALLY APPEARED before me, Daniel Driggers, who being duly sworn, deposes and says as follows:

1. I am 54 years old, competent to make the statements herein, and have personal knowledge of the statements herein.

2. I am employed by Richland County and hold the position of Chief Financial Officer. I have held this position for 10 years and have dealt with budget issues during my entire tenure with Richland County which began in 2000.

3. As Chief Financial Officer, I am responsible for preparing the financial statements for the County; administering the budget approved by County Council; structuring and issuing debt instruments as well as managing relationships with the credit reporting agencies; and administering all other financial functions of Richland County.

4. In my official capacity as Chief Financial Officer, I have determined that the refusal of SCDOR and the State Treasurer to remit to Richland County its revenue from the Transportation Penny will have a severe negative impact on the finances of the County.

5. Richland County has outstanding transportation contractual obligations which are currently funded by the transportation sales tax. The County runs the risk of being unable to continue these contractual obligations as approved by the voters of Richland County in the 2012 referendum. Additionally, the County does not have the capacity within its reserves to fund these projects. As a result, the list of projects approved by the voters in the 2012 referendum would be halted until such time as the funds are released.

6. By halting or slowing the progress of ongoing transportation projects and future projects, the County runs the risk of losing local contractors that are currently contractually engaged to complete the projects, due to uncertainty over future payments. This would require the County to re-procure those services which, in turn, may result in additional costs to the county and its taxpayers.

7. Richland County employs certain staff members whose jobs are solely devoted to the transportation program and its projects. These employees are currently paid out of the transportation sales tax fund. Without the quarterly distribution of such funds, these salaries will have no identified source of funding, therefore putting these positions/jobs at risk.

8. If SCDOR prevents the County from receiving its penny tax revenue, it eliminates the county's option to go to the bond market as planned and take advantage of the current low interest rates that are available at this time. The impact of the County not being able to avail itself of these low interest rates will have the effect of increasing the cost of the projects by millions of dollars. Thus, the additional costs for these projects will result in reducing the number of projects as approved in the referendum by the voters or such additional costs will be borne by the taxpayers of Richland County.

9. In my opinion, SCDOR's actions have put at risk the county's credibility with creditors and rating agencies. This, in turn, may increase the county's risk assessment resulting in higher interest cost both for the county's transportation program and other county general obligation debt. The very threat of SCDOR withholding funds has already required a county disclosure to the credit market and responses to numerous telephone calls from creditors.

10. If the transportation projects are to continue without the penny tax revenue, County Council would have to vote to increase taxes or fees to cover the shortfall. The effect of this would

be double taxation in that Richland County citizens will be paying for the projects via the past and continued collection of the penny and via additional charges at the county level.

11. Without the benefit of the transportation sales tax, the County would not be able to meet its obligation to make quarterly payments to the CMRTA bus service for operations as committed in the 2012 referendum. For many Richland County citizens, this bus service is their only mode of transportation to and from work, medical appointments, shopping, recreational pursuits, family, friends and other destinations. As such, this would have a severe impact on our citizens, our businesses, and our economy in Richland County.

FURTHER AFFIANT SAYETH NOT!

Sworn to and subscribed before me

this 20 day of May, 2016

Notary for South Carolina

My Commission Expires: Feb. 17, 2019

LATITIA GARNETT NOTARY PUBLIC SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AFFIDAVIT OF
ROBERT A. SCHNEIDER

PERSONALLY APPEARED before me, Robert A. Schneider, who being duly sworn, deposes and says as follows:

1. I am 40 years old, competent to make the statements herein, and have personal knowledge of the statements herein.

2. My educational experience includes a Bachelor of Science, Western Carolina University; Master of Public Administration and Doctor of Philosophy, University of Tennessee. My professional experience includes seventeen years of continually progressive experience in the mass transit industry to include expertise in award-winning operations, maintenance, and planning functions in Knoxville, TN (1999-2007); General Manager with Veolia/TransDev in Boise, ID (2007-2011). and Executive Director of the Central Midlands Regional Transit Authority d/b/a The COMET ("The COMET") in Columbia, SC (2011-current).

3. Prior to the Transportation Penny ("Transportation Penny" or "Penny") becoming available, The COMET relied heavily upon contributions from the City of Columbia and Richland County, the total of which allowed for a very limited level of service.

4. Beginning in May 2012, and based upon a balanced budget service plan, The COMET operated approximately 225 hours of weekday fixed route transit service and approximately 90 hours per Saturday. There was no transit service available on Sundays or most holidays. On weekdays, routes operated from approximately 6:00 a.m. until 7:15pm, with no service during mid-day periods or Saturdays on a number of routes. Most routes operated on a

60-minute frequency (a bus would travel past a bus stop every 60 minutes) on a fleet of aged vehicles with no available access to any authority-owned shelters or benches.

5. DART, or Dial-A-Ride Transit is a service for persons with disabilities that operates at the same days, hours and availability (complements) as fixed route transit. If a route is not operational in the mid-day, DART riders in that area did not receive transit service, as there would be no complementary fixed route bus available.

6. The COMET now relies heavily upon its allocation of the Transportation Penny. For the July 1, 2015 – June 30, 2016 budget period, $14,229,000 in Penny funds was allocated by Richland County government to fund on-street operations for transit services. The Penny amount budgeted for the upcoming fiscal year of July 1, 2016 – June 30, 2017 is $16,779,545.

7. The revenue received by The COMET from the Transportation Penny is used to directly fund hourly services for fixed route and ADA paratransit service. This includes wages, fringes, fuel and associated costs such as on-street supervision, information, and operation of the transit center. The Penny also funds support functions for vehicle maintenance, facilities maintenance of both the transit center and operations & maintenance facilities, utilities, employee training, industrial safety program and oversight, financial support, human resources, planning capacity, community information and transit-based technology. The Penny funds also provide matching funds for capital purchases to include vehicles, shelters, benches, fleet parts and inventory and necessary facility upkeep and maintenance.

8. Based upon the availability of the Transportation Penny, service levels are significantly higher than could be previously provided. Current service levels are approximately 602 hours of weekday transit revenue hours across 28 transit routes, with service beginning as early as 5:15 a.m. and ending at 12:30 a.m. (after midnight). On weekends approximately 337

hours of service are provided on both Saturday and Sunday, across a span from 6:00 a.m. to 10:30 p.m.. Service has expanded to approximately 40 square miles of rural area service, including outlying incorporated and unincorporated communities. The Penny tax dollars also fund DART services for persons with disabilities, many of who are unable to drive or access traditional means of transportation or navigate street networks.

9. The COMET is projected to serve 2.5 million passengers in CY2016 based upon year-to-date ridership data, which averages 48,000 trips per week. The COMET fixed route transit system serves an aggregate of 8700 trips week, fluctuating by time of the year. A significant amount of the service provides transit access to low-income and minority communities along corridors with high concentrations of public or subsidized housing. The US Census Bureau identifies more than 2,000 unique working individuals that are below the poverty level and identified at "transit dependent" within Richland County, as well as 250 workers in Lexington County (American Community Survey data, accessed 5/19/2016). Per the ACS data, more than 17% of Richland County is at or below the poverty level, with more than 62,000 residents. For Lexington County, similar numbers of 38,000, which is 14% of that county's population

10. National statistics note that nearly 70% of transit trips are work or school-based with approximately 10% for medical and essential shopping services (A Profile of Public Transportation Passenger Demographics and Travel Characteristics Reported in On-Board Surveys, May 2007).

11. Nearly 100% of DART riders are transit dependent, as they are unable to use fixed route services due to documented disability that limits mobility. Paratransit vehicles make approximately 761 trips per week. A substantial population is unable to obtain a driver's license

due to their disability, which may include blindness, deafness, cerebral palsy, or multiple sclerosis. A significant portion of passengers are senior citizens with medical conditions that prohibit automobile use. There are approximately 4,000 eligible and registered DART passengers in Richland County.

12. The ADA does not allow for priority of trips (medical is not more important than social), as such close analysis of trips is not possible without asking customers the purpose of a visit to a location (work, shopping, illness, etc.). However, a sample of DART passenger trips from recent travel in May 2016 shows at least 25% of trips to employment centers and approximately 25% to medical appointments, with trips for groceries, church or other purposes comprising the remaining trip purpose. High-traffic areas include the four major hospitals in the region, along with subscription services to dialysis clinics, physical therapy, or oncology for treatment.

13. If the Transportation Penny is withheld, The Comet will only be able to operate at current levels until approximately Sunday, August 14, 2016. At that point, all services would have to be suspended indefinitely, including fixed route transit, rural transit, and ADA/DART service. A "scaled-down" service plan would not be feasible, as the available time to reduce service is insufficient to hold the requisite hearings, hold required public meetings, provide notices to general public of changes and then implement reductions. There is also insufficient time to provide notices to vendors and key contractors (including penalty payments for early termination, where applicable), and employee lay-offs (approximately 150 workers).

14. Additionally, necessary funds would have to be withheld to provide basic facilities maintenance and security, despite being operationally dormant. Funds would also be

set aside for insurance, basic utilities, and rudimentary personnel to maintain the basic financial obligations and reporting, as required by rule and policy.

15. Moreover, in the past five years, The COMET has purchased more than $27,000,000 in vehicles, major equipment, facility construction and upgrades and materials, which have not met their useful life. These purchases were made using federal Department of Transportation grants of 80% - 100% of purchase price; with The COMET providing 0% - 20%, depending on the purchase)). Under federal guidelines the transit system would be required to reimburse the federal government for the unused portions of the federal grants, estimated to be as much as $17,500,000, dependent on the age of equipment at actual suspension on a straight-line depreciation model.

16. The COMET uses Governmental Accounting Standards to report its financial activities, including the receipt and expenditure of the Penny Tax funds. The COMET's financial statements are also annually subject to audits which are conducted in accordance with Government Auditing Standards, as required by the Comptroller General of the United States. Neither of these standards are directly related to the Internal Revenue Code Section 263.

17. Without the Transportation Penny funds, The COMET would essentially cease to operate, as any residual revenues would be necessary to maintain insurance, security, utilities and associated items.

18. The COMET is reliant on three other primary sources of revenue, excluding the penny sales tax, but are directly connected to the seed funds provided by the penny sales tax:

a. State Mass Transit Fund (South Carolina Department of Transportation: $460,000), which pays for approximately ¼ of the annual fuel requirement or operation of approximately two transit routes, but no utilities or staffing to support the system.

b. Passenger Fares ($1,950,000), which are directly generated by transit services. The fares are collected from the passengers during the course of service and are reinvested in capital match for grants, payment of utilities or other transit-based activities. Without the Penny tax funds, these transit services still in operation would not generate more than 15% fare recovery, (estimated at $12,000 annually).

Capital funds ($0.00 - $6,000,000 annually), which are used for capital purchases, reimbursement of expenses for support of capita items and other federally-allowed programs. Without the Penny Tax funds, grants could not be matched, services would not be delivered and there could be no additional capital purchases.

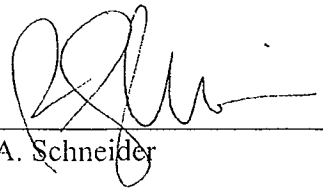
19. On May 12, 2016, The COMET sent a letter to Director Reames, South Carolina Department of Revenue ("SCDOR"), asking whether the SCDOR would withhold the Transportation Penny tax allocation from Richland County that was intended to be used for the operations of The COMET transportation system. (A true and correct copy of this letter is attached hereto as Exhibit A.)

20. On May 19, 2016, Milton G. Kimpson, Esquire sent a letter on behalf of Director Reames to me as Executive Director of The COMET stating: "As such, in the event the Penny Tax fund allocations are still being halted at the time of the normal July 2016 distribution, the Department will issue to Richland County the 29% of the revenue specified for (sic) COMET bus system operations." (A true and correct copy of this letter is attached hereto as Exhibit B.)

[Signature on next page]



FURTHER AFFIANT SAYETH NOT!



Robert A. Schneider

Print Name here: Robert A. Schneider

Sworn to and subscribed before me

this 20 day of May, 2016

Lisa Gibson

Notary for South Carolina
Print Name here: Lisa Gibson
My Commission Expires: 2/8/2022

Exhibit A

Exhibit A Inadvertently Left out of Filing in Lower Court

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211-9979

May 19, 2016

VIA HAND DELIVERY
Robert Schneider, Ph.D.
Executive Director
Central Midlands Regional Transit Authority
3613 Lucius Road
Columbia, SC 29201

Re: Continued Funding for the Central Midlands Regional Transit Authority COMET Bus System

Dear Dr. Schneider:

I am in receipt of your May 12, 2016, letter to Director Reames inquiring whether funding from the Richland County Penny Transportation Tax for the COMET bus system will continue, while tax allocations for Richland County have been temporarily halted.

As outlined in the Department's April 27, 2016, letter to County Administrator McDonald, the Department is concerned that Richland County has failed to adopt a uniform standard to govern its expenditure of Penny Tax funds. The Department's audit revealed a number of improper expenditures and without the adoption of such a standard, the use of funds for purposes inconsistent with state law remains unchecked.

It is not the Department's intent, however, to restrict the use of Penny Tax funds for operation of the COMET bus system. As such, in the event the Penny Tax fund allocations are still being halted at the time of the normal July 2016 distribution, the Department will issue to Richland County the 29% of the revenue specified for COMET bus system operations.

Yours very truly,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

Milton G. Kimpson
General Counsel for Litigation

c: CMRTA Board of Directors
The Honorable Torrey Rush, Richland County Council Chair (via email)
Mr. Anthony W. McDonald, Richland County Administrator (via email)
The Honorable David A. Adams, Richland (via email)

EXHIBIT
tabbies
B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO.: 16-CP-40-3102
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 Plaintiff. v. Richland PDT, a joint venture consisting of M.B. Kahn Construction Co., Inc., ICA Engineering, Inc., And Brownstone Construction Group, LLC, as a unit and individually, Third Party Defendants.	)	ANSWER, COUNTERCLAIMS AND THIRD PARTY COMPLAINT OF SOUTH CAROLINA DEPARTMENT OF REVENUE and RICK REAMES, III

RICHLAND COUNTY
FILED
2016 JUN 20 PM 4:35
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

COMES NOW, the Defendants/Third Party Plaintiffs, South Carolina Department of Revenue and Rick Reames, III, its Director, in his official capacity (collectively "Department") and answer the complaint filed by Plaintiff Richland County (Plaintiff or County) and further, asserting counterclaims against the Plaintiff and third party complaints against Richland PDT, a joint venture made up of MB Khan Construction Co., Inc. (MB Khan), ICA Engineering, Inc. (ICA), and Brownstone Construction Group, LLC (Brownstone), individually and collectively.

FOR A FIRST DEFENSE

1. Any and all allegations of the Plaintiff's Complaint not hereinafter admitted, explained, or qualified herein are denied and strict proof demanded thereof.

2. Paragraphs 1, 2, 3, 4 and 5 are denied and strict proof demanded thereof.

3. Upon information and belief, paragraph 6 is admitted.

4. Paragraphs 7 and 8 are admitted.

5. Paragraph 9 requires no admission or denial.

6. Upon information and belief, paragraphs 10 and 11 are denied and the relief requested by the Plaintiff therein should be denied.

7. Upon information and belief, paragraph 12 and 13 are admitted.

8. In response to paragraphs 14, 15, 16, 17, 18, 19, 20, and 21, Department would admit so much of same as it is alleged therein, but the Department would further qualify same by making reference to the actual wording of the entire text of the statutory provisions listed therein.

9. In response to paragraphs 22, 23, 24, and 25, the Department would admit so much of same as it is alleged therein, but would further qualify same by making reference to the entire text of Plaintiff's Ordinance No. 039-12HR (hereinafter County Ordinance).

10. Upon information and belief, paragraph 26 is admitted but the Department would further qualify same by making reference to its counterclaim(s) to the extent that the Plaintiff has failed to limit its expenditures of Penny Tax funds to the list of referendum - approved projects, and further, to the extent the referendum-approved projects are eligible for Penny Tax funds under the Act.

11. In response to paragraph 27, the Department acknowledges that the South Carolina Supreme Court in Letts v. Richland County sustained the County Penny Tax Referendum against challenges to the election process in which voters approved the Penny Tax; nevertheless, as will be explained below, the Department asserts the County Ordinance is invalid on its face and/or is being applied by the County in a manner which violates the applicable state enabling statute.

12. The Department would admit the allegations of Paragraph 28, but the Department would further qualify same by making reference to its counterclaim(s) to the extent that the Plaintiff has failed to limit its expenditures of Penny Tax funds to the list of referendum - approved projects, and further, to the extent the referendum-approved projects are eligible for Penny Tax funds under the Act.

13. In response to Paragraphs 29 and 30, upon information and belief, the Department would admit same.

14. In response to Paragraph 31, the Department, upon information and belief, admits that the County procured a Program Development Team (PDT), said Team being made up of Third Party Defendants ICA, Brownstone and MB Kahn (hereinafter Richland PDT or Team ICA/Brownstone/Kahn); the Department is without sufficient information and belief regarding why the County needed to procure the PDT as opposed to proceeding under S.C. Code Ann. § 4-37-20 (2012) to create a Transportation Authority to administer the Penny Tax Program and therefore denies the remaining allegations of that paragraph and demands strict proof thereof.

15. Upon information and belief, and subject to the qualifications, counterclaims and Third Party claims herein below, paragraphs 32 and 33 are admitted.

16. The Department is without sufficient information and belief regarding paragraphs 34, 35, and 36 and therefore denies the same and demands strict proof thereof.

17. In response to paragraph 37, upon information and belief, the Department admits that the State Treasurer has heretofore disbursed Penny Tax Revenues to the County on a consistent quarterly basis and that the County is relying upon Penny Tax Revenue to complete its projects; however, given the County's public statements that it has sufficient Penny Tax funds in reserve to fund current projects, the remaining allegations of this paragraph, however, are denied and strict proof demanded thereof.

18. Upon information and belief, paragraph 38, to the extent it alleges an emergency need for distribution of Penny Tax Revenues in July 2016, is denied; furthermore, as to the remaining allegations contained in this paragraph, the Department is without sufficient information and belief regarding their truth and accordingly demands strict proof thereof.

19. In response to paragraph 39, the Department would deny same and demand strict proof thereof. The Department further craves reference to the text of the Optional Methods of Financing Transportation Facilities Act, S.C. Code Ann. § 4-37-10, et seq (Act) and its counterclaims listed below.

20. The Department is without sufficient information and belief regarding paragraphs 40, 41, 42, 43, 44, 45, and 46 and therefore denies the same and demands strict proof thereof.

21. In response to paragraph 47, the Department admits that it initiated an audit review of the Plaintiff's Penny Tax Program and would further show that the audit revealed the Plaintiff's unlawful expenditure of Penny Tax Funds such that the Department has attempted to ensure that the Plaintiff comes into compliance with its statutory obligations regarding the

use of Penny Tax funds; the remaining allegations of paragraph 47 are denied and strict proof demanded thereof.

22. In response to paragraph 48, the Department admits that Exhibit A to the Plaintiff's complaint is a true and accurate copy of the Department's April 15, 2015 correspondence to the County and further asserts that its authority for conducting the review of the Plaintiff's Penny Tax Program is cited in said correspondence. The remaining allegations are hereby denied and strict proof demanded thereof.

23. In response to paragraph 49, the Department admits so much of same that alleges the Plaintiff initially cooperated with its requests for information during the course of the review of the Penny Tax Program; the Department is without sufficient information and belief regarding the County's motivations for cooperating, however, and therefore must deny the remainder of paragraph 49 and demand strict proof thereof.

24. In response to paragraph 50, the Department admits that Exhibit B to the Plaintiff's complaint is a true and accurate copy of the Department's December 3, 2015 correspondence to the County outlining the serious deficiencies in the County's operation of its Penny Tax Program and the use of Penny Tax Funds; the Department craves reference to the text of the letter itself and denies the remainder of this paragraph and demands strict proof thereof.

25. In response to paragraph 51, the Department admits that it received Exhibit C to the Plaintiff's complaint as referenced in paragraph 51 and craves reference to the entire text of the December 9, 2015 correspondence.

26. The Department responds to paragraph 52 by admitting that it received Exhibit D to the Plaintiff's complaint and craves reference to the text of said correspondence.

27. Paragraph 53 is admitted.

28. That answering the allegations of paragraph 54, the Department admits that Exhibit E to the Plaintiff's complaint is a true and accurate copy of the Department's February 25, 2016 letter and Report on Sales and Use Tax for Transportation Facilities in Richland County (Penny Tax Report) to the County; the Department craves reference to the text of said documents. The Department denies the remaining allegations contained therein and demands strict proof thereof.

29. In response to paragraphs 55 and 56, the Department admits so much of same as it references verbatim the language of the Penny Tax Report itself as contained in Exhibit E to the Plaintiff's complaint and craves reference to the entire text of said document; all further allegations contained in these paragraphs are denied and strict proof demanded thereof.

30. In response to paragraphs 57 and 58, the Department admits that Exhibit F to the Plaintiff's complaint is a true and accurate copy of correspondence sent by the Department *responding* to a proposal submitted by the County and the Department craves reference to the same; any further allegations contained in paragraphs 57 and 58 are denied and strict proof demanded thereof.

31. In response to paragraph 59, the Department admits that it put forward Internal Revenue Code (IRC) 263/263A (which has been adopted by South Carolina) as a standard for the expenditure of Penny Tax Funds so that the County may cease the unlawful use of Penny Tax Funds and come into compliance with state law; the remaining allegations in paragraph 59 are denied and strict proof demanded thereof.

32. In response to paragraph 60, the Department admits that the Plaintiff has correctly quoted from portions of the County Ordinance but asserts that the Ordinance is either invalid

or is being applied in an unlawful manner, craving reference to the Department's counterclaim(s) as set forth below; the remaining allegations of this paragraph are denied and strict proof demanded thereof.

33. In response to paragraph 61, the Department admits that the Plaintiff has quoted from a portion of S.C. Code Ann. § 4-37-20 and craves reference to the entire statute as well as the remainder of the Penny Tax Act; the remaining allegations of this paragraph are denied and strict proof demanded thereof.

34. Paragraphs 62, 63, 64, and 66 are denied and strict proof demanded thereof.

35. In response to paragraph 65, the Department admits that it has issued a notice of Proposed Regulation 117-338 which will set out a uniform standard for the proper expenditure of Penny Tax Funds as well as allow for the possibility of alternate standards; the remaining allegations contained in this paragraph are denied and strict proof demanded thereof.

36. Paragraph 67 is admitted only insofar as the Department received the referenced May 12, 2016 letter from Dr. Schneider, Executive Director of CMRTA and that the Department, prior to the filing and service of the instant lawsuit and in a good-faith attempt at resolution of certain issues, responded to Dr. Schneider's letter with the communication attached to Plaintiff's complaint as Exhibit I. The Department craves reference to the entirety of the May 12, 2016 correspondence and to its Counterclaim(s) set forth herein below.

37. Paragraphs 68, 69, 70, 71, and 72 are denied and strict proof demanded thereof.

38. In response to paragraph 73, the Department admits that representatives from the County did meet with the Department and the Department asserts that it operated in good-

faith in an attempt to resolve all matters; the Department is without sufficient information and belief as to the motivations of the representative of the Plaintiff and therefore denies the remaining allegations contained in paragraph 73 and demands strict proof thereof.

39. In response to the allegations of paragraph 74, the Department admits that it sent the letter attached at Exhibit G to Plaintiff's complaint and craves reference to said letter; the remaining allegations are denied and strict proof demanded thereof.

40. Paragraph 75 is denied and strict proof demanded thereof.

41. The Department admits that it received the letter attached to Plaintiff's Complaint as Exhibit H and craves reference thereto; the remainder of paragraph 76 is denied and strict proof demanded thereof.

42. The Department admits that it sent the letter attached to Plaintiff's complaint as Exhibit I, which is a true and accurate copy thereof, in a good faith attempt to resolve certain issues and craves reference thereto; any remaining allegations contained in paragraph 77 are denied and strict proof demanded thereof.

43. Paragraph 78 is denied and strict proof demanded thereof.

44. In response to paragraph 79, the Department admits that the Plaintiff has given a general description of the creation of the Department and its general authority, but asserts, however, that paragraph 79 does not exhaust the sources of the Department's authority over the matters herein. The remaining allegations are denied and strict proof demanded thereof.

45. Paragraph 80 is admitted.

46. In response to paragraph 81, the Department admits that certain of its powers and duties regarding Penny Tax Funds are set forth in Title 4, Chapter 37 but that paragraph 81

does not exhaust the sources of the Department's powers and duties with regard to taxes that it administers and collects.

47. Paragraphs 82 and 83 are denied and strict proof demanded thereof.

48. In response to paragraphs 84, 85, 86, 87, and 88, the Department craves reference to the S.C. Code Ann. § 4-37-10, et seq., and Title 12 of the South Carolina Code, and the actual wording of such statutes; the Plaintiff's remaining allegations contained in these paragraphs are denied and strict proof demanded thereof.

49. Paragraph 89 is denied and strict proof demanded thereof.

50. In response to paragraph 90, the Department admits that its February 24, 2016 letter and Penny Tax Report make reference to the cited statutory provisions and the Department craves reference to the actual language of said statutes; the remainder of this paragraph is denied and strict proof demanded thereof.

51. Paragraph 91 requires no denial or admission.

52. Paragraphs 92 and 94 are denied and strict proof demanded thereof.

53. In response to paragraph 93, the Department craves reference to the text of S.C. Code Ann. § 12-4-10; Plaintiff's characterization of this language as "precatory" is denied and strict proof demanded thereof.

54. In response to paragraph 95, the Department craves reference to the wording of the cited Constitutional provision and Act 52. The remaining allegations are denied and strict proof demanded thereof.

55. Paragraphs 96, 97, and 98 are denied and strict proof demanded thereof.

56. In response to paragraph 99, the Department craves reference to the text of S.C. Code Ann. § 12-4-310(9); Plaintiff's characterization of this statutory language as "precatory" is denied and strict proof demanded thereof.

57. Paragraphs 100, 101, 102, 103, 104, 105, 106, 107, and 108 are denied and strict proof demanded thereof.

58. Paragraph 109 is admitted. The Department further craves reference to its counterclaim(s) set forth more fully herein below.

59. In response to paragraphs 110, 111, and 112, the Department craves reference to the entire text of the statutes the Plaintiff has cited in these paragraphs; the remaining allegations contained within these paragraphs are denied and strict proof demanded thereof.

60. In response to paragraphs 113 and 114, the Department craves reference to the entire text of the statutes cited within these paragraphs as being both required for proper interpretation and reflective of the legislative intent of the cited statute.

61. Paragraphs 115, 116, 117, 118, 119, and 120 are denied and strict proof demanded thereof.

62. In response to paragraphs 121, 122, and 123, the Department craves reference to the text of S.C. Code Ann. § 4-37-30(A)(5); all remaining allegations contained within these paragraphs are denied and strict proof demanded thereof.

63. In response to paragraph 124, the Department craves reference to the text of S.C. Code Ann. § 4-37-30(A) (17); any remaining or other allegation contained within said paragraph is denied and strict proof demanded thereof.

64. Paragraphs 125 and 126 are denied and strict proof demanded thereof.

65. In response to paragraph 127, the Department admits that no final regulation under the Act has been promulgated but asserts that it has begun, well prior to the Plaintiff's filing of the instant lawsuit, the process to promulgate regulations pursuant to the to the Administrative Procedures Act, S.C. Code Ann.1-23-10, et seq.; further, the Department asserts that all regulations must be consistent with the Penny Tax Act

66. Paragraphs 128 and 129 are denied and strict proof demanded thereof.

67. In response to paragraph 130, the Department craves reference to the text of Article VIII of the South Carolina Constitution; the remaining allegations of that paragraph are denied and strict proof demanded thereof.

68. In response to paragraph 131, the Department craves reference to Chapter 9 of Title 4 of the South Carolina Code of Laws; and further asserts that the County's actions as described below, demonstrate a pattern of actions which violate Chapter 9 of Title 4, specifically, S.C. Code Ann. § 4-9-25, inasmuch as the Plaintiff has enacted the County Ordinance, which, on its face and/or as applied, is inconsistent with the general law of this State. In this regard, the Department further craves reference to its counterclaim(s) set forth more fully herein below.

69. Paragraph 132 requires no admission or denial.

70. Paragraphs 133, 134, 135, 136, 137, 138, 139, 140, and 141 are denied and strict proof demanded thereof.

71. Upon information and belief, paragraph 142 is denied and strict proof demanded thereof.

72. Paragraph 143 is denied and strict proof demanded thereof.

73. The Department is without sufficient information or belief regarding the truth of paragraphs 144 and 145, and therefore denies same and demands strict proof thereof.

74. Upon information and belief, paragraph 146 is denied and strict proof demanded thereof.

75. The Department is without sufficient information or belief regarding the truth of paragraphs 147, 148, 149, 150, 151, 152, 153, 154, 155, and 156 and therefore denies same and demands strict proof thereof.

76. In response to paragraph 157, the Department admits that prior to the Plaintiff filing the instant suit, it offered to remit funds to the State Treasurer to be distributed to the County for continued operations of the bus system as evidenced by Exhibit I to the Plaintiff's complaint; the remaining allegations contained within this paragraph are denied and strict proof demanded thereof.

77. The Department is without sufficient information or belief regarding the truth of paragraphs 158, 159, 160, and 161 and therefore denies the same and demands strict proof thereof.

78. Paragraphs 162, 163, and 164 are denied in their entirety and strict proof demanded thereof.

79. That answering Paragraph 165, it requires no admission or denial; notwithstanding, the Department reiterates its prior answers to Paragraphs 1-164, in response to the allegation(s) of Paragraph 165.

80. That answering Paragraph 166, the Department would qualifiedly admit same by also craving reference to the South Carolina Rules of Civil Procedure and applicable case law as providing or limiting such authority regarding the issuance of Writs of Mandamus.

81. That answering Paragraphs 167 and 168, the Department would deny same and demand strict proof thereof.

82. That answering Paragraph 169, the Department would deny same and demand strict proof thereof.

83. That answering Paragraphs 170, 171 and 172, the Department would, based on the conduct and misconduct of the Plaintiff as is alleged herein and as may be shown at trial, deny same and demand strict proof thereof.

84. That answering Paragraph 173, the Department would deny same and demand strict proof thereof.

85. That answering Paragraphs 174, the Department would deny same and demand strict proof thereof, and further request that the Court deny the relief sought by the Plaintiff.

86. That answering Paragraphs 175, 176, 177, 178, 179, 180, 181 and 182, the Department would deny same and demand strict proof thereof.

BY WAY OF FURTHER ANSWER, DEFENSE AND/OR COUNTERCLAIM FOR A SECOND DEFENSE

87. Paragraphs 1- 86 of this Answer, to the extent not inconsistent herewith, are reiterated as if fully set forth herein.

88. In response to the Department's April 15, 2015 correspondence (Exhibit A to Plaintiff's Complaint) to the Plaintiff requesting access to the Plaintiff's books and records for the purpose of conducting an audit of the Penny Tax Program, the Plaintiff raised no objection to the Department's authority to conduct its inquiry and instead, cooperated with the Department's requests for information.

89. Upon information and belief, the Plaintiff has consented to the Department's audit of the Penny Tax Program and to the Department's authority concerning the tax matters at issue here.

90. Upon information and belief, at no time prior to the Department releasing the results of its audit did the Plaintiff withdraw its consent to the Department's inquiry.

91. Upon information and belief, now that the results of the Department's audit have been released finding that the Plaintiff's Penny Tax Program is being operated in an unlawful manner, exceeding the scope of allowable expenditures under S.C. Code Ann. § 4-37-10, et seq., the Plaintiff cannot withdraw its consent to the Department's authority to take action to address the Plaintiff's unlawful operation of its Penny Tax Program.

92. Upon information and belief, now that the Department's audit has revealed that Plaintiff's Penny Tax Program is being operated in an unlawful manner, the Department, as the state agency which collects the sales and use tax at issue here and is imbued with authority to administer, regulate, and enforce the same, has a fiduciary duty owed to the citizens and taxpayers of the State of South Carolina, and in particular, the citizens and taxpayers of Richland County, to take appropriate action to rectify the Plaintiff's unlawful use of Penny Tax Funds, or at a minimum, to not remit additional Penny Tax funds to the Plaintiff until safeguards are in place to ensure that tax dollars will not continue to be used improperly.

93. The Department would also allege and show that, upon information and belief, the Plaintiff has a fiduciary relationship with the Department to properly account for, and expend, those tax monies the Department has remitted to the Plaintiff under the Act.

FOR A THIRD DEFENSE

14

94. Paragraphs 1- 93 of this Answer, to the extent not inconsistent herewith, are reiterated as if fully set forth herein.

95. Upon information and belief, the Plaintiff has failed to state facts sufficient to constitute a cause of action against the South Carolina Department of Revenue.

FOR A FOURTH DEFENSE

96. Paragraphs 1- 95 of this Answer, to the extent not inconsistent herewith, are reiterated as if fully set forth herein.

97. Upon information and belief, the Plaintiff has failed to state facts sufficient to constitute a cause of action individually against the Director of the South Carolina Department of Revenue, Rick Reames, III.

FOR A FIFTH DEFENSE BY WAY OF COUNTERCLAIM AGAINT RICHLAND COUNTY FOR DECLARATORY JUDGMENT
(Invalidity of Ordinance No. 039-12HR)

98. Paragraphs 1- 97 of this Answer, to the extent not inconsistent herewith, are reiterated as if fully set forth herein.

99. This cause of action is brought pursuant to the South Carolina Declaratory Judgement Act, S.C. Code § 15-53-10, et seq.

100. Pursuant to S.C. Code Ann. § 12-4-10, the Department of Revenue was created "to administer and enforce the revenue laws of this State; administer and enforce licensing laws and regulations relating to alcoholic liquors, beer and wine and assess penalties for violations thereof; and other laws specifically assigned to it."

101. Furthermore, pursuant to S.C. Code Ann. § 12-4-310, et seq., the Department has broad authority to facilitate tax administration, regulation and enforcement.

102. Pursuant to S.C. Code Ann. § 4-37-30(A), South Carolina counties, such as the Plaintiff, are "empowered to 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;"

103. S.C. Code Ann. § 4-37-30(8) 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."

104. The Department'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 "[t]he Department of Revenue shall administer and enforce the provisions of this chapter [Chapter 36]."

105. Pursuant to S.C. Code Ann. § 4-37-30(5)(b), the Department is given the authority to terminate the sales and use tax (Penny Tax) at issue here if, prior to the end of the maximum time allotted for the tax, the Department "determines that 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."

106. It is axiomatic that "[w]here a special fund is created or set aside by statute for a particular purpose or use, it must be administered and expended in accordance with the statute, and may be applied only to the purpose for which it was created or set aside, and not diverted to any other purpose, or transferred from such authorized fund to any other fund." City of Myrtle Beach v. Tourism Expenditure Review Committee, 407 S.C. 298, 755 S.E.2d 425 (2014).

107. Upon information and belief, the Plaintiff has expended and continues to spend Penny Tax Funds in a manner inconsistent with the restrictions of the Act such that the Department, in keeping with its tax administration, enforcement, and regulatory duties, and consistent with the public interest, is a proper party to pursue the within action.

108. Furthermore, upon information and belief, inasmuch as the Department, in addition to its tax administration, regulation, and enforcement duties regarding this tax, has the responsibility of collecting the same for subsequent allocation and distribution to counties, including the Plaintiff, for their use in accordance with the requirements of the Act, such that the Department has certain fiduciary duties owed to the citizens and taxpayers of the State of South Carolina and to the citizens and taxpayers of Richland County, in particular, to ensure that Penny Tax Funds made available to the counties are used for appropriate purposes.

109. S.C. Code Ann. § 4-37-30(A)(1)(a)(i) provides that the one percent sales tax may be imposed to build transportation related projects which include "highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation related projects and facilities including, but not limited to, drainage facilities relating to the highways, roads, streets bridges and other transportation related projects."

110. S.C. Code Ann. § 4-37-30(A)(1)(c) specifies that any county ordinance put before voters for the purposes of a referendum to impose this tax must specify the "estimated capital cost of the project or projects to be funded in whole or part from proceeds of the tax and the principal amount of bonds to be supported by the tax"; upon information and belief, the enabling statute does not allow for any costs other than "capital costs" to be included in the referendum to be put before the voters of a jurisdiction and further, the enabling statute

does not permit, allow or authorize Penny Tax funds to be used for costs that do not qualify as "capital costs".

111. The Plaintiff, acting through its County Council, enacted the County Ordinance which authorized a referendum on the Penny Tax to be put before its voters for approval; according to its terms, the County Ordinance imposed a one percent sales and use tax for twenty-two (22) years, to fund "...projects at a maximum cost not to exceed $1,037,900,00.00 to be funded from the net proceeds of a sales tax" and further provided that "[the] imposition of the sales and use tax and the use of the sales and use tax revenue, if approved in the referendum, shall be subject to the condition precedent and conditions or restrictions on the use and expenditure of sales and use tax revenue established by the Act [§ 4-37-10, et seq.], the provisions of this Ordinance and other applicable law." (County Ord. §1(c)). Further, the County Ordinance provided that "sales and use tax revenues shall be used for the cost of the projects established in this Ordinance, as it may be amended from time to time, including, without limitation, payment of administrative costs of the projects and such sums as may be required in connection with the issuance of bonds, the proceeds of which are applied to pay costs of the projects. All spending shall be subject to an annual independent audit to be made available to the public."

112. Upon information and belief, the Plaintiff's County Ordinance, to the extent it allows for the expenditure of any Penny Tax funds for any "cost of the projects...without limitation" other than the "capital costs" specified in the Act itself, is void because it is inconsistent with the Act and improperly and illegally exceeds the authority given to the Plaintiff under the Act.

113. Further, upon information and belief, the Plaintiff's County Ordinance, to the extent it allows for the expenditure of any Penny Tax Funds for County operations beyond those necessary for the acquisition and/or construction of transportation-related facilities, is void because such use of Penny Tax Funds is not authorized by the Act itself.

114. Upon information and belief, and as will be detailed below, pursuant to its County Ordinance the Plaintiff has already expended hundreds of thousands of dollars and entered into contracts worth potentially millions of dollars for expenses that are improper, illegal, and beyond the scope of allowable expenses under the Act.

115. In the alternative, even if the County Ordinance is not void on its face, because of the nature of the Plaintiff's unrestrained spending of Penny Tax Funds, the Plaintiff has applied the County Ordinance in a manner that is inconsistent with the restrictions placed on the use of Penny Tax Funds under the enabling statute.

116. Furthermore, upon information and belief, the Plaintiff's unrestrained spending of Penny Tax Funds for what it considered to be the "cost of the projects" without limitation in violation of the restrictions on the use of such funds imposed by the enabling statute, will make it impossible for the Department to fulfill its duty to "determine that 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.

117. The Department therefore, respectfully demands that this Court issue its Declaration that:

a. The County Ordinance is invalid on its face as exceeding the authority allowed by the enabling statute, S.C. Code Ann. § 4-47-10, et seq., inasmuch as the County

Ordinance authorizes the expenditure of Penny Tax Funds for purposes beyond the purposes specified in the enabling statute;

b. In the alternative, even if the County Ordinance is not void on its face, that the Plaintiff has applied the County Ordinance, or ignored the provisions of the County Ordinance, in a manner that is inconsistent with the restrictions placed on the use of Penny Tax Funds under the enabling statute.

FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM AGAINST RICHLAND COUNTY FOR DECLARATORY JUDGEMENT (INVALID EXPENSES UNDER S.C. Code Ann. § 4-37-30)

118. Paragraphs 1 - 117 of this Answer, to the extent not inconsistent herewith, are reiterated as if fully set forth herein.

119. This cause of action is brought pursuant to the South Carolina Declaratory Judgement Act, S.C. Code § 15-53-10, et seq.

120. Pursuant to its tax administration, regulatory and enforcement authority, to include, but not limited to, S.C. Code Ann. § 12-4-387, the Department initiated an audit review of the Plaintiff's Penny Tax Program in April 2015.

121. The Plaintiff initially cooperated with the Department's requests for access to Penny Tax Fund information, to include, books, invoices, bills, contracts and other records and provided access to the same to the Department's personnel; the Plaintiff offered no objection or other complaint regarding the Department's authority to conduct an examination of its Penny Tax program.

122. At the conclusion of its review, the Department found evidence of the unrestrained expenditure of Penny Tax funds on the various costs, many of which had either no relation to the acquisition or construction of any transportation-related facility as required by the Act

or were wildly excessive in relation to the scope of the services delivered. These findings included, but were not limited to:

- Over $700,000 for the start-up of a county-wide Small Business Enterprise Program which included expenses for ordinance drafting, acquiring software, website development, consulting services, and personnel costs for continued operations;
- Contracts for undefined, amorphous "public relations" services totaling over $3,000,000, before reimbursement of expenses, over a five (5) year period;
- Expenditures on a mentor-mentee program which paid both an experienced contractor/vendor for services as well as an inexperience contractor/vendor for duplicative services;
- Contracts for the continued operation *of other* County services.

123. Furthermore, upon information and belief, and as will be explained below and at trial, there was substantial evidence of self-dealing and improper relationships between decision-makers and contractors.

124. Upon information and belief, the Plaintiff's use of Penny Tax Funds for purposes not directly related to the acquisition and/or construction of "highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects" as specified in § 4-37-30 is improper, illegal, and beyond the scope of the Act.

125. The Department therefore, respectfully demands that this Court issue its declaration that any expenditures of Penny Tax Funds by the Plaintiff that cannot be "capitalized " as a capital cost of an approved project to build or construct "highways, roads, streets, bridges,

mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation related projects," are illegal and beyond the scope of the Act.

FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM AND /THIRD PARTY COMPLAINT FOR CIVIL CONSPIRACY

126. Paragraphs 1- 125 of the within Answer, to the extent not inconsistent herewith, are reiterated as if fully set forth herein.

127. Upon information and belief, the members of the Richland PDT, a joint venture, are ICA Engineering, Inc., Brownstone Construction Group, LLC and MB Kahn Construction Co., Inc. (also referred to herein as Richland PDT or Team ICA/Brownstone/Kahn).

128. Upon information and belief, each of these businesses is separately incorporated or otherwise formed in South Carolina and does business in Richland County; further, these three businesses formed Team ICA/Brownstone/Kahn, which ultimately received a contract valued at more than $31,000,000 from the Plaintiff to perform program development services for the Plaintiff's Penny Tax Program.

129. Furthermore, Team ICA/Brownstone/Kahn subsequently created an entity known as "Richland PDT, LLC" to conduct its business operations; however, upon information and belief, Richland PDT, LLC has never obtained a business license to operate in Richland County.

130. Upon information and belief, this Court has personal jurisdiction over Richland PDT, Richland PDT, LLC, Team ICA, Brownstone/Kahn, and the individual members of the Richland PDT, ICA Engineering, Inc., Brownstone Construction Group, LLC, and MB

Kahn Construction Co., Inc., venue is proper and each of the companies is subject to service of process.

131. Upon information and belief, inasmuch as the Department alleges that the members of the Richland PDT engaged in a civil conspiracy with the Plaintiff to expend Penny Tax Revenues in an illegal manner, complete relief cannot be accorded without the joinder of the members of the Richland PDT, collectively as a joint venture and individually as the businesses making up said joint venture, to the instant action as third-party defendants.

132. The Department's review of the Plaintiff's Penny Tax Program revealed several irregularities in the procurement process used to engage the PDT, as well as irregularities in the subsequent operation of the Penny Tax Project, namely:

a) The procurement process initially employed to select a program development team solicited requests for proposal (RFP) to procure a project development team using a procedure requiring ranking of proposals by an independent selection committee (Committee) as required under Richland County Code, Section 2-600; said ordinance further required the Plaintiff to negotiate with the firm ranked highest by the Committee and to thereafter negotiate with the next highest ranking proposal if these negotiations failed.

b) Instead, upon information and belief, the Plaintiff chose to negotiate with and eventually awarded a contract to ICA, which was ranked third in the Committee's scoring.

c) After the higher ranked company filed a protest to challenge the contract award to a lesser ranked company, the Plaintiff withdrew the contract award from ICA.

d) Thereafter, the Plaintiff amended the applicable County law and granted itself authority to exempt all Penny Tax contracts from standard procurement rules, also providing that the selection procedures were exempt from provisions to protest contract awards;

e) Using a new, abbreviated procurement process, the Plaintiff awarded the program development services contract to Team ICA/Brownstone/ Kahn, despite the relative inexperience of the members with building transportation related facilities as compared to the experience of other applicants.

f) Upon information and belief, Team ICA/Brownstone/Kahn acting as the Richland PDT has further awarded contracts to entities to perform services despite the presence of various conflicts of interests resulting in self-dealing.

g) That upon information and belief, the Plaintiff and Team ICA/Brownstone/ Kahn have failed to conduct independent audits of Penny Tax Funds as required under the County Ordinance and have further failed to ensure that Penny Tax contractors/vendors are audited as is required under the County Ordinance.

h) That upon information and belief, the Plaintiff and Team ICA/Brownstone/ Kahn have effectively shut out and frustrated attempts to allow oversight of the expenditure of Penny Tax Funds by citizen groups.

133. Upon information and belief, the $31,000,000,000 PDT contract was awarded to Team ICA/Brownstone/Kahn, using the abbreviated procurement process exempt from protest procedures and despite the relative lack of experience of Team ICA/Brownstone/Kahn in the construction of transportation-related facilities, because the

Plaintiff and Team ICA/Brownstone/MD Kahn reached an agreement to expend Penny Tax Funds in a manner inconsistent with the spending restrictions and purposes of the Act.

134. Upon information and belief, this agreement constitutes an unlawful civil conspiracy to violate the tax law, namely, S.C. Code Ann. § 4-37-30.

135. Upon information and belief, the unlawful expenditures effected as a result, and in furtherance, of the civil conspiracy between the Plaintiff and Team ICA/ Brownstone/ Kahn total well in excess of $3.5 million dollars in actual costs and the award of contracts for improper expenditures.

136. Upon information and belief, because this represents an unlawful expenditure of restricted tax dollars for which the Department is responsible for under its tax administration, enforcement, and regulatory duties, these improper expenditures constitute special damages to the Department, as well as special damages to the taxpayers of Richland County.

137. Furthermore, upon information and belief, the Department has suffered special damages in that its ability to perform its additional statutory duties under § 4-37-30(A)(5)(b) of the enabling act is seriously impaired by the Plaintiff's unrestrained expenditure of Penny Tax Funds in violation of the Act.

138. That upon information and belief, the Penny Tax Dollars expended in an improper manner as a result of the parties' civil conspiracy should be reimbursed to the Penny Tax Fund and that any funds unlawfully paid to Team ICA/Brownstone/Kahn in furtherance of this conspiracy be disgorged by these third party defendants.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM and CLAIM FOR FRAUD

139. Paragraphs 1- 138, to the extent not inconsistent herewith, are reiterated as if set for the fully herein.

140. Upon information and belief, the activities of the Plaintiff and Team ICA/Brownstone/ Kahn in expending Penny Tax Funds on the "cost of projects...without limitation" which lack sufficient direct or indirect relation to transportation related facilities as contemplated under the Act, gives rise to fraud.

141. Upon information and belief, and as will be shown at trial, in adopting the County Ordinance that offers, in pertinent part, that "[t]he imposition of the sales and use tax and the use of the sales and use tax revenue, if approved in the referendum, shall be subject to the condition precedent and conditions or restrictions on the use and expenditure of sales and use tax revenue established by the Act [§ 4-37-10, et seq], the provisions of this Ordinance and other applicable law"; that "sales and use tax revenues shall be used for the cost of the projects established in this Ordinance, as it may be amended from time to time, including, without limitation, payment of administrative costs of the projects and such sums as may be required in connection with the issuance of bonds, the proceeds of which are applied to pay costs of the projects"; and that "[a]ll spending shall be subject to an annual independent audit to be made available to the public," the Plaintiff made certain representations to the Department, as the entity responsible for the administration, regulation and enforcement of this tax, and to the citizens and taxpayers of Richland County.

142. Furthermore, upon information and belief, the Plaintiff and Team ICA/Brownstone/Kahn entered into a contract for the performance of program development services, said contract, in pertinent part regarding 'gratuities or kickbacks," provides that the "[t]he PDT, and their respective employees, Subcontractors and consultants shall not,

under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the County"; in so entering into this contract, the Plaintiff and Team ICA/Brownstone/Kahn made certain representations to the Department as the entity responsible for the administration, regulation and enforcement of the tax at issue and to the citizens and taxpayers of Richland County.

143. Upon information and belief, the representations made by the Plaintiff, individually, and along with Team ICA/Brownstone/Kahn were false and the Plaintiff and Third Party Defendants had knowledge of their falsity and/or a reckless disregard of their truth or falsity.

144. Upon information and belief, the Plaintiff and third party defendants ICA/Brownstone/Kahn intended for the Department, as the entity responsible for the administration, regulation and enforcement of this tax, to rely upon said representations.

145. That further, upon information and belief, the representations made by the Plaintiff in its County Ordinance, and by the Plaintiff and Team ICA, Brownstone/Kahn in their contract for PDT services are material;

146. That upon information and belief, the Plaintiff has a fiduciary duty owed to the Department as it relates to those tax monies received by the Plaintiff under the Penny Tax Act, and as a result thereof, the Department had a right to rely upon said representations with regard to its administration duties and did, in fact, rely upon said representations in making allocations of Penny Tax funds pursuant to the Act.

147. Upon information and belief, the Department has suffered special damages as a result of the Plaintiff's and third party defendants' false representations in that a special tax that it administers has been used by the Plaintiff and third party defendants in an improper

manner exceeding the scope of allowable uses for this money under the terms of the enabling statute.

148. Upon information and belief, the Plaintiff and third party defendants have thus committed actionable civil fraud against the Department and the citizens of Richland County such that the Penny Tax Fund must be reimbursed and profits earned by Team ICA/Brownstone/Kahn should be disgorged.

FOR A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM and CLAIM FOR CONSTRUCTIVE FRAUD

149. Paragraphs 1 – 148 are reiterated as if fully set forth herein.

150. Upon information and belief, the activities of the Plaintiff and Team ICA/Brownstone/ Kahn in expending Penny Tax Funds on the "cost of projects . . . without limitation" that lack sufficient direct or indirect relation to transportation related facilities as contemplated under the Act gives rise to fraud.

151. Upon information and belief, in adopting the County Ordinance that offers, in pertinent part, that "[the]imposition of the sales and use tax and the use of the sales and use tax revenue, if approved in the referendum, shall be subject to the condition precedent and conditions or restrictions on the use and expenditure of sales and use tax revenue established by the Act [§ 4-37-10, et seq.], the provisions of this Ordinance and other applicable law"; that "sales and use tax revenues shall be used for the cost of the projects established in this Ordinance, as it may be amended from time to time, including, without limitation, payment of administrative costs of the projects and such sums as may be required in connection with the issuance of bonds, the proceeds of which are applied to pay costs of the projects"; and that "[a]ll spending shall be subject to an annual independent audit to be made available to

the public," the Plaintiff made certain representations to the Department as the entity responsible for the administration, regulation, and enforcement of this tax and to the citizens and taxpayers of Richland County.

152. Furthermore, upon information and belief, the Plaintiff and Team ICA/Brownstone/Kahn entered into a contract for the performance of program development services, said contract, in pertinent part regarding 'gratuities or kickbacks," provides that the "[t]he PDT, and their respective employees, Subcontractors and consultants shall not under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the County"; in so entering into this contract, the Plaintiff and Team ICA/Brownstone/Kahn made certain representations to the Department as the entity responsible for the administration, regulation and enforcement of the tax at issue and to the citizens and taxpayers of Richland County.

153. Upon information and belief, the representations made by the Plaintiff and Team ICA/Brownstone/Kahn were false.

154. The Plaintiff and Third Party Defendants had knowledge of their falsity and/or a reckless disregard of their truth or falsity.

155. The Department had no knowledge that the representations of the Plaintiff and third party defendants Team ICA/Brownstone/Kahn were false.

156. That upon information and belief, the representations made by the Plaintiff in its County Ordinance, and by the Plaintiff and Team ICA, Brownstone/Kahn in their contract for PDT services are material;

157. That upon information and belief, the Plaintiff has a fiduciary duty owed to the Department as it relates to those tax monies received by the Plaintiff under the Penny Tax Act, and as a result thereof, the Department had a right to rely upon said representations with regard to its administration duties and did, in fact, rely upon said representations in making allocations of Penny Tax funds to the Plaintiff.

158. The Department, as the entity responsible for the administration, regulation and enforcement of this tax, to include its collection and allocation of said tax did, in fact, rely upon said representations in making allocations of Penny Tax funds to the Plaintiff.

159. Furthermore, the Department will show that there exists an impermissible relationship between the Richland PDT (Team ICA/Brownstone/MB Kahn), the COMET/CMRTA (hereinafter "COMET") bus system, and entities who have been granted contracts with Penny Tax funds and that the parties thereto have engaged in a series of self-dealing and insider deals. In particular, the COMET Board is scheduled to receive at least $300 million of Penny Tax dollars over the life of the Penny Tax program to run the Midlands' bus system. The company which received the contract to operate the bus system is represented by one of the principals of Brownstone Construction Group, LLC (hereinafter referred to as Brownstone Principal A):

- Brownstone Principal A owns a one-third equity interest in Brownstone Construction Group, LLC which is one of the three firms that comprise the PDT.
- Brownstone Principal A also owns a consulting firm with received a contract to perform public relations services for the company which received the contract to operate the Comet bus system.
- Further, Richland PDT awarded a $1.5 million contract to the consulting firm owned by Brownstone Principal A for public relations work potentially associated with the Penny Tax program.

- Thus, Brownstone Principal A, through his ownership interests in Brownstone and his consulting firm, is potentially being paid three times from Penny Tax funds: (1) through his one-third ownership in one of the three firms that was awarded the PDT contract, (2) through the contract involving the COMET bus system, and (3) through the $1.5 million dollar public relations contract awarded through the PDT.
- The Department is further informed and believes that Brownstone Principal A and/or Brownstone was paid to assist in the passage of the Penny Tax Referendum itself, resulting in Brownstone Principal A possibly being paid four different ways in association with the expenditure of Penny Tax funds.
- The Department is further informed and believes that as a result of the aforementioned insider deals and self-dealing, a member of the COMET Board was awarded a contract to perform services by the PDT, being paid with Penny Tax funds.

160. Upon information and belief, the Plaintiff and third party defendants have thus committed actionable constructive fraud against the Department and the citizens of Richland County such that the Penny Tax Fund must be reimbursed and profits earned by Team ICA/Brownstone/Kahn should be disgorged.

FOR A TENTH DEFENSE AND BY WAY OF COUNTERCLAIM/THIRD PARTY CLAIM FOR PERMANENT INJUNCTION

161. Paragraphs 1 – 160 are reiterated as if fully set forth herein.

162. Upon information and belief, the Plaintiff has already expended hundreds of thousands of dollars, and entered into contracts worth potentially millions of dollars for expenses, that are improper, illegal, and beyond the scope of allowable expenses under the Act. The Department will show that the Plaintiff, by and through the Richland County Council, without legal authority under the Penny Tax Act, implemented and adopted a "Small and Local Business Enterprise ("SBLE") office, with Penny Tax dollars- and then used this office to circumvent the procurement process and award contracts unrelated to specific transportation projects.

163. The Department will show that the Plaintiff, by and through the Richland County Council and without legal authority under the Penny Tax Referendum, paid or instructed others to pay various persons to train unqualified individuals so as to appear as if they were qualified to perform professional, non-professional, managerial and other tasks associated with the Penny Tax Program while at the same time paying the unqualified individuals to perform the tasks, using Penny Tax Funds.

164. The Department is informed and believes that in an effort to conceal their wrongdoings, the Plaintiff, by and through the Richland County Council, stripped the Transportation Penny Advisory Committee (TPAC) of any and all responsibilities to provide any oversight of the proper administration and expenditure of the Penny Tax funds.

165. The Department will show that the Plaintiff, by and through its County Council, failed to exercise appropriate oversight and scrutiny of the Richland County PDT so as to prevent the level of impermissible relationships and self-dealing as outlined in paragraph 159, above.

166. The Department will show that the Plaintiff, by and through the Richland County Council, allowed the Richland PDT entity to operate without a business license from Richland County for over 2 years, and further that the Plaintiff has failed to comply with the terms of its own County Ordinance, in that it has not subjected the Plaintiff's spending of the Penny Tax monies to an annual independent audit.

167. As a result of the foregoing, the Department is informed and believes that Richland County, by and through the Richland County Council, has engaged in a deliberate process of self-dealing, waste, spoilage, misappropriation, misallocation, malfeasance, nonfeasance, and misfeasance to the great injury of the public and the State of South Carolina.

168. Upon information and belief, the continued unrestrained expenditure of Penny Tax Funds for purposes inconsistent with the Act has caused and will continue to cause irreparable harm to the Department, as the entity responsible for tax administration and enforcement, and to the taxpayers and citizens of Richland County.

169. That the Department has proposed to the Plaintiff that it adopt a uniform standard based on Internal Revenue Code (IRC) 263/263A to determine what expenditures are allowable as capital costs contemplated under the Act.

170. That thus far, the Plaintiff has refused to adopt the Department's recommended standard or any standard at all to curb or otherwise govern its unrestrained and illegal expenditure of Penny Tax Funds on "the cost of projects... without limitation."

171. That, upon information and belief, because the Penny Tax will be effective for over 19 additional years, during which time, over One Billion ($1, 000,000,000) Dollars is expected to be expended, the Department, public and the State cannot be fully compensated in damages, and that no adequate remedy at law exists to prevent the Plaintiff's unrestrained expenditure of Penny Tax Funds and the outlined conduct and misconduct.

172. That as a result of the foregoing, the Department is informed and believes that it is entitled to an Order enjoining the Plaintiff, from making any further payments, expenditures, contracts or other obligations of Penny Tax Funds unless and until the Plaintiff adopts and implements IRC 263/263A or some other acceptable uniform standard to govern its spending and adopt other appropriate safeguards to ensure that expenditures of Penny Tax Funds qualify as capital costs under the Act and therefore, are a proper use of Penny Tax dollars.

FOR AN ELEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM and THIRD PARTY COMPLAINT FOR THE APPOINTMENT OF A RECIEVER

173. Paragraphs 1 – 172 are reiterated as if fully set forth herein.

174. That the Department's ability to perform its tax administration, enforcement, and regulation duties, to include, but not limited to, its statutory duty under §4-37-30(A)(5)(b) of the enabling act, are seriously hampered by the Plaintiff's unrestrained expenditure of Penny Tax Funds in violation of the Act.

175. Upon information and belief, that while the Plaintiff may have awarded some contracts for projects that are appropriate under the Act, nevertheless, given the course of unrestrained spending and self-dealing engaged in by the Plaintiff and Team ICA/Brownstone/MB Kahn, coupled with the millions and millions of tax dollars subject to further misuse if said spending is allowed to continue without restraint, this Court should appoint a receiver to ensure that Penny Tax Funds are expended on appropriate projects and capital costs during the pendency of this action.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Department prays that the same be dismissed and that this Court order the following relief in accordance with the Department's Counterclaims and Third Party Complaint:

a. For a Declaratory Judgment that the Plaintiff's County Ordinance is void on its face as exceeding the authority of the enabling statute; or
b. In the alternative, a Declaratory Judgment that the Plaintiff has applied its County Ordinance in a manner inconsistent with the Act;
c. For a Declaratory Judgement that the Plaintiff has expended Penny Tax Funds in an improper manner, inconsistent with the restriction imposed in the Act;

d. For a Declaratory Judgement that the Plaintiff's unrestrained expenditure of Penny Tax Funds prevents the Department from fulfilling its tax administration duties and responsibilities under the Act;

e. That the Plaintiff and Third Party Defendants Team/ICA/Brownstone/ Kahn have engaged in a civil conspiracy to violate the tax laws of this State and that the Department, as well as the taxpayers of Richland County, has suffered special damages therefrom such that unlawful Penny Tax expenditures should be reimbursed to the Penny Tax Fund and the third party defendant be made to disgorge profits;

f. That the Plaintiff and Third Party Defendants Team/ICA/Brownstone/ Kahn have engaged in civil fraud with regard to the expenditure of Penny Tax funds and that the Department, as well as the taxpayers of Richland County, has suffered special damages therefrom such that unlawful Penny Tax expenditures should be reimbursed to the Penny Tax Fund and the third party defendant be made to disgorge profits;

g. In the alternative, that the Plaintiff and Third Party Defendants Team/ICA/Brownstone/ Kahn have engaged in constructive fraud with regard to the expenditure of Penny Tax funds and that the Department, as well as the taxpayers of Richland County, has suffered special damages therefrom such that unlawful Penny Tax expenditures should be reimbursed to the Penny Tax Fund and the third party defendant be made to disgorge profits;

h. For a permanent injunction against the Plaintiff prohibiting the further expenditure of Penny Tax Funds until the Plaintiff adopts IRC 262/263A or some other acceptable alternative as a standard to be used to determine when expenditures are proper within the Act;

i. For the appointment of a Receiver to operate the Penny Tax Program so as to ensure the lawful operations of the Penny Tax Program while this matter is pending.

Respectfully submitted,

Milton G. Kimpson (SC Bar No. 7917)
Dana R. Krajack (SC Bar No. 3608)

Nicole M. Wooten (SC Bar No. 73594)
Lauren Acquaviva (SC Bar No. 100528)
PO Box 12265
Columbia, SC 29211
Phone: 803-898-5598
Fax: 803-898-5147
Milton.Kimpson@dor.sc.gov
Dana. Krajack@dor.sc.gov
Nicole.Wooten@scdor.sc.gov
Lauren.Acquaviva@dor.sc.gov

JAMES E. SMITH, JR., P.A.
James E. Smith, Jr. (SC Bar No. 8733)
Dylan W. Goff (SC Bar No. 78416)
1422 Laurel Street
Columbia, South Carolina 29201
Phone: (803) 933-9800
Fax: (803) 933-9801
James@JamesSmithPA.com
Dylan@JamesSmithPA.com

Attorneys for Defendants South Carolina Department of Revenue and Rick Reames, III, its Director

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO.: 16-CP-40-3102
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 Plaintiff. v. Richland PDT, a joint venture consisting of M.B. Kahn Construction Co., Inc., ICA Engineering, Inc., And Brownstone Construction Group, LLC, as a unit and individually, Third-Party Defendants.	)	**NOTICE OF MOTION AND MOTION FOR INJUNCTION OR IN THE ALTERNATIVE FOR THE APPOINTMENTMENT OF A RECEIVER**

RICHLAND COUNTY FILED
2016 JUN 21 PM 4:23
JEANNETTE W. McCRIDE C.C.P. & G.S.

TO THE PLAINTIFF AND THIRD-PARTY DEFENDANTS NAMED ABOVE:

YOU WILL PLEASE TAKE NOTICE that the Defendants, South Carolina Department of Revenue, and its Director, Rick Reames, III, in his official capacity (collectively "Department"), by and through its undersigned attorneys, will move before the Presiding Judge in the Richland County Court of Commons Pleas as soon as they can be heard [1] for an Order pursuant to Rule 65, SCRCP, granting the Department certain Injunctive Relief, or, in the alternative, for the Appointment of a

[1] A hearing on the Plaintiff's Petition for Writ of Mandamus and Motion for Temporary Injunction is scheduled to be heard on June 28, 2016. The Department respectfully requests that the Court entertain the within motions at that same time.

Receiver pursuant to Rules 65 and 66, SCRCP, for the reasons set forth below and in the Defendants' Answer, Counterclaims and Third-Party Complaint filed with this Court on June 20, 2016:

1. Pursuant to S.C. Code Ann. § 12-4-10, the Department of Revenue was created "to administer and enforce the revenue laws of this State; administer and enforce licensing laws and regulations relating to alcoholic liquors, beer and wine and assess penalties for violations thereof; and other laws specifically assigned to it."

2. Furthermore, pursuant to S.C. Code Ann. § 12-4-310, et seq., the Department has broad authority to facilitate tax administration, regulation, and enforcement.

3. Pursuant to S.C. Code Ann. §4-37-30(A)[2], South Carolina counties, such as the Plaintiff, are "empowered to 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;"

4. S.C. Code Ann. § 4-37-30(8) 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."

5. The Department'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 "[t]he Department of Revenue shall administer and enforce the provisions of this chapter [Chapter 36]."

6. Pursuant to S.C. Code Ann. § 4-37-30(5)(b), the Department is given the authority to terminate the sales and use tax (Penny Tax) at issue here if, prior to the end of the maximum time

[2]This code section is part of the Optional Methods for Financing Transportation Facilities Act, SC Code Ann. § 4-37-10, et seq. The Optional Methods for Financing Transportation Facilities Act will hereinafter be referred to as the "Penny Tax Act" or "Act."

allotted for the tax, the Department "determines that 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."

7. "Where a special fund is created or set aside by statute for a particular purpose or use, it must be administered and expended in accordance with the statute, and may be applied only to the purpose for which it was created or set aside, and not diverted to any other purpose, or transferred from such authorized fund to any other fund." City of Myrtle Beach v. Tourism Expenditure Review Committee, 407 S.C. 298, 755 S.E.2d 425 (2014).

8. Upon information and belief, the Plaintiff has expended, and continues to spend, Penny Tax Funds in a manner inconsistent with the restrictions of the Act such that the Department, in keeping with its tax administration, enforcement, and regulatory duties, and consistent with the public interest, is a proper party to pursue the within action.

9. Furthermore, upon information and belief, inasmuch as the Department, in addition to its tax administration, regulation, and enforcement duties regarding this tax, has the responsibility of collecting the same for subsequent allocation and distribution to counties, including the Plaintiff, for their use in accordance with the requirements of the Act, such that the Department has certain fiduciary duties owed to the citizens and taxpayers of the State of South Carolina and to the citizens and taxpayers of Richland County, in particular, to ensure that Penny Tax Funds made available to the counties are used for appropriate purposes.

10. S.C. Code Ann. § 4-37-30(A)(1)(a)(i) provides that the one percent sales tax may be imposed to build transportation related projects which include "highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation related projects and facilities including, but not limited to, drainage facilities relating to the highways, roads, streets bridges and other transportation related

projects."

11. S.C. Code Ann. § 4-37-30(A)(1)(c) specifies that any county ordinance put before voters for the purposes of a referendum to impose this tax must specify the "estimated capital cost of the project or projects to be funded in whole or part from proceeds of the tax and the principal amount of bonds to be supported by the tax"; upon information and belief, the enabling statute does not allow for any costs other than "capital costs" to be included in the referendum to be put before the voters of a jurisdiction and further, the enabling statute does not permit, allow, or authorize Penny Tax funds to be used for costs that do not qualify as "capital costs".

12. The Plaintiff, acting through its County Council, enacted County Ordinance No. 039-12HR (County Ordinance) which authorized a referendum on the Penny Tax to be put before its voters for approval; according to its terms, the County Ordinance imposed a one percent sales and use tax for twenty-two (22) years, to fund "...projects at a maximum cost not to exceed $1,037,900,00.00 to be funded from the net proceeds of a sales tax" and further provided that "[the] imposition of the sales and use tax and the use of the sales and use tax revenue, if approved in the referendum, shall be subject to the condition precedent and conditions or restrictions on the use and expenditure of sales and use tax revenue established by the Act [§ 4-37-10, et seq.], the provisions of this Ordinance and other applicable law." (County Ord. §1(c)). Further, the County Ordinance provided that "sales and use tax revenues shall be used for the cost of the projects established in this Ordinance, as it may be amended from time to time, including, without limitation, payment of administrative costs of the projects and such sums as may be required in connection with the issuance of bonds, the proceeds of which are applied to pay costs of the projects. All spending shall be subject to an annual independent audit to be made available to the public."

13. Upon information and belief, the Plaintiff's County Ordinance, to the extent it allows for the expenditure of any Penny Tax funds for any "cost of the projects...without limitation" other than the "capital costs" specified in the Act itself, is void because it is inconsistent with the Act and improperly and illegally exceeds the authority given to the Plaintiff under the Act.

14. Upon information and belief, and as will be detailed below, pursuant to its County Ordinance, the Plaintiff has already expended hundreds of thousands of dollars and entered into contracts worth potentially millions of dollars for expenses that are improper, illegal, a result of self-dealing and beyond the scope of allowable expenses under the Act.

15. The Plaintiff has applied the County Ordinance in a manner that is inconsistent with the restrictions placed on the use of Penny Tax Funds under the enabling statute.

16. The Plaintiff's unrestrained spending of Penny Tax Funds for what it considered to be the "the cost of projects ...without limitation," is in violation of the restrictions on the use of such funds imposed by the enabling statute, and will make it impossible for the Department to fulfill its duty to "determine that 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...."

17. Pursuant to its tax administration, regulatory and enforcement authority, to include, but not limited to, S.C. Code Ann. § 12-4-387, the Department initiated an audit review of the Plaintiff's Penny Tax Program in April 2015.

18. The Department's audit has revealed that Plaintiff's Penny Tax Program is being operated in an unlawful manner. The Department, as the state agency which collects the sales and use tax at issue here and is imbued with authority to administer, regulate, and enforce the same, has a fiduciary duty owed to the citizens and taxpayers of the State of South Carolina, and in particular, the citizens

and taxpayers of Richland County, to take appropriate action to rectify the Plaintiff's unlawful use of Penny Tax Funds, or at a minimum, to not remit additional Penny Tax funds to the Plaintiff until safeguards are in place to ensure that tax dollars will not continue to be used improperly.

19. At the conclusion of its review, the Department found evidence of the unrestrained expenditure of Penny Tax funds on the various costs, many of which had either no relation to the acquisition or construction of any transportation-related facility as required by the Act or were wildly excessive in relation to the scope of the services delivered. These findings included, but were not limited to:

- Over $700,000 for the start-up of a county-wide Small Business Enterprise Program which included expenses for ordinance drafting, acquiring software, website development, consulting services, and personnel costs for continued operations;
- Contracts for undefined, amorphous "public relations" services totaling over $3,000,000, before reimbursement of expenses, over a five (5) year period;
- Expenditures on a mentor-mentee program which paid both an experienced contractor/vendor for services as well as an inexperience contractor/vendor for duplicative services;
- Contracts for the continued operation of other County services.

20. Furthermore, upon information and belief, there was substantial evidence of self-dealing and improper relationships between decision-makers and contractors.

21. The Plaintiff's use of Penny Tax Funds for purposes not directly related to the acquisition and/or construction of "highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects" as specified in § 4-37-30 is improper, illegal, and beyond the scope of the Act.

22. This Motion is further based upon the Pleadings, which are incorporated herein verbatim, to

the extent not inconsistent herewith, specifically including but not limited to, the following:

A. The Department is informed and believes that Richland County, by and through the Richland County Council, has engaged in a deliberate process of self-dealing, waste, spoilage, mismanagement, misappropriation, misallocation, malfeasance, nonfeasance, and misfeasance to the great injury of the public and the State of South Carolina.

B. Upon information and belief, the continued unrestrained expenditure of Penny Tax Funds for purposes inconsistent with the Act has caused and will continue to cause irreparable harm to the Department as the entity responsible for tax administration and enforcement and to the citizens and taxpayers of Richland County.

C. That the Department has proposed to the Plaintiff that it adopt a uniform standard based on Internal Revenue Code 26/263A (IRC 263/263A) to help the Plaintiff determine what expenditures are allowable as allowable costs contemplated under the Act.

D. That thus far, the Plaintiff has refused to adopt the Department's recommended standard or any standard at all to curb or otherwise govern its unrestrained and illegal expenditure of Penny Tax Funds on "cost of projects... without limitation."

E. Because the Penny Tax will be effective for over 19 additional years, during which time, over $1,000,000.00 is expected to be expended, the public, and the State, cannot be fully compensated in damages, and that no adequate remedy at law exists to prevent the Plaintiff's unrestrained expenditure of Penny Tax Funds and the outlined conduct and misconduct.

23. That as a result of the foregoing, the Department is informed and believes that it is entitled to an Order enjoining the Plaintiff, from making any further payments, expenditures, contracts, or other obligations of Penny Tax Funds unless and until the 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 capital costs under the Act and therefore, are a proper use of Penny Tax dollars.

24. In the alternative, the Department requests this Court appoint a Receiver to take control of the Plaintiff's Penny Tax Program, including, not limited to, marshaling, administering and enforcing the

proper expenditure of those monies in accordance with the enabling Act.

25. The Department is informed and believes that without the Appointment of a Receiver, the Plaintiff, and Third-party Defendants, will continue to misspend, mismanage, misappropriate, misuse, misallocate, waste, spoil, convert, curb, or otherwise govern its unrestrained and illegal expenditure of Penny Tax Funds on "cost of projects.... without limitation."

26. This Motion is further supported by the attached Affidavits of Tim Donavan and Jerilynn VanStory.

27. The Department is further informed and believes that the Plaintiff, and Third-party Defendants, should bear all associated costs of appointing a Receiver to ensure that the Plaintiff and Third-party Defendants are in compliance with the Penny Tax Act.

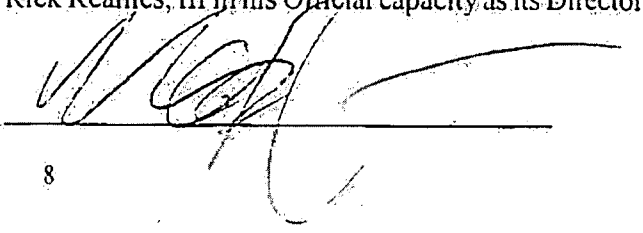
WHEREFORE, AS A RESULT OF THE FOREGOING, the Department is informed and believes, and respectfully prays that this Court:

A. Issue an Order enjoining the Plaintiff, and Third-party Defendants, from making any further payments, expenditures, funding, contracts or other obligations of Penny Tax Funds unless and until the 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; or in the alternative

B. Issue an Order appointing a Receiver to marshal, administer and enforce the proper expenditure of those monies, as the Plaintiff would otherwise be entitled to receive but for the mismanagement and economic waste committed by the Plaintiff and Third-party Defendants, under the Penny Tax Referendum – as referred to herein above

Respectfully submitted,

South Carolina Department of Revenue, and
Rick Reames, III in his Official capacity as its Director



Milton G. Kimpson (SC Bar No. 7917)
Dana R. Krajack (SC Bar No. 3608)
Nicole M. Wooten (SC Bar No. 73594)
Lauren Acquaviva (SC Bar No. 100528)
PO Box 12265
Columbia, SC 29211
Phone: 803-898-5598
Fax: 803-898-5147
Milton.Kimpson@dor.sc.gov
Dana.Krajack@dor.sc.gov
Nicole.Wooten@dor.sc.gov
Lauren.Acquaviva@dor.sc.gov

JAMES E. SMITH, JR., P.A.
James E. Smith, Jr. (SC Bar No. 8733)
Dylan W. Goff (SC Bar No. 78416)
1422 Laurel Street
Columbia, South Carolina 29201
Phone: (803) 933-9800
Fax: (803) 933-9801
James@JamesSmithPA.com
Dylan@JamesSmithPA.com
Attorneys for Defendants South Carolina Department of Revenue and Rick Reames, II, its Director

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO.: 16-CP-40-3102
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 Plaintiff. v.	)	AFFIDAVIT OF JERILYNN VANSTORY
Richland PDT, a joint venture consisting of M.B. Kahn Construction Co., Inc., ICA Engineering, Inc., And Brownstone Construction Group, LLC, as a unit and individually, Third Party Defendants.	)	

RICHLAND COUNTY
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2016 JUN 21 PM 4:23
JEANNETTE W. McBRIDE
C.C.P. & G.S.

The South Carolina Department of Revenue would respectfully submit the following:

I, Jerilynn VanStory, being first duly sworn, do hereby make oath and affirm that, if called as a witness, I am competent to testify as follows:

1. I, Jerilynn VanStory, am employed by the South Carolina Department of Revenue as a Revenue Law Consultant in the Office of General Counsel, Policy section. The Office of General Counsel, Policy Section is the division of the Department responsible for providing guidance on the administration of the tax laws of this State.

2. I am a licensed attorney in and for the State of South Carolina, and have an L.L.M. in tax. I have been an attorney for 32 years and a member of the South Bar for 20 years. In my capacity as a Revenue Law Consultant, I am authorized to make this Affidavit on behalf of myself and on behalf of the Department. Further, I make this Affidavit from my own personal knowledge.

3. As part of my regular duties with the Department, I act as or provide legal advice to the Department of Revenue, the Executive and Legislative Branches of the State of South Carolina, and the public, concerning tax laws of this State. I have been involved in the Department's analysis of appropriate expenditures under the Optional Methods for Financing Transportation Facilities Act ("Penny Tax Act") and our efforts to explain the same to Richland County.

4. It is my opinion that Richland County's Penny Tax ordinance, Ordinance No. 039-12HR, exceeds the scope of the state statute because the ordinance seeks to allow broad payment of expenses that the underlying statute does not permit. Neither S.C. Code Ann. § 4-37-30 (the state statute authorizing the tax) or any part of Chapter 37, Title 4 (Penny Tax Act) makes any mention of administrative expenses being allowed for transportation projects. The law does mention administrative expenses or costs for administering the tax in other contexts.

5. On or about January 19, 2016, it is my recollection that Milton Kimpson (DOR General Counsel – Litigation), Brittany Kilpatrick (another DOR Attorney) and I met with Rob Perry, Transportation Director for Richland County, and Larry Smith, Richland County's attorney. At that meeting we discussed the proper use of Penny Tax funds and focused primarily on the SLBE program and the public relations expenditures that Richland County had paid from the Penny Tax funds.

6. At that meeting, we discussed the appropriate standard for determining which expenditures could be paid out of Penny Tax funds. Richland County indicated that they were using federal labor or transportation guidelines for determining what expenses could be paid from Penny Tax monies.

7. I pointed out that the statute controlled what expenses could be paid out of Penny Tax monies and pointed out that the statute was very asset specific and provided that in the ordinance the County had to provide the estimated capital costs of the projects to be funded with the Penny Tax funds.

8. I also advised that the principles contained in IRC §§ 263 and 263A of the Internal Revenue Code ("IRC") were a more appropriate standard to use since these principles specifically deal with capitalization of costs associated with a particular asset. I then tried to explain the principles contained in IRC §§ 263 and 263A and how they related to capital costs. We then discussed specific expenditures and how they were likely to be treated under the principles of IRC §§ 263 and 263A. Both Mr. Smith and Mr. Perry asked for information concerning IRC §§ 263 and 263A and I later provided them with written information concerning the principles of the IRC Code Sections mentioned.

9. In my opinion, nothing allows a county to use the Penny Tax money for unlimited or unrelated expenses. The statute specifically states that the ordinance to impose the Penny Tax must provide that Penny Tax funds are to be used for projects such as "highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities, including but not limited, to, drainage facilities, relating to highways, roads, streets, bridges, and other transportation related projects;..." Code Section 4-37-

30(A)(1)(a) [emphasis added]. The law also requires that the ordinance state the "estimated capital cost of the project or projects to be funded in whole or part from the proceeds of the tax...." S.C. Code Ann. § section 4-37-30(A)(1)(c). Specifically, under the terms of the transportation facilities law, the expenditures must be used for facilities (tangible assets) and not general county operating expenses and the expenses incurred must be related to the facilities themselves.

10. While some administrative costs may be appropriate expenditures under the transportation facilities law, the use of the term "capital costs" in the statute gives some guidance on what administrative costs may be properly allowable under the law. The term "capital cost" is not defined in the law. However, "capital costs" are generally considered one-time costs incurred for the creation or improvement of tangible property, either real or personal, such as buildings, infrastructure and equipment. Often such costs are referred to as "capital expenses" or "capital expenditures."

11. IRC §§ 263 and 263A require that a taxpayer that produces real property and tangible personal property capitalize all direct costs and an allocable portion of indirect costs and mixed costs associated with purchase, creation, or improvements of property into what is called the basis of that property. Any costs that are traceable to the construction, purchase or improvement of property, such as a building or road, must be capitalized into the basis of that asset. These costs generally include the cost of labor to create the property, pensions for employees working to create the property, accounting and legal services, and other items associated with the creation, construction or purchase of the property. For example, the labor costs incurred in building an office building and the legal fees associated with acquiring the land on which the building was constructed would be capitalized into the basis of the office building. However, costs for an attorney to learn how to do a real estate closing would generally not be considered a "capital cost" to be included in the basis of the property. Since the statute does not define "capital costs", these Internal Revenue Code principles can be used to provide guidance as to which costs are properly allowable under the Penny Tax Act.

12. On or around February 11, 2016, I met with Rick Reames, Milton Kimpson, Malane Pike, Larry Smith, and at least one other Richland County attorney or official to once again discuss the proper expenditure of Penny Tax funds. While the County first voiced their concerns over the Department's authority in the matter, the main focus of the meeting was on the expenditures of Penny Tax funds.

13. We discussed governmental accounting standards and also discussed the principles of IRS Code §§ 263 and 263A and I once again explained the logic behind adopting such as standard and how the language of the statute relating to capital costs and tangible assets seemed to be in line with the principles of IRC §§ 263 and 263A. I believe I once again provided written information about what type of costs would be capitalized using the IRC §§263 and 263A principles.

FURTHER AFFIANT SAYETH NOT

Jerilynn Van Story
Revenue Law Consultant
S.C. Department of Revenue

SWORN and subscribed to before me

this 17th day of June, 2016.

Notary Public for South Carolina
My Commission Expires: 03-06-17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO.: 16-CP-40-3102
	)	
Richland County, South Carolina,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
The South Carolina Department of Revenue, and Rick Reames, III in his Official capacity as its Director	)	AFFIDAVIT OF TIM DERRICK
	)	
Defendants/Third Party Plaintiff.	)	
	)	
v.	)	
	)	
Richland PDT, a joint venture consisting of M.B. Kahn Construction Co., Inc., ICA Engineering, Inc., And Brownstone Construction Group, LLC, as a unit and individually,	)	
	)	
Third Party Defendants.	)	

RICHLAND COUNTY
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JEANNETTE W. WOODS
C.C.P. & G.S.

I, Tim Derrick, being first duly sworn, do hereby make oath and affirm as follows:

1. I am Tim Derrick, I am employed by the South Carolina Department of Revenue as the Revenue Data Manager in the Administrative Services Division.

2. In my capacity as a Revenue Data Manager, I am authorized to make this Affidavit on behalf of myself and on behalf of the Department. Further, I make this Affidavit from my own personal knowledge.

3. As part of my regular duties with the Department, I act as the contact person for tax revenue data. Furthermore, the Administrative Services Division of the Department is the division responsible for allocating transportation tax collections to the State Treasurer's Office (Treasurer's Office).

4. The Department allocates monies to the Treasurer's Office the month after the Department collects those monies from taxpayers. Collected funds are deposited and safeguarded in a special account until ready for allocation. Prior to

allocation, the Department deducts its costs from the total amount collected. I created a chart explaining the distribution schedule for Transportation Taxes, which is attached as Exhibit A.

5. It is my understanding that the Treasurer's Office disburses payments to Richland County quarterly in January, April, July, and October. It is also my understanding that the next quarterly disbursement would normally occur sometime in the middle of July 2016.

6. I have personally reviewed the file related to the above captioned matter.

7. In my review of the file, I determined that between July of 2013 (the date of the first allocation since the inception of the Richland County Transportation Tax) and March of 2016, the Department allocated a total of $156,461,275.86 to the Treasurer's Office for disbursement to Richland County.

8. I created a chart showing the amount of monies collected each month for the Richland County Transportation tax, the Department's costs, and the amount of monies allocated to the Treasurer's Office each month in Fiscal Year 2016. See Exhibit B.

9. In regards to Fiscal Year 2016, I determined the following (see Exhibit B for more detail):

   a. The Department allocated a total of $14,751,243.84 in July, August, and September of 2015, which I understand the Treasurer's Office disbursed with interest to Richland County in October of 2015;

   b. The Department allocated a total of $14,646,835.18 in October, November, and December of 2015, which I understand the Treasurer's Office disbursed with interest in January of 2016;

   c. The Department allocated a total of $15,446,305.04 in January, February, and March of 2016, which I understand the Treasurer's Office disbursed with interest in April of 2016;

   d. The Department allocated $5,447,515.54 in April of 2016, which I understand the Treasurer's Office is not due to disburse until July of 2016;

   e. The Department collected $5,788,383.76 in April of 2016 but did not allocate those monies to the Treasurer's Office in May of 2016. After deducting costs, $5,746,707.40 would normally have been allocated to the Treasurer's Office in May for its July quarterly disbursement;

   f. The Department collected $5,525,515.47 in May of 2016, but did not allocate those monies to the Treasurer's Office in June of 2016. After

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RICHLAND COUNTY
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deducting costs, $5,485,731.76 would normally have been allocated to the Treasurer's Office in June for its July quarterly disbursement.

10. It takes approximately 1 – 2 business days for the Department to transfer monies over to the Treasurer's Office.

AFFIANT FURTHER SAYETH NOT.

Tim Derrick
Revenue Data Manager
Administrative Services Division
S.C. Department of Revenue

Sworn and subscribed to before me
this 17th day of June, 2016.

Notary Public for South Carolina
My Commission Expires on: 1-10-2018

EXHIBIT A

Transportation Tax Distribution Chart

Tax Type	Distribution by STO to locations
Transportation Tax	Quarterly

Distribution Month:			
Month Sales Tax Collections Sales Tax Period	Month Sales Tax Collections are Submitted to DOR	Month Sales Tax Collections are Transferred to STO	Month Distributed to County by STO
January	February	March	April
February	March	April	July
March	April	May	July
April	May	June	July
May	June	July	October
June	July	August	October
July	August	September	October
August	September	October	January
September	October	November	January
October	November	December	January
November	December	January	April
December	January	February	April

EXHIBIT B

Richland County Transportation Sales Tax FY16

	Net Collections	DOR Cost	Allocated to STO	Available for Quarterly Distribution to Richland County
Jun-15 (allocated to STO July 2015)	5,086,307.74	(36,607.53)	5,049,700.21	
Jul-15 (allocated to STO August 2015)	5,154,561.30	(37,004.28)	5,117,557.02	
Aug-15 (allocated to STO September 2015)	4,617,230.67	(33,244.06)	4,583,986.61	14,751,243.84 Distributed in Oct 2015 Distribution from STO would also include interest
Sep-15 (allocated to STO October 2015)	4,203,900.06	(30,268.08)	4,173,631.98	
Oct-15 (allocated to STO November 2015)	5,509,808.23	(40,390.82)	5,569,417.81	
Nov-15 (allocated to STO December 2015)	4,939,348.90	(35,583.31)	4,903,765.59	14,646,815.18 Distributed in Jan. 2016 Distribution from STO would also include interest
Dec-15 (allocated to STO January 2016)	4,373,939.19	(31,492.36)	4,342,446.83	
Jan-16 (allocated to STO February 2016)	6,271,679.09	(45,157.53)	6,226,721.56	
Feb-16 (allocated to STO March 2016)	4,912,506.70	(35,370.05)	4,877,136.65	15,446,305.04 Distributed in Apr. 2016 Distribution from STO would also include interest
Mar-16 (allocated to STO April 2016)	5,467,022.10	(39,506.56)	5,427,515.54	
Apr-16 (yet to be allocated)	5,788,383.76	(41,678.36)	5,746,707.40	
May-16 (yet to be allocated)	5,525,515.47	(39,783.71)	5,485,731.76	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO.: 16-CP-40-3102
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 Plaintiff. v. Richland PDT, a joint venture consisting of M.B. Kahn Construction Co., Inc., ICA Engineering, Inc., And Brownstone Construction Group, LLC, as a unit and individually, Third Party Defendants.	)	AFFIDAVIT OF DEANA WEST

RICHLAND COUNTY
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2016 JUN 24 PM 4:39
JEANNETTE W. McBRIDE
C.C.P. & G.S.

The South Carolina Department of Revenue would respectfully submit the following:

I, Deana West, being first duly sworn, do hereby make oath and affirm that, if called as a witness, I am competent to testify as follows:

1. I, Deana West, am employed by the South Carolina Department of Revenue ("Department") as the Senior Manager in the Office of General Counsel, Policy Section. The Office of General Counsel, Policy Section is the section of the Department responsible for providing guidance to the administration of the tax laws of this State.

2. In my capacity as Senior Manager, I am authorized to make this Affidavit on behalf of myself and on behalf of the Department. Further, I make this Affidavit from my own personal knowledge.

3. I am also licensed as a Certified Public Accountant by the State of South Carolina. I have been employed, by the Department in this capacity, and others, in excess of twenty-five (25) years.

4. As part of my regular duties with the Department, I provide general tax guidance to the Department's personnel, members of the Executive and Legislative Branch, and the public.

5. On April 13, 2016 – our Director, Rick Reames and I met with Torrey Rush, Daniel Driggers and Tony McDonald, the Richland County administrator, to discuss the Department's position directly with the councilmen/county employees. The meeting was amicable and general in nature. It included a brief discussion of the areas of concern and the need for and impact of standards to determine eligible costs that might permissibly be paid from revenue derived from the local transportation sales and use tax.

6. On May 12, 2016 – at the request of the Richland County officials, the Department's Director, Rick Reames, and I, met with Torrey Rush, Tony McDonald and Greg Pearce. The overall economic position of Richland County was presented, by Mr. Pearce, including the impact of the October flood and the possible financial ramifications of the local transportation sales and use tax standards proposed by the Department.

7. At the May 12, 2016 meeting, the Department reiterated our desire to work with the county in addressing their spending issues and adopting standards. It was suggested that I contact Daniel Driggers, Chief Financial Officer, at Richland County and discuss expenditures the County Finance Department may have listed as costs that may not qualify for the Penny Tax program based on their understanding of DOR's recommended standards.

8. I subsequently attempted to contact Mr. Driggers, having left messages with his administrative assistant several times. Mr. Driggers and I exchanged voice mails the following week, but we were never able to speak directly with each other.

FURTHER AFFIANT SAYETH NOT.

Deana West
Program Manager II
S.C. Department of Revenue

SWORN and subscribed to before me
this 15 day of June, 2016.

Wanda C. Dubbs

Notary Public for South Carolina

My Commission Expires: 1/7/18

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO.: 16-CP-40-3102
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 Plaintiff, v. Richland PDT, a joint venture consisting of M.B. Kahn Construction Co., Inc., ICA Engineering, Inc., And Brownstone Construction Group, LLC, as a unit and individually, Third Party Defendants.	)	AFFIDAVIT OF TIM DONOVAN

RICHLAND COUNTY
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2016 JUN 27 AM 10:31
JEANNETTE W. McBRIDE
C.C.P. & G.S.

The South Carolina Department of Revenue would respectfully submit the following:

I, Tim Donovan, after first being duly sworn, do hereby make oath and affirm as follows:

1. I am the Audit Manager for Foreign Audit, Nexus and Discovery for the South Carolina Department of Revenue ("Department"). I have a B.S.B.A. with emphasis in accounting from Winthrop University. I have been employed with the Department since October 1990 in the following positions: domestic tax auditor, foreign tax auditor, senior tax analyst, foreign audit supervisor, and Audit Manager for Foreign Audit, Nexus and Discovery. I have worked in my current position for approximately 6 years.

2. In my capacity as the Audit Manager for Foreign Audit, Nexus and Discovery, I am authorized to make this Affidavit on behalf of myself and on behalf of the Department.

Further, I make this Affidavit from my own personal knowledge, based on the experience that I have gained in approximately 25 years with the Department.

3. As part of my regular duties with the Department, I manage the foreign audit program that oversees the Department's multistate corporate income tax audits and compliance with the state's tax laws.

4. In November of 2012, voters in Richland County passed a sales and use tax for transportation facilities. This tax is a state tax that is collected and administered by the Department and is ultimately remitted by the Department to the County. Pursuant to S.C. Code Ann. § 4-37-30, the sales and use tax collected must be used solely for transportation facilities. In the statutes governing sales and use taxes and in the specific statute providing for the transportation sales and use tax, the General Assembly expressly provided that the Department is the proper party to administer and enforce the tax. The General Assembly further delegated authority to the Department to promulgate regulations to implement the transportation tax. S.C. Code Ann. § 4-37-30 and S.C. Code Ann. § 12-36-2660. The Department has begun the process of issuing regulations to provide additional guidance on the collection, administration, and enforcement of the transportation sales and use tax.

5. The Department received information concerning Richland County's misuse of the Penny Tax funds. Pursuant to S.C. Code Ann. § 12-4-387, the Department "conduct audits involving all taxes to promote voluntary compliance and to collect revenues for the general fund of the State and designated accounts." Given my extensive audit background and the Department's limited resourses, in April of 2015, in my official capacity with the Department, I audited Richland County to determine compliance with the provisions of the state's tax statutes, and in particular section 4-37-30(A) (the sales and use tax provision). As part of my duties as a Department auditor, I am required to determine compliance with the state's tax statutes to include whether the nature and the amount of the Penny Tax Funds expended were proper. The County raised no objections to my audit. The audit revealed a number of concerns relating to Richland County's compliance with the law which are discussed in detail below. (See attached Exhibits "A" detailing expenditures that are not in compliance with section 4-37-30(A)).

6. In November 2013, County Council ("Council") issued a request for proposal ("RFP") to procure professional services for a project development team ("PDT") to help administer the penny tax program. At the time, Richland County law required that RFP submissions be reviewed and ranked by an independent selection committee ("Committee"). *See* Richland County Code, Section 2-600. The Richland County law also required Council to negotiate with the firm ranked highest by the Committee and if these negotiations failed, the Council would then negotiate with qualifying firms in descending rank. Richland County law also provides for protest procedures. *See* Richland County Code 2-621.1.

7. The Committee performed its responsibility and ranked Team CECS the highest (90.6 ranking) with Team Baker as the second selection (73.8). Team ICA (66.8), Team MB Kahn (53) and Team Enviro (46.4) were scored third, fourth and fifth, respectively. The three firms ultimately chosen as the PDT were not scored first or second by the Committee. Instead of negotiating with the highest scoring firm as was required by Richland County's own ordinance,

on January 7, 2014, after two rounds of voting, the Council selected the third ranked team, Team ICA. Team CSES protested and Council subsequently withdrew the PDT contract award from Team ICA.

8. On May 6, 2014, Council amended the Richland County procurement law granting itself the authority to exempt Penny Tax expenditures, and only Penny Tax expenditures, from the standard procurement rules. *See* Richland County Code, Section 2-591. While the amended RFP process does require an evaluation committee to determine and submit a short list of qualified firms to the Council for consideration, the process appears to be substantially abbreviated and does not include the rigorous scoring of the original procurement procedure. Further, the law specifically exempts contracts granted (or not granted) using this procedure from the protest provisions of the Richland County law. *See* Richland County Code, Section 2-591, section (f).

9. Under this second procedure, Council, on the first round of voting, awarded Team ICA/Brownstone/MB Kahn the PDT contract. The effect of the May 6, 2014 amendment and subsequent contract award is that Council awarded a $31 million dollar contract for project management without independent scoring by an impartial scoring committee. As a Department auditor with over 25 years of experience, I have been involved with the Department's procurement process on various contracts. Without independent scoring, there is little oversight regarding conflicts of interest, efficiency of costs, or experience and qualification of service providers cannot properly exist. In fact, Team ICA/Brownstone/MB Kahn's level of experience related to building actual transportation facilities is questionable in comparison to the experience of other applicants. The elimination of any procedure to protest the awarding of the contract to another party eliminates any scrutiny of how the winner of the contract was chosen. As a part of the audit I conducted of Richland County, to include the documents I reviewed, the Transportation Project Oversight Committee was not granted any oversight role with respect to the Penny Tax by the Council. In my experience as an auditor, the evaluation of tests and controls, which includes oversight, is an important function to ensure proper procedures are followed. My audit review of the Penny Tax Program gave no indication that an annual independent auditof Penny Tax funds was conducted as required by the statute. *See* Richland County Ordinance No. 039-12HR, Section 1, paragraph 2 and Section 3, subsection (b), paragraph 3. I have reviewed recent financial statements of Richland County, and they do not reveal that such an audit was performed or was made available to the public as required by the ordinance. As mentioned, the Department's review of the Penny Tax program began in April 2015. Since that time, the County has not produced to the Department a copy of any audits. Furthermore, the audit review that I conducted did not indicate that any independent audits of the financial records and transactions of the agencies or organizations receiving an appropriation of the Penny Tax were audited as required by the ordinance. Council admitted in correspondence to the Department that no audits, as required by the statute, were conducted.

10. Although Richland County asserts that the County may circumvent the normal procurement process contained in Richland County Code 2-600 by approving any contract by ordinance, Richland County did not do that. Instead, Richland County passed the ordinance allowing Penny Tax fund contracts to be approved, subject to Richland Code Section 2-591. Richland Code Section 2-591 does not contain any protest or appeal rights. Furthermore,

because Richland County did not use the ordinance method to approve a contract the protest procedures contained in Richland County Code 2-621.1 were not applicable, as well as the possible referral of the protest to the county's independent procurement review panel as provided in Richland County Code 2-621.4.

11. Concerns also exist about some of the relationships between the PDT (Team ICA/Brownstone/MB Kahn), the COMET bus system, and parties who have been granted contracts with Penny Tax funds. For example, the Comet Board is scheduled to receive at least $300 million of Penny Tax dollars over the life of the Penny Tax program to run the Midlands' bus system. The company which received the contract to operate the bus system is represented by Darryl Campbell. Mr. Campbell owns a one-third equity interest in Brownstone which is one of the three firms that comprise the PDT. Campbell Consulting Group, solely owned by Mr. Campbell, also received a contract to perform public relations services for its client who operates the Comet bus system. Finally, the PDT awarded a $1.5 million contract to Campbell Consulting Group for public relations work potentially associated with the Penny Tax program. Thus, Mr. Campbell, through his ownership interests in Brownstone and Campbell Consulting Group, are potentially being paid three times from Penny Tax funds: (1) through his one-third ownership in one of the three firms that were awarded the PDT contract, (2) through the contract involving the COMET bus system, and (3) through the $1.5 million dollar public relations contract awarded through the PDT. The Department is aware, as it was widely reported in the media, that MB Kahn and Mr. Campbell campaigned in favor the passage of the Penny Tax itself.

12. Additionally, the chair of the COMET Board was hired as a member of the PDT and received a nearly $400,000 contract to perform "right of way" closings. At the same time, the chair received $200 an hour to be "mentored" on how to perform right of way closings. In total, he received over $38,000 as a "mentee". Similarly, a local real estate broker was hired to provide immediate service regarding "right of way" matters for one of the firms hired by the PDT to work on Penny Tax projects. This broker also received "mentee" payments to be trained in the various activities of the "right of way acquisition" process.

13. The use of Penny Tax funds to establish and staff the County's Small Local Business Enterprise ("SLBE") Program violates the statute's specification that Penny Tax revenue be spent on transportation-related projects. Even though Richland County asserts that all contracts awarded to date through the SLBE "have been solely related to the Penny Tax," the SLBE Program was established as a county-wide program intended to support all facets of county operations – not just Penny Tax projects. Expenditures – including more than $200,000 for legal services related to "SLBE Program Administration" to a Maryland law firm; approximately $219,000 in estimated personnel costs; $122,000 for a software management system; and $13,000 for website development – are to support the entire SLBE program and not specific Penny Tax projects.

14. The use of Penny Tax revenue to pay for public relations services and "mentoring" is inappropriate and inconsistent with the statute's requirement that funds be used specifically for transportation facilities. The public relations contract paid for from Penny Tax funds are excessive in relation to similar services offered by substantially similar firms. With respect to much of this work, my audit review indicated that there is a lack of any kind of

documentation that would verify what services were provided and the amount of hours spent on these projects. While Richland County states what the public relations firms were supposed to do for the $3 million dollar contract, it did not present documentation as to what services were actually performed for these fees or how much each service cost.

15. In addition, according to records of the Secretary of State, some entities included as part of the PDT have compliance issues. Richland County allowed these entities to be paid with Penny Tax dollars despite noncompliance.

FURTHER AFFIANT SAYETH NOT.

Tim Donovan
Audit Manager for Foreign Audit, Nexus and Discovery
S.C. Department of Revenue

SWORN and subscribed to before me
this 27th day of June, 2016.

Notary Public for South Carolina

My Commission Expires: 7/30/19

EXHIBIT A

ATTACHMENT 1

Cumlative Invoice 1-5

PDT Joint Venture

3,810,330.61

PDT - Project Dev	240.83
PDT - CEI Resurfacing A	22,206.26
PDT - CEI Resurfacing B	26,755.30
PDT - CRM Greene St Phase 1	540,000.00
PDT - CRM Lincoln Tunnel	40,185.00
Total:	629,387.39

MB Kahn

MB Kahn - Program Mngt Fee:	545,922.10
MB Kahn - Reimbursables	19,954.96
Total:	565,877.06

Brownstone

Brownstone - Program Mngt Fee:	877,916.65
Brownstone -Reimbursables	193,249.68
Total:	1,071,166.33

ICA

ICA - Project Management Fee:	545,922.08
ICA - Reimbursables:	14,275.00
ICA- Sub Contract Tolleson Eng.	292,000.00
ICA - Mitigation Bank Employee	6,029.50
ICA - Hussey Gay Bell Surveys	22,515.00
Total:	880,741.58

Campbell Consulting

Campell - Public Involvement	125,000.00
Campbell - Reinbursables	10,589.10
Campbell - sub contract Banco	125,000.00
Total:	260,589.10

Davis & Floyd

Davis & Floyd - Program Mngt	131,560.00
Davis & Floyd - Reinbursable	6,875.00
D & F - Irealty Mentoring	38,000.00
D & F - RW Acquisition	8,800.00
Total:	185,235.00

OLH Inc.

OLH - Program Controls Mngt	154,429.15
OLH - Reinbursables	1,055.00
Total:	155,484.15

Newman Law Firm

Newman - ROW Contracts	23,850.00
Newman - Mentoring	38,000.00
Total:	61,850.00

Note: The items highlighted in Yellow indicate those items in which the Department believes do not fall within the category for allowable expenditures.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO.: 16-CP-40-3102
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 Plaintiff, v. Richland PDT, a joint venture consisting of M.B. Kahn Construction Co., Inc., ICA Engineering, Inc., And Brownstone Construction Group, LLC, as a unit and individually, Third Party Defend	)	MEMORANDUM IN OPPOSITION TO PLAINTIFF'S DECLARATORY JUDGMENT, WRIT OF MANDAMUS, AND INJUNCTIVE RELIEF

RICHLAND COUNTY
FILED
2016 JUN 23 PM 4:51
JEANETTE W. McBRIDE
C.C.P. & G.S.

COMES NOW, the Defendants/Third Party Plaintiffs South Carolina Department of Revenue and Rick Reames, III, its Director, in his official capacity (collectively "Department") and submit the following memorandum of law in opposition to the Plaintiff's Petition for Writ of Mandamus and/or Motion for Preliminary Injunction:

INTRODUCTION

In April 2015, the Department audited the Plaintiff's Penny Tax Program which had been established under the authority of the Optional Methods of Financing Transportation Facilities Act, S.C. Code Ann. § 4-37-10, et seq. ("Penny Tax Act" or "Act"). The Penny Tax Act allows counties to impose a one percent sales and use tax on sales of tangible

personal property, the proceeds of which are to be used for the construction and/or acquisition of transportation-related facilities. The Department's audit revealed that the Plaintiff had used Penny Tax Funds for purposes which are beyond the scope of allowable costs under the Act. The Department's position is that the certain expenditures by the Plaintiff of Penny Tax Funds are not in accordance with the Act which requires funds to be used for the construction and/or acquisition of transportation-related facilities. As a result, the Plaintiff is violating the express language of the statute as passed by the General Assembly. The Department submits the Plaintiff should very simply adopt procedures and standards that would ensure the expenditures are made for transportation projects as is required by the Act. This will not require the Plaintiff to abandon its current governmental accounting standards for reporting purposes; the standard will simply be used to determine whether a cost may be paid for using the Penny Tax funds.

FACTUAL BACKGROUND

On or about July 18, 2012, the Plaintiff enacted Ordinance No. 039-12HR (County Ordinance) which provided for the imposition of a one percent sales and use tax pursuant to the Penny Tax Act upon approval of said tax by referendum. The proceeds of the one percent sales and use tax are to be used in accordance with the statutory restrictions imposed by the General Assembly as outlined in the Act.[1] After voter approval of the referendum, the sales and use tax became effective in Richland County on May 1, 2013. The Plaintiff's

[1] As explained in the Department Answer, Counterclaim and Third Party Complaint, the Plaintiff's County Ordinance allowed the use of Penny Tax Funds for purposes the Department believes are inconsistent with the enabling Act such that the County Ordinance is void on its face or has been applied by the Plaintiff in an illegal manner.

Penny Tax, authorized to run for twenty-two (22) years, will last another 19 years and will raise over one billion ($1,000,000,000) dollars for use as specified under the Act.[2]

The Plaintiff subsequently initiated the process to hire a program development team (PDT) to manage its Penny Tax Program.[3] The Plaintiff initially sought to procure a PDT through a Request for Proposal under Richland County Code, Section 2-600. This method allowed for the evaluation of proposals by an independent Review Committee ("Committee"). Here, the Committee performed its duties, scored the applications for the

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[2] The Ordinance specifies that the tax will raise $1,037,900,000 over the course of 22 years beginning May 1, 2013.

[3] The Plaintiff's PDT is not the same as a Transportation Authority provided for under S.C. Code Ann. § 37-4-10. The primary difference between a PDT and a Transportation Authority appears to be the level of control retained by the Plaintiff under the PDT model. Pursuant to S.C. Code Ann. § 4-3-20, a Transportation Authority "...has all the rights and powers of a public body, politic and corporate of this State, including, without limitation, all the rights and powers necessary or convenient to manage the business and affairs of the authority and to take action as it may consider advisable, necessary, or convenient in carrying out its powers including, but not limited to " (1) have perpetual succession; (2) to sue and be sued; (3) to adopt, use, and alter a seal; (4) to make and amend bylaws for regulation of its affairs consistent with the provisions of this chapter; (5) to acquire by gift, deed or easement, purchase, hold, use, improve, lease, mortgage, pledge, sell, transfer, and dispose of any property, real, personal, or mixed, or any interest in any property, or revenues of the authority as security for notes, bonds, evidences of indebtedness, or other obligations of the authority; (6) to borrow money, make and issue notes, bonds, and other evidences of indebtedness; to secure the payment of the obligations or any part by mortgage, lien, pledge, or deed of trust, on any of its property, contracts, franchises, or revenues; (7) to make contracts, including service contracts with a person, corporation, or partnership including, without limitation, the South Carolina Department of Transportation, to provide the facilities and services provided herein; and (8) execute all instruments necessary or convenient for the carrying out of business." The only express limitation on the power given to a Transportation Authority appears to be that it cannot exercise eminent domain. As the Plaintiff alleges in its Complaint, it "elected to outsource the implementation of the Transportation Penny Program, but retain administrative control over the Transportation Penny Program." (Plaintiff's Complaint, para. 31). The Department respectfully submits that it is the Plaintiff's retention of control over the Program which has led to its problems.

PDT contract, and ranked the proposals. The Plaintiff's procurement ordinance thereafter required that it enter into negotiations with the highest ranking applicant and then, in the event those negotiations did not result in a contract, initiate negotiations with the next highest ranking applicant. Instead, the Plaintiff began negotiations with the third-ranked applicant, third-party defendant ICA Engineering Company (ICA) and ultimately awarded the PDT contract to ICA. (See Affidavit of Tim Donovan, paras. 7-9).

After a higher ranked company filed a protest to challenge the contract award to third-party defendant ICA, the Plaintiff withdrew the contract award to ICA and amended the applicable ordinance to grant itself the authority to exempt all Penny Tax contracts from standard procurement rules, and also provided that the selection procedures were exempt from provisions to protest contract awards. (Affidavit of Tim Donovan, para. 8). Using an abbreviated procurement process, the Plaintiff then awarded the program development services contract to Team ICA/Brownstone/ Kahn, (third party defendant Richland PDT) despite the relative inexperience of the members with building transportation related facilities as compared to the experience of other applicants. (Affidavit of Tim Donovan, para. 9).

This abbreviated procurement procedure further fostered self-dealing and improper relationships between decision-makers and vendors. As alleged in the Department's Third-Party Complaint, the COMET/CMRTA (hereinafter "COMET") bus system is scheduled to receive at least $300 million of Penny Tax dollars over the life of the Penny Tax program to run the Midlands' bus system. The company which received the contract to operate the bus system is represented by Darryl Campbell, one of the principals of Brownstone Construction Group, LLC, who also owns a consulting company, Campbell

Consulting Group. Mr. Campbell owns a one-third equity interest in Brownstone Construction Group, LLC which is one of the three firms that comprise the PDT. Mr. Campbell's consulting firm received a contract to perform public relations services for the company which received the contract to operate the COMET bus system. Furthermore, Richland PDT awarded a $1.5 million contract to Mr. Campbell's consulting firm for public relations work potentially associated with the Penny Tax program. As such, Mr. Campbell, through his ownership interests in Brownstone and his consulting firm, is potentially being paid three times from Penny Tax funds: (1) through his one-third ownership in one of the three firms that was awarded the PDT contract, (2) through the contract involving the COMET bus system, and (3) through the $1.5 million dollar public relations contract awarded through the PDT.[4] (Affidavit of Tim Donovan, para. 11).

On or about April 15, 2015, the Department initiated an audit review of the Plaintiff's Penny Tax Program by correspondence directed to W. Anthony McDonald, Richland County Administrator. (See Exhibit A). At that time, the Plaintiff neither objected to the Department's audit nor did it question the Department's authority to conduct the audit review. To assist with the Department's audit review, the Plaintiff provided the Department's auditors with extensive access to books and records. Further, the Department auditors were provided other information pertaining to all phases of its Penny Tax Program to include, but not limited to: its origin; implementation; and procurement procedures, practices, and operations. As the Plaintiff has indicated in its Complaint, it cooperated with the Department over a period of several months by allowing Department personnel to

[4] The Department further believes that Mr. Campbell's consulting firm was paid to assist in the passage of the Penny Tax Referendum itself.

conduct a comprehensive audit of the Plaintiff's Penny Tax Program. (Plaintiff's Complaint, para. 49).

By letter dated December 3, 2015, the Department informed the Plaintiff of the results of its audit review. (See Exhibit B). The letter broke the findings into three (3) categories: (1) evidence of potential public corruption with regard to Plaintiff's procurement of the PDT was referred to an appropriate law enforcement agency; [5] (2) evidence of criminal behavior relating to state taxes which was referred to the Department's Criminal Investigative Division[6]; and (3) the Department's concerns with the expenditure of Penny Tax funds on costs outside of the enabling statute for purposes such as the set-up and operation of the Small and Local Business Enterprise Program (SLBE) and the obligation of millions of dollars of Penny Tax funds on ill-defined public relations contracts.

In its December 3, 2015 letter, the Department expressed a willingness to work the Plaintiff on those areas within its control, i.e., - the improper expenditure of Penny Tax funds. (Exhibit B).[7] Subsequent correspondence from the Plaintiff indicated a desire to explore the Department's concerns regarding expenditures. (See Exhibits C and D). In early January 2016, Department personnel met with Rob Perry, Transportation Director for

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[5] These findings were turned over to the South Carolina Law Enforcement Division (SLED). It is the Department's understanding that the SLED investigation is continuing.

[6] This investigation resulted in the former Chair of County Council being convicted on three misdemeanor counts of failure to file state income tax returns and the conviction of the former President of the COMET Board on two misdemeanor counts of failure to file state tax returns.

[7] The matters turned over to law information agencies – outside and internal – need to run their normal course such that the Department could not work with the County to address these concerns.

Richland County and Larry Smith, Richland County's attorney. (See Affidavit of Jerilynn VanStory, para. 4). During the meeting, the Department explained the potential use of IRC 263/263A as a guide to help the Plaintiff determine which costs could appropriately be paid for using Penny Tax funds. (Id., para.7). This meeting was followed by several meetings between Department and persons representing and/or affiliated with the Plaintiff, as will be further explained below. Despite the Department's good-faith attempts to bring the Plaintiff's expenditures of Penny Tax funds into compliance with state law, the County continued to equivocate about whether it would adopt the recommended uniform standard to evaluate the propriety of the expenditure of Penny Tax funds. The Department's communication, dated April 27, 2016 stating that the allocation of Penny Tax Funds would be stopped until the Plaintiff adopted a uniform standard to govern expenditures was a move taken solely because of the Plaintiff's resistance to make meaningful changes in its practices, i.e., adopting any uniform standard to govern its expenditure of these funds. (Exhibit E). The Plaintiff filed this lawsuit on May 20, 2016 challenging the Department's authority to regulate its practices with regard to the expenditure of Penny Tax funds and seeking to force the Department to resume allocations of tax revenue.

I. THE DEPARTMENT IS STATUTORILY AUTHORIZED TO REGULATE THE EXPENDITURE OF PENNY TAX FUNDS.

Contrary to arguments advanced by the Plaintiff, the Department has the *statutory* authority to regulate a county's use of Penny Tax Funds. This authority comes from a number of statutory sources which outline the Department's tax administration, regulatory and enforcement powers.

Pursuant to S.C. Code Ann. § 12-4-10 (2014), the Department was created "to administer and enforce the revenue laws of this State; administer and enforce licensing laws and regulations relating to alcoholic liquors, beer and wine and assess penalties for violations thereof; and other laws specifically assigned to it." [8] Furthermore, pursuant to S.C. Code Ann. § 12-4-310, et seq., the Department has broad authority to facilitate tax administration, regulation and enforcement. To that end, S.C. Code Ann. § 12-4-387 (2014) provides that the Department "shall use available personnel to conduct audits involving all taxes to promote voluntary compliance and to collect revenues for the general fund of the State and designated accounts." (Emphasis added).

S.C. Code Ann. § 4-37-30(8) of the Penny Tax Act itself 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." The Department's authority specifically with regard to sales and use taxes emanates from S.C. Code Ann. § 12-36-2660 (2014), which states that the "[t]he Department of Revenue shall administer and enforce the provisions of this chapter [Chapter 36, Sales and Use Tax Act]." Finally, the Penny Tax Act gives the Department two additional powers that are relevant to this inquiry before the Court:

First, pursuant to S.C. Code Ann. § 4-37-30(5)(b), the Department is given the authority to terminate the sales and use tax (Penny Tax) at issue here if, prior to the end of the maximum time allotted for the tax, the Department "determines that the tax has raised

[8] While the term "administer" is not defined by statute, Black's Law Dictionary's definition of "administer" is "to manage or conduct." Black's Law Dictionary, p. 41 (5th ed. 1979).

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." Essentially, § 4-37-30(5)(b) gives the Department authority to determine when the collection of the sales and use tax should end under the Act, i.e., when the revenues collected pursuant to the Act exceed the greater of total cost of the transportation project(s) allowed under the referendum or the amount to amortize all debt incurred. [9]

Secondly, under S.C. Code Ann. § 4-37-30(17), the General Assembly authorized the Department to "promulgate regulations necessary to implement this section." Given that a comprehensive set of regulations already exist in the sales and use tax area (S.C. Code Ann. Regs. 117-300 thru 117-337.6), the General Assembly must have contemplated that further regulations would be necessary to help counties define and/or identify appropriate uses for Penny Tax funds when it granted the Department the authority to promulgate regulations. See Denene, Inc. v. City of Charleston, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) (stating the "Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something."). Certainly, the General Assembly did not use language limiting the Department's regulatory authority except to mandate that any regulations be "necessary to implement this section."

Finally, in this regard, it must be stressed that the Penny Tax is a special tax authorized by the General Assembly for a specific purpose. It is axiomatic that these tax dollars must be used for the purposes provided for in the enabling legislation and for no

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[9] As will be explained in Part II, below, this constitutes more than simply monitoring when a certain level of funding has been reached, especially here where substantial evidence exists the Penny Tax funds paid over to the Plaintiff are being misused for costs falling outside the restrictions placed on the use of said funds.

other purpose. In City of Myrtle Beach v. Tourism Expenditure Review Committee, 407 S.C. 298, 755 S.E.2d 425 (2014), a case involving a challenge by the Tourism Expenditure Review Committee to the expenditure of local accommodations tax dollars by the City of Myrtle Beach, the South Carolina Supreme Court observed:

> Where a special fund is created or set aside by statute for a particular purpose or use, it must be administered and expended in accordance with the statute, and may be applied only to the purpose for which it was created or set aside, and not diverted to any other purpose, or transferred from such authorized fund to any other fund." 81A C.J.S. *States* § 387.[10]

The Department asserts that the Penny Tax imposed under section 4-37-30 creates a special fund set aside by statute for a particular purpose as contemplated by the City of Myrtle Beach Court. City of Myrtle Beach, 407 S.C. 298, 755 S.E.2d 425. See also, Ops. Atty. Gen. dated May 20, 2004 ("Generally, public funds may be expended only for designated purposes as authorized by the General Assembly. As stated in an opinion dated October 1, 2001, '(i)t is well recognized that public funds may be expended only for their designated purpose.'") (citations omitted).

The Penny Tax funds are to be used to build transportation related projects which include "highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets bridges and other transportation related projects." Section 4-37-30(A)(1)(a)(i). The Department's tax administration, regulatory, and enforcement authority as outlined above extends to the matters at issue here – whether

[10] Former 81A C.J. S. *States* § 387 has been renumbered and is now found at 81A C.J.S. *States* § 401 (2016).

Penny Tax Funds are being used in accordance with the restrictions set forth in the Act. The Department alleges that the Plaintiff's expenditure of Penny Tax funds is improper and is inconsistent with the purpose of the Act. Inasmuch as the Department is charged with the administration of this tax – consistent with the administration of other sales and use taxes, those administrative duties extend to providing some level of oversight, and ability to ensure compliance, regarding the use of said dollars. In fact, the Department has begun the process of promulgating regulations that will provide counties with additional guidance on the proper use of the penny tax funds.[11]

The Department does not, as alleged by the Plaintiff, seek to micromanage county affairs or upset the notions of Home Rule.[12] These contentions overlook the nature of the tax dollars at issue here. The Penny Tax Act was not enacted to allow counties to raise money for their General Funds to be used for general purposes at the unbridled discretion of county government. Instead, through the Penny Tax Act, the South Carolina General Assembly provided a means to build, construct and acquire transportation facilities. The tax money raised under the auspices of section 4-37-30 may only be used for this specific purpose. The legislative parameters for the use of these funds must be strictly construed and where a purpose does not clearly fall within acceptable use, that use must be discarded. See Cain v. S.C. Pub. Svc. Authority, 222 S.C. 200, 213, 72 S.E.2d 177, 183 (1952)

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[11] The Department submits that its proposed regulations are designed to help counties expend Penny Tax funds only on those costs which are "capital costs" for the purpose of building transportation related facilities. As will be explained, "capital costs" are the only expenditures allowable under the Penny Tax Program.

[12] The Department asserts that the Plaintiff is spending Penny Tax funds in a manner inconsistent with the state law authorizing the tax. Home Rule does not authorize a county's actions which violate a general state law.

("Legislative grants are subject to strict construction and any ambiguity therein must be resolved in favor of public or government.").

Given the General Assembly's general grant of authority to the Department in the sales and use tax area, coupled with Section 4-37-30(17)'s explicit grant of authority to promulgate regulations "necessary to implement this section," it follows that the Department has the authority to act to correct a misuse of Penny Tax funds when it determines that a county's use of said funds is outside the parameters of the Act. While staying the allocations of Penny Tax funds to the Treasurer's Office for ultimate disbursement to the Plaintiff is a drastic step, as outlined above, the Department and its personnel have attempted in good faith to bring about an amicable resolution of this matter. The Plaintiff has nevertheless, refused to adopt any standard to govern its use of Penny Tax funds. In the face of this unrestrained spending of tax dollars for purposes outside the law, the Department has no choice other than to prevent the misuse of these funds by staying the allocation of the same. Notably, other states have recognized the importance of protecting state funds from misappropriation or expenditures that are outside the parameters of the law. See 81 C.J.S. *States* § 393 ("It is the duty of a state comptroller, or other proper officer, before issuing a warrant for the payment of an account against the State, to make an administrative determination that the money is in the state treasury, that an appropriation has been made by law to pay the account, and that the expenditure is within the law. The comptroller, or other proper officer, has the legal right to refuse disbursement of funds which such officer considers illegal until there is a judicial determination of the validity of

the proposed expenditure.") (*citing* Lyons v. Norris, 829 So.2d 748 (Ala. 2002) (emphasis added).[13]

As outlined earlier, the Department's audit revealed serious deficiencies regarding how the Plaintiff has used Penny Tax dollars.[14] Among many improper expenditures, the Plaintiff has used over $700,000 in Penny Tax funds to create its Small and Local Business Enterprise (SLBE) Program, a county-wide initiative that supports a range of county programs other than the Penny Tax, yet the funds to develop and implement this program have come solely from Penny Tax dollars. Similarly, the Plaintiff has committed almost $3,000,000 over the course of several years for vague public relations services.

In the exercise of its oversight authority, the Department has gone to great lengths to resolve these matters before stopping monthly allocations of the Plaintiff's Penny Tax Funds to the State Treasurer's Office. In December 2015, the Department shared its audit findings and concerns with the Plaintiff in a letter to Mr. McDonald. (See Exhibit B). That correspondence informed the Plaintiff that there were three areas of concern: (1) elements of public corruption that had been referred to the appropriate external law enforcement agency

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[13] Although the Plaintiff may have a county-level official with the authority to act as a "comptroller" with regard to Penny Tax funds, given the problems noted in the Department's audit, it is obvious that this official is failing to properly exercise that authority or that his/her authority has been circumscribed in some manner. No state agency other than the Department has the necessary authority over counties' Penny Tax programs to police improper expenditures of the same. The South Carolina Treasurer's Office makes distributions to the various counties but that agency simply disburses the funds the Department has collected in accordance with the Department's instructions.

[14] See Affidavit of Tim Donovan, para. 13.

for investigation; (2) elements of criminal tax activity for which the Department's law enforcement division initiated an investigation; and (3) improper and excessive expenditures of Penny Tax Funds that fell clearly outside of the Penny Tax Act spending restrictions. In January of 2016, Department personnel met with representatives of the County to discuss the expenditures and at that time explained the use Internal Revenue Code (IRC) § 263A as a uniform standard to determine which expenditures could be paid out of Penny Tax funds.[15] (See Affidavit of Jerrilyn VanStory , para. 4). A second meeting to discuss these issues followed the initial meeting. Id. On or about March 24, 2016, in response to the Department's February 24, 2016 correspondence and Report on the Transportation Penny, the Department received a settlement proposal from an attorney representing one of the members of the PDT who was asked to "facilitate" some resolution to the concerns raised by the Department. (See Exhibit F) While the Plaintiff's resolution proposal was a marked improvement, the Plaintiff declined to employ IRC § 263 or any other uniform standard to govern the future expenditures of Penny Tax Funds. The Department responded with a letter dated April 1, 2016 which accepted much of the Plaintiff's March 24, 2016 proposal but continued to press for the adoption of a uniform standard to govern the expenditure of Penny Tax funds (See Exhibit G). The Plaintiff thereafter sent correspondence dated April 8, 2016, which, while seemingly agreeing on several areas, continued to decline to adopt the recommended standard (or any other standard) to govern the expenditure of Penny Tax funds. (See Exhibit H). This led to the Department's April 27, 2016 letter announcing a

[15] As will be explained, the Department proffered IRC § 263A to the Plaintiff as a guide to determine what costs are proper to be paid from Penny Tax funds. The Department does not seek to impose new accounting reporting requirements on the Plaintiff.

stay in Penny Tax revenue allocations until the adoption of a standard and the Plaintiff's subsequent communication that it was going to initiate legal action against the Department.

S.C. Code Ann. § 4-37-30, the enabling statute for the Penny Tax Program, specifically provides that Penny Tax money may be used for the construction and/or acquisition of:

> highways, roads, streets, bridges; mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects;

The statute continues to require that any proposed ordinance for the implementation of the Penny Tax must set forth:

> the estimated capital cost of the project or projects to be funded in whole or in part from proceeds of the tax and the principal amount of bonds to be supported by the tax;

Id. (emphasis added).

This section specifically references capital cost - no other "costs" are mentioned in the statute as being an allowable use for Penny Tax funds. To the extent the Plaintiff has expended Penny Tax funds on costs that cannot be "capitalized", these expenditures exceed the scope of allowable expenditures under the Act.[16] This is the basis for the Department's

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[16]The Department acknowledges that in any construction/building project, there will necessarily be administrative and operational costs that are directly related to the project. Section IRC 263/263A allows for such direct and some sufficiently related indirect costs to be capitalized. (See Affidavit of Jerilynn VanStory, paras. 4-9). The Plaintiff's expenditures of Penny Tax funds for the SLBE program and public relations do not immediately fall within these parameters. Certainly, the Plaintiff's ordinance allowing for the expenditure of Penny Tax funds for "the cost of the projects established in this Ordinance, as it may be amended from time to time, including, without limitation, payment

proposal that the Plaintiff utilize the same principles as those provided in IRC §263 and IRC §263A for determining what costs qualify as capital costs of the transportation project assets and as a template for how Penny Tax funds are to be spent. Simply put, there should be no money expended out of the Penny Tax Fund for costs other than those costs that are considered capital costs of a specific transportation-related project. It is important to realize that the IRC § 263 and IRC § 263A standards are to be used to determine when an expenditure of Penny Tax money is appropriate. No matter what accounting method/system for reporting purposes is used, the expenditure of these funds must adhere to these spending guidelines.

The unrestrained spending of Penny Tax dollars is particularly troubling and impedes the Department's ability to perform its statutorily imposed tax administration duties, to include its responsibility to terminate the tax under S.C. Code Ann. § 4-37-30(5)(b). To the extent the Plaintiff or any other county wastes Penny Tax funds by using the same for purposes inconsistent with § 4-37-30, the Department is unable – and will never be able – to "determine that 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." The Department submits that this responsibility entails much more than simply monitoring when 1 billion dollars in Penny Tax funds has been raised. Rather, this legislatively mandated responsibility requires some level of evaluation and oversight to ensure that Penny Tax Funds are being used for proper purposes. If this money is being exhausted on expenditures that are not "capital costs" in clear contravention

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of administrative costs of the projects...." cannot reasonably be construed as authorized by the Act.

of the law, it is being wasted and the Department's ability to make the determination that sufficient revenues have been raised to "provide the greater of either the costs of the project[s] as approved in the referendum or the cost to amortize all debts related to the approved projects funds" has been frustrated.

Simply put, the Department's tax administration duties as provided in the referenced statutes extend to the Plaintiff's use of Penny Tax Funds. The Penny Tax is a special tax to be used for a particular purpose. Here, there is abundant evidence that the Plaintiff is not using the tax money it receives for the specific purposes designated in the Penny Tax Act. Without a doubt, this is clearly improper. Under such a scenario, the Department is obligated to exercise its statutory authority to bring the use of these special funds into full and complete compliance with the law.

The Plaintiff, nevertheless, spends ample effort arguing that the referenced statutes do not provide the Department with any authority to regulate the Plaintiff's use of Penny Tax Funds. Again, this view overlooks the fact that these are tax dollars earmarked by the General Assembly to be used for particular purposes. In City of Myrtle Beach, the tourism expenditure board was given explicit authority by the General Assembly to regulate the use of the local accommodations tax dollars at issue. City of Myrtle Beach, 407 S.C. 298, 755 S.E.2d 425.[17] Given the Department's existing and comprehensive authority over sales and use taxes, there was no need for the General Assembly to be as explicit in its direction to the Department with regard to the Penny Tax in comparison to the tourism expenditure board. The legislative tie between the Penny Tax and the Department's existing statutory authority

[17]The local accommodations tax at issue in City of Myrtle Beach is not collected by the Department. See S.C. Code Ann. § 6-4-5 et seq. (2014).

was established by Section 4-37-30(8) which 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." Given the purpose of the Penny Tax Fund, the Department asserts that its authority to address the misuse of those funds by the Plaintiff is amply supported by the existing statutory framework.

II. THE DEPARTMENT HAS EQUITABLE AUTHORITY TO REGULATE THE EXPENDITURE OF PENNY TAX FUNDS.

A. The Department Has Standing (Is Equitably Authorized) To Regulate The Expenditure Of Penny Tax Funds By The Plaintiff.

The essence of the Plaintiff's argument, in support of its lawsuit in general, and its Motion for Mandamus, is leveled at whether the Department has any authority, or standing, to challenge the Plaintiff's expenditures under the color of the Penny Tax Referendum. It would seem that the Plaintiff is willing to go so far as to say that despite whatever monies may have been misappropriated, misused, unlawfully expended, or even converted, that neither the Court nor the Department can require the Plaintiff to account for those expenditures in the past, or restrict the Plaintiff's unbridled expenditures in the future. If this is not what the Plaintiff is asserting, but rather is denying that any such prior expenditures were improper – and that all future expenditures will be proper, then it becomes a question of fact – and not one of law, such that the Court can rule on the Plaintiff's Motion.

Further, the Department also asserts that the present matter in controversy is one of great public importance, in which a resolution is needed for future guidance. It is beyond refute to acknowledge that the amount of money at issue in the present case is in excess of $1 billion, and affects hundreds of thousands of Richland County residents. Likewise, the

program is scheduled to "last" for twenty-two years (in total), and will last at least another 19 years. Given that the Plaintiff has failed to yield to the reasonable demands made by the Department, to implement some safeguards and oversight to ensure the proper expenditure of Penny Tax funds, it would seem without some intervention, by the Department or the Court, that the Plaintiff will go on, unabated, to waste and mismanage millions of dollars to the detriment of the County itself, and its citizens.[18] The Department, therefore, suggests that the continued misspending, misallocation, and misuse of those funds by those now in charge of the Penny Tax program will simply continue unabated unless and until the Court directs that their unbridled activities are improper, and that all future expenditures must necessarily be in compliance with the statutes which gave rise to the passage of the Penny Tax Referendum in the first place. Without the Department's intervention, potentially millions of dollars would potentially be improperly spent, in violation of the Penny Tax Referendum. See, e.g., S.C. Public Interest Foundation and Sloan v. SC. Dept. of Transp., 770 S.E. 2d 399, 412 S.C. 18 (Ct. App. 2015).

Similarly, a court may use its equitable powers to restrain improper government activity. Newsome v. City of Union, 249 Ga. 434, 291 S.E.2d 712 (1982).[19] Here, given the

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[18]It is noted that Richard Sloan has already filed suit, as an individual taxpayer, to curtail the Plaintiff's unrestricted spending of the Penny Tax funds, but Courts have held that as a general rule, a taxpayer may not maintain a suit to enjoin the action of State officers when he has no special interest and his only standing is the exceedingly small interest of a general taxpayer. See ATC South, Inc. v. Charleston County, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008); see also S.C. Public Interest Foundation, *supra*.

[19]While Newsome is a case from another jurisdiction, its rationale is appropriate here. More specifically, where a Court becomes aware of improper government activity – here, the Plaintiff's expenditure of Penny Tax funds in violation of the enabling statute – the Court may invoke its equitable powers to restrain the improper activities.

evidence of the Plaintiff's misconduct with regard to its unrestrained use of Penny Tax funds, this Court has the authority to withhold the allocation/distribution of these funds, or, at minimum, impose restrictions on use of the same until a judicial determination has been made in this matter.

B. The Department Has The Fiduciary Duty To Stop The Allocation Of Penny Tax Funds In The Instant Scenario.

The Department's Counterclaims and Cross Claims against the Plaintiff and Third Party Defendants Team ICA/Brownstone/Kahn allege that these parties have engaged in the following activities: (1) a civil conspiracy to expend funds in a manner which violates the tax law; (2) fraud as it relates to the expenditure of these funds or in the alternative, have engaged in at least constructive fraud regarding these funds. These are not allegations that have been made lightly but after much consideration of the evidence gathered during the audit process.

Where the Department is aware of improper activity of this nature with regard to the expenditure of tax money, it owes a duty to the taxpayers and citizens of this State, particularly to those of Richland County, to address these issues and to bring about compliance with the tax laws of this State. Again, these are not funds that may be used by the Plaintiff for it general purposes. The General Assembly authorized imposition of the Penny Tax for certain defined reasons, and the consequent use of these funds by counties that receive this money is restricted by the parameters of the enabling statute.

Given the Department's knowledge of misconduct with regard to the Plaintiff's use of Penny Tax Funds as alleged in its Counterclaims/Third Party Complaints, the Department is compelled to act to address these matters. Implemented in May 2013, the Plaintiff's

22 year Penny Tax could last another 19 years. To this point, the Department has collected and allocated $156,461,275.86 to the Plaintiff. (See Affidavit of Tim Derrick, para. 7). At this rate, in the next 19 years, without some check on the Plaintiff's unrestrained spending, an additional $881,438,725 could be ultimately distributed to the Plaintiff and available for its unfettered use.[20] Without the adoption of IRC § 263/263A or some other uniform standard to restrict the Plaintiff's use of these funds for "capital costs" of transportation related facilities, the taxpayers and citizens of Richland County will be substantially harmed to the tune of millions of dollars of waste at the end of the life of the Penny Tax.

In these circumstances, the Department is compelled to act and in fact, has a fiduciary duty owed to the taxpayers and citizens of Richland County, to act to restrain the Plaintiff's uncontrolled spending of Penny Tax funds. See generally, Moore v. Moore, 599 S.E.2d 467 (Ct. App. 2004) ("A fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence."). The Department collects the Penny Tax funds. The public - to include citizens who actually pay the additional one percent sales and use tax and the taxpayers who remit the tax to the Department - reposes trust, confidence and faith in the Department that these funds will be safeguarded and used for the purposes intended by the General Assembly.[21] Where there is

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[20]As indicated earlier, the Plaintiff's unrestrained spending has frustrated the check the General Assembly contemplated by allowing the Department to "terminate" the tax under S.C. Code Ann. § 4-37-30.

[21]For sales and use taxes, the retailer of tangible personal property is actually the person legally liable for the tax. S.C. Code Ann. § 12-36-950 (2014). The retailer may pass

evidence of the kind uncovered by the Department's audit, the Department cannot fail to act without violating its fiduciary duties owed to the public, and in particular the taxpayers and citizens of Richland County. [22]

III. THE PLAINTIFF'S PETITION FOR WRIT OF MANDAMUS MUST BE DENIED

"To obtain a writ of mandamus requiring the performance of an act, the applicant must show: (1) a duty of respondent to perform the act; (2) the ministerial nature of the act; (3) the applicant's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy. Holden, 349 S.C. 132, 136, 561 S.E.2d 634, 636-637 (Ct. App. 2002).

The Department acknowledges the provisions of S.C. Code Ann. § 4-37-30 cited by the Plaintiff which seem to suggest the Department statutorily mandated to allocate collected Penny Tax funds such its duty is only ministerial. (Plaintiff's Complaint, paras. 137-139). However, the Department submits that there is no mandate given the Department's tax

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the tax on to the consumer who, when the tax is passed on, pays the same along with the purchase price of the good. S.C. Code Ann. § 12-36-940 (2014).

[22] The Department's audit authority in section 12-4-387 further supports the actions taken here as well as underscoring the Department's fiduciary duties owed to the public (The Department "shall use available personnel to conduct audits involving all taxes to promote voluntary compliance and to collect revenues for the general fund of the State and designated accounts." (emphasis added)) The Department has conducted a comprehensive audit of the Plaintiff's Penny Tax program uncovering potentially millions of dollars of expenditures and practices unauthorized by the Penny Tax Act. The Department has dutifully communicated these deficiencies to the Plaintiff, which, thus far, has refused to bring its practice in line with the law. In such a situation, the Department is compelled to take the actions the Plaintiff complains of here. A failure to so act violates its responsibilities under the Penny Tax Act, violates its fiduciary duties to the public regarding the taxes it collects and arguably frustrates its ability to foster "voluntary compliance" through the audit process.

administration and regulatory duties with regard to the Penny Tax as outlined above. The General Assembly has given the Department certain tax administration authority with regard to the Penny Tax Act, and this alone trumps any argument that the Department's duties with regard to the allocation of funds are mandated or simply ministerial in nature. Implicit within that grant of authority to the Department to administer the Penny Tax Act is the discretion to withhold Penny Tax funds when it has a good-faith belief, as it does here, that the Penny Tax funds are being used improperly. (See generally, Affidavit of Tim Donovan). Additionally, the Department's ability to terminate the tax under Section 4-37-30(5)(b) undercuts the position that its allocation duty is sufficiently ministerial to support a Writ of Mandamus. Furthermore, given the evidence of the Plaintiff's misuse of these tax dollars, the Plaintiff cannot show that it has a "specific legal right for which discharge of the duty is necessary." The Plaintiff has no right to violate the Penny Tax Act. [23] See Lyons, 829 So.2d 748.

Moreover, there is not only substantial evidence of the Plaintiff's improper expenditure of Penny Tax funds and the Plaintiff's obstinacy to adopt a uniform standard to govern its use of the funds, there is evidence that the Plaintiff has engaged in a civil conspiracy with the Richland PDT to misuse these funds and that misuse constitutes fraud

[23] Also, the Plaintiff has another legal remedy available to it. It has filed a complaint in this Court challenging the Department's authority to act in this instance. Similarly, the Department has filed a counterclaim to adjudicate whether the Plaintiff's expenditures violate the Penny Tax Act. These are important legal issues that should be decided after fair and full consideration by the Court. The monies collected by the Department are being appropriately safeguarded in a segregated account and can easily be paid over to the Plaintiff in the event it should prevail on the merits of its lawsuit. The need to issue a Writ of Mandamus is simply not present here.

or, in the alternative, constructive fraud. In a situation such as this, any argument that the Penny Tax Act imposes only a ministerial duty upon the Department to allocate Penny Tax funds to the Plaintiff so that the funds can continue to be wasted and improperly used must fail. To the contrary, in this situation, the Department is compelled to take some action to halt the misuse of these funds. At minimum, the Court must exercise its equitable powers to deny the relief sought by the Plaintiff. See Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011) ("Courts have inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible."). Notably, a writ of mandamus "is somewhat of a hybrid proceeding; it is not strictly a law case, nor is it one in equity." Holden v. Cribb, 349 S.C. 132, 561 S.E.2d 634 (Ct. App. 2002). Both law and equity here compel that the Plaintiff not be given more Penny Tax funds to waste and misuse until it adopts and implements a uniform standard to govern the expenditure of the same.

IV. THE PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF MUST BE DENIED.

The "analytical framework, which courts must employ in determining whether to grant preliminary injunctive relief" requires that "the party requesting such to make a 'clear showing' that he will suffer irreparable harm if the court denies his request. Rockford Mfg., Ltd. v. Bennet, 296 F.Supp.2d 681, 684-685 (U.S.D.S.C. 2003). Second, if the party establishes irreparable harm, 'the next step then for the court to take is to balance the likelihood of irreparable harm to the plaintiff from the failure to grant interim relief against the likelihood of harm to the defendant from the grant of such relief.' Id. at 685. Third, if the balance tips decidedly in favor of the party requesting preliminary relief, 'a preliminary injunction will be granted if the plaintiff has raised questions going to the merits so serious,

substantial, difficult, and doubtful, as to make them fair ground for litigation and thus more deliberate investigation.' Id. However, 'if the balance does not tip decidedly there must be a strong probability of success on the merits.' Id. Fourth, the court must evaluate whether the public interest favors granting preliminary relief." Id.

"The two most important factors are the probable irreparable harm to the moving party if an injunction is not issued and the probable harm to the non-moving party if an injunction is issued. Id. Notably, "[i]f the balance of these two factors is in the non-moving party's favor, he or she does not have to show a likelihood of success on the merits, and the presentation of a grave or serious question is sufficient to warrant a preliminary injunction." Id. However, the inverse is true that if the likelihood success on the merits is great, the need for showing irreparable harm decreases proportionately." Id.

Here, the probable or irreparable harm to the Plaintiff is *de minimis* at best while the probable or irreparable harm to the Department is tremendous as the ability to administer and enforce the revenue laws of this state is frustrated by expending valuable Department personnel, time, and resources.

Despite the Plaintiff's claims that the Department's action may interrupt and delay transportation-related projects, force the Plaintiff to cease operating the COMET bus system, potentially owe money on various contracts, have difficulty borrowing money, and ultimately cease operating the entire Penny Tax Program, none of these allegations are accurate. The Plaintiff has asserted numerous times through various media sources that it

has funds to last until November. (Exhibit I)[24] Because the Plaintiff has sufficient funds to get them through November of this year, none of the aforementioned concerns raised by the Plaintiff rise to the level of "irreparable harm" that the Plaintiffs is required to demonstrate in order for this Court to grant the motion for injunctive relief.

The Department does not dispute the Plaintiff's assertion that it cannot complete the Penny Tax projects it has committed itself to without continued Penny Tax allocations over the course of the next 19 years. Nevertheless, the Department submits that this neither constitutes an immediate need nor is it the standard to invoke related to the preliminary injunctive relief it seeks.[25]

Accordingly, the Department respectfully requests that this Court deny the Plaintiff's request for relief in the form of a Declaratory Judgment, Writ of Mandamus, and/or Injunctive Relief in this matter.

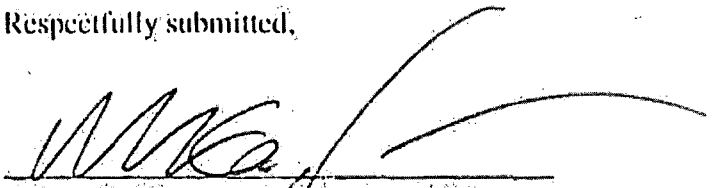
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[24]Exhibit I is a newspaper article, dated April 27, 2016 which attributes this statement to Daniel Driggers. Mr. Driggers' affidavit filed in this matter does not dispute this assertion.

[25]The Department's stay of allocations of Penny Tax collections to the State Treasurer for the Plaintiff can also be considered in the nature of the common-law right of set off. The Department believes the Plaintiff has misused Penny Tax funds on costs that are not allowable under the Act. In its Answer, Counterclaims and Third Party Complaint, the Department requests that these monies be reimbursed to the Penny Tax fund. It is within the Department's enforcement authority to withhold funds otherwise due to the Plaintiff to offset the monies it has improperly spent. S.C. Code Ann.§ 12-60-60 is an anti-injunction statute and provides that "[a]n action of a court or an administrative law judge cannot stay or prevent the department or an officer of the State charged with a duty in the collection of taxes, from acting to collect a tax, whether or not the tax is legally due." (emphasis added). The Department's actions to stay Penny Tax allocations can be construed as being within its legitimate collection efforts within the meaning of this statute such that §12-60-60 would prevent the entry of an injunction or other stay against the Department.

Respectfully submitted,



Milton G. Kimpson (SC Bar No. 7917)
Dana R. Krajack (SC Bar No. 3608)
Nicole M. Wooten (SC Bar No. 73594)
Lauren Acquaviva (SC Bar No. 100528)
PO Box 12265
Columbia, SC 29211
Phone: 803-898-5598
Fax: 803-898-5147
Milton.Kimpson@dor.sc.gov
Dana.Krajack@dor.sc.gov
Nicole.Wooten@dor.sc.gov
Lauren.Acquaviva@dor.sc.gov

JAMES E. SMITH, JR., P.A.
James E. Smith, Jr. (SC Bar No. 8733)
Dylan W. Goff (SC Bar No. 78416)
1422 Laurel Street
Columbia, South Carolina 29201
Phone: (803) 933-9800
Fax: (803) 933-9801
James@JamesSmithPA.com
Dylan@JamesSmithPA.com
Attorneys for Defendants South Carolina Department of Revenue
and Rick Reames, II, its Director

Exhibit "A"

State of South Carolina

Department of Revenue

NIKKI R. HALEY
Governor

RICK REAMES III, ESQUIRE
Director

300A OUTLET POINTE BOULEVARD
POST OFFICE BOX 125
COLUMBIA, SOUTH CAROLINA 29214
Telephone: (803) 898-5040
Facsimile: (803) 896-0023
Director@dor.sc.gov

April 15, 2015

Mr. W. Anthony McDonald
Richland County Administrator
Post Office Box 192
Columbia, SC 29202

Re: Richland County Transportation Sales Tax

Dear Mr. McDonald:

It was a pleasure to talk with you today. As we discussed, the South Carolina Department of Revenue is initiating a review of the Richland County Transportation Sales Tax that was passed by voter referendum in November, 2012. Pursuant to our statutory and regulatory authority, this review is to ensure public accountability and transparency regarding the collection and expenditures of revenue generated by the tax.

We request that you have the appropriate personnel from Richland County contact my office by Friday, April 24 to establish a convenient time and process so that Department of Revenue employees can gain access to County records. The Department of Revenue is committed to conducting the review in a manner most convenient to the County and can work at your location, or alternatively, the County can simply provide the records to our personnel for review at our office.

Thank for your cooperation and your attention to this matter. If you have any questions, I invite you to contact me at any time. We look forward to working with you.

Very truly yours,

Rick Reames III
Director

RRRIII/afw
CC: The Honorable David A. Adams, Richland County Treasurer

Exhibit "B"

State of South Carolina

Department of Revenue

NIKKI R. HALEY
Governor

RICK REAMES III, ESQUIRE
Director

300A OUTLET POINTE BOULEVARD
POST OFFICE BOX 125
COLUMBIA, SOUTH CAROLINA 29214
Telephone: (803) 898-5040
Facsimile: (803) 896-0023
Director@dor.sc.gov

December 3, 2015

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RICHLAND COUNTY
ADMINISTRATOR'S OFFICE

Mr. W. Anthony McDonald
Richland County Administrator
2020 Hampton Street, Room 4058
Columbia, SC 29202

RE: Richland County Penny Transportation Program

Dear Mr. McDonald:

As you know, on April 15, 2015, the South Carolina Department of Revenue (the "Department") initiated a review of the Richland County Penny Transportation Program (the "Penny") for the period May 1, 2013 – October 31, 2015. The Department appreciates Richland County's cooperation throughout the review. The purpose of this letter is to update you on the matter. The review has given rise to three general areas of concern.

First, the manner in which the Project Development Team (the "PDT") was procured, including but not limited, to Council's adoption of exemptions from established procurement procedures, and certain payments by or to the PDT raises questions of potential public corruption and fraud. Public corruption and fraud are beyond the scope of the Department's mission and, therefore, the Department has referred these matters to law enforcement.

Second, the Department has discovered multiple instances of illegal activity by individuals and/or companies associated with the Penny Program. These activities are within the scope of the Department's mission, and the Department is proceeding with these cases as is appropriate.

Finally, certain expenditures appear to fall outside the parameters of both the transportation tax statutes and the Richland County ordinance authorizing the program. Additional details regarding these areas of concern are outlined below.

Expenditures Outside the Transportation Tax Statute and Ordinance

Small Local Business Enterprise (SLBE) Program

Despite clear indication by both the referendum and ordinance that Penny revenue expenditures be limited to specific transportation-related projects, records outline Council's use of Penny revenue to fund the County's Small Local Business Enterprise (SLBE) program.

Council passed an ordinance creating the SLBE initiative in September 2014 to "provide a race and gender neutral procurement tool...to ensure that all segments of its local business community have a reasonable and significant opportunity to participate in County contracts for construction, architectural & engineering services, professional services, nonprofessional services, and commodities." Rich. Cnty. Code §2-639(a).

While this expressed purpose may be laudable, it falls outside the legally permitted expenditures established by the Penny referendum and ordinance because the SLBE is a countywide program applying to all facets of county operations – not just Penny expenditures. Therefore, the expenditures are not specifically for transportation projects as required by law.

An estimated $619,457 in Penny revenue appears to have been used as the exclusive funding source for the SLBE personnel and program start-up costs outlined below.

$219,378	in estimated personnel costs
$250,231	in attorney fees to draft ordinance
$122,760	for software management system
$13,000	for website development
$4,296	for assistance from Charleston County
$9,792	for related consulting

These figures are from the audit period which was limited to the first 24 months of collections of the Penny Program. The Penny Program is scheduled for a 22-year term, and many of the recurring expenditures related to the SLBE program will likely increase over time.

In addition, the estimated personnel costs represent the annual salary cost for five full-time employees hired by Council to work exclusively for the SLBE, including: two Certification and Compliance Specialists; Assistant Procurement Director; Outreach Specialist; and Education Specialist. It should be noted that this estimate is based on annual salaries. As positions were filled at various points during the year, the full annual salary expenditure may not be relevant for all five positions.

Public Information Services

The PDT contract awards $3 million over a period of five years for public information services. Two firms each receive monthly payments of $25,000, or $300,000 per year; for a combined expenditure of $600,000 per year for public information services. This includes personnel costs only and does not account for additional amounts to be paid to both firms as reimbursement for such items as brochures, mailings, business cards, website maintenance, catering, mileage, and computer and cell phone allowances.

Firm invoices offer a breakdown of employee hours spent on public information activities related to the Penny Tax. One of the firms purportedly has one full-time employee dedicated to Penny Tax projects. One additional person from each firm records an average of 10-15 hours per week for a combined total of approximately 20-30 hours per week. It is unclear exactly what work has been actually performed as no documentation detailing the work has been provided.

In effect, the Penny Tax program is paying $50,000 per month, $600,000 per year, and $3 Million over five years (before reimbursements) for the equivalent of fewer than two full-time employees – when an entire public information office already exists within Richland County government and other PDT members also provide public relations services.

In comparison, according to US Bureau of Labor statistics, the annual mean wage for a Public Relations and Fundraising Manager in South Carolina is $85,890; the mean wage for a Public Relations Specialist salary is $49,200 per year. The total annual cost for both employees would be $135,090, excluding taxes and benefits.

As outlined above, Council has misappropriated a significant amount of Penny revenue and is scheduled to spend millions of additional dollars over the next several years for expenditures falling outside the parameters of the transportation tax laws. The County should take action to correct these expenses both prospectively and by reimbursement for previously paid amounts.

Thank you again for Richland County's cooperation on this matter. Please call me if you have any questions or wish to further discuss these issues. Of course, the Department will be unable to comment on ongoing criminal investigations.

Yours very truly,

Rick Reames III
Director

RRIII/afw
CC: The Honorable David A. Adams, Richland County Treasurer
The Honorable Torrey Rush, Chairman, Richland County Council

Exhibit "C"

RICHLAND COUNTY
GOVERNMENT
Office of the County Administrator

December 9, 2015

VIA HAND DELIVERY

Rick Reames III, Esquire
Director
South Carolina Department of Revenue
300A Outlet Pointe Boulevard
Post Office Box 125
Columbia, South Carolina 29214

S.C.
DEPT. OF REVENUE
DEC 09 2015
RECEIVED COLUMBIA
TAXPAYER'S ASSISTANCE

Re: Richland County Penny Sales Tax Transportation Program

Dear Mr. Reames:

We received your letter dated December 3, 2015, on Friday, December 4, 2015, regarding a South Carolina Department of Revenue ("DOR") review of Transportation Penny Sales Tax (the "Penny Tax") expenditures, which we understand commenced in April 2015.

We are both shocked and alarmed that DOR has found potential evidence of public corruption and fraud along with other illegal activities. As part of this response, we are requesting additional information regarding your findings such that we can immediately invoke measures to protect and preserve county money and assets. In addition, we want to make clear that Richland County stands ready fully to cooperate with any criminal investigation. Finally, upon further review, if Richland County has mistakenly used the Penny Tax to fund inappropriate expenses, the county will immediately reimburse the transportation tax fund.

The letter raises three areas of concern: 1) "...the manner in which the Project Development Team (the "PDT") was procured, including but not limited, (sic) to Council's adoption of exemptions from established procurement procedures, and certain payments by or to the PDT raises questions of potential public corruption and fraud"; 2) "...the Department has discovered multiple instances of illegal activity by individuals and/or companies associated with the Penny Program"; and 3) "...certain expenditures appear to fall outside the parameters of both the transportation tax statutes and the Richland County ordinance authorizing the program." We address these three areas of concern below.

We appreciate your acknowledgement of the County's cooperation in this matter, the County's intent is not just to cooperate within whatever your scope of authority may be, but to also provide whatever assistance it can regarding uncovering and addressing any potential criminal conduct. While we understand there may be limitations in what you may be able to discuss with us regarding your investigation, as addressed further below, we request the opportunity to meet with you, at the appropriate time, to better understand the allegations of criminal activity and how we can assist you in your investigation.

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Fax: (803) 576-2137 • TDD: (803) 748-4999

Further, if a criminal investigation is ongoing, please advise us if there are any matters, including matters addressed in your letter, that are intended to be confidential so as not to compromise the investigation.

1. PDT Procurement and Allegations of Corruption/Fraud

In addressing the manner in which the PDT was procured, the procurement and resulting contract complies with both the South Carolina Consolidated Procurement Code ("Procurement Code") and the Richland County Ordinance, Article X, Procurement. The Council did not "exempt" the PDT from established procurement procedures but, as authorized under State law, it established a procurement procedure applicable to certain procurements funded by the Penny.

The Procurement Code requires that political subdivisions, such as the County, "shall adopt ordinances or procedures embodying sound principles of appropriately competitive procurement". S.C. Code Ann. § 11-35-50 (Supp. 2014). The Procurement Code also expressly allows the Board[1] of the State Fiscal Accountability Authority to exempt any purchase from the Procurement Code. The Procurement Code provides:

> upon the recommendation of the designated board office, may exempt governmental bodies from purchasing certain items through the respective chief procurement officer's area of responsibility. The board may exempt specific supplies, services, information technology, or construction from the purchasing procedures required in this chapter ....

S.C. Code Ann. § 11-35-710 (Supp. 2014) (emphasis added).

Richland County Ordinance, Article X prescribes the County purchasing procedures ("Procurement Ordinance"). Section 2-598 provides, in pertinent part:

> (a) All public purchases shall be made in a manner which provides for the greatest economy for the taxpayer, the fairest selection of vendor, and the prevention of conflicts of interest. Towards this end, it shall be the policy of the county that, whenever practical, leases, goods, and services required by county agencies shall be procured through a competitive purchasing policy which may be achieved through competitive bidding or through requests for proposals; provided, however, contracts that are specifically approved by a county ordinance are exempt from the provisions of this Article.

If Council had desired to "exempt" solicitations funded by the Penny Tax from the Procurement Ordinance, it could have simply adopted an ordinance to that effect. Just as the Procurement Code authorizes the board to exempt a purchase from the purchasing procedures, Section 2-598, authorizes the Council to exempt ANY contract from the County purchasing procedures. Therefore, contrary to the inference raised in your letter, Council could have exempted the PDT from the Purchasing Ordinance totally and been in compliance with Article X.

[1] Effective July 1, 2015, "Board" means the board of the State Fiscal Accountability Authority.

Instead of exempting the PDT acquisition from the Procurement Ordinance, the Council adopted an ordinance (Section 2-591) to be used only for purchases deemed significant by the Council and when only proceeds of the Penny Tax are used in conjunction with a competitive solicitation ("Penny Ordinance"). The Penny Ordinance requires competition. Under the Penny Ordinance, the County Administrator appoints an evaluation committee composed of persons he deems qualified to evaluate proposals received pursuant to the solicitation. The evaluation committee reviews the proposals and sends a short list (not to exceed 8) to Council for decision. While Council can make the final determination to whom it may award a particular contract, it may only choose a contractor after the offerors have gone through a competitive procurement process and are deemed qualified by the evaluation committee. This process under the Penny Ordinance is used for professional services otherwise acquired through Sections 2-600 and 2-601, services acquired through competitive sealed proposals. The process used by the County is quite like the process used by the State under the Procurement Code to hire architectural and engineering services.

In addition to what we perceive as your concern about the legislative action taken by Council in adopting Section 2-591, you also advise that "certain payments by or to the PDT [raise] questions of potential public corruption and fraud". From your letter, we cannot tell whether you are concerned about payments before contract award or after contract award and implementation of the program, or both. We would appreciate the opportunity to meet with you, to discuss these concerns, and to offer whatever assistance we can.

You also state that "[p]ublic corruption and fraud are beyond the scope of the Department's mission and, therefore, the Department has referred these matters to law enforcement." Again, the County wishes to cooperate fully with all law enforcement officials and in any investigation.

2. Allegations of Illegal Activity

As to the second concern expressed in your letter involving the alleged "multiple instances of illegal activity by individuals and/or companies associated with the Penny Program", you advise that the "activities (described therein) are within the scope of the Department's mission, and the Department is proceeding with these cases as is appropriate." The County stands ready and willing to provide any additional information or assistance to DOR that it can.

3. Expenditures Outside the Scope of Transportation Tax and Penny Tax Laws

Regarding the last area of concern that "expenditures appear to fall outside the parameters of both the transportation tax statutes and the Richland County ordinance authorizing the program", you indicate on page 3 of your letter that "Council has misappropriated a significant amount of Penny revenue and is scheduled to spend millions of additional dollars over the next several years for expenditures falling outside the parameters of the transportation tax laws." We read this statement, your concern and the use of the word "misappropriated" to mean that Council has used Penny Tax revenue to pay for staffing, goods and services outside

the scope of the Penny Ordinance and state statutes, and not that any funds have monies have been stolen or embezzled. Please advise us if our understanding is incorrect.

Specifically, you express concern that since the County's Small Business Local Enterprise ("SLBE") program is a county-wide ordinance, its development and implementation should not have been funded "entirely from Penny funds". You are correct that the SLBE will ultimately be utilized county-wide. Rather than expand its mission in an *ad hoc* fashion through potentially numerous legislative amendments, however, the County established its SLBE Program to be flexible and scalable enough to accommodate all endeavors and enterprises that small local business may undertake now and in the future. To date, the SLBE Program has been applied only to procurements through the Penny Tax. Additionally, the SLBE Program has not been funded entirely with Penny Tax revenue. For example, renovations and up-fit costs for the SLBE offices have been funded through county general bond proceeds.

The County's long-term plan is for the SLBE Program to support other undertakings in addition to Penny Tax projects, but, to-date, the Program has been used for Penny Tax projects, with *de minimis* non-transportation expenses potentially embraced in the start-up costs of the Program. We welcome the opportunity to discuss Penny Tax expenditures regarding the SLBE and to provide you with any information you seek concerning these expenditures and the source of the funding. The County is certainly willing to reconcile any Penny Tax spending through general fund reimbursement as part of the reconciliation process continually undertaken through the County audit process.

We would appreciate the opportunity to meet with you to understand what matters and in what amounts DOR believes that Penny Tax revenues may have been used for non-transportation projects or the support thereof. This will help us ensure that each funding source - Penny Tax revenue and the County's general fund - are accurately maintained.

Regarding Public Information Services, the County is committed to keeping the public informed of transportation projects, as well as receiving public input on Penny Tax programs. While DOR might question the amount of expenditures dedicated to Public Information Services, which Richland County will review, we are confident that using proceeds of the Penny Tax to generate public engagement is well within the scope of the ordinance and applicable state law.

With regard to the allegation of public corruption, fraud, and illegal activities, as we stated earlier, we are very concerned that the allegations are that county money and/or assets are being compromised. The county must address this immediately. Accordingly, we respectfully request the following information so that we can better address these allegations and take appropriate action to protect the taxpayers of Richland County:

1. The letter addresses "certain payments by or to the PDT". Please clarify whether these payments are:

a) before or after the PDT contract award;

b) made by the county to PDT members and, if so, to whom the payments are made and the nature of the payments;

c) made by the PDT member(s) and, if so, the name of the PDT member and to whom the payment was made at the county, including employees and/or elected officials; and

d) were the payments made as part of the PDT program?

2. The letter indicates that the matters involving the procurement procedures and the PDT payments have been referred to law enforcement. Please identify the law enforcement agency that these issues have been referred to.

3. The letter states that DOR "has discovered multiple instances of illegal activity by individuals and/or companies associated with the penny tax". Please identify the specific illegal activities you are referring to and the individuals/companies involved in such activities. If such activities involve illegal payments made from county funds or any other unauthorized use of county funds, please indicate the amounts involved.

4. Are other state, federal, or county agencies involved in this investigation? If so, please specify the agencies involved.

5. The letter states that Council's adoption of Section 2-591 (the Penny Tax procurement ordinance) provided exemptions from established procurement procedures which were not proper. Richland County employed independent counsel to draft the procurement ordinance. We would respectfully request that you provide the following information so that we can fully understand DOR's concerns.

a) Does DOR contend that there is a problem with the legislative procedure used to adopt the ordinance enacting section 2-591, e.g. insufficient number of readings, etc. and, if so, what is the problem(s) specifically and what is the legal basis for that problem(s)?

b) Does DOR contend that the Council does not have the legal authority to adopt the ordinance and if so, what is the legal basis of that contention?

c) Does DOR contend that Council cannot adopt additional methods of procuring county goods and services and, if so, what is the legal basis for that contention?

d) Does DOR contend that Council lacks legal authority to exempt a procurement from the county procurement processes and if so, what is the legal basis for that contention?

e) Has the adoption process of the procurement ordinance been referred to law enforcement?

6. The letter states that DOR is concerned with "the manner in which the Project Development Team (the 'PDT') was procured". Please identify the concerns that DOR has regarding the manner in which the [PDT] was procured and provide the legal basis for those concerns.

To reiterate, the answers to these questions are critical to our ability to protect the county from further loss. We respect the need for confidentiality in the investigation of criminal matters and we will work with DOR to insure that confidentiality is maintained.

With regard to the expenditures that DOR asserts are outside of the scope of the transportation tax and the ordinance, the County is currently researching these expenditures and will respond to your concerns upon completion of our review.

We would appreciate a prompt response to the above questions as time is of the essence. We look forward to working with you to resolve all matters identified in the audit.

Sincerely,

Tony McDonald

W. Anthony McDonald
County Administrator

Cc: Hon. Torrey Rush
Hon. David Adams

Exhibit "D"

RICHLAND COUNTY
GOVERNMENT
Office of the County Administrator

HAND DELIVERED

December 31, 2015

Rick Reames, III, Esquire
Director
South Carolina Department of Revenue
300A Outlet Pointe Boulevard
Columbia, SC 29214

Re: Audit of Richland County Penny Transportation Program

Dear Mr. Reames:

This letter is intended to address the portions of the audit dealing with the Small Local Business Enterprise (SLBE) expenditures and the expenditures for public information services. We have had the opportunity to examine both of these issues and we feel strongly that Richland has done nothing in error. Each issue is addressed below.

Use of Penny Tax Revenue to Fund Administrative Expenses of Penny Tax Projects

Although the Department's letter does not specifically allege that it is improper to use Penny tax revenue to fund administrative expenses of the Penny tax program, such is implied. Accordingly, the County would like to address this issue first since the expenditures in question are administrative expenditures. Ordinance No. 039-12HR, the ordinance imposing the Penny Transportation tax, provides that the Penny tax can be used to pay administrative costs of the projects. Specifically, Section 1(c) provides:

> Subject to annual appropriations by County Council, sales and use tax revenues shall be used for the costs of the projects established in this Ordinance, as it may be amended from time to time, **including, without limitation, payment of administrative costs of the projects,** and such sums as may be required in connection with the issuance of bonds, the proceeds of which are applied to pay costs of the projects. (Emphasis supplied herein).

As the ordinance expressly allows for administrative expenses, the County has restricted its administrative costs in support of the Penny Program to those expenses prescribed by the U.S. Government (USG) in, *e.g.*, Code of Federal Regulations parameters such as are found in 20 CFR 667.220, which sets forth permitted administrative functions as including:

- Accounting, budgeting, financial and cash management;
- Procurement and purchasing;
- Personnel and property management;

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- Payroll, audit and general legal services;
- Oversight and monitoring of administrative activities; and
- Developing information systems and procedures related to administrative functions.

As such, the County's use of Penny tax revenue for the ordinary and reasonable administrative costs attendant to construction projects approved by voter referendum, such as those relating to recruitment of qualified contractors and public information services to disseminate information about the projects to the public, are squarely embraced in the administrative oversight of the Program, consistent with the USG definition of administrative costs and functions. Therefore, the expenses cited by the Department audit are ordinary and reasonable administrative expenses properly chargeable to the Penny Transportation tax. Below is a detailed review of those expenses.

SLBE Expenditures

The Department's audit references the County's exclusive use of the Penny Transportation tax to fund the SLBE program. As noted in your letter, the SLBE initiative was created by ordinance in September 2013 to provide a race and gender neutral procurement tool whereby small local firms that are located in Richland County and paying Richland County taxes will get a better opportunity to participate in County contracts such as those relating to the Penny Transportation tax. This program not only benefits small business owners in Richland County, but it also provides a larger and more diversified pool of qualified, skilled contractors in the marketplace available to the County.

Critically, to date, all contracts awarded through the SLBE Program have been solely related to the Penny tax. Thus, the use of the Penny tax to fund it. It is Richland County's plan to expand the use of the SLBE program to all procurements within the County, following its initial use on transportation projects. It is also Richland County's plan to allocate the costs of the SLBE program once its use is expanded to other procurements, and ultimately to support the SLBE Program through cost allocation across the range of SLBE efforts.

Tools to aid in the recruitment of qualified contractors are an ordinary and necessary administrative expense to any project the County undertakes. The Penny Transportation Tax Program has currently completed 74 construction projects and has 11 projects ongoing. Approximately 40% of certified SLBE firms are participating in a Richland County Penny Transportation contract. This has allowed the County to concurrently engage in a number of transportation initiatives, thereby bringing these improvements to fruition in an expeditious manner.

While the County's use of the Penny tax to fund only those SLBE Program contracts directly related to Penny Projects is proper under the County's ordinance, the voter referendum and the above-cited CFR administrative costs and functions definitions, the County shares the Department's opinion that it is appropriate for public expenditures to be paid from appropriate funding sources. To that extent, as is the case with all County expenditures, SLBE Program expenses will continue to be monitored to ensure that only Penny-related efforts will be paid for from Penny tax revenue, and to the extent any non-Penny expenses are incurred, especially as the

Program develops additional procurement areas, such expenses will be paid for from the County's general fund or other appropriate non-Penny sources. In this regard, it is important to note that the Penny Transportation tax did not fund all of the SLBE start-up costs as the Department suggests. For example, the cost for renovation of the office space being used by the SLBE Program was paid for from the County's general fund, and not from the Penny tax. The County will continue to fund the operating expenses of the SLBE program with the Penny tax until the Program is expanded to include procurements outside of the Penny tax. When that occurs, the operating expenses of the SLBE program will be allocated proportionately.

Public Information Services

The Department's letter references payments to two companies for public information services that it believes to be excessive and outside of the parameters of the transportation tax laws, admitting, however, that it is unclear what work has been performed in that no documentation detailing the work was provided. As we understand it, the Department never requested documentation detailing the work. Thus, it is understandable that the Department would be unable to determine the degree, if any, of excessiveness or departure from the relevant tax law parameters.

After the passage of the Penny tax ordinance and the referendum, the County began to look at its current staffing and resources to determine what functions could be handled in house and what functions would need to be provided for through contract. Given the breadth of the twenty-two year omnibus Penny Transportation Program, the County quickly realized that the public information needs relating to these transportation projects would be massive and would overwhelm the County's small in-house public information office.

It was also the intent of Richland County to pursue federal funding to accompany the Penny tax for these major transportation projects. Federal funding necessitates that the projects be developed to federal standards which encompass compliance with the National Environmental Policy Act (NEPA), Federal Regulations found at 23 CFR Parts 771 and 772, as well as any related guidance promulgated by Federal Highway Administration (FHWA). These various federal laws and regulations require public involvement such as multiple public outreach meetings on individual projects, public interaction for specified comment periods, responses to comments received as a result of public meetings prior to the commencement of right of way acquisition efforts, and interagency coordination with SCDOT, FHWA, DHEC, DNR, SHPO, and USACE. The sheer volume of work that this level of public involvement necessitates is well above that of a typical county or municipality. Further, the public information work is of a defined duration rather than ongoing and, therefore, could best be handled on a contract basis. It should be noted that the County successfully applied for federal funding and has thus far acquired in excess of twelve million dollars for the program. It should also be noted that it is not uncommon to hire outside public relations personnel to assist with defined projects. This practice of outsourcing work is common for other programs, municipalities, counties, and state agencies in an effort to accomplish these additional duties without permanently or temporarily increasing in-house staff.

To meet its staffing needs for the transportation projects, Richland County thereafter entered into a Management Agreement with the Program Development Team (PDT), which, in turn,

contracted with the public information firms and others. Please be aware that Richland County contracted with the PDT, not with the public information firms individually. Richland County essentially contracted for a package of services from the PDT and the PDT negotiated and entered into contracts with various contractors, including the public information firms at issue. Pursuant to the PDT agreement, the following are the public information duties relating to the Penny Transportation tax:

A. Management
   1. Develop a public information plan for communicating the program to the public and stakeholders, providing timely information on program issues, fostering public participation, and encouraging public input.
   2. Develop a Crisis Communication Plan that will be used in the case of an emergency.
   3. Develop an Internal Communication Plan for this program.
   4. Provide monthly program reports.
   5. Coordinate and respond to public inquiries and public records requests.
   6. Coordinate with the Comet and their use of the transportation penny funds.
   7. Coordinate with Richland County Clerk of Council Office and the County's Ombudsman Office to address questions and/or comments from the general public.
   8. Coordinate with Richland County Public Information office on all public relations activities.

B. Public Relations
   1. Utilize multiple forms of print and electronic media to inform the public.
   2. Develop and maintain comprehensive mailing and contact lists for use in distributing project materials and informing stakeholders.
   3. Prepare a monthly contribution regarding the penny program for use in the County's newsletters.
   4. Develop and maintain website for the CTIP.
   5. Develop and implement display sign program for announcement of project area public meetings.
   6. Provide and maintain a dedicated contact (toll-free) phone with a message machine for public constituents.
   7. Produce short, high-impact videos when requested by the County.
   8. Coordinate, manage and oversee ribbon cuttings and any other events.
   9. Develop, implement, and manage an information center within the program team office location.
   10. Maintain a database of media personnel for use to distribute press releases, breaking news and program highlights.

C. Community Relations
   1. Develop plan for community meetings.

2. Moderate meetings and, as necessary, provide written responses to comments received.
3. Coordinate with Richland County staff in presenting information to community, civic and special interest groups.
4. Develop and implement communication plan for residents and businesses in project areas to include discussion of construction activities; gathering comments; and addressing concerns.
5. Conduct networking meetings with prime contractors and DBE/local contractors.

D. Media Relations
1. Utilize partnerships with media outlets, including the County's government access channel.
2. Maintain positive relationships with media outlets to ensure accurate messaging and publicity of the program.

E. Coordination of Public Meetings and Public Hearings
1. Develop a public involvement plan that will:
    a. Inform the public about all aspects of the program and where they can turn for answers.
    b. Educate the public about specific projects and how they will impact them.
2. Coordinate with County staff and other agencies as needed to schedule and plan public meetings, public hearings, groundbreaking ceremonies, and other events and meetings as requested by County.
3. Identify stakeholders for public meetings and public hearings.
4. Meet with members of County Council to provide updates on public meetings and public hearings and receive input on which stakeholders to invite, which venues to use and the role of the councilmember on each agenda.
5. Advertise/publicize public meetings and public hearings a minimum of 14 days prior to meeting.
6. Coordinate participation of required speakers for public meetings and hearings.
7. Conduct public meetings and public hearings.
8. Record public meetings and public hearings upon request of the County.
9. Prepare reports from public meetings and public hearings.
10. Develop written responses to comments from public meetings and public hearings.

F. Stakeholder Meetings
1. Develop and coordinate a Core Stakeholder Working Group consisting of PDT, Richland County Government, Greater Columbia Chamber of Commerce, Citizens for a Greater Midlands, Transportation Penny Advisory Committee, SCDOT, the City of Columbia, and other key stakeholders.

2. Provide presentations to members of Core Stakeholder Working Group.

The County's contract with the PDT was a lump sum contract to provide 29 positions, of which the public information component comprised 4 of those positions (not 3 as described in the audit report). All payments are made directly to the PDT and the PDT is responsible for paying the contractors and for insuring that the contractor provides the deliverables identified in the management agreement. In negotiating the contract for the PDT, County officials estimated a fair market value salary for each of the 29 positions. To those estimated salaries, it then added a multiplier of 2.4 to account for benefits and overhead and then added a 15% profit to the PDT. These amounts are industry standards and have frequently been used by state agencies in contract negotiations. The salaries estimated for the 4 positions ranged from $55,000 to $95,000 which is approximately within the range of salaries identified in the Department's letter. Thus, the $25,000 monthly amounts billed by the PDT for the public information component were not exclusively salaries. It should also be noted that there is now a 5th position working in the public information arena at no additional charge to the county. Two of the five positions are subcontractors to the public information firms, and thus, do not report hours to the county. One can easily see evidence of their work by visiting www.richlandpenny.com. It should be noted that the website shows only a part of the work that has actually been performed. Therefore, it is our hope that this clarification of the number of positions working on this component of the PDT contract and man-hours associated with it will address the Department's initial concerns.

Conclusion

We hope that this addresses the Department's concerns relative to the two audit issues identified in the Department's letter. We will be happy to address any additional questions you may have or meet with you at your convenience. Richland County worked very hard to gain the public's trust in the Penny tax referendum and it is of utmost importance to the County that public trust and confidence are maintained. As such, we greatly appreciate the Department's thoughtful consideration of the detailed response set forth herein, and trust that it will review the Penny Program in the light of a fuller understanding this amplifying information is intended to provide.

Very truly yours,

Tony McDonald

Tony McDonald
County Administrator

cc: Hon. Torrey Rush
Hon. David Adams

Exhibit "E"

State of South Carolina

Department of Revenue

NIKKI R. HALEY
Governor

RICK REAMES III, ESQUIRE
Director

300A OUTLET POINTE BOULEVARD
POST OFFICE BOX 125
COLUMBIA, SOUTH CAROLINA 29214
Telephone: (803) 898-5040
Facsimile: (803) 896-0023
Director@dor.sc.gov

April 27, 2016

Mr. W. Anthony McDonald
Richland County Administrator
Post Office Box 192
Columbia, SC 29202

Dear Mr. McDonald:

This letter is in response to your letter dated April 8, 2016, as well as to the several meetings and discussions held with you, your staff and Chairman since that date. The Department appreciates the cooperation of your staff during the review of the Richland County Transportation Penny Tax Program.

Unfortunately, the response authorized by Council as outlined in your letter fails to bring the Penny Tax Program into compliance with the state's tax laws. While some of the proposed changes will improve accountability, the contemplated actions do not rectify a core problem of the County's Penny Tax Program – the absence of a uniform standard for determining qualifying expenditures to ensure all Penny Tax revenue is spent specifically on transportation-related projects.

The Department began its review of the County's Penny Tax Program in April of 2015, reported its findings in December of 2015, and has continued to hold discussions and work with the County, including initiating and participating in two meetings as recently as April 11 and April 13. Council has had adequate time and opportunity to enact reform, yet Council has not acted to implement a common uniform standard to ensure appropriate expenditures of Penny Tax funds as recommended by the Department.

As such, the Department must take action to enforce the state's tax laws and will immediately cease allocations of revenue to the Richland County Transportation Penny Tax fund until such time as Council brings the program into compliance. As you are aware, these allocations are made monthly using state sales and use tax revenue and data collected by the Department. Under state tax law, actual distributions of funds are made quarterly, with the next distribution scheduled for early July for allocations made during April, May and June.

Fortunately, Council can easily resolve this matter by simply adopting a uniform standard as recommended by the Department. As outlined and discussed with Chairman Rush and County staff during our meeting on April 13, Council's adoption of a uniform standard that ties expenditures to the projects would remedy the majority of non-compliance concerns.

I understand that at its meeting on April 19, 2016, Council authorized staff to review the tax capitalization approach the Department set forth as the common accounting practice to ensure expenditures are tied to the actual projects. While this is a positive step, Council has neither committed to nor provided a timeline for adopting a uniform standard. The effect is the continued expenditure of Penny Tax funds without the safeguard and assurance the standard would provide.

It is the Department's intention to be open and available and to continue to work with the County on this point to achieve compliance. However, the Department has a responsibility under the law to monitor Penny Tax collections, and absent further action, the Department's monthly allocation and the resulting July distribution of Penny Tax funds will be zero. Should emergency funding become necessary for continued operation of the COMET bus system, I invite your staff to communicate with Department staff so that limited emergency funding may be allocated for scheduled distribution to ensure uninterrupted service of the bus system.

I regret the Department has been forced to take this step as a result of the Richland County Transportation Penny Program's continued violation of the express laws as passed by the General Assembly. The Department is obligated to uphold the state tax laws, yet stands ready to work together with Council to bring the program into compliance as expeditiously as possible.

I appreciate your attention to this matter. I am available to discuss the details at any time and to continue to facilitate actions that promote compliance with the law.

Yours very truly,

Rick Reames III
Director

RRIII/afw

Cc: The Honorable Torrey Rush, Chairman, Richland County Council
The Honorable Greg Pearce, Vice Chair, Richland County Council
The Honorable Bill Malinowski, Member, Richland County Council
The Honorable Joyce Dickerson, Member, Richland County Council
The Honorable Damon Jeter, Member, Richland County Council
The Honorable Paul Livingston, Member, Richland County Council
The Honorable Seth Rose, Member, Richland County Council
The Honorable Jim Manning, Member, Richland County Council
The Honorable Julie-Ann Dixon, Member, Richland County Council
The Honorable Norman Jackson, Member, Richland County Council

Exhibit "F"

Proposed Actions to be Implemented in Response to SCDOR 2-24-16 Letter

****Please note that these proposed actions are a framework for discussion, and no action will be taken until approved by Richland County Council.****

March 24, 2016

Small Local Business Enterprise Program (SLBE)

Richland County will implement a cost allocation of SLBE expenditures for future SLBE program expenditures. Direct start-up costs will be reviewed and refunded from the general fund. Further, a review will be performed of all SLBE operating expenses to date, and any expenses not attributable to the Transportation Penny will be refunded from the general fund. Future funding for the SLBE program will come from the general fund, with cost allocations to departments utilizing the program.

Public Information

Richland County will convert the Public Information component of the PDT contract to a task-by-task expense moving forward in the form of a task oriented table for public information (Attachment A). Expenses will be reimbursed per meeting/task conducted, and other public information specific tasks will be reimbursed likewise. Based on the approved tasking table (utilizing SCDOT guidelines), a review will be performed for public information expenses to date, and anything not attributable to a specific task identified in the table will be refunded from the general fund.

Independent Audit

While Transportation Penny tax funds were included in the most recent Comprehensive Annual Financial Reports conducted by the County, Richland County will also conduct a financial audit specifically of the Transportation Penny program. The scope will be provided to the TPAC for review and comment prior to commencement of the audit. The audit scope will include: 1) a financial audit of the Transportation Penny account(s); and 2) a financial audit of the PDT contract in accordance with the scope of review outlined in the County's contract with the PDT.

Future Expenditures of Penny Tax Funds

Richland County currently follows Governmental Accounting Standards (GAS), and will continue to follow those standards. The County will convert the public information tasks included in the PDT contract from its current lump sum to task basis. This method is compliant with state and federal law, and allowable state and federal contracting methods. In addition, the county will continuously assess any Transportation Penny lump sum contracts to ascertain if a similar conversion could save taxpayer funding, which is always an objective in our contracting processes. Finally, the financial audit of the Transportation Penny program should further provide transparency and identify any areas for improvement.

Attachment A

Public Information Scope of Work and Fee Restructuring

Convert the lump sum Public Information portion of the PDT contract to individual task order assignments. Each of the following items would have individual scopes and pre-negotiated, established fees based upon SCDOT guidelines. Based on project development and schedules, specific items would be authorized on an as-needed basis.

Project Specific Functions

- Public Information Meetings
- Speakers Bureau presentations
- Press releases/media notices
- Groundbreaking events/ribbon cuttings
- Prepare videos Update and maintain mailing lists
- Update and maintain website, toll-free phone
- Prepare and provide bi-weekly and monthly reports
- Manage social media tools to include Facebook and Twitter
- Paid advertisements

Program Specific Functions

- Annual State of the Penny Meeting
- Quarterly Report
- Annual Report
- Paid advertisements

Coordinate additional work items with County PIO staff, including additional media coordination to include television, radio and print interviews, advertisements, program awareness campaigns, and paid advertising.

Exhibit "G"

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211-9979

April 1, 2016

VIA ELECTRONIC MAIL

Robert Coble, Esquire
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201

Re: Richland County Penny Tax

Dear Mr. Coble:

Thank you for your March 24, 2016 communication. We have carefully evaluated your proposal and request that the following be implemented:

A. Proper Expenditure of Penny Tax Funds

The Department believes that the March 24, 2016 proposal as stated lacks specificity with regard to the permissible purposes for which Penny Tax money may be used. S.C. Code Ann. § 4-37-30, the enabling statute for the Penny Tax Program, specifically provides that Penny Tax money may be used for:

> highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects;

The statute continues to require that any proposed ordinance for the implementation of the Penny Tax must set forth:

> the estimated capital cost of the project or projects to be funded in whole or in part from proceeds of the tax and the principal amount of bonds to be supported by the tax;

Id. (emphasis added).

This is the basis for the Department's proposal that Richland County (County) utilize the same principles as those provided in IRC § 263 and IRC § 263A for determining what costs qualify as capital costs of the transportation project assets and as a template for how Penny Tax funds are to be spent. Simply put, there should be no money expended out of the Penny Tax Fund for costs other than those costs that are considered capital costs of a specific transportation-related project. It is important to realize that the IRC § 263 and IRC § 263A standards are to be used to determine when an expenditure of Penny Tax Funds is appropriate.[1] No matter what accounting method/system for reporting purposes is used, the expenditure of funds must adhere to these spending guidelines.

The County seeks to continue to rely upon Governmental Accounting Standards (GAS) as the standard for how Penny Tax Funds can be spent under the statute. To that end, please provide us with any information on how capital cost is determined under GAS and how the treatment of capital assets and capital costs under GAS may differ from IRC 263 and IRC 263A principles.

Going forward, Penny Tax Funds should only be used for the acquisition, building and improvement of capital infrastructure assets as specified in § 4-37-30 (highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related project facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects) and for expenditures/costs that would be considered capital costs associated with the transportation related facilities.

Action Items:

1. Provide any information on how capital costs are determined under GAS and how the treatment of capital assets and capital costs under GAS may differ from IRC 263 and IRC 263A principles;

2. Implement Department-approved standards to ensure that Penny Tax Funds are only being used for the acquisition, building and improvement of capital infrastructure assets as specified in § 4-37-30 and for expenditures/costs that would be considered capital costs associated with the transportation related facilities.

B. Small Local Business Enterprise Program (SLBE)

SLBE program-wide costs, to include start-up costs and general operational and administrative costs cannot be made to fit within the capitalization model. Therefore, SLBE start-up costs such as program administration ($200,000 for legal services paid to Maryland law firm), acquisition of a software management system ($122,000), and website development ($13,000) should be reimbursed from the General Fund and the penny tax fund credited with

[1]The five page Capitalization Period of Direct and Indirect Costs guide from the IRS furnished earlier provides an excellent guideline for determining what expenditures qualify as capital costs under these standards. Note that we are not addressing how expenditures are reported for financial reporting purposes but are addressing the proper standard to determining what qualify as capital costs associated with transportation projects (as stated in the statute) for purposes of determining proper expenditures to be paid out of Penny Tax funds.

such amounts. This list of "general" costs is not exhaustive. For instance, "mentoring" costs incurred as part of the SLBE program should largely be repaid. The estimated $219,000 in personnel costs incurred at the time of the audit should be reviewed and any costs not directly related to a specific capital project should be reimbursed from the General Fund. It is too broad to say that "SLBE operating expenses" will be reviewed and "expenses not attributable to the Transportation Penny will be refunded." Allowable Penny Tax costs must relate directly to the acquisition, building or improvement of specific capital assets in order to be paid out of Penny Tax funds. With this template in mind for Penny Tax funds, the Department appreciates the County's commitment to ensure that "future funding for the SLBE program will come from the general fund, with cost allocations to departments utilizing the program."

Action Items:

1. Reimburse the Penny Tax Fund for SLBE start-up costs, including but not limited, to program administration ($200,000 for legal services paid to Maryland law firm), acquisition of a software management system ($122,000) and website development ($13,000) from the General Fund;

2. Review all SLBE personnel costs charged to-date to the Penny Tax Fund, to include costs attributable to "mentoring," and any costs which are not directly related to the acquisition, building or improvement of specific capital assets should be reimbursed from the General Fund;

3. Future funding for the SLBE program should come from the General Fund. No cost may be allocated to the Penny Tax Fund unless the costs directly relate to the acquisition, building or improvement of specific capital assets.

C. Public Information

As a general rule, marketing, advertising and public relations costs are not considered capital costs. However, some of these expenses may be considered mixed-use costs that may be included in capital costs. While some adjustments are necessary, the proposal to convert the Public Information component of the PDT contract to a task-by- task expense may be acceptable to the extent that such expenses would be considered capital costs. In order to be an appropriate expenditure of Penny Tax Funds, a task must relate to the acquisition, building or improvement of a specific capital project as provided in S.C. Code Ann. § 4-37-30(A)(1)(a) and must be part of the estimated capital cost of such project as provided in § 4-37-30(a)(1)(c) using the standard set forth above. As such, the list of tasks contained in Attachment A to the County's proposal must be scrubbed to only encompass those tasks that can readily be identified with a specific project and that might be of the type that would be capitalized. For instance, the expense associated with a Public Information meeting for a particular project may be an acceptable expenditure while costs associated with "update and maintain website and toll free phone" are too amorphous and general. Further, the activities listed under the heading "Program Specific Functions" all appear to be very general and not easily relatable to a specific capital project. Nevertheless, as the excessive amounts of money the County was projected to spend on Public Information contracts was a major concern; this "task oriented" approach is a great improvement. To guard against excessive expenditures, however, some recognized guideline should be consulted to determine a reasonable amount the County should spend on

the identified tasks. The Department appreciates the County's commitment to review public information expenses incurred to date and reimburse for expenses not attributable to specific transportation projects.

Action Items:

1. Convert the existing Public Information component of the PDT contract to the task-by-task model as proposed;

2. Adopt the modified Schedule A ("scheduled tasks") attached hereto for the listing of allowable public information tasks to the extent the task relates to the acquisition, building or improvement of a specific capital project and further, to the extent the cost of that task was part of the estimated capital cost of such project as provided in S.C. Code Ann. § 4-37-30(a)(1)(c);

3. Assign reasonable costs to be allowed for each scheduled task using a recognized guideline;

4. Review Public Information costs charged to the Penny Tax Fund to date and reimburse the Penny Tax Fund for costs not attributable to scheduled tasks from the General Fund; even if a cost can be attributed to a scheduled task, reimburse the Penny Tax Fund for any amounts paid which exceed the allowable cost for a scheduled task.

D. Independent Audit

The proposal regarding an independent audit is largely acceptable provided that the financial audit of the Project Development Team (PDT) contract strictly adhere to those provisions contained in the contract between the PDT and County relating to the existence of overcharges/overspending for services (F. 1-8), gratuities or kickbacks, conflicts of interest or other improper relationships between parties. (See, Section XV, General Provisions, subsections, F. 1-8; G. 1-2). The PDT contract also makes the books and records of the PDT's subcontractors subject to this same scope of review and any audit must extend to those subcontractors.

Further, we recommend that the County enact an Ethics Policy, (or revise any existing ethics policy) acceptable to the Department, to prohibit conflicts of interest and commit to correct any contractual relationships that violate the policy.

Action Items:

1. Arrange for the conduct of an independent financial audit of the PDT contract with the County, the scope of which includes the contract provisions addressing the existence of overcharges/overspending for services (F. 1-8), gratuities or kickbacks, conflicts of interest or other improper relationships between parties. (See, Section XV, General Provisions, subsections, F. 1-8; G. 1-2) and extends to the books and records of the PDT's subcontractors;

2. Make the results of any independent financial audit of the PDT contract available to the public;

3. Adopt appropriate standards (or revise existing standards), acceptable to the Department, to guard against conflicts of interest. The County must commit to correct any contractual relationships that violate these standards.

Provided the above proposals are acceptable, the Department envisions a thirty (30) day implementation period to make the necessary changes to the Penny Tax Program. We believe that these changes will bring the County's Penny Tax Program into compliance with state law and potentially serve as a template for the administration of transportation funds for other counties to follow. More importantly, these changes should give the citizens of Richland County a level of confidence that county government is working to bring transparency to the Penny Tax Program. If the needed changes are made by the end of the implementation period, the Department will be willing to work with the County on some public statement regarding the progress made by the County.

Please advise whether the aforementioned Action Items are acceptable as soon as possible.

Yours truly,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

Milton G. Kimpson
General Counsel for Litigation

Modified
Attachment A

Public Information Scope of Work and Fee
Restructuring

Convert the lump sum Public Information portion of the PDT contract to individual task order assignments. Each of the following items would have individual scopes and pre-negotiated, established fees based upon SCDOT guidelines. Based on project development and schedules, specific items would be authorized on an as-needed basis.

Project Specific Functions

- Public Information Meetings
- Speakers Bureau presentations
- Press releases/media notices
- Groundbreaking events/ribbon cuttings
- Prepare videos Update and maintain mailing lists
- ~~Update and maintain website, toll-free phone~~
- Prepare and provide bi-weekly and monthly reports
- ~~Manage social media tools to include Facebook and Twitter~~
- Paid advertisements

Program Specific Functions

- ~~Annual State of the Penny Meeting~~
- ~~Quarterly Report~~
- ~~Annual Report~~
- ~~Paid advertisements~~

Exhibit "H"

RICHLAND COUNTY
GOVERNMENT
Office of the County Administrator

HAND DELIVERED

April 8, 2016

Rick Reames, III, Esquire
Director
South Carolina Department of Revenue
300A Outlet Pointe Boulevard
Columbia, SC 29214

Re: Audit of Richland County Transportation Penny Program

Dear Mr. Reames:

Thank you for the opportunity to provide you with Richland County's corrective action plan regarding the four areas of concern identified by the Department of Revenue ("DOR") in your February 24, 2016 correspondence. At the April 5, 2016 County Council Meeting, the Council re-affirmed its position on these items, and directed the delivery of this correspondence. Many of these items are underway, with the remainder to be fully implemented by the end of the current fiscal year.

In the February 24th letter you identified four areas that DOR has concerns with and requested that the County identify what changes would be implemented to mitigate those concerns. The four items, and the corresponding corrective actions, are as follows:

1. Small Local Business Enterprise Program (SLBE)
   DOR requests that Richland County ("Richland") repay from its general fund the amounts paid from Penny Tax funds for the set-up and staffing of the SLBE Program, all of which DOR interprets as operating expenditures of the County and does not specifically relate to transportation facilities.

   To address this concern, Richland County will refund any SLBE direct start up costs previously paid for by the Transportation Penny Fund. Such refund will be accomplished in the FY 17 budget and will come from the County's general fund. In addition, the County will implement a cost allocation of SLBE expenditures for all future SLBE Program activities. To be clear, future funding for the SLBE Program will come from the general fund, with cost allocations to departments utilizing the Program. Finally, a review is being performed of all SLBE operating expenses to date, and any expenses not attributable to the Transportation Penny will be refunded from the general fund in the FY 17 budget.

2. Public Information

DOR requests that Richland repay from its general fund that portion of public relations expenditures that were paid from Penny Tax funds that do not specifically relate to transportation facilities. To the extent that Richland determines that part of the public expenditures were related to specific transportation facilities and not general public relations concerns or advertising, DOR requests that Richland provide DOR with substantiation and the basis on which it believes such expenditures are associated with transportation specific projects.

To address this concern, Richland County will convert the Public Information component of the Program Development Team ("PDT") contract to a task-by-task expense moving forward using a task oriented table with specific compensation for the specified tasks (Attachment A). Expenses will be reimbursed per meeting/task conducted, and other public information specific tasks will be reimbursed likewise. Based on the approved tasking table consistent with SCDOT contract compensation for like tasks, a review will be performed of public information expenses to date, and any such expense not attributable to a specific task identified in the table will be refunded from the general fund in the FY 17 budget.

3. Independent Audit

Per DOR's interpretation of Richland County ordinance No. 039-12HR, Section 1, paragraph 2, and Section 3, subsection (b), paragraph 3, DOR requests that Richland immediately engage an independent accounting firm to conduct independent audits of the Penny Tax Program for all prior years in which Penny Tax funds were expended and require companies who received funds under the Penny Tax Program to provide Richland with independent financial audits concerning such funds as well.

Although Transportation Penny tax funds were included in the most recent County-wide annual independent audits and reported in the County's Comprehensive Annual Financial Reports, Richland County will also conduct a separate financial audit specific to the Transportation Penny Program. The scope of the audit is being drafted now and will be provided to the Transportation Penny Advisory Committee for review and comment prior to commencement of the audit. The audit scope will include: (1) a detailed financial audit of the Transportation Penny account(s); and (2) a detailed financial audit of the PDT contract in accordance with the scope of review outlined in the County's contract with the PDT. The results of all audits will be made available to the public.

4. Future Expenditures of Penny Tax Funds

DOR requests that Richland immediately take corrective action to assure that future expenditures of Penny Tax funds are made solely for capital costs associated with transportation facilities and provide the public with information as to how those capital costs are to be determined.

In addressing this concern, it is important to clarify that Richland County currently follows Governmental Accounting Standards (GAS), and will continue to follow those standards. To specifically address the capitalization issue that DOR has raised, the County will convert the public information tasks included in the PDT contract from its current lump sum approach to a task-by-task approach. While both methods are compliant with state and federal law, and allowable state and federal contracting methods, this conversion should provide greater transparency for funds expended to support this task. The County will continuously assess any and all Transportation Penny lump sum contracts to ascertain if a similar conversion could save taxpayer funding, which is always an objective in our contracting processes. The County will further allocate all SLBE expenses to the department utilizing the program. Finally, the financial audit of the Transportation Penny Program will provide transparency and identify any areas for potential improvement.

We appreciate your thorough review of the County's Transportation Penny Program over the past several months. Richland County is implementing many improvements to the Program as a result of DOR's suggestions. The County will continue to assess the Program throughout its multi-year life and implement changes accordingly as potential areas for improvement are identified. We want to make every effort possible that the County delivers the Program in a manner most effective and efficient for our citizens. Maintaining public trust and transparency is paramount for Richland County in all of our endeavors, and the modifications we are currently pursuing are intended to re-establish public trust in the County's Transportation Penny Program.

Very truly yours,

Tony McDonald

Tony McDonald
County Administrator

cc: The Honorable Torrey Rush, County Council Chair
The Honorable Greg Pearce, County Council Vice Chair

Attachment A

Public Information Scope of Work and Fee Restructuring

Convert the lump sum Public Information portion of the PDT contract to individual task order assignments. Each of the following items would have individual scopes and pre-negotiated, established fees based upon SCDOT guidelines. Based on project development and schedules, specific items would be authorized on an as-needed basis.

Project Specific Functions

- Public Information Meetings
- Speakers Bureau presentations
- Press releases/media notices
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- Update and maintain website, toll-free phone
- Prepare and provide bi-weekly and monthly reports
- Manage social media tools to include Facebook and Twitter
- Paid advertisements

Program Specific Functions

- Annual State of the Penny Meeting
- Quarterly Report
- Annual Report
- Paid advertisements

Coordinate additional work items with County PIO staff, including additional media coordination to include television, radio and print interviews, advertisements, program awareness campaigns, and paid advertising.

Exhibit "I"

LOCAL APRIL 29, 2016 7:10 PM

Richland Council gets grim answers to impact of meeting penny tax demands

HIGHLIGHTS

County's general fund would take $3 million annual hit to pay for some expenses now paid by penny tax

Department of Revenue says costs unrelated to specific projects can't be paid by the penny

Council members continue to balk at DOR's assertion of authority to demand changes, withhold funds



BY SARAH ELLIS
sellis@thestate.com

RICHLAND COUNTY, SC — Richland County Council had a litany of questions and concerns at a Friday work session relating to what one councilman described as the "hostage situation" with the county's transportation penny sales tax funds.

Council learned it would cost more than $3 million from the county's annual general fund budget - separate from the penny tax fund - to cover costs that the state Department of Revenue says should not be paid for by the penny sales tax.

Council members were uncertain whether they also might have to repay from the general fund the nearly $10 million that have already been spent that DOR says shouldn't have been paid by the penny.

But they don't yet have all the answers.

At issue are "program costs" associated with the transportation improvement program, or costs that do not directly relate to a specific transportation project. Examples of these costs include portions of the transportation department's salaries and the entirety of a public information website that details plans for the program's projects as well as financial and progress reports.

Earlier this week, DOR told the county it would withhold further allocations of penny sales tax collections until the county changes its accounting practice to ensure that only project-specific costs are paid for by the penny tax.

Besides the possible hit to the county's property-tax-backed general fund, stopping the flow of penny tax revenue from the county would have a negative impact on the county's future ability to borrow money against the penny tax, attorneys told council.

"If there's a chance the penny would be withheld from y'all in the future, then that's a risk factor that will have an impact," said Frannie Heizer, an attorney with the McNair Law Firm who works with the county on borrowing money. "The phone call we got yesterday was from a very nervous investor."

The county has enough penny funds in the bank – roughly $110 million – to pay off debt and continue current program operations for about nine months if the county does not come into compliance with the standards DOR demands and penny tax funds continue to be withheld from the county, the county's chief financial officer, Daniel Driggers, estimated.

Council members discussed their feelings that many of the costs being pointed to as not project-specific are still necessary to the overall viability of the penny program and, therefore, should justifiably be paid by the penny.

"Isn't it somewhat logical to say that without having these projects that must be done, we wouldn't need a program or we wouldn't have the rest of the program costs?" Councilman Bill Malinowski said. "So aren't they tied together? We need them all."

Expressing frustration at the overall situation, council members continued to question the authority of DOR to demand the changes it has and to withhold the county's penny revenues.

"What specific authority or other statute has the Department of Revenue cited that they are using to request Richland County to make the changes that they are?" Malinowski said. "But they're at the point where they're saying, 'Do it my way, or else.' ... A hostage situation."

For months, county attorney Larry Smith told council, the county's lawyers have asked DOR "to be more specific" with the legal grounds it stands on.

"We have attempted again and again to have them be more specific about what laws (DOR director Rick Reames is) referring to," Smith said. "But what we get is a generalization and a conclusion that (some expenditures are) not in compliance without specifically saying, 'These are the laws we're referring to.'"

When County Council meets again Tuesday, members will continue to try to move toward a resolution in the best interest of taxpayers on the penny program, county officials said in a late afternoon press release.

Reach Ellis at (803) 771-8307.

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COMMENTS



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New "half-bike" could be next urban Hipster hit

In a busy city or when taking public transport, an ordinary bike can take up quite a bit of space. Berlin-based inventor Felix Kruschardt has come up with the Halbrad, or "half-bike".

By Connatix

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO.: 16-CP-40-3102
Richland County, South Carolina, Plaintiff, v. The South Carolina Department of Official Capacity as its Director Defendants/Third Party Plaintiff, v. Richland PDT, a joint venture consisting of M.B. Kahn Construction Co., Inc., ICA Engineering, Inc., And Brownstone Construction Group, LLC, as a unit and individually, Third-Party Defendants.	)	MEMORANDUM IN SUPPORT OF DEFENDANTS/THIRD PARTY PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF OR IN THE ALTERNATIVE FOR THE APPOINTMENT OF A RECEIVER

RICHLAND COUNTY
FILED
2016 JUN 24 PM 4:39
JEANETTE W. McBRIDE
C.C.P. & G.S.

COMES NOW, the Defendants/Third-Party Plaintiffs South Carolina Department of Revenue and Rick Reames, III, its Director, in his official capacity (collectively "Department") and submit the following memorandum of law in support to the Department's Motion for Injunctive Relief or, in the alternative, for the Appointment of a Receiver:

INTRODUCTION

Pursuant to S.C. Code Ann. § 12-4-10, the Department of Revenue was created "to administer and enforce the revenue laws of this State; administer and enforce licensing laws and regulations relating to alcoholic liquors, beer and wine and assess penalties for violations thereof;

et seq., the Department has broad authority to facilitate tax administration, regulation, and enforcement. Pursuant to S.C. Code Ann. § 4-37-30(A), South Carolina counties, such as the Plaintiff, are "empowered to 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." S.C. Code Ann. § 4-37-30(8) 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." The Department'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 "[t]he Department of Revenue shall administer and enforce the provisions of this chapter [Chapter 36]."Pursuant to S.C. Code Ann. § 4-37-30(5)(b), the Department is given the authority to terminate the sales and use tax (Penny Tax) at issue here if, prior to the end of the maximum time allotted for the tax, the Department "determines that 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." "Where a special fund is created or set aside by statute for a particular purpose or use, it must be administered and expended in accordance with the statute, and may be applied only to the purpose for which it was created or set aside, and not diverted to any other purpose, or transferred from such authorized fund to any other fund." City of Myrtle Beach v. Tourism Expenditure Review Committee, 407 S.C. 298, 755 S.E.2d 425 (2014).

In April 2015, the Department audited the Plaintiff's Penny Tax Program which had been established under the authority of the Optional Methods of Financing Transportation Facilities Act, S.C. Code Ann. § 4-37-10, et seq. ("Penny Tax Act" or "Act"). The Penny Tax Act allows counties to impose a one-percent sales and use tax on sales of tangible personal property, the

proceeds of which are to be used for the construction and/or acquisition of transportation-related facilities. The Department's audit found evidence of the unrestrained expenditures of Penny Tax funds on various costs, many of which had either no relation to the acquisition or construction of any transportation-related facility as required by the Act, or were wildly excessive in relation to the scope of the services delivered. Furthermore, there was substantial evidence of self-dealing and improper relationships between decision-makers and contractors. The Plaintiff's use of Penny Tax Funds for purposes not directly related to the acquisition and/or construction of "highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects" as specified in § 4-37-30 is improper, illegal, and beyond the scope of the Act.

The Department submits that the Plaintiff must adopt and implement a uniform standard, such as Internal Revenue Code 263/263A, to determine whether certain and various costs are eligible to be paid for out of Penny Tax Funds. This will not require the Plaintiff to abandon its current government-based accounting method; IRC 263/263A, or another such standard, will simply be used to determine whether a cost may be paid for using the Penny Tax funds.

The Department has met with, and discussed its concerns with the Plaintiff on numerous occasions. (Affidavit of Jerilynn VanStory, paras. 4, 8 ; Affidavit of Deana West, paras. 5 – 7) Nevertheless, the Plaintiff continues to rebuke the Department's efforts to impress upon the Plaintiff the requirement that it adopt some uniform standard to determine the propriety for expenditure of tax funds, and appropriate auditing procedure, so as to ensure compliance with requirements of the statute(s) and the Penny Tax Act. Rather than come into compliance, the Plaintiff has instead chosen to file the instant lawsuit, in an apparent effort to exculpate itself

from any oversight as to the expenditures currently being made by the Plaintiff and Third-party Defendants. The present Motion, by the Department, seeks to enjoin such unlawful expenditures and economic waste, either directly by way of an Injunction, or in the alternative, to Appoint a Receiver so as to marshal and direct the legal and appropriate expenditures of the Penny Tax Funds.

FACTUAL BACKGROUND

On or about July 18, 2012, the Plaintiff enacted Ordinance No. 039-12HR (County Ordinance) which provided for the imposition of a one percent sales and use tax pursuant to the Penny Tax Act upon approval of said tax by referendum. The proceeds of the one percent sales and use tax are to be used in accordance with the statutory restrictions imposed by the General Assembly as outlined in the Act.[1] After voter approval of the referendum, the sales and use tax became effective in Richland County on May 1, 2013. The Plaintiff's Penny Tax, authorized to run for twenty-two (22) years, will last another 19 years and will raise over one billion ($1,000,000,000) dollars for use as specified under the Act.[2]

The Plaintiff subsequently initiated the process to hire a program development team (PDT) to manage its Penny Tax Program.[3] The Plaintiff initially sought to procure a PDT

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[1] As explained in the Department's Answer, Counterclaim and Third Party Complaint, the Plaintiff's County Ordinance allowed the use of Penny Tax Funds for purposes the Department believes are inconsistent with the enabling Act such that the County Ordinance is void on its face or has been applied by the Plaintiff in an illegal manner.

[2] The Ordinance specifies that the tax will raise $1,037,900,000 over the course of 22 years beginning May 1, 2013.

[3] The Plaintiff's PDT is not the same as a Transportation Authority provided for under S.C. Code Ann. § 37-4-10. The primary difference between a PDT and a Transportation Authority appears to be the level of control retained by the Plaintiff under the PDT model. Pursuant to S.C. Code Ann. § 4-3-20, a Transportation Authority "...has all the rights and powers of a public body, politic and corporate of this State, including, without limitation, all the rights and powers necessary or convenient to manage the business and affairs of the authority

through a Request for Proposal (RFP) under Richland County Code, Section 2-600. This method allowed for the evaluation of proposals by an independent Review Committee ("Committee"). Here, the Committee performed its duties, scored the applications for the PDT contract, and ranked the proposals. The Plaintiff's procurement ordinance thereafter required that it enter into negotiations with the highest ranking applicant and then, in the event those negotiations did not result in a contract, initiate negotiations with the next highest ranking applicant. Instead, the Plaintiff began negotiations with the third-ranked applicant, third-party defendant ICA Engineering Company (ICA) and ultimately awarded the PDT contract to ICA. (See Affidavit of Tim Donovan, paras. 7-9).

After a higher ranked company filed a protest to challenge the contract award to third-party defendant ICA, the Plaintiff withdrew the contract awarded to ICA and amended the applicable ordinance to grant itself the authority to exempt all Penny Tax contracts from standard procurement rules, and also provided that the selection procedures were exempt from provisions to protest contract awards. (Affidavit of Tim Donovan, para. 8). Using an abbreviated

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and to take action as it may consider advisable, necessary, or convenient in carrying out its powers including, but not limited to " (1) have perpetual succession; (2) to sue and be sued; (3) to adopt, use, and alter a seal; (4) to make and amend bylaws for regulation of its affairs consistent with the provisions of this chapter; (5) to acquire by gift, deed or easement, purchase, hold, use, improve, lease, mortgage, pledge, sell, transfer, and dispose of any property, real, personal, or mixed, or any interest in any property, or revenues of the authority as security for notes, bonds, evidences of indebtedness, or other obligations of the authority; (6) to borrow money, make and issue notes, bonds, and other evidences of indebtedness; to secure the payment of the obligations or any part by mortgage, lien, pledge, or deed of trust, on any of its property, contracts, franchises, or revenues; (7) to make contracts, including service contracts with a person, corporation, or partnership including, without limitation, the South Carolina Department of Transportation, to provide the facilities and services provided herein; and (8) execute all instruments necessary or convenient for the carrying out of business." The only express limitation on the power given to a Transportation Authority appears to be that it cannot exercise eminent domain. As the Plaintiff alleges in its Complaint, it "elected to outsource the implementation of the Transportation Penny Program, but retain administrative control over the Transportation Penny Program." (Plaintiff's Complaint, para. 31). The Department respectfully submits that it is the Plaintiff's retention of control over the Program which has led to its problems.

procurement process, the Plaintiff then awarded the program development services contract to Team ICA/Brownstone/ Kahn, (third party defendant Richland PDT) despite the relative inexperience of the members with building transportation related facilities as compared to the experience of other applicants. (Affidavit of Tim Donovan, para. 9).

This abbreviated procurement procedure further fostered self-dealing and improper relationships between decision-makers and vendors. As alleged in the Department's Third-Party Complaint, the COMET/CMRTA (hereinafter "COMET") bus system is scheduled to receive at least $300 million of Penny Tax dollars over the life of the Penny Tax program to run the Midlands' bus system. The company which received the contract to operate the bus system is represented by Darryl Campbell, one of the principals of Brownstone Construction Group, LLC, who also owns a consulting company, Campbell Consulting Group. Mr. Campbell owns a one-third equity interest in Brownstone Construction Group, LLC which is one of the three firms that comprise the PDT. Mr. Campbell's consulting firm received a contract to perform public relations services for the company which received the contract to operate the Comet bus system. Furthermore, Richland PDT awarded a $1.5 million contract to Mr. Campbell's consulting firm for public relations work associated with the Penny Tax program. As such, Mr. Campbell, through his ownership interests in Brownstone and his consulting firm, is potentially being paid three times from Penny Tax funds: (1) through his one-third ownership in one of the three firms that was awarded the PDT contract, (2) through the contract involving the COMET bus system, and (3) through the $1.5 million dollar public relations contract awarded through the PDT.[4] (Affidavit of Tim Donovan, para. 11).

[4] The Department further believes that Mr. Campbell's consulting firm was paid to assist in the passage of the Penny Tax Referendum itself.

On or about April 15, 2015, the Department initiated an audit review of the Plaintiff's Penny Tax Program by correspondence directed to W. Anthony McDonald, Richland County Administrator. See Exhibit A. At that time, the Plaintiff neither objected to the Department's audit nor did it question the Department's authority to conduct the audit review. To assist with the Department's audit review, the Plaintiff provided the Department's auditors with extensive access to books and records. Further, the Department auditors were provided other information pertaining to all phases of its Penny Tax Program to include, but not limited to: its origin; implementation; and procurement procedures, practices, and operations. As the Plaintiff has indicated in its Complaint, it cooperated with the Department over a period of several months by allowing Department personnel to conduct a comprehensive audit of the Plaintiff's Penny Tax Program. (Plaintiff's Complaint, para. 49).

By letter dated December 3, 2015, the Department informed the Plaintiff of the results of its audit review. (See Exhibit B). The letter broke the findings into three (3) categories: (1) evidence of potential public corruption with regard to Plaintiff's procurement of the PDT which was referred to an appropriate law enforcement agency[5]; (2) evidence of criminal behavior relating to State taxes which was referred to the Department's Criminal Investigative Division[6]; and (3) the letter communicated the Department's concerns with the expenditure of Penny Tax funds for purposes outside the enabling statute, such as the set-up and operation of the Small and Local Business Enterprise Program (SLBE) and the obligation of millions of dollars of Penny Tax funds on ill-defined public relations contracts.

[5] These findings were turned over to the South Carolina Law Enforcement Division (SLED). It is the Department's understanding that the SLED investigation is continuing.

[6] This investigation resulted in the former Chair of County Council being convicted on three misdemeanor counts of failure to file state income tax returns and the conviction of the former President of the COMET Board on two misdemeanor counts of failure to file state tax returns.

In its December 3, 2015 letter, the Department expressed a willingness to work with the Plaintiff on those areas within its control, i.e., the improper expenditure of Penny Tax funds. See Exhibit B)[7]. Subsequent correspondence from the Plaintiff indicated a desire to explore the Department's concerns regarding expenditures. (See Exhibits C and D to Plaintiff's Complaint). In early January 2016, Department personnel met with Rob Perry, Transportation Director for Richland County and Larry Smith, Richland County's attorney. (See Affidavit of Jerilynn VanStory, para. 4). During this meeting, the Department explained the potential use of IRC 263/263A as a guide to help the Plaintiff determine which costs could appropriately be paid for using Penny Tax funds. (Id., para. 7). This meeting was followed by several meetings between Department and persons representing and/or affiliated with the Plaintiff as well as a detailed written explanation of the unlawful spending and IRC 263/263A standards in its February 24, 2016 correspondence which contained the Report on Sales and Use Tax for Transportation Facilities in Richland County. (Exhibit C). Despite the Department's good-faith attempts to bring the Plaintiff's expenditures of Penny Tax funds into compliance with state law, the Plaintiff continued to equivocate about whether it would adopt the recommended uniform standard to evaluate the propriety of the expenditure of Penny Tax funds. The Department's communication, dated April 27, 2016, stating that the allocation of Penny Tax Funds would stop until the Plaintiff adopted a uniform standard to govern expenditures was a move taken solely because of the Plaintiff's resistance to make meaningful changes in its practices, i.e., adopting any uniform standards to govern its expenditure of these funds. (Exhibit D). The Plaintiff filed this lawsuit on May 20, 2016 challenging the Department's authority to regulate its practices

[7] The matters turned over to law enforcement agencies – external and internal – need to run their normal course such that the Department could not work with the County to address these concerns.

with regard to the expenditure of Penny Tax funds and seeking to force the Department to resume allocations of tax revenue.

ANALYSIS

I. THIS COURT SHOULD ENJOIN THE PLAINTIFF FROM MAKING FURTHER EXPENDITURES OF PENNY TAX FUNDS UNTIL THE PLAINTIFF ADOPTS AND IMPLEMENTS A UNIFORM STANDARD OR OTHER APPROPRIATE SAFEGUARD TO ENSURE COMPLIANCE WITH THE STATUTORY MANDATES AND THE PENNY TAX REFERENDUM.

Pursuant to Rule 65, SCRCP, the Department is entitled to injunctive relief in this matter for the reasons set forth in the Departments' Answer, Counterclaims and Third-Party Complaint filed with this Court on June 20, 2016. "Actions for injunctive relief are equitable in nature." Denman v. City of Columbia, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). The South Carolina Supreme Court has held that, to obtain an injunction, "a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. Id. Importantly, the "[p]urpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it." Compton v. S.C. Dep't of Corrections, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011).

A. Irreparable Harm

As asserted in its Motion, the Department is informed and believes that without an injunction in place pending the merits of this hearing, the Plaintiff, and Third-party Defendants, will continue to misspend, mismanage, misappropriate, misuse, misallocate, waste, spoil, convert, curb, or otherwise restrict its unrestrained and illegal expenditure of Penny Tax Funds on "cost of projects... without limitation."

S.C. Code Ann. § 4-37-30(A)(1)(a)(i) provides that the one percent sales tax may be imposed to build transportation related projects which include "highways, roads, streets, bridges,

mass transit systems, greenbelts, and other transportation related projects and facilities including, but not limited to, drainage facilities relating to the highways, roads, streets bridges and other transportation related projects." Further, S.C. Code Ann. § 4-37-30(A)(1)(c) specifies that any county ordinance put before voters for the purposes of a referendum to impose this tax must specify the "estimated capital cost of the project or projects to be funded in whole or part from proceeds of the tax and the principal amount of bonds to be supported by the tax" (emphasis added); upon information and belief, the enabling statute does not allow for any costs other than "capital costs" to be included in a referendum to be put before the voters of a jurisdiction and further, the enabling statute does not permit, allow, or authorize Penny Tax funds to be used for costs that do not qualify as "capital costs".

The Plaintiff, acting through its County Council, enacted County Ordinance No. 039-12HR (County Ordinance) which authorized a referendum on the Penny Tax to be put before its voters for approval; according to its terms, the County Ordinance imposed a one percent sales and use tax for twenty-two (22) years, to fund "... projects at a maximum cost not to exceed $1,037,900,00.00 to be funded from the net proceeds of a sales tax" and further provided that "[the] imposition of the sales and use tax and the use of the sales and use tax revenue, if approved in the referendum, shall be subject to the condition precedent and conditions or restrictions on the use and expenditure of sales and use tax revenue established by the Act [§ 4-37-10, et seq.], the provisions of this Ordinance and other applicable law." (County Ord. §1(c)). Further, the County Ordinance provided that "sales and use tax revenues shall be used for the cost of the projects established in this Ordinance, as it may be amended from time to time, including, without limitation, payment of administrative costs of the projects and such sums as may be required in connection with the issuance of bonds, the proceeds of which are applied to

pay costs of the projects. All spending shall be subject to an annual independent audit to be made available to the public."

Pursuant to its tax administration, regulatory and enforcement authority, to include, but not limited to, S.C. Code Ann. § 12-4-387, the Department initiated an audit review of the Plaintiff's Penny Tax Program in April 2015. The Department's audit has revealed that Plaintiff's Penny Tax Program is being operated in an unlawful manner. The Department, as the state agency which collects the sales and use tax at issue here and is imbued with authority to administer, regulate, and enforce the same, has a fiduciary duty owed to the citizens and taxpayers of the State of South Carolina, and in particular, the citizens and taxpayers of Richland County, to take appropriate action to rectify the Plaintiff's unlawful use of Penny Tax Funds, or at a minimum, to not remit additional Penny Tax funds to the Plaintiff until safeguards are in place to ensure that tax dollars will not continue to be used improperly. See Affidavit of Tim Derrick (detailing past and future allocations of the Penny Tax funds to the Plaintiff).

At the conclusion of its review, the Department found evidence of the unrestrained expenditure of Penny Tax funds on various costs, many of which had either no relation to the acquisition or construction of any transportation-related facility as required by the Act or were wildly excessive in relation to the scope of the services delivered. These findings included, but were not limited to:

- Over $700,000 for the start-up of a county-wide Small Business Enterprise Program which included expenses for ordinance drafting, acquiring software, website development, consulting services, and personnel costs for continued operations;
- Contracts for undefined, amorphous "public relations" services totaling over $3,000,000, before reimbursement of expenses, over a five (5) year period;

- Expenditures on a mentor-mentee program which paid both an experienced contractor/vendor for services as well as an inexperience contractor/vendor for duplicative services;
- Contracts for the continued operation of other County services.

Furthermore, there was substantial evidence of self-dealing and improper relationships between decision-makers and contractors. The Plaintiff's use of Penny Tax Funds for purposes not directly related to the acquisition and/or construction of "highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects" as specified in § 4-37-30 is improper, illegal, and beyond the scope of the Act.

Here, the probable or irreparable harm to the Plaintiff must yield to the probable or irreparable economic harm to the State in general, and in particular to the Richland County taxpayers, as well as to the Department in its ability to administer and enforce the revenue laws of this State.

B. Likelihood of Success on the Merits

The court, in determining whether to grant a preliminary injunction, "must examine the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief." Compton, 392 S.C. at 367, 709 S.E.2d at 642. "'Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.'" Peek v. Spartanburg Regional Healthcare System, 367 S.C. 450, 456, 626 S.E.2d 34, 37 (Ct. App. 2005) (quoting Hensel v. City of North Myrtle Beach, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992)).

The Department, in addition to its tax administration, regulation, and enforcement duties regarding this tax, has the responsibility of collecting the same for subsequent allocation and distribution to counties, including the Plaintiff, for their use in accordance with the requirements of the Act, such that the Department has certain fiduciary duties owed to the citizens and taxpayers of the State of South Carolina and to the citizens and taxpayers of Richland County, in particular, to ensure that Penny Tax Funds made available to the counties are used for appropriate purposes.

To recap, the Plaintiff has used Penny Tax funds for purposes that the Department asserts are inconsistent the terms of the Penny Tax Act. These purposes include, but are not limited to:

- Over $700,000 for the start-up of a county-wide Small Business Enterprise Program which included expenses for ordinance drafting, acquiring software, website development, consulting services, and personnel costs for continued operations;
- Contracts for undefined, amorphous "public relations" services totaling over $3,000,000, before reimbursement of expenses, over a five (5) year period;
- Expenditures on a mentor-mentee program which paid both an experienced contractor/vendor for services as well as an inexperience contractor/vendor for duplicative services;
- Contracts for the continued operation of other County services.

The Act specifies that the Penny Tax was to be used to build, construct and/or acquire transportation related facilities, to include "highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects." SC Code Ann. § 4-37-30. The Department believes that the aforementioned expenses fall outside of the allowable costs under the Act such that it has a "substantial likelihood of success on the merits" with regard to its counterclaims and third party complaints

for the imposition of the requested injunctive relief. (See Affidavits of Tim Donovan and Jerilynn VanStory).[8]

C. Absence of Adequate Remedy at Law

A party's pleading must state a cause of action for injunctive relief and allege facts which show that the party has no adequate and complete remedy at law. Knohl v. Duke Power Co., 260, S.C. 374, 376, 196 S.E.2d 115, 116 (1973) (citing S.C. Pub. Service Authority v. Carolina Power and Light Co., 244 S.C. 466, 137 S.E.2d 507 (1964).

The Department's Motion for Injunctive Relief is based upon its pleadings, (to include but not limited to, the Answer, Counterclaim and Third-Party Complaint, Memorandum in Opposition to Petition for Mandamus and Injunctive Relief with the exhibits thereto and affidavits) which are incorporated herein verbatim, to the extent not inconsistent herewith, specifically including but not limited to, the following:

1. The Department is informed and believes that Richland County, by and through the Richland County Council, has engaged in a deliberate process of self-dealing, waste, spoilage, mismanagement, misappropriation, misallocation, malfeasance, nonfeasance, and misfeasance to the great injury of the public and the State of South Carolina.

2. Upon information and belief, the continued unrestrained expenditure of Penny Tax Funds for purposes inconsistent with the Act has caused and will continue to cause irreparable harm to the Department as the entity responsible for tax administration and enforcement and to the citizens and taxpayers of Richland County.

3. That the Department has proposed to the Plaintiff that it adopt a uniform standard based on Internal Revenue Code 26/263A (IRC 263/263A) to help the Plaintiff determine what expenditures are allowable costs as contemplated under the Act.

[8] The Department's Counterclaims seek a declaration that the Plaintiff's use of funds for costs other than capital costs exceed the parameters of the Penny Tax Act and are therefore improper. The Department further asserts that the Penny Tax Act itself is the sole measure of what costs are allowable inasmuch as the Plaintiff's County Ordinance is also improper.

4. That thus far, the Plaintiff has refused to adopt the Department's recommended standard or any standard at all to curb or otherwise govern its unrestrained and illegal expenditure of Penny Tax Funds on "cost of projects... without limitation."

Because the Penny Tax will be effective for over 19 additional years, during which time, over $1,000,000,000.00 is expected to be expended, the public, and the State, cannot be fully compensated in damages, and that no adequate remedy at law exists to prevent the Plaintiff's unrestrained expenditure of Penny Tax Funds and the outlined conduct and misconduct.

Accordingly, this Court should issue an Order enjoining the Plaintiff from making any further payments, expenditures, contracts, or other obligations of Penny Tax Funds unless and until the 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 capital costs under the Act and therefore, are a proper use of Penny Tax dollars.

II. THE COURT SHOULD APPOINT A RECEIVER TO TAKE CONTROL OF THE PLAINTIFF'S PENNY TAX PROGRAM.

In the alternative, the Department requests this Court appoint a Receiver to take control of the Plaintiff's Penny Tax Program, including, but not limited to, marshaling, administering and enforcing the proper expenditure of those monies in accordance with the enabling Act.

As asserted in the Motion, the Department is informed and believes that without the Appointment of a Receiver, the Plaintiff, and Third-party Defendants, will continue to misspend, mismanage, misappropriate, misuse, misallocate, waste, spoil, convert, curb, or otherwise restrict its unrestrained and illegal expenditure of Penny Tax Funds on "cost of projects... without limitation." It is telling that despite the Plaintiff being informed of the impropriety of its expenditures, and the corrective measures that are needed to address these issues, that the Plaintiff has instead chosen to operate in obscurity and is trying to lift any review, or censorship of its activities, via the present lawsuit. See Defendant's Affidavits of Deanna West and Jerilynn

VanStory.

The Plaintiff has also rebuked the Department's efforts to impress upon the Plaintiff the requirement that it adopt some uniform standard, and appropriate auditing procedure, so as to ensure compliance with requirements of the statute(s) and the Penny Tax Referendum. In the event that the Court does not enjoin the Plaintiff from its current conduct, or misconduct, potentially millions of dollars will simply vanish – to the detriment of both the State and the citizens of Richland County. Given the allegations of fraud, misuse, misappropriation, and misdealing that are alleged by the Department, and without any other adequate remedy at law, the only alternative – if not enjoined, would be for the Court to appoint a receiver.

It is not surprising, given the Plaintiff's proclivities, that the Plaintiff has challenged the Court's ability to appoint a receiver. It would seem, however, that the Court's authority, to do so, has been firmly established. "That the power to appoint a receiver is inherent in a court of equity is fully realized and approved." Southern Trust Co. v. Cudd, 166 S.C. 108, 164 S.E. 428 (1932) (quoting Pelzer v. Hughes, 27 S.C. 408, 3 S.E. 781(1887)). "The power to appoint a receiver is vested in every circuit court of the State, and nowhere in the body of the law is there any limitation upon this authority, or any repeal of the provisions of this section [former Code 1962 § 10-2301], express or implied." Petition of State ex rel. Hutchinson, 182 S.C. 369, 189 S.E. 475 (1937). The power of a court, to appoint a receiver, upon the proper circumstances – notably where there is an allegation of fraud, waste, misappropriation, has been recognized as being within the chancery powers of a court, for well over a century. See, e.g. 1) "The power to appoint receivers is inherent in courts of equity." Michigan Minerals, Inc. v. Williams, 306 Mich. 515, 11 N.W.2d 224 (1943); 2) "A receiver may be appointed where necessary to prevent fraud or to protect property against imminent danger of loss." 65 Am.Jur.2d, Receivers, § 27, p.

879; 3) "The primary purpose of a receiver is to preserve property and to dispose of it under order of the court." Band v. Livonia Associates, 176 Mich.App. 95, 439 N.W.2d 285 (1989); 4) "The phrase "allowed by law" is not limited to situations where appointment of a receiver is provided for by statute. It also refers to those cases where the facts and circumstances justify appointment of a receiver in order to afford equitable relief." Weathervane Window, Inc. v. White Lake Const. Co., 192 Mich. App. 316, 480 N.W.2d 337 (Ct. App. 1992) citing Band, *supra* at 105, 439 N.W.2d 285; 5) "A court of equity...however, by virtue of its chancery jurisdiction, possesses ample authority to create receiverships, independent of statute ...." Hamzavi v. Bowen, 126 Md. App. 492 (1999); 6) "The appointment of receivers is one of the oldest remedies known to chancery" ... "and one of the most common instances in which a receiver may be appointed is where it is necessary "to preserve, pendente lite, specific property which is the subject of litigation." Lowder v. All Star Mills, Inc., 301 N.C. 561, 273 S.E.2d 247 (1981) (citing Blum Bros. v. Girard Nat. Bank, 248 Pa. 148, 93 A. 940 (1915), and Sinclair v. Moore Central Railroad Co., 228 N.C. 389, 395, 45 S.E.2d 555, 560 (1947); "A court's authority to appoint a receiver can be derived from several sources. Court receivers are appointed by virtue of a court's equity jurisdiction or statutory authority. Receivers [also] may be provided for in a variety of contracts." Dydek v. Dydek, 2012-NMCA-088, 288 P.3d 872 (Ct. App. 2012); 8) "The appointment of receivers comes within the extraordinary powers of a court in equity...." Union Planters Nat. Bank v. East Cent. Arkansas Econ. Dev. Corp., 340 Ark. 706, 13 S.W.3d 578 (2000); 9) see further, Hillman v. Stults, 263 Cal. App. 2d 848, 70 Cal.Rptr. 295 (Ct. App. 1968) – restoration of civil rights; Grayson v. Grayson, 222 Or. 507, 352 P.2d 738 (1960) – divorce action. [9]

[9] To the extent necessary, S.C. Code Ann. § 15-65-10, also allows this Court to appoint a receiver "[b]efore judgment, on the application of either party, when he establishes an apparent

The affidavits submitted by the Plaintiff outline a number of projects that are in progress or planned using Penny Tax funds. At first glance, some or all of these projects may be allowable uses for Penny Tax funds. Notably, the affidavits do not address the costs the Department has identified as being improper for the use of Penny Tax funds. The Department contemplates that a Receiver would step in to authorize the expenditure of the Penny Tax funds only for those costs that are directly related to the building, construction and/or acquisition of transportation related facilities as allowed by the Penny Tax Act.

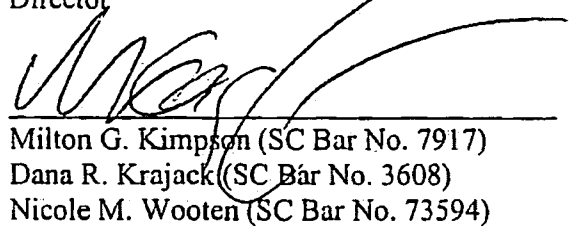
Accordingly, the Department respectfully requests this Court to issue an Order enjoining the Plaintiff, and Third-party Defendants, from making any further payments, expenditures, funding, contracts or other obligations of Penny Tax Funds unless and until the Plaintiff adopts and implements IRC §263/263A 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; *or in the alternative*, issue an Order appointing a Receiver to marshal, administer and enforce the proper expenditure of those monies, as the Plaintiff would otherwise be entitled to receive but for the mismanagement and economic waste committed by the Plaintiff and Third-party Defendants, under the Penny Tax Referendum – as referred to herein above. Furthermore, the Department requests this Court to issue an Order requiring the Plaintiff, and Third-party Defendants, to bear all associated costs of appointing a Receiver in this matter.

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right to property which is the subject of the action and which is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired, except in cases when judgment upon failure to answer may be had without application to the court." S.C. Code Ann. § 15-65-10(1). The effect of the appointment of a receiver is to take property at the instance of the moving party, out of the possession of the person in whose possession it is found and place it in the hands of a third party pending litigation. Truesdell v. Johnson, 144 S.C. 188, 142 S.E.2d 343 (1928).

Respectfully submitted,

South Carolina Department of Revenue, and
Rick Reames, III in his Official capacity as its Director



Milton G. Kimpson (SC Bar No. 7917)
Dana R. Krajack (SC Bar No. 3608)
Nicole M. Wooten (SC Bar No. 73594)
Lauren Acquaviva (SC Bar No. 100528)
PO Box 12265
Columbia, SC 29211
Phone: 803-898-5598
Fax: 803-898-5147
Milton.Kimpson@dor.sc.gov
Dana.Krajack@dor.sc.gov
Nicole.Wooten@dor.sc.gov
Lauren.Acquaviva@dor.sc.gov

JAMES E. SMITH, JR., P.A.
James E. Smith, Jr. (SC Bar No. 8733)
Dylan W. Goff (SC Bar No. 78416)
1422 Laurel Street
Columbia, South Carolina 29201
Phone: (803) 933-9800
Fax: (803) 933-9801
James@JamesSmithPA.com
Dylan@JamesSmithPA.com
Attorneys for Defendants South Carolina Department of Revenue
and Rick Reames, II, its Director

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Docket No.: 2016-CP-40-3102
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 Plaintiff.	)	
	)	
v.	)	
	)	
Richland PDT, a joint venture consisting of M.B. Kahn Construction Co., Inc., ICA Engineering, Inc., And Brownstone Construction Group, LLC, as a unit and individually,	)	
	)	
Third Party Defendants.	)	

RICHLAND COUNTY
FILED
2016 JUL 11 PM 3:45
JEANNETTE W. WOOTEN
C.C.P. & G.S.

NOTICE OF MOTION AND MOTION TO ALTER OR AMEND ORDER GRANTING PLAINTIFF'S PETITION FOR WRIT OF MANDAMUS, DENYING PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION, AND DENYING DEFENDANTS' MOTION FOR INJUNCTION AND IN THE ALTERNATIVE APPOINTMENT OF RECEIVER

TO: JAMES E. SMITH, ESQUIRE, DYLAN W. GOFF, ESQUIRE, MILTON G. KIMPSON, ESQUIRE, DANA R. KRAJACK, ESQUIRE, AND NICHOLE M. WOOTEN, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that pursuant to Rules 52(b) and 59(e), SCRCP, Plaintiff Richland County ("Plaintiff," "County" or "Richland County") files this motion for an order altering and/or amending the Court's July 1, 2016 Order Granting Plaintiff's Petition for Writ of Mandamus, Denying Plaintiffs' Motion for Temporary Injunction, and Denying the Motion of the South Carolina Department of Revenue and Rick Reames, III in his official capacity as its

director ("SCDOR, "Director" or collectively "Defendants") for Injunction and in the Alternative Appointment of Receiver ("Order"). This Motion is based upon the grounds set forth below, and the grounds presented to this Court in the County's Complaint, Motions, Memoranda, and oral argument, all of which are incorporated herein.

A. The "Public Importance" Exception to the Standing Requirement Does not Apply to Defendants.

This Court held that Defendants (SCDOR) have standing under the "public importance" exception and under the "special interest" test in *Camp v. Board of Public Works*, 120 S.E.2d 681 (S.C. 1961) (Order, p. 13-15). County respectfully submits this is an error for two reasons. First, the "public importance" exception does not apply to an executive branch administrative agency like SCDOR. Second, SCDOR's standing exists, if at all, under the "special interest" test in *Camp v. Board of Public Works*, 238 S.C. 461, 120 S.E.2d 681 (1961), but SCDOR does not meet the requirements of that test. Thus, Plaintiff respectfully requests that this Court issue an amended order holding that Defendants do not have standing to bring their Motion for Injunction and/or Receiver, Counterclaims, and Third Party Complaint.

1. There is No Public Importance Exception for a Public Agency.

The Order found that "SCDOR and the Director have standing based on the public importance exception." [4] The Order further found, in footnote 4:

> "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 *Sloan 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. South Carolina has long recognized the public importance exception to the general standing requirements."

(Order, p. 14.) However, the opposite conclusion should be reached upon a review of the case law. Research reveals no case holding that a state agency has "standing" under the public importance

exception. This is remarkable and very telling given that every state agency exists for the sole purpose of advancing the public interest as directed by the General Assembly. Every "public importance" case involves a "person," and there is no "public importance" case involving a state agency. This is not surprising because, as argued later, a state agency cannot have any standing absent authority granted by the General Assembly in a statute.

As this Court noted, the touchstone for standing is that the claimant (SCDOR here) "must have a *personal* stake in the subject matter of the lawsuit." (Order, p. 13) (emphasis added). An administrative agency like SCDOR, however, is not a "person" under the law and, therefore, it does not and cannot have a "personal stake" in anything. Only a "person" under the law, *i.e.*, natural persons and corporations, can have a "personal" stake in the subject matter of a lawsuit. SCDOR is a creature of statute and, therefore, its "stake" in anything is not "personal." Rather, any "stake" must come from the General Assembly in a statutory grant of power or duty. This is an important and controlling distinction, because the "public importance" exception for standing arises when a claimant has a "personal stake" in the matter, but that stake is no different from the stake of others. SCDOR does not and cannot have a "personal stake," so the "public importance" exception is irrelevant to any standing of SCDOR.[1] A review of the "public importance" standing cases fully supports this conclusion.

In this scenario only, standing may arise under the "public importance" *exception* to the requirement that the claimant have an injury of a "personal nature" that is different from the

[1] This Court focused solely on the "public importance" of SCDOR's unproven allegations and the need for future guidance from the court, *i.e.*, the need for a court to decide the merits of SCDOR's allegations. (Order, p. 14-15). SCDOR claims that its unproven allegations raise a matter of substantial public interest and importance. Public importance, however, is not a "stand-alone" basis for standing. Rather, it is an "exception" to some of the requirements for standing. SCDOR, however, does not meet the other requirements for standing for which "public importance" is not an exception. The courts cannot confer standing simply because there is a perceived need for a judicial ruling. Essentially, the Court's ruling allows the exception to swallow the rule.

"general nature" common to others. *See, e.g, Sloan v. Greenville County*, 590 S.E.2d 338, 346-349 (S.C. App. 2003). The exception, however does not and cannot arise unless and until the claimant first has a "personal stake" in the matter. A state agency is not a "person" under the law and, therefore, it cannot have a "personal stake" in the matter. This does not mean, however, that an agency never has standing, but its standing arises only upon it having a "stake" granted by statute as explained by the Supreme Court in *Camp v. Board of Public Works*, 238 S.C. 461, 120 S.E.2d 681 (1961).(See Section B, *supra.*)

2. There Is No Need Judicially to Create a Public Importance Exception for a State Agency as the Attorney General is Already Conferred Such Standing.

Just because Defendants do not have statutory standing to contest the actions taken by the County in expending Penny Tax Revenues and administering the Penny Tax Program does not mean the County's actions can go unchallenged *by the proper plaintiff.* In this case, as noted by the County at oral argument, the proper plaintiff would be the South Carolina Attorney General.[2]

The South Carolina Attorney General, a publically elected constitutional officer of the State (unlike the Director), typically has standing to bring suit to protect the "public interest" even in some instances where the challenged conduct is by a local government In *State ex rel. Condon*, 339 S.C. 8, 528 S.E. 408 (2000), the Supreme Court explained that "[a] quo warranto action is rooted in the common law writ designed to test whether a person exercising power is legally entitled to do so. It is an ancient prerogative right through which the State acts to protect itself and the good of the public generally, and may be used to test the legality of exercise of powers by municipal corporations." 528 S.E.2d at 411. The Supreme Court further explained that "[t]he attorney general may bring quo warranto actions in the name of the State." *Id.* The Court also

[2] The County does not concede by this argument that any claim made against the County if brought by the Attorney General would be meritorious, only that the Attorney General if any such action would be brought would be the party with standing, as opposed to a state agency.

held that "the State, provided it is acting in the public interest, has standing to bring a quo warranto action challenging the annexation of property it does not own." *Id.*

In *State ex rel. Condon* and subsequent cases, the Supreme Court has allowed the use of a quo warranto action in cases where there is a challenge to an annexation by a municipality. In fact, in *St. Andrews Public Service Dist. v. City Council of City of Charleston*, 349 S.C. 602, 564 S.E.2d 647 (2002), the Supreme Court *declined to allow a public service district* to bring an annexation challenge. The Court, in fact, overruled prior authority and held that "the only non-statutory party which may challenge a municipal annexation is the State, through a quo warranto action. In our view, the better policy is to limit 'outsider' annexation challenges to those brought by the State 'acting in the public interest.'" 564 S.E.2d at 648. This is exactly what the Defendants attempt here—to usurp any authority that the Attorney General has been expressly conferred by statute.

This is also consistent with the Supreme Court's discussion of the Attorney General's authority in *State ex rel. Condon v. Hodges*, 349 S.C. 232, 562 S.E.2d 623 (2002). By statutory authority, specifically S.C. Code Ann. § 1-7-40, the Attorney General must "appear for the State in the Supreme Court and the Court of Appeals in the trial and argument of all causes, criminal and civil, in which the State is a party or interested." In addition, as the Supreme Court explained, "[a]s the chief law officer of the State, [the Attorney General] may, in the absence of some express legislative restriction to the contrary, exercise all such *power* and *authority as public interests may from time to time require,* and may institute, conduct and maintain all such suits and *proceedings* as *he deems* necessary for *the enforcement of the laws of the State,* the *preservation of order,* and the *protection* of *public rights.*" 562 S.E.2d at 627. (Emphasis in original).

This is also consistent with the case of *State v. County of Florence*, 406 S.C. 169, 749 S.E.2d 516 (2013), where the declaratory judgment action challenging a proposed tax referendum was brought by both the State (through the Attorney General) and by SCDOR. If SCDOR had the authority to bring that action itself, it would have had no need to have the Attorney General join that action.

In sum, it is the Attorney General that has the authority to sue a political subdivision by way of a quo warranto action or potentially a declaratory judgment action where he can show that he is "acting in the public interest." However, SCDOR and its Director do not enjoy similar authority – even under the guise of public importance standing. Therefore, the Court need not create an unprecedented level of standing for a state agency where such standing is conferred by statute on the Attorney General, an elected official.[3]

B. Defendants Have No "Special Interest" That Can Confer Standing.

1. There is no "Special Interest" of Defendants as Defined by *Camp*.

The Court's second finding on standing concluded that "SCDOR and the Director have a 'special interest' in the County's use of the Penny Tax Revenues sufficient to confer standing upon Defendants' (sic) for the limited purpose of presenting the claims in its Motion, Cross Claims, and Third Party Complaint." (Order, p. 14) However, the Court erred in its interpretation of the "special interest" discussed in *Camp v. Board of Public Works*, 238 S.C. 461, 120 S.E.2d 681 (1961) in order to confer statutory standing on Defendants.

In *Camp*, the "special interest" that might be asserted by the state agency in that case was

[3] Further, the Order neither acknowledged nor discussed the case, South Carolina Public Interest Foundation and William B. DePass, Jr,. individually, and on behalf of all others similarly situated vs Richland County, 2016-CP-40-7825 ("SCPIF"), raised by Plaintiff in its argument against conferring standing on Defendants under the public importance exception. Mr. DePass is the individual plaintiff. A taxpayer or an individual would not be provided specific legislative authority to bring a suit; thus, our courts have recognized an exception that an individual may have standing if the matter rises to one of public importance. If properly proven, a taxpayer may have standing to bring a suit challenging the County's actions under the Penny Tax Program.

based upon its statutory authority. *Camp* recognized that administrative agencies have "only such powers as are conferred, expressly or by reasonably necessary implication, or such as are merely incidental to the powers expressly granted" and if they have no statutory authority ("responsibility with reference to the pollution of streams"), they have no standing. (citation omitted) (*Camp*, 120 S.E.2d at 685). Ultimately, the Supreme Court found that the agency had no statutory power and therefore no standing:

> Assuming under some circumstances one public agency may attack 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. This we do not think respondents have done.
>
> We have only recently held that an administrative agency has "only such powers as are conferred, expressly or by reasonably necessary implication, or such as are merely incidental to the powers expressly granted." *Black River Electric Cooperative, Inc. v. Public Service Commission,* 1961, S.C., 238 S.C. 282, 120 S.E.2d 6, 11. Nowhere in the Soil Conservation Act are respondents given any jurisdiction over pollution of streams or other waters of the State.

Camp, 120 S.E.2d at 684, 685 (emphasis added).

Defendants do not have a "special interest," as contemplated in *Camp*, because they do not have any statutory authority over how the County spends the Penny Tax Revenues or how it administers the Penny Tax Program. The responsibilities the Defendants are charged with under the Penny Tax Program are ministerial duties— to remit the Penny Tax Revenue to the Treasurer and to administer the levying and collecting of the Penny Tax Revenue. Neither Defendants' statutory responsibilities under the Act nor its general duties in Title 12 will be adversely affected by the County's expenditures of Penny Tax Revenues and administration of the Penny Tax Program.

2. The Statutory Provisions Cited by Defendants Confer no "Special Interest."

The Court in its standing analysis stated that "SCDOR and the Director have a level of statutory authority to oversee[4] the County's use of the Penny Tax Revenues." (Order, p. 13). The statutory provisions relied on by the Court to confer "standing upon Defendants for the limited purpose of presenting the claims in its Motion, Cross Claims, and Third Party Complaint" are S.C. Code §§ 12-4-10. 12-4-310, 12-36-2660 and 4-37-30(A)(8)[5]. (Order, p. 13-14.) The Court's reliance on these statutes for Defendants' "special interest" standing is misplaced.

The fundamental question is whether the General Assembly intended to grant SCDOR the power to enforce the spending limitations in the Act or the Ordinance. SCDOR cannot have any power absent legislative intent to grant that power. To answer this question, one must first consider the nature of administrative agencies generally, and then review the statutes pertaining to SCDOR.

The "model" for administrative agencies is to enforce laws by investigation, hearing upon notice, and administrative decision after providing an opportunity to be heard, with that decision being subject to judicial review. See, *e.g.*, S.C. Const. Art. I, § 22. This "model" comes into existence under statutes that do the following: (1) create the agency; (2) give the agency power over some matter; (3) establish enforcement procedures to be followed by the agency, (4) grant the agency power to make a decision on the matter under those procedures; and (5) grant the right to judicial review of that decision. The enforcement and decision making procedures are

[4] Neither the Defendants nor the Court in its Order define how exactly Defendants are to "oversee" the Penny Tax Program. In its plain and ordinary meaning, "oversee" means "to watch and direct (an activity, a group of workers, etc.) in order to be sure that a job is done correctly." http://www.merriam-webster.com/dictionary/oversee. July, 2016. The Order states: "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." (Order, p. 8.) Thus, an interpretation of these statutes authorizing Defendants to watch and direct the County how to administer the Penny Tax Program (as determined by Defendants) constitutes a violation of Home Rule.

[5] The Order's actual cite is ""§4-47-30(8)" which Plaintiff assumes is a typographical error.

established in one of two ways: (1) a statute setting forth specific procedures for a specific agency; or (2) use of the general procedures set forth in the Administrative Procedures Act (S.C. Code Ann. §§ 1-23-310 *et seq.* (Rev. 2005 & Supp. 2015). The fundamental reason for all of this is to remove the enforcement of administrative matters from the circuit court in the first instance, place them in the executive branch (including the Administrative Law Court, "ALC") under procedures that are faster and simpler than formal judicial proceedings but nevertheless comport with due process, and then afford any aggrieved party the right to judicial review.

SCDOR fits squarely into this "model" with respect to enforcing the tax laws as part of its overriding duty and power to collect taxes. Statutes create SCDOR and give it the power to "administer and enforce" the *tax* laws. Statutes create the enforcement procedures to be used by SCDOR in enforcing the *tax* laws, but all of these procedures, pertain to collecting taxes or establishing tax liability. See e.g., Chapters 54 and 60 of Title 12. After SCDOR makes its enforcement decisions as authorized by statute, resort is then had to the ALC and ultimately to the judiciary. *E.g.*, S.C. Code Ann. §§ 1-23-310 *et seq.*

As this Court noted, this matter does not fit within the definition of a "contested case" under the Administrative Procedures Act. (Order, p. 12-13). This raises a very telling question: Why would the General Assembly set forth its intent with respect to SCDOR's tax enforcement powers so clearly and precisely, taking full advantage of the benefits afforded by an administrative decision process, and yet not do so with respect to any SCDOR power to enforce spending limitations set forth in the Transportation Act, County's ordinance, or any other taxing statutes, and thereby leave SCDOR burdened with enforcement through the far more cumbersome and time-consuming process of circuit court actions? The answer is simple. The General Assembly never intended to create this bizarre dichotomy of enforcement, because it never intended to grant

SCDOR the power to enforce any spending limitations in any tax laws. Had it so intended, it would have stated this intent clearly and precisely, and it would have empowered SCDOR to use the administrative process to do so, in the same manner as it did with SCDOR's taxation enforcement powers.[6]

As a review of the statutory provisions relied upon in the Order for the "level of statutory authority" to enforce the Transportation Act and/or Ordinance demonstrates, nothing in the statutes gives Defendants the authority to regulate or enforce the County's actions under the Act, the scope of the Ordinance or the implementation of the Ordinance.

a. *S.C. Code Ann. § 12-4-10.*

S.C. Code Ann. § 12-4-10 states, in pertinent part: "[t]he South Carolina Department of Revenue is created to administer and enforce the revenue laws of this State . . . and other laws specifically assigned to it." This section is simply the General Assembly's general explanation of the purpose of the agency. It is up to the Legislature to give SCDOR and the Director specific authority to "administer and enforce" the revenue laws. A review of Title 12 demonstrates that the statutory powers and duties the General Assembly gives to SCDOR vary from one specific tax to another (*e.g.* note the difference in authority given to SCDOR in property tax matters as opposed to sales tax matters) and are specifically enumerated within statutes regarding each tax type. The mere statutory creation of an agency is not an affirmative grant of authority to oversee, including enforcing, any actions of the County's operation of the Penny Tax Program.

[6] As noted in *City of Myrtle Beach v. Tourism Expenditure Review Committee*, 407 S.C. 298, 755 S.E. 2d. 425 (2014), the General Assembly specifically created a Tourism Expenditure Review Committee (TERC) and statutorily gave it the same type of express powers over counties' use of the Accommodations Tax that SCDOR now claims it has over the Transportation Penny Tax and all spending limitations—but without the express statutory authority given to TERC. *City of North Myrtle Beach* simply cannot be reconciled with the Defendants' assertion of authority in this matter. Simply put, why would the Legislature feel the need to create TERC's oversight authority if SCDOR already had it?

Taken to its logical extreme, if SCDOR has authority over the expenditure of tax revenue by Richland County because of § 12-4-10, SCDOR has authority to tell any agency or branch of government of the State or political subdivision of the State receiving tax revenues how to spend them. This is an absurd result. *Florence Cnty. Democratic Party*, 727 S.E.2d at 420. The Order's reliance on §12-4-10 to grant standing to the Defendants based on their "level of statutory authority to oversee" is misplaced.

b. *S.C. Code § 12-4-310.*

The Order relies on S.C. Code § 12-4-310 generally in support of Defendants' oversight authority. Section 12-4-310 establishes the "mandated powers and duties" the General Assembly conferred upon SCDOR. Three of the subsections of § 12-4-310 reference counties and provide: subsection (5) make information about business licenses issued under § 12-36-510 available to a political subdivision requesting the information; subsection (10) make records available to the counties when a county levies taxes based on gross receipts or net taxable sales; and subsection (11) provide data and assistance to counties to any county implementing the Fairness in Lodging Act. Each of these subsections require SCDOR to provide information to counties and do not give SCDOR any general oversight of the counties' operations of the Penny Tax Program or otherwise.

Defendants relied specifically on Code Ann. § 12-4-310(9), which states in pertinent part: "[t]he department shall . . . exercise and perform other powers and duties as granted to it or imposed upon it by law." This provision only stands for the proposition that the Legislature can provide additional powers and duties for the Department to exercise. Section 4-37-30(A)(8) clearly states that the powers and duties granted/imposed upon SCDOR with respect to the Penny Tax are to administer and collect the tax only. The only enforcement powers granted to SCDOR in the Act

are to enforce the collection of the tax pursuant to §12-36-2660 and Chapter 54 of Title 12.[7] The Order's reliance on §12-4-310 to grant standing to the Defendants based on their "level of statutory authority to oversee" is misplaced.

c. *S.C. Code Ann. § 12-36-2660.*

The Order found that "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." (Order, p. 14.) The Order misapprehends the authority § 12-36-2660 given SCDOR to administer, regulate and enforce the County's actions under the Transportation Act. In its entirety, S.C. Code Ann. § 12-36-2660 states "[t]he Department of Revenue shall administer and enforce the provisions of this chapter." "[T]his chapter" refers to Chapter 36 of Title 12, the "South Carolina Sales and Use Tax Act." S.C. Code Ann. § 12-36-5, et seq. "Enforce the provisions of this chapter" refers to the powers conferred by Title 12, Chapter 54, which is the power to enforce the collection of the tax.

With regard to the Penny Tax, this is made clear by the references to Chapter 54 made in §4-37-30(A)(9). It is also notable that §4-37-30 never states that SCDOR has the authority to enforce the provisions of that section (i.e. the Penny Tax), but instead, only references SCDOR's powers via §12-36-2660 and Chapter 54 of Title 12 which are to collect the tax. This language evidences the Legislature's clear intent to limit SCDOR's enforcement authority to the collection of the tax. Thus, there is no authority to oversee the County's spending in § 12-36-2660.

[7] See e.g., §12-54-15; §12-54-25; §12-54-43; §12-54-44; §12-54-50; §12-54-70; §12-54-85; §12-54-90; §12-54-100; §12-54-110; §12-54-120; §12-54-122; §12-54-123; §12-54-124; §12-54-126; §12-54-127; §12-54-155; §12-54-160; §12-54-180; §12-54-195; §12-54-196; §12-54-200; and §12-54-210.

d. *S.C. Code Sections 4-37-30(A)(8), (9) and 12-36-10 et seq.*

Sections 4-37-30(A)(8) and (9) reference Chapter 36 of Title 12. Section 4-37-30(A)(8) provides, in pertinent part: "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. (Emphasis Added.) The Order concluded that "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." (Order, p. 19.) See *Owen Industrial Products, Inc. V. Sharpe,* 274 S.C. 193, 197, 262 S.E.2d 33, 35 (1980). Section 4-37-30(A)(9) provides, in pertinent part: "The tax authorized by this section is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable jurisdiction which are subject to the tax imposed by Chapter 36 of Title 12 and the enforcement provisions of Chapter 54 of Title 12.[8] ..." (Emphasis added.)

Chapter 36 of Title 12 provides SCDOR's authority to levy and collect sales taxes, including the Penny Tax. As even a cursory examination of Chapter 36 evidences, it sets forth the procedures used by SCDOR to levy and collect the sales taxes, what sales are subject to sales taxes, from whom sales taxes may be collected, etc. The authority to enforce, as described in § 12-36-2660, refers to SCDOR's authority to enforce the levying and collection of sales tax. SCDOR, not the County, collects the Penny Tax Revenues. Section 12-36-2660 simply authorized SCDOR to enforce the collection and reporting of Penny Tax Revenues collected by entities in Richland County selling goods subject to the Penny Tax. There is no authority in § 12-36-2660 to provide

[8] See *infra* regarding the Order's failure to acknowledge or discuss the enforcement provisions of Chapter 54 of Title 12.

Defendants the power to oversee the expenditure of the Penny Tax Revenues SCDOR collects and remits to the Treasurer.

Thus, the Order's reliance on §12-36-2660 and § 4-37-30(A)(8) to grant standing to the Defendants based on their "level of statutory authority to oversee" is misplaced. [9]

e. *The Order Ignores the Express Statutory Oversight Authority of Defendants, which has Nothing to do with the Transportation Act.*

The Order neither acknowledges nor addresses Chapter 54 of Title 12. S.C. Code Ann. § 4-37-30(A)(9) specifically provides that the Penny Tax is subject to "the enforcement provisions of Chapter 54 of Title 12." Chapter 54 of Title 12 provides for the "Uniform Method of Collection and Enforcement of Taxes Levied and Assessed by South Carolina Department of Revenue." Specifically, Defendants relied upon § 12-54-100 for their authority, not only to withhold remittance of the Penny Tax Revenues, but also to oversee the County's administration of the Penny Tax Program.

Section 12-54-100 grants the Department only the authority to examine or investigate matters required to be included on a tax return so that the Department can determine the correctness of the taxpayer's return to establish a taxpayer's tax liability. Section 12-54-100 provides, in pertinent part:

> In the administration of a state tax law, the director or his duly authorized agent, for the purpose of ascertaining the correctness of a return or making

[9] Further, the Order overlooks and misapprehends the Separation of Powers requirement contained in the Constitution of South Carolina ("Constitution"). Article I, Sec. 8 provides: "In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." For this Court to confer standing on a State agency under the public importance exception thwarts the separation of powers doctrine that "[t]he exclusive power to make laws and provide for their enforcement is vested in the General Assembly, subject only to those restrictions expressly set forth in the Constitution." *South Carolina Jurisprudence*, "Constitutional Law," § 12, p. 30 (1993) (Footnotes Omitted). The constitutional restriction in this case is the fact that the Transportation Act was adopted by the General Assembly in furtherance of Article VIII, Sec. 7 of the Constitution. The Court recognized this point when it found in its Order: "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." To grant standing to Defendants would be to contravene the constitutional mandate of separation of powers.

> a determination of or fixing tax liability, may examine or investigate the place of business, tangible personal property, facilities, computers, computer programs, electronic data, books, invoices, papers, records, memoranda, vouchers, other documents, equipment, or licenses of the taxpayer or other person bearing upon the matters required to be included on a return. (Emphasis added.)

In clear and unambiguous language, § 12-54-100 only applies to SCDOR's administration of the tax laws as these laws apply to taxpayers.

It is axiomatic that Richland County is a political subdivision and governmental entity of the State of South Carolina and is not a taxpayer that must file a tax return. Since the County is not a taxpayer that must file a tax return, SCDOR's general audit authority is not applicable to the County. Further, the section authorizes tax liability audits ("making a determination of or fixing tax liability"). As such, it cannot be a source of authority for controlling *spending* which is a non-tax liability issue. Accordingly, SCDOR's reliance on this section for its authority is in error and it has no likelihood of success based upon reliance on this statute.

The Order should be altered or amended to find that S.C. Code § 12-54-100 gives Defendants no authority to oversee the County's expenditure of and administration of the Penny Tax Revenues or to file the motion or counterclaims. The Order should further be altered or amended to find that S.C. Code Ann. § 12-54-100 only provides authority for Defendants to determine the correctness of a filed tax return or to audit for the purpose of fixing tax liability.

C. There is no "Fiduciary Duty" that could Confer Standing on Defendants.

The Order makes no findings or conclusions regarding Richland County's assertion that Defendants do not owe a fiduciary duty to the citizens of South Carolina and specifically Richland County other than stating: "Finally, SCDOR and the Director claim to have certain fiduciary duties

owed to the citizens and taxpayers of the State and specifically Richland County."[10] While the County argued during the hearing that Defendants do not have a fiduciary duty to the citizens of South Carolina or Richland County, the Defendants did not even utter the word "fiduciary," much less make the argument, supported by any law, that a fiduciary duty is imposed on Defendants by statute or under any theory of common law.

There is no statute and Defendants have neither cited nor referenced in any documents filed with the Court or during argument, any legal authority in support of this alleged fiduciary duty Defendants owe to the public to empower Defendants to oversee the County's actions regarding its operation of the Penny Tax Program.

As a search of the South Carolina Code of Laws demonstrates, the General Assembly has enacted laws expressly using the phrase "fiduciary duty" as to State agencies and imposed that duty upon various State agencies. "Fiduciary duty" is used in the following titles: 15 (Civil Remedies), 34 (Banking), 36 (Commercial Code), 54 (Ports Authority); 59 (Education—South Carolina Education Lottery) and 62 (Probate Code). As a review of these titles demonstrates, the Legislature choose to impose a "fiduciary duty" on agencies or governmental officers when they carried out their duties under the referenced Titles. The phrase "fiduciary duty" is not used in either Title 12 or Title 4. There is no statutory authority for Defendants to claim authority to oversee the County's administration of the Penny Tax Program based upon the alleged fiduciary duty of the Defendants.

On June 27, 2016, Defendants provided the Court with an Attorney General's Opinion regarding S.C. Code Ann. § 9-16-40. The Opinion interprets Chapter 16 of Article 9 regarding

[10] To the extent that this statement is used to support the Court's finding that Defendants have standing based to bring the motion, counterclaim and third party complaint, either on some level of statutory oversight or the public importance exception, for the reasons stated in *supra*, such reliance is misplaced and misapprehends the law.

authority of the South Carolina Retirement System ("Retirement System"). "Fiduciary" is a defined term. See S.C. Code Ann. § 9-16-40(4). Even if this section were applicable, Defendants do not fall within the above definition of "fiduciary." The Attorney General's opinion points to no instance in which the SCDOR acts in a fiduciary capacity.

Defendants also rely on case law in support of their claim of a fiduciary duty to the citizens of Richland County. None of the cases cited by Defendants relate to the fiduciary duty of a governmental entity.

The Order should be altered or amended to find that the SCDOR does not have a fiduciary duty regarding the Transportation Act to the citizens of South Carolina or Richland County and thus no standing based on a non-existent duty.

D. The Court Erred When It Held Plaintiff Had An Adequate Remedy at Law for Plaintiff's Motion for a Temporary Injunction.

The Order found that "Plaintiff's Motion for Temporary Injunction is denied because the County is unable to show there is no other adequate remedy at law in light of the Court's decision above granting Plaintiffs Petition for a Writ of Mandamus." Order, p 17. The Court erred by failing to hold that: 1) a mandamus in this case does *not* provide an adequate remedy at law; and 2) the County's Motion for Temporary Injunction is in aid to the writ of mandamus, without which the remedy of mandamus would not be complete.

In *Lombard Iron Works & Supply Co. v. Allendale*, 187 S.C. 89; 196 S.E. 513 (1938) our Supreme Court decided an action where a judgment creditor sought a writ of mandamus ordering town officials to collect past due taxes and pay the same to plaintiff, a full accounting all uncollected taxes and property of the Town of Allendale ("Allendale"), and appointment of a receiver to receive the funds and carry out the mandamus of the court. The lower court ordered, *inter alia*, that Allendale be restrained and enjoined from disposing of all property not held for a

public purpose, all uncollected taxes and all surplus taxes. A second circuit judge, pursuant to Allendale's motion to vacate and set aside the injunction, granted the motion, stating only that "'upon proof of the material allegations of the complaint (sic) plaintiffs would be entitled to the common-law remedy of mandamus.'" *Lombard,* 196 S.E. at 515. On appeal, the parties agreed that the mandamus should issue. One of the questions on appeal was whether plaintiffs had "an adequate and exclusive legal remedy in the issuance of a writ of mandamus?" *Id.* at 516.

In determining that the writ of mandamus was not an adequate remedy at law, the Supreme Court held:

> Mandamus is somewhat of a hybrid proceeding. It is not a suit in tort, nor is it a suit in contract; it is not strictly a law case, nor is it one in equity. It is based on the theory that an officer charged with a purely ministerial duty can be compelled to perform that duty in case of refusal. .... same authority holds that where there is an adequate remedy at law, mandamus will not lie. To the same effect, ...

Lombard, 196 S.E. at 516. (citations omitted.) See also *Charleston County Sch. Dist. v. Charleston County Election Comm'n.*, 336 S.C. 174, 179, 519 S.E.2d 567, 570 (1999).

The purpose of the writ of mandamus here is only to compel Defendants to carry out their ministerial duty to remit and allocate the Penny Tax Revenues to the Treasurer. (Order, p. 11.) However, by definition the writ of mandamus does not prohibit Defendants from issuing directives, demands, or orders to the County, including but not limited to, the demand that the County adopt and implement "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." (Order, p. 16-17, citing Defendants' Motion for Injunction.)[11] In the *Lombard* case, the Supreme Court found that while

[11] Specifically, as noted at ¶¶57, 59-66 and Exhibit F to the Complaint, and pages 6 and 34, n. 15 of the County's June 23, 2016 Memorandum, SCDOR has issued Proposed Regulation 117-338 seeking to mandatorily impose Internal Revenue Code §263A as a requirement for the County's use of the Penny Tax Revenues,

the writ of mandamus compels ministerial duties, it cannot compel future duties ("cannot require the payment or partial payment of the judgments until after the levying and collecting of taxes which are applicable le to the payments... .") *Id.* at 516.

The Supreme Court further held the writ of mandamus where it enforces officers to perform their ministerial duties but does not protect against non-ministerial acts of governmental bodies or officials, "the prohibitory powers of equity are necessary so that the writ of mandamus will constitute an adequate remedy. This does not substitute injunction for mandamus, but is an aid to the writ of mandamus and without which the remedy of mandamus would not be complete." *Id.*

Here, the writ of mandamus is not an adequate remedy at law in that, while it compels Defendants to remit the Penny Tax Revenues to the Treasurer, it does not and cannot give Plaintiff relief from Defendants' demands and directives. As noted in the County's affidavits, as long as Defendants assert any sort of authority over the County's use of Penny Tax Revenues, there is a threat to the bond rating and ability to borrow by Richland County. The exact nature of Defendant's extent of assertion of authority over the County's use of Penny Tax Revenues is a mystery, as Defendants have not suggested that they will only take action with regard to the County through this Court, but maintain that Defendants have 'authority' over the Penny Tax Revenues by, among other things, requiring the use by the County of Internal Revenue Code sections only applicable to taxpayers. Richland County is not seeking to substitute injunctive relief for mandamus, but is seeking injunctive relief as an aid to mandamus, without which, the remedy of mandamus is not complete. See *Id.*

Thus, the Order should be altered or amended by striking that portion of the Order that provides: "Plaintiff's Motion for Temporary Injunction is denied because the County is unable to

show there is no other adequate remedy at law in light of the Court's decision above granting Plaintiffs Petition for a Writ of Mandamus."

In order to grant temporary complete relief as to the remedy of mandamus, the Order should be amended further to provide: "The Court finds that the Plaintiff has a likelihood of success on the merits of its Declaratory Judgment action, since Defendants' interference with the County's statutory and constitutional authority under Home Rule to administer the Penny Tax Program will cause the County and its citizens irreparable harm and the County has no adequate remedy at law."

E. The Court Should Amend Its Order Granting Mandamus.

The Order found the Court issued "a Writ of Mandamus directing SCDOR and the Director to remit the Penny Tax Revenues for the quarter ending June 2016 to the Treasurer as it routinely has since the Ordinance became effective pursuant to Rule 65, SCRCP." (Order, p 13.) However, Plaintiff requested in its Petition and Complaint that the Mandamus be granted for all payments of Penny Tax Revenues, henceforth, not just for the past quarter of the year. The Plaintiff requests that the Court amend its Order and order that the mandamus applies not only to the second quarter payment, but also all payments henceforth.

F. **Conclusion.**

For the reasons stated herein, it is respectfully requested that the Court amend the Order as stated.

Respectfully submitted,

By: 

Benjamin E. Nicholson, V
M. Elizabeth Crum
McNAIR LAW FIRM, P.A.
1221 Main Street (29201)
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800
nnicholson@mcnair.net
lcrum@mcnair.net

Ray N. Stevens
Ray E. Jones
Parker Poe Adams & Bernstein LLP
1201 Main St., Ste. 1450 (29201)
PO Box 1509
Columbia, SC 29202
Telephone: (803) 255-8000
Facsimile: (803) 255-8017
raystevens@parkerpoe.com
rayjones@parkerpoe.com

Of Counsel:
Larry C. Smith
Richland County Attorney
P.O. Box 192
Columbia, SC 29202

Attorneys for the Plaintiff, Richland County

July 11th, 2016
Columbia, South Carolina

COLUMBIA 1278145v6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO.: 16-CP-40-3102
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 Plaintiff, v. Richland PDT, a joint venture consisting of M.B. Kahn Construction Co., Inc., ICA Engineering, Inc., And Brownstone Construction Group, LLC, as a unit and individually, Third Party Defendants.	)	**NOTICE OF MOTION AND MOTION TO RECONSIDER, ALTER or AMEND JUDGMENT PURSUANT TO RULES 52, 59 and 60 SCRCP**

To: The Honorable G. Thomas Cooper, Jr., and the Plaintiff, Richland County:

You will please take notice that the Defendant(s), South Carolina Department of Revenue and Rick Reames, III, its Director (collectively "Department"), by and through its undersigned attorney(s), will move before the Honorable G. Thomas Cooper, Jr., following ten (10) days after service hereof, or as soon as counsel may otherwise be heard, to reconsider, alter or amend the decision of the Court, as set forth in the 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, dated June 30, 2016.

("Order") This Motion is made pursuant to Rules 52, 59 & 60, SCRCP. In pertinent part, Rule 52(a), SCRCP provides that "...in all actions tried upon the facts without a jury...the court shall find the facts specially and state separately its conclusions of law thereon...." Rule 52(b), SCRCP provides that "upon motion of a party...the court may amend its findings or make additional findings and may amend the judgment accordingly.....the question of the sufficiency of the evidence to support the findings may thereafter be raised ...." Rule 59(e) allows for a motion "to alter or amend..." Further, and pursuant to Rule 60, SCRCP a party may also move for relief from judgment or order as a result of clerical mistakes or under any the following circumstances: (1) mistake, inadvertence, ..."

The basis for this Motion is that the Court makes certain findings in Part II of the Order under the heading, Defendants Have Standing to Assert Their Motion, Counterclaims and Third-Party Complaint, concerning the Department's standing to pursue the matters complained of in its motions, counterclaims and third-party claims against the Plaintiff and the Third Party Defendant, Richland PDT. Specifically the Court found that:

> 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}." Finally, SCDOR and the Director claim to have certain fiduciary duties owed to the citizens and taxpayers of the State and specifically Richland County. 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 Motion, Cross Claims [counterclaims], and Third Party Complaint.

Furthermore, SCDOR and the Director have standing based on the public importance exception.[1] 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 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 inextricable connected to the pubic 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 their 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 raised by this case.

(Order, pages 13-15)

However, these findings do not appear under the Conclusions heading in Part V of the Order. The Department respectfully requests, pursuant to the enumerated rules of procedure, that

[1]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 *Sloan 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.

the Court amend its Order to incorporate its findings contained in Part II of its Order into Part V of its Order to state that :

1. SCDOR and the Director have a level of statutory authority to oversee the County's use of the Penny Tax Revenues.
2. 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 Motion, Counterclaims, and Third Party Complaint.
3. SCDOR and the Director have standing based on the public importance exception to prevent the unlawful expenditure of money raised by taxation.

WHEREFORE, the Defendants South Carolina Department of Revenue and Rick Reames, III, respectfully request that this Court reconsider, alter or amend its June 30, 2016 Order as stated above. The Defendants further respectfully reserve their right to submit a Memorandum of Law in support of the within Motion at a later time.

Respectfully submitted,

Milton G. Kimpson (SC Bar No. 7917)
Dana R. Krajack (SC Bar No. 3608)
Nicole M. Wooten (SC Bar No. 73594)
Lauren Acquaviva (SC Bar No. 100528)
PO Box 12265
Columbia, SC 29211
Phone: 803-898-5131
Fax: 803-896-0171
Milton.Kimpson@dor.sc.gov
Dana.Krajack@dor.sc.gov
Nicole.Wooten@dor.sc.gov
Lauren.Acquaviva@dor.sc.gov

JAMES E. SMITH, JR., P.A.
James E. Smith, Jr. (SC Bar No. 8733)
Dylan W. Goff (SC Bar No. 78416)
1422 Laurel Street

Columbia, South Carolina 29201
Phone: (803) 933-9800
Fax: (803) 933-9801
James@JamesSmithPA.com
Dylan@JamesSmithPA.com
Attorneys for Defendants South Carolina
Department of Revenue
and Rick Reames, II, its Director

July 11, 2016

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
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, LLC, as a unit and Individually, Third-Party Defendants.	)	Civil Action No. 2016-CP-40-3102 **NOTICE OF MOTION AND MOTION TO DISMISS COUNTERCLAIMS AND THIRD PARTY COMPLAINT**

RICHLAND COUNTY
FILED
2016 JUL 20 PM 2:31
JEANNETTE W. McBRIDE
C.C.P. & G.S.

TO: JAMES E. SMITH, JR., ESQUIRE, DYLAN GOFF, ESQUIRE, MILTON G. KIMPSON, ESQUIRE, DANA R. KRAJACK, ESQUIRE, NICOLE M. WOOTEN AND LAUREN ACQUAVIVA, ESQUIRE, COUNSEL FOR DEFENDANTS AND THIRD-PARTY PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for the Plaintiff Richland County ("Richland County") will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, Columbia, South Carolina, at such time and place as may be set by the Court, pursuant to Rule 12(b)(1), Rule 12(b)(6) and Rule 9(b) SCRCP, for an Order dismissing the Defendants' counterclaims and third party complaint, to the extent Defendants' have

asserted it against Plaintiff, in their entirety.

The Plaintiff Richland County's motion is based on the following grounds:

1. The Defendants lack standing to assert their counterclaims for declaratory, equitable and monetary relief. Moreover, the Defendants lack standing to sue on behalf of the citizens and taxpayers of Richland County, including the counterclaims for civil conspiracy, "civil fraud," and constructive fraud. Moreover, Defendants lack standing to assert their claims for declaratory judgment, injunctive relief and third party complaint to the extent Defendants' have asserted it against Plaintiff,.

2. The Defendants are not "persons" under S.C. Code Ann. § 15-78-50(a) and thus lack standing or the capacity to bring a tort claim under the South Carolina Tort Claims Act against another governmental entity. The Plaintiff Richland County enjoys absolute sovereign immunity for the Defendants' counterclaims for civil conspiracy, "civil fraud," and constructive fraud.

3. The Defendants' counterclaims are barred by the applicable statute of limitations.

4. Defendants lack statutory authority under the South Carolina Code of Laws to assert their counterclaims against Plaintiff Richland County. Moreover, Defendants lack statutory authority under the South Carolina Code of Laws to assert their claims for declaratory judgment, injunctive relief and third party complaint to the extent Defendants' have asserted it against Plaintiff.

5. The Plaintiff Richland County is entitled to absolute sovereign immunity pursuant to S.C. Code Ann. § 15-78-60(17) of the South Carolina Tort Claims Act with respect to the Defendants' counterclaims for civil conspiracy, "civil fraud" (which is assumed to be intended as a counterclaim for actual fraud), and constructive fraud.

6. The Plaintiff Richland County is entitled to absolute sovereign immunity as to any non-tort counterclaims alleged by the Defendants, including any equitable claims seeking the

recovery of money or reimbursement of money and their third party complaint to the extent Defendants' have asserted it against Plaintiff.

7. The Defendants have alleged no money damages to which they are legally entitled or have any legal claim upon which to recover.

8. The Defendants' request for disgorgement of profits is not relief properly directed at or which may be recovered against the Plaintiff Richland County.

9. The Defendants' counterclaim for civil conspiracy fails as a matter of law because they have not alleged additional acts in furtherance of a conspiracy which are separate and independent from other wrongful acts alleged in the Answer, Counterclaims and Third Party Complaint to the extent Defendants' have asserted it against Plaintiff,

10. The Defendants' counterclaim for civil conspiracy fails as a matter of law because they have not alleged special damages.

11. The Defendants have failed to plead all elements of a cause of action for "civil fraud" (which is assumed to be intended as a counterclaim for actual fraud).

12. The Defendants' counterclaim for "civil fraud" (which is assumed to be intended as a counterclaim for actual fraud) fails as a matter of law because the Plaintiff Richland County does not have a fiduciary relationship with the Defendants as alleged.

13. The Defendants' counterclaim for "civil fraud" (which is assumed to be intended as a counterclaim for actual fraud) fails as a matter of law because the Defendants have not alleged special damages recoverable in a cause of action for actual fraud.

14. The Defendants' counterclaim for constructive fraud fails as a matter of law because the Plaintiff Richland County does not have a fiduciary relationship with the Defendants as alleged.

15. The Defendants' counterclaim for constructive fraud fails as a matter of law because

the Defendants have not alleged special damages recoverable in a cause of action for constructive fraud.

16. The Defendants' counterclaims for "civil fraud" (which is assumed to be intended as a counterclaim for actual fraud) and for constructive fraud are not stated with sufficient particularity as required under Rule 9(b), SCRCP.

17. The Defendants' counterclaims for declaratory and injunctive relief fail as a matter of law because S.C. Code Ann. § 4-37-30, as adopted by 1995 Act No. 52 and as amended by 2000 Act No. 368, does not limit the expenditure of penny tax revenue to "capital costs." Contrary to Defendants' allegations, the penny tax revenue may be expended on the administration and operation of transportation–related projects (including operating mass-transit projects which were added to the categories of projects and facilities by the amendment in 2000). The intent of the General Assembly as to the scope of the authorized uses of the penny tax revenue is stated clearly in the preamble or "Findings" section of 1995 Act No. 52, as contained in Section 1 of the Act, which reads as follows: "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." *See*, 1995 Act No. 52, § 1. *See also*, *State v. Thrift*, 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"). The Plaintiff submits that the provisions of Ordinance Number 039-12HR, as challenged by the Defendants, are valid, enforceable and lawful under state law, and the Defendants are not entitled to

the declaratory or injunctive relief as pled.

18. The Defendants' counterclaim seeking the appointment of a receiver is barred and fails as a matter of law for the reasons previously raised by the Plaintiff and specifically on the bases for denial as stated in the Order of The Honorable G. Thomas Cooper, Jr. entered on June 30, 2016.

This motion is based upon the pleadings filed in this case and incorporate by reference all arguments made in Plaintiff Richland County's Motion seeking the Writ of Mandamus and for Temporary Injunction, its Memorandum in Opposition to Defendants' Motion for Injunctive Relief or Alternatively Appointment of a Receiver, and its Rule 52/59 Motion regarding the Court's July 1, 2016 Order in this matter; a memorandum of law as may be submitted at or prior to the hearing; and such other matters as may be presented to the Court.

BENJAMIN E. NICHOLSON, V
M. ELIZABETH CRUM
McNAIR LAW FIRM, P.A.
1221 Main Street (29201)
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800
nicholson@mcnair.net
lcrum@mcnair.net

RAY N. STEVENS
RAY E. JONES
PARKER POE ADAMS & BERNSTEIN, LLP
1221 Main Street, Suite 1100
Post Office Box 1509
Columbia, South Carolina 29202
(803) 255-8000

Of Counsel

LARRY C. SMITH
Richland County Attorney
P.O. Box 192
Columbia, SC 29202

Counsel for Plaintiff Richland County

-and –

ANDREW F. LINDEMANN
DAVIDSON & LINDEMANN, P.A.
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Plaintiff Richland County on Counterclaims

Columbia, South Carolina

July 20, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Docket No.: 2016-CP-40-3102
Richland County, South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
The South Carolina SCDOR of Revenue, and Rick Reames, III in his official capacity as its Director,	)	
	)	
Defendants.	)	
	)	

RICHLAND COUNTY
FILED
2016 JUN 23 PM 4:31
JEANNETTE W. WALKER
C.C.P. & G.S.

PLAINTIFF RICHLAND COUNTY'S MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS AND MOTION FOR TEMPORARY INJUNCTION

The Plaintiff, Richland County, South Carolina ("Richland County" or "County") submits its Memorandum in Support of its Motion for a Writ of Mandamus and/or Temporary Injunction against the Defendants, the South Carolina Department of Revenue ("SCDOR" or "Department") and Rick Reames, III in his official capacity as the Director of SCDOR ("the Director") (collectively "Defendants") based on their refusal to carry out their statutorily prescribed ministerial duties required under the Optional Methods for Financing Transportation Facilities, S.C. Code Ann. §§ 4-37-10, et seq. (Supp. 2015) ("Transportation Act" or "Act").

I. INTRODUCTION

This lawsuit arises out of the unprecedented attempt by SCDOR and its Director to depart from the statutorily established and traditional function of the SCDOR to administer the **collection** of tax revenues, and to move to a completely illegal and unauthorized function to direct governmental bodies how they, in this case Richland County, should ***spend*** tax revenues.

Defendants assert that the Penny Tax Revenues (as defined herein) can only be spent on "capital" projects (bridges, roads, etc.) and not on the administrative costs associated with the development of these projects. This bold assertion ignores the General Assembly's express finding that counties are granted the power to finance "the cost of **acquiring, designing,** constructing, **equipping and operating** highways, roads, streets, and bridges, and other transportation-related projects." Act 52, Section 1, S.C. Acts and Joint Resolutions 1995. (Emphasis added) Plainly, "acquiring, designing, equipping and operating" necessarily includes administrative costs to procure services, design projects and operate transportation-related projects. Defendants entire legal analysis asserting that only capital costs can be paid with the Penny Tax Revenues generated pursuant to the Transportation Act completely ignores these express findings of the General Assembly.

The Defendants, a state agency and a state official, are attempting to disenfranchise the citizens of Richland County by usurping the authority of the duly elected members of the Richland County Council ("Council") granted by the South Carolina Constitution, Art. VIII—Local Government ("Home Rule"). Without any basis in law, a state agency and an unelected state governmental official are trying to dictate to the County and Richland County Council ("Council") how Richland County's citizens' money should be spent, in total disregard of the Legislature's express findings that the General Assembly intended to authorize counties, after notice and referendum, to pay for the cost of "acquiring, designing, constructing, equipping and operating highways, roads, streets, and bridges, and other transportation-related projects" pursuant to the provisions of S.C. Code Ann. § 4-37-30.

The Defendants pleadings are highly critical of the County and actions of the Council, yet most of such allegations are, in large part, only based on "information and belief" without citing

to actual fact.[1] Essentially, Defendants wish to substitute their judgment for the judgment of Council. If Defendants are allowed to tell governmental bodies how to spend their revenues, then there would be no need for any other level of government, as SCDOR would be the ultimate dictator of what it considers the right and proper use of the Penny Tax Revenues, solely in its unfettered discretion.

There is no support for Defendants' position in the law of South Carolina. If the electorate do not like how their elected officials are spending their tax dollars, the officials can be voted out of office. The electorate have no control over a state agency or an appointed official—Defendants.

Thus, Richland County is forced to bring this action against Defendants because SCDOR, through the Director, has grossly exceeded its statutory authority and has stated its intention to this Court[2] to ignore its statutorily imposed ministerial duty to remit the Penny Tax Revenues (defined below) collected for the County to the South Carolina State Treasurer ("Treasurer"). SCDOR's threatened actions also constitute a violation of the provisions of the Home Rule.

In contravention of the express requirements of the Transportation Act and Home Rule, SCDOR is attempting to establish itself as the governing body of Richland County by usurping the authority of the duly elected and qualified members of Council and other County officials to determine how the County spends Penny Tax Revenues. Richland County requests an order from this Court issuing a Writ of Mandamus requiring the SCDOR to carry out its ministerial duty to remit and allocate the quarterly Penny Tax Revenues for the second quarter of 2016 and all future quarters in which this sales and use tax is being collected. Richland County also

[1] One must wonder the basis of the "information and belief" allegations (which legally is the equivalent of "we don't know but we think," since SCDOR claims it has been "auditing" the Penny Tax Program since April 2015.
[2] (See ¶ 92 of Answer, Counterclaims and Third Party Complaint of South Carolina Department of Revenue, and Rick Reames, III ("Answer").

requests that a temporary injunction prohibiting Defendants from causing harm to the Plaintiff by withholding the remittance and allocation of the Penny Tax Revenues for the second quarter of 2016 to the Treasurer.

II. BACKGROUND[3]

The Transportation Act was effective May 18, 1995. Act 52, Section 1, S.C. Acts and Joint Resolutions 1995. 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. Section 1 of Act 52 made the following findings.

> 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. (Emphasis added) As discussed further below, S.C. Code Ann. § 4-9-30 is the general law that proscribes the powers and authorities of South Carolina counties under Home Rule.

On July 18, 2012, 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 (herein, the penny sales and use tax is referred to as "the Penny Tax.")[4] 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 ("Referendum"). The results of the

[3] The facts outlined in this Memorandum are supported by the Verified Complaint or affidavits as specified.
[4] A copy of the Ordinance is attached as Attachment A for the convenience of the Court.

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 plaintiff's challenge of the Referendum.[5] 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 began establishing the framework for the implementation of the transportation improvement program ("Transportation Penny Program") to be paid for by the sales and use tax collected pursuant to the Referendum ("Penny Tax Revenues"). The Penny Tax became effective on May 1, 2013.

The chronology leading to this action began in April 2015.

- **April 15, 2015**, the Director informed the County Administrator that SCDOR intended to initiate a review of "Richland County Transportation Sales Tax" passed by voter referendum in November, 2012." (See Exhibit A[6])

- **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. This letter first took the position that administrative expenses associated with the expenditure of the Penny Tax Revenues for the Project Development Team ("PDT") subcontractors were not allowed under the Act. Defendants were instructing Richland County how to use, account for, and disburse the Penny Tax Revenues. (See Exhibit B)

- **December 9, 2015**, the County sent a letter to the Director noting it will cooperate with SCDOR within the scope of its authority. (See Exhibit C)

- **December 31, 2015**, the County sent a letter to SCDOR further clarifying its position regarding the SCDOR December 3, 2015 letter (See Exhibit D)

- **January 19, 2016**, County officials met with SCDOR and asked SCDOR to provide County with SCDOR's legal authority to direct the County's actions regarding the Penny Tax. The County and SCDOR officials met again on February 11, 2016.

- **February 24, 2016**, SCDOR sent a letter to the County, which, among other things, expressly stated that administrative expenses could not be paid with the Penny Tax

[5] A copy of this decision is attached hereto as Attachment B for the convenience of the Court.
[6] All cites to exhibits are to exhibits attached to the Complaint filed May 20, 2016.

Revenues. It further stated that, expenditures of Penny Tax Revenues could only be made for capital projects. SCDOR attached to the letter its "Report on Sales and Use Tax for Transportation Facilities in Richland County ("Report"), attached to the letter. This Report contained SCDOR's instructions to the County as to how the Penny Tax Revenues must be spent and allocated. (See Exhibit E)

- **April 1, 2016**, SCDOR made additional demands to the County and increased its list of "required" actions to twelve items, including requiring the County use IRC § 263 and § 263(A) in determining whether Penny Tax Revenues could be used to fund any expenses incurred in connection with the Transportation Penny Program. SCDOR signaled its intent that its exercise of control over the County's use of the Penny Tax Revenues could serve as a test case ("potentially serve as a template for the administration of transportation funds for other counties[7] to follow"). (See Exhibit F)

- **April 27, 2016**, SCDOR informed the County that unless it complied with SCDOR's directions 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. Further, if emergency funding was necessary for The COMET, the County could contact the SCDOR staff. (See Exhibit G)

- **May 4, 2016**, the County again requested that SCDOR provide the County with SCDOR's legal authority to impose requirements on County and Council with regard to the expenditure and allocation of the Penny Tax Revenues (See Exhibit H)

- **May 19, 2916**, SCDOR responded to the Central Midlands Regional Transportation Authority's ("The COMET" or "CMRTA") letter asking if SCDOR intended to restrict the flow of Penny Tax Revenues to The COMET, stating is was not SCDOR's intent "to restrict the use of Penny Tax funds for operation of The COMET bus system" and if the "Penny Tax fund allocations are still halted at the time of the normal July 2016 distribution, the Department will "issue to Richland County the 29% of the revenue specified for (sic) COMET bus system operations." (See Exhibit I)[8]

III. APPLICABLE LAW

A. WRIT OF MANDAMUS.

This Court is authorized to issue a Writ of Mandamus by Art. V, § 20 of the Constitution of South Carolina ("Constitution") and South Carolina Code of Laws and South Carolina

[7] The Court should take judicial notice of the fact that Charleston County has adopted ordinances pursuant to the Transportation Act and operates CARTA—Charleston Area Rapid Transit Authority—which is funded by the transportation tax (half a penny). While Defendants make unsupported allegations about "civil fraud" and criminal wrongdoing, the draconian measures they are attempting to foist on the County would also be applicable to any county attempting to operate and raise and expend funds under the Transportation Act.

common law. Rule 65, SCRCP set 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 *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); and *Knight v. Austin,* 396 S.C. 518, 522, 722 S.E.2d 802, 804 (2012).

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. *Wilson v. Preston*, 378 S.C. at 354, 662 S.E.2d at 583. 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. *Id.* at 354, 662 S.E.2d at 583.

Edwards v. State, 383 S.C. 82, 96, 678 S.E.2d 412, 419 (2009); *see also Sanford,* 685 S.E.2d at 606.

B. RULES OF STATUTORY CONSTRUCTION.

The County is a political subdivision of the State of South Carolina (the "State") and is a creature of statute. The SCDOR is also a creature of statute, operating as part of the executive branch of government. S.C. Code Ann. § 12-4-10 (2014) Its general powers are found in S.C.

[8] However, after the County filed the instant action, Defendants appear to have changed their position and will not remit the Penny Tax to the Treasurer for funding of The COMET. See: Answer, ¶¶ 98-117.

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 *Bazzle 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 SCDOR has with regard to regulation of the Penny Tax Revenues, the Penny Tax or Richland County's implementation and administration of the Ordinance necessarily derives 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.

> "The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." *State v. Scott*, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (citing *Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993)); *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." Scott, 351 S.C. at 588, 571 S.E.2d at 702 (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)). Therefore, "[i]f a statute's language is plain, unambiguous, and conveys a clear meaning 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.'" Id. (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)); see also *State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) ("All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used.") (citing *McClanahan v. Richland Cnty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002)). The Court must construe statutory language in light of the intended purpose of the statute, and "[t]his Court will not construe a statute in a way which leads to an absurd result or renders it meaningless." *Florence Cnty. Democratic Party*, 398 S.C. at 128, 727 S.E.2d at 420.

State v. Cty. of Florence, 406 S.C. 169, 173-74, 749 S.E.2d 516, 518 (2013). See also *Protection and Advocacy for People with Disabilities, Inc. v. Buscemi*, S.C. Ct. App. Opinion No. 5410, filed June 8, 2016.

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) ("When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning.").

> In construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect. *TNS Mills, Inc. v. South Carolina Dept. of Revenue,* 331 S.C. 611, 503 S.E.2d 471 (1998). A statute should not be construed by concentrating on an isolated phrase. *Laurens County School Districts 55 and 56 v. Cox,* 308 S.C. 171, 417 S.E.2d 560 (1992).

South Carolina State Ports Authority v. Jasper County, 368 SC 388, 398, 629 S.E. 2d 624, 629 (2006). Finally,

> [w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect. *Wilder v. South Carolina Hwy. Dep't*, 228 S.C. 448, 90 S.E.2d 635 (1955); see also *Wooten ex rel. Wooten v. S.C. Dep't of Transp.*, 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999) (a specific statutory provision prevails over a more general one).

Spectre, LLC v. South Carolina Dept. of Health and Environmental Control, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010).

IV. THE WRIT OF MANDAMUS SHOULD BE ISSUED TO DEFENDANTS

The Transportation Act is part of the Legislature's general statutory grant of authority for counties to govern themselves in South Carolina. The Transportation Act is the specific Act regulating a county's optional methods of funding transportation projects. Under this specific

Act, SCDOR has the duty to: 1) administer and collect Penny Tax funds; 2) remit the Penny Tax Revenues to the Treasurer; 3) remit unidentified Penny Tax funds to the Treasurer; 4) provide counties and the Treasurer with data for the purpose of calculating distributions of the Penny Tax Revenues it has collected on the County's behalf and 5) 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. [9]

As the executive director of SCDOR, the Director has a duty to see that the statutory duties of the SCDOR are carried out ("The department is governed in matters of policy and administration by a director ... .") S.C. Code Ann. § 12-4-30(A) (2014). The Director, as an officer of the State, is also required to take the oath of office (S.C. Code Ann. § 12-4-40), which provides: "I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been elected, (or appointed), and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect, and defend the Constitution of this State and of the United States. So help me God." Constitution, Art. VI, sec. 5. Clearly, Defendant Director has the duty to administer SCDOR in accordance with the laws and Constitution of the State.

A. DEFENDANTS HAVE MINISTERIAL DUTIES[10] UNDER THE TRANSPORTATION ACT.

It is undisputed that Richland County has adopted an Ordinance pursuant to the provisions of S. C. Code Ann. § 4-37-30 of the Transportation Act. Because of the County's adoption of the Ordinance and implementing the Penny Tax, Defendants have certain mandatory

[9] Other than §§ 4-37-30(A)(5), (8), (15) and (16) 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. Section 4-47-(A)(4)(b) requires that the applicable election commission certify the results of any referendum held pursuant to the Act to governing body authorizing the referendum and the SCDOR. Section 4-37-30(A)(13) deals with filing of documents by taxpayers with SCDOR to claim an exemption for the sales and use tax based upon events occurring prior to the imposition date of the sales and use tax.

or "ministerial" duties required by 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 type of language used in a statute dictates whether or not a duty is ministerial or not.

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).

"The term 'shall' in a statute means that the action is mandatory." *Wigfall v. Tideland Utils., Inc.,* 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003). See *Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) ("Under the rules of statutory interpretation, use of words such as "shall" or "must" indicates the legislature's intent to enact a mandatory requirement."); *State v. Rimert,* 315 S.C. 527, 531, 446 S.E.2d 400, 402 (1994) (holding that "'must' is mandatory"). When a statutory direction to an agency is couched in the terms of "must" or "shall," the agency has no discretion as to whether to carry out the statutory directive. The Legislature has mandated it to do so.

In contrast to its mandatory language, the General Assembly describes non-mandatory and thus discretionary statutory duties with different language. "The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary.

[10] The below discussion combines the first two elements the County must prove in order for the Court to issue a Mandamus.

This is the ordinary significance of the use of the word 'may,' [if] nothing appears to require that it be given any other meaning in the present statute." *State v. Wilson*, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980). In contrast, the express statutory commands that SCDOR "shall" and "must" perform certain duties to the County clearly create ministerial duties.

1. Defendants' Ministerial Duty to Administer and Collect.

Section 4-37-30(A)(8) 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[11] prescribe the amounts which may be added to the sales price because of the tax." (Emphasis added.) Certainly, the clear and unambiguous language of § 4-37-30(A)(8), established Defendants' duty to collect and administer the Penny Tax on behalf of Richland County, as the governmental entity imposing the Penny Tax.

The Supreme Court has addressed the administration and collection of taxes. In *Owen Industrial Products, Inc. v. Sharpe*, 274 S.C. 193, 197, 262 S.E.2d 33, 35 (1980) the Supreme Court 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." (internal citation and quotations omitted.) 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

[11] The General Assembly's juxtaposition of the words "must" and "may" in the same subparagraph clearly demonstrates its intention that "must" and "shall" are mandatory (the SCDOR has to take the action). If the General Assembly had meant to give the Defendants discretion, they would have used the word "may." See *State v. Wilson*, 264 S.E.ed at 416.

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).

Clearly, the Supreme Court has determined that "administering" a tax is levying, collecting and distributing tax funds. In contrast, the Supreme Court has never stated that SCDOR was authorized to tell the recipient of tax revenue how that recipient should utilize the tax revenues.

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

Defendants also have a duty to remit the Penny Tax Revenues it collects 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 the State Treasurer and credited to a fund separate and distinct from the general fund of the State." (Emphasis added.)

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 ("must") on Defendants to send the Penny Tax Revenues SCDOR collects for Richland County to the Treasurer on a quarterly basis.

3. Defendants' Ministerial Duty to Transfer Unidentified Penny Tax Revenues.

Section 4-37-50 provides, in pertinent part: "Annually, and only in the month of June, funds collected by the department from the local option transportation facility tax, which are not identified as to the governmental unit due the tax, must be transferred, after reasonable effort by the department to determine the appropriate governmental unit, to the State Treasurer's Office. ..." (Emphasis added). The SCDOR also has a duty to transfer penny sales taxes not identified as to the county of origin to the Treasurer.

In its plain and ordinary meaning, "transfer" means "a : to convey from one person, place, or situation to another : move, shift b : to cause to pass from one to another : transmit." *http://www.merriam-webster.com/dictionary/transfer* (June, 2016). Section 4-37-50 imposes a ministerial duty ("must transfer"). For sales and use taxes collected by SCDOR pursuant to the Act which are not identified as to the county from which it comes, SCDOR's duty is to transfer the funds to the Treasurer.

4. Defendants' Ministerial Duty to Furnish Data.

Finally, § 4-37-30(A)(16) provides, in pertinent part, that SCDOR "shall furnish data to the State Treasurer and to the counties receiving revenues for the purpose of calculating distributions and estimating revenues. The information which must be supplied to counties upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. ..." (Emphasis added). Defendants have a duty to furnish specified information regarding the Penny Tax both to the Treasurer and Richland County. Finally, in its plain and ordinary meaning "furnish" means "to supply or give (something) to someone or something". http://www.merriam-webster.com/dictionary/furnish (June 23, 2016)

On June 10, 2016, pursuant to the above section, the County sent a letter to SCDOR requesting data regarding the County's data. See Affidavit of Larry Smith, ¶.3. In response to its ministerial duty imposed by S. C. Code Ann. § 4-37-30(A)(16), on June 20, 2016, the SCDOR furnished some of the requested Penny Tax Revenues data to the County. The duty to provide data under § 4-37-30(A)(16) and the duty to remit the Penny Tax Revenues to the Treasurer under § 4-37-30(A)(8) are equally ministerial. See Affidavit of Larry Smith, ¶.4. Defendants cannot "pick and choose" which ministerial duties they will follow.

The plain and unambiguous language of the above statutory provisions give Defendants no discretion as to the duties the General Assembly has directed Defendants to carry out.

B. THE COUNTY HAS SPECIFIC LEGAL RIGHT FOR WHICH DISCHARGE OF THE DUTIES ARE NECESSARY.

First, the County has the express statutory right to have its Penny Tax Revenues collected, held and accounted for distinctly from any other taxes which SCDOR collects and administers. S.C. Code Ann. § 4-37-30(A)(8). Second, 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, ...") Obviously, by Ordinance, the Penny Tax is imposed in Richland County. Finally, Richland County has the express statutory right to receive data regarding the amount of Penny Tax Revenues collected by the SCDOR for the County's budget planning. Unless this Court orders the Defendants to carry out their ministerial duties, the County will be denied its express statutory rights.

C. THERE IS NO OTHER LEGAL REMEDY FOR THE COUNTY.

The Transportation Act does not provide an administrative remedy for the County to challenge the directives of Defendants. The Defendants have stated unequivocally, including in their Answer, that unless the County complies with "the standards DOR demands" (Defendants' Motion for Continuance dated June 10, 2016, p. 2), 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' directives do not fall within the definition of "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 simply no other legal remedy for the County than mandamus.

Clearly, the Legislature intended that SCDOR carry out its ministerial administrative duty of remitting the Penny Tax Revenues it collects for Richland County to the Treasurer so the Treasurer can disburse the revenues to the County. SCDOR's statutory mandate to remit the Penny Tax Revenues is a "a corresponding imperative duty created or imposed by law."' *Porter,* 512 S.E.2d at 497. The Court should issue a Writ of Mandamus directing Defendants to remit the Penny Tax Revenues for the quarter ending June 2016 to the Treasurer as it routinely has since the Ordinance became effective.

V. THE COURT SHOULD ENJOIN DEFENDANTS FROM TAKING ACTIONS TO HARM THE COUNTY.

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, ... " (ftnts. omitted) Am. Jur.2d, *Injunctions,* § 158, p. 754. 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." (ftnts. omitted) *Id* at § 159, p. 754. 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 a temporary injunction, Richland County must demonstrate that Defendants' threatened actions will cause the County irreparable harm, it has a likelihood of success on the merits and the County 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).

Defendants' efforts to assert authority it does not have under the Transportation Act or otherwise do not comport with a reasonable and practical construction of the statutory provisions.

> A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. *Caughman v. Columbia Y.M.C.A.*, 212 S.C. 337, 47 S.E. (2d) 788 (1948). ... Although the South Carolina Tax Commission is vested with rule making power for the purposes of carrying out legislative will expressed [274] in statutory term, it has no authority to enact new laws in the nature of regulations to satisfy its own theory of income tax..

Hay v. S.C. Tax Com., 273 S.C. 269, 273-74, 255 S.E.2d 837, 840 (1979). In *Heyward v. South Carolina Tax Commission*, 240 S.C. 347, 126 S.E.2d 15 (1962), the Supreme Court found:

> Even though the General Assembly has required the respondent to make and publish all needed rules and regulations incident to the enforcement of the income tax laws of this State, such delegation of power did not give the respondent the authority to adopt, by regulation, the installment method of reporting income for income tax purposes. The respondent was invested with rule-making power for the purpose of carrying out the legislative will expressed in statutory form; but it had no legal authority to enact new laws in the nature of regulations to satisfy its own theory as to the enforcement of the income tax laws of this State.

Heyward, 126 S.E.2d 20 (S.C. 1962)

As discussed below, it is reasonable and practical to construe the Transportation Act to authorize the County, not the Defendants, to make decisions regarding the expenditure of Penny Tax Revenues for the Penny Tax Program and not to construe the Transportation Act "to satisfy its own theory as to the" County's administration of the Penny Tax Program.

A. PLAINTIFF HAS A LIKELIHOOD OF SUCCESS ON THE MERITS.

The County has a likelihood of success on the merits of this case because: 1) Defendants lack statutory authority to take the actions they are taking and have exceeded their statutory

authority since they have only the authority conferred upon them by law, and 2) Defendants actions violate the County's authority under Home Rule. Specifically, as to the SCDOR, even in areas where its direct audit authority is clear, if such duties are assigned to other agencies, the SCDOR's reach cannot intrude.[12] To examine the request before the Court, the required analysis asks what powers are "conferred by law" upon the SCDOR and has the SCDOR "act[ed] within the authority granted..." *Bazzle,* 462 S.E.2d at 274. This analysis, a comparison of the Defendants' claimed authority with the paucity of actual authority, shows an administrative reach far in excess of its statutory authority.

1. Defendants Action Exceed their Statutory Authority.

Clearly, as discussed in the Mandamus section above, the Transportation Act does not give SCDOR the authority to determine which Transportation Tax Program projects or which expenses relative to those projects can be funded by the Penny Tax. The Ordinance and the Referendum dictate what projects the County can undertake. S.C. Code Ann. § 4-37-30(A)(1). As noted *supra*, under the plain and unambiguous language of the Transportation Act, Defendants have no statutory authority to direct the County's expenditures of Penny Tax Revenues or to direct any accounting methods the County must employ.

Defendants repeatedly requested Defendants to provide the statutory basis for their refusal to remit the Penny Tax Revenue. However, prior to the County's filing of this lawsuit, Defendants cited to only four (4) statutes they allege give SCDOR's "general authority" to dictate the Penny Tax expenditures made by counties. These statutory provisions relied upon by

[12] *ESA Servs., LLC v. S. Carolina Dep't of Revenue*, 392 S.C. 11, 26, 707 S.E.2d 431, 440 (Ct. App. 2011) ("This court is aware the Department has the statutory authority to audit qualifying businesses pursuant to the Act and make appropriate adjustments when a qualifying business is not complying with the terms of its revitalization agreement as agreed upon by Council and the business. However, the Department's authority does not extend to negotiating or interpreting the terms of a revitalization agreement because the Act clearly assigns Council with this responsibility.") (Emphasis added.)

Defendants are found in Title 12 of the Code—Taxation, not in Title 4—Counties. Defendant's citation to these general statutes for authority to Defendants for its actions in this matter are in derogation of the statutory construction maxim that specific statutes control over general statutes regarding the same subject matter. *Spectre, LLC v. South Carolina Dept. of Health and Environmental Control*, 688 S.E.2d at 852.

In the Answer, Counterclaims and Third Party Complaint of South Carolina Department of Revenue and Rick Reames, III ("Answer"), Defendants' have belatedly added two more alleged statutes authorizing their actions--and S.C. Code Ann. § 12-4-387 (2015) (Answer ¶ 120) and S.C. Code Ann. § 4-37-30(A)(5)(b).[13] (Answer ¶ 105). Finally, Defendants make the extraordinary claim that SCDOR has some sort of authority a non-statutory concept of an alleged "fiduciary duty" owed by both SCDOR and Richland County to the citizens of South Carolina and of Richland County.

a. *S.C. Code Ann. § 12-36-2660 Provides Defendants No Authority.*

First, Defendants rely on S.C. Code Ann.§ 12-36-2660 (2014). In its entirety, S.C. Code Ann. § 12-36-2660 states "[t]he Department of Revenue shall administer and enforce the provisions of this chapter." The reference to "this chapter" is to Chapter 36 of Title 12, the "South Carolina Sales and Use Tax Act." S.C. Code Ann. § 12-36-5, *et seq.*.

Section 12-36-2660 is made applicable to the Transportation Tax via §§ 4-37-30(A)(8) and (9). Section 4-37-30(A)(8) provides, in pertinent part: "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. (Emphasis Added.) Section 4-37-30(A)(9) provides, in pertinent part: "The tax authorized by this section is in addition to all other local sales and use

[13] Paragraph 105 of the Answer cites to S.C. Code Ann. §4-37-30(5)(b), which Richland County assumes to be S.C. Code § 4-37-30(A)(5)(b).

taxes and applies to the gross proceeds of sales in the applicable jurisdiction which are subject to the tax imposed by Chapter 36 of Title 12 and the enforcement provisions of Chapter 54 of Title 12. ..." (Emphasis added.)

Chapters 36 and 54 of Title 12 effectively limit SCDOR's authority to levying and collecting the tax. Section 12-36-2660 is the applicable statute in this regard. The plain and unambiguous language of § 12-36-2660 provides no authority for SCDOR to direct Richland County on how to spend the Penny Tax Revenues or to force the County to comply with its expenditure directives. Instead, the section provides the general authority under which the SCDOR levies and collects sales and use taxes.

The authority to enforce as described in §12-36-2660 is referring to SCDOR's authority to enforce the collection of sales tax. This becomes clear through an examination of Title 12, Chapter 54 – Uniform Method of Collection and Enforcement of Taxes Levied and Assessed by South Carolina Department of Revenue. All statutes contained in Chapter 54 are in furtherance of SCDOR's authority to enforce the filing of returns and the collection of tax. Thus, SCDOR does not derive authority to control the County's expenditure of the Penny Tax Revenues by virtue of § 12-36-2660 or any other statute in Title 12 of the S.C. Code.

In fact, the Legislature makes clear its intention with regard to SCDOR's authority over the Transportation Sales Tax by omitting the authority to enforce in the language of § 4-37-30(A)(8) and (A)(9), but instead, referencing Chapters 36 and 54 of Title 12. By doing such, Defendants are restricted to the same enforcement authority that they have with the State imposed sales tax. That authority is to administer and enforce the collection of the tax—nothing more.

Authority over collecting taxes is not tantamount—as SCDOR has argued—to authority over spendingTaxes. Accordingly, SCDOR's reliance on this section for its authority is in error.

b. *S.C. Code Ann. § 12-4-10 Provides Defendants No Authority.*

The second general statute relied on by Defendants is S.C. Code Ann. § 12-4-10, which states in pertinent part: "[t]he South Carolina Department of Revenue is created to administer and enforce the revenue laws of this State . . . and other laws specifically assigned to it." This section is nothing more than the General Assembly's general explanation of the purpose of the agency. After creating SCDOR in § 12-4-10, the General Assembly specifically granted SCDOR its mandated powers and duties in S.C. Code Ann. § 12-4-310 and in other sections of Title 12 regarding each specific type of tax. In fact, SCDOR's statutory powers vary from one specific tax to another (*e.g.* note the difference in authority given to SCDOR in property tax matters as opposed to sales tax matters). The mere statutory creation of an agency is not an affirmative grant of authority.

Taken to its logical extreme, if SCDOR has authority over the expenditure of tax revenue by Richland County because of this Code section, then SCDOR has authority to tell any agency of the state receiving tax revenues how to spend them. This is an absurd result. *Florence Cnty. Democratic Party*, 727 S.E.2d at 420.

c. *S.C. Code Ann. § 12-4-310(9) Provides Defendants No Authority.*

The third general section Defendants rely on is S.C. Code Ann. § 12-4-310(9), which stated in pertinent part: "[t]he department shall . . . ." In clear and unambiguous language, this statute only stands for the proposition that the Legislature can provide additional powers and duties for the Department to exercise. Defendants have not and cannot point to a single "other"

statute granting it powers and duties to direct Richland County as to how to administer its Penny Tax Program. SCDOR's reliance on this section for its authority is in error.

d. S. C. Code Ann. § 12-54-100 Provides Defendants No Authority.

SCDOR also relies on S.C. Code Ann. § 12-54-100 for its authority to exercise control over the County's implementation of the Penny Tax. Section 12-54-100 grants the Department only the authority to examine or investigate matters required to be included on a tax return so that the Department can determine the correctness of the taxpayer's return to establish a taxpayer's tax liability. Section 12-54-100 provides, in pertinent part:

> In the administration of a state tax law, the director or his duly authorized agent, for the purpose of ascertaining the correctness of a return or making a determination of or fixing tax liability, may examine or investigate the place of business, tangible personal property, facilities, computers, computer programs, electronic data, books, invoices, papers, records, memoranda, vouchers, other documents, equipment, or licenses of the taxpayer or other person bearing upon the matters required to be included on a return.

(Emphasis added.) Simply put, § 12-54-100 only applies to SCDOR's administration of the tax laws as these laws apply to taxpayers.

It is axiomatic Richland County is a political subdivision and governmental entity of the State of South Carolina and is not a taxpayer that must file a tax return. Thus, since the County is not a taxpayer that must file a tax return, SCDOR's general audit authority is not applicable to the County. Further, the section authorizes tax liability audits. As such, it, cannot be a source of authority for controlling *spending* which is a non-tax liability issue. SCDOR's reliance on this section for its authority is in error.

Defendants have no statutory authority as part of the Transportation Act or Title 12 of the S.C. Code to regulate and enforce the County's actions regarding the Penny Tax.

e. S. C. Code Ann. § 4-37-30(A)(5)(b) Provides Defendants No Authority.

For the first time in their Answer, the final statute Defendants now say they rely on to give them the statutory authority to direct Richland County's actions regarding the Penny Tax is § 4-37-30(A)(5)(b). This section provides, in pertinent part:

> (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. ...
>
> (5) The tax terminates on the earlier of:
> (a) the final day of the maximum time specified for the imposition; or
> (b) the end of the calendar month during which the Department of Revenue determines that 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." (Emphasis added).

Defendants appear to place emphasis of its authority to "determine" when to terminate the tax. First, § 4-37-30(A) provides that the County's Ordinance imposes the Penny Tax for a specific time period to collect a limited amount of money. Section 4-37-30(A)(5) is the section that regulates the last day the County can impose the Penny Tax in its jurisdiction, as prescribed by the Referendum.

SCDOR's authority under the plain and ordinary language of subsection b is limited to a determination if the amount collected covers the greater of the cost of the projects approved by the Referendum (see Attachment A) or if the amount covers the cost to pay off "all debts related to the approved projects." A determination as to whether the tax collection has reached the spending limit imposed by Ordinance and Referendum does not authorize the Defendants to direct the County *how to spend* the funds. This section does nothing more that direct the Department to keep an accounting of the tax revenue collected and to notify the County when the prescribed amount is reached. Reading § 4-37-30(A)(5), not in isolation but with 30(A)(8), it is

clear that SCDOR's determination of the amount of revenues collected is part of its duty to administer and collect the Penny Tax Revenue—nothing more.

Ironically, Defendants cite to *City of Myrtle Beach v. Tourism Expenditure Review Committee*, 407 S.C. 298, 755 S.E. 2d. 425 (2014) for the proposition a statutorily created special fund must be applied for the purpose for which it is created or set aside. See Answer, ¶ 106. *City of Myrtle Beach* supports the County's position that the Defendants do not have statutory authority to direct the actions of the County and to withhold the Penny Tax Revenues. In *City of Myrtle Beach*, the City had a seven (7%) sales tax of which two (2%) was the accommodation tax ("A-tax") which was collected by SCDOR pursuant to S.C. Code Ann. § 12-36-2630(3).

In enacting the South Carolina Accommodations Tax Act ("Accommodations Act"), the Legislature created the Tourism Expenditure Review Committee ("TERC") to "ensure counties and municipalities comply with the basic requirements and restrictions set forth in the Act" to determine whether the proposed governmental spending was compliant or non-compliant with the purposes of the Accommodations Act. *City of Myrtle Beach* 755 S.E. 2d at 425. The Accommodations Act, unlike the Transportation Act, gives TERC express authority to review and determine whether the proposed use of the A-tax is a compliant use under the Accommodations Act. *Id.* at 426-427.

Further, if TERC finds that the A-tax expenditure is non-compliant, it is statutorily authorized to notify the Treasurer, who shall withhold the amount of the A-tax found to be non-compliant. *Id.* ("S.C. Code Ann. § 6-4-35(B)(1)(a). Section 6-4-35(B) further provides that "[i]f [TERC] finds an expenditure to be in noncompliance, it shall certify the noncompliance to the State Treasurer, who shall withhold the amount of the expenditure found in noncompliance from subsequent distributions in accommodations tax revenue otherwise due the municipality or

county"). Thus, the statutory framework examined in *City of Myrtle Beach* is a prime example of where the Legislature does choose to give authority to a governmental agency over tax revenues other than the one spending tax revenues. Indeed, the Legislature decided not to give SCDOR this authority in the Accommodations Tx law, instead giving such authority to TERC.

Defendants seek to exercise the same authority that TERC exercises under the express statutory authority of the Accommodations Act. However, Defendants have not been given this statutory authority under S.C. Code Ann. § 4-37-30(A)(5) or otherwise. Simply put, if the Legislature intended to give SCDOR this type of authority, it would have expressly done so as it did for TERC in the Accommodations Tax.

f. S.C. Code Ann. § 12-4-387 Provides Defendants No Authority.

In its Answer, the Defendant appear to rely on the authority to audit pursuant to S.C. Code Ann. §12-4-387 (2014) as a basis to take their actions withholding the quarterly remittance of the Penny Tax Revenues and directing the County regarding its expenditures under the Penny Tax Program. The Defendants' reliance is misleading and without merit. In its Answer, the Defendants rely on S.C. Code Ann. §12-4-387 (2014) as a source of "tax administration, regulatory and enforcement" authority to audit the Plaintiff. See Answer, ¶ 120. This section states: "The Department of Revenue shall use available personnel to conduct audits involving all taxes to promote voluntary compliance and to collect revenues for the general fund of the State and designated accounts." The phrase "voluntary compliance" as used in tax statutes refers to taxpayers voluntarily reporting and remitting the tax due. See *Waltner v. C.I.R.*, TC Memo 2014-035.

Thus, the plain meaning of §12-4-387 refers to SCDOR's authority to audit taxpayers for the purpose of encouraging the voluntary filing of tax returns and remitting of taxes and

collecting revenue. Notably, the plain language of the statute does not grant authority to SCDOR to audit a governmental entity[14], and most importantly, it does not grant authority to Defendants to determine how the collected revenue is spent.

Although it is clear that §12-4-387 does not grant the Defendants the authority they seeks to impose in this action, this section is a general grant of authority to audit tax-payers. The specific sections §§ 4-37-30(A)(8) and 12-36-2660 are specific grants of authority for purposes of the Transportation Sales Tax and must be relied upon as determinative of the Defendant's authority in this matter to the exclusion of §§ 12-4-387. See *Spectre*, supra. (Specific statute rules over the general statute.)

g. There is No General "Fiduciary Duty" that Provides Defendants with Authority.

In its Answer, Defendants assert another basis for its authority to direct the County regarding the expenditure of the Penny Tax Revenues relating to the Penny Tax Program—namely alleging a fiduciary duty Defendants owe to the citizens of the state and Richland County, see Answer, ¶¶ 92 and 108, and alleging a fiduciary duty the County owes to Defendants, see Answer, ¶¶ 93, 146, and 157.

Both the County and Defendants are creatures of statute. There is NO statute imposing the alleged fiduciary duty Defendants owe the public or the alleged fiduciary duty the County owes to the Defendants. Such fiduciary duties simply do not exist in statute and Defendants have not even attempted to provide a cite therefor.

As a search of the S.C. Code Ann. Demonstrates, the phrase "fiduciary duty" is used in the following titles: 15 (Civil Remedies), 34 (Banking), 36 (Commercial Code), 54 (Ports Authority); 59 (Education—South Carolina Education Lottery) and 62 (Probate Code). The

[14] A governmental entity is not a taxpayer subject to voluntary tax compliance.

phrase is not used in either Title 12 or Title 4. There is no statutory authority for SCDOR to claim authority to act based upon alleged fiduciary duties.

h. Defendants Simply Have No Authority to Support their Actions.

Defendants have no statutory authority as part of the Transportation Act or Title 12 of the S.C. Code to regulate and enforce the County's actions regarding the Penny Tax. Further, SCDOR's reliance on the general statutes it cites as the source of its authority is misplaced and in error. The County has a likelihood of success on the merits of its case because the Defendants threatened actions are greatly in excess of its statutory authority vis a' vis the Transportation Act, Title 12 of the S.C. Code and Richland County's Ordinance authorizing the operation of the Penny Tax Program.

2. The Defendants' Actions Violate Home Rule.

As authorized by S.C. Code Ann. § 4-37-30(A)(1)(a), section 1(c) of the Ordinance specified that purposes for which the sales and use tax revenues (herein, "the Penny Tax Revenues") must be used:

> For financing the costs of highways, roads, streets, bridges, greenways, pedestrian sidewalks, and bike paths and lanes and other transportation-related projects facilities, and drainage facilities related thereto, and mass transit systems operated by Richland County or (jointly) operated by Richland County, other governmental entities and transportation authorities.

(Emphasis added). See Attachment A, p. 2. Section 2(c) of the Ordinance provided in part:

> The maximum cost of the projects to be funded from the proceeds of the Sales and Use Tax shall not exceed, in the aggregate, the sum of $1,037,900,000, and the maximum amount of net proceeds to be raised by the Sales and Use Tax shall not exceed $1,070,000,000, which includes administrative costs and debt service on bonds issued to pay for the projects. (Emphasis added)

See Attachment A, pp. 2-3. As authorized by § 4-37-30(A)(4), section 4 of the Ordinance provided for the Referendum Ballot Question and expressly provided that the "sales tax revenue will be used to pay the costs of administrative expenses and the following projects:... ." The

Referendum ballot projects included: 1) improvements to highways, roads, etc.; 2) continued operation of mass transit services; and 3) improvements to pedestrian sidewalks, etc. See Attachment A, pp. 5-6.

Defendants assert the Transportation Act only authorizes "capital expenditures" completely ignores the fact that the legislative findings in Act 52—"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" the costs associated with acquiring, designing and operating all include administrative costs and not purely capital costs. Certainly, not even Defendants can argue that the costs associated with the operations of The COMET's are capital costs. Reading the Transportation Act as a whole, it is clear that the legislative intent was to allow a county such as Richland, to expend Penny Tax Revenues on transportation related projects that are not just capital in nature. Defendants have focused on isolated words and phrases, to ignore the express legislative findings and not to read the Act as a whole in an attempt to thwart the County from exercising its powers and duties under Home Rule.

The clear legislative intent of the Transportation Act is that counties are empowered to raise tax funding and expend them on both capital and operating costs associated with the Penny Tax Program.

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. (Emphasis added.)

The General Assembly, after the constitutional amendment was approved by the electorate of South Carolina, enacted the general law implementing home rule for local government in South Carolina so that counties and other local governments can govern themselves and not be subject to direction and control by the State legislative delegations or state government. See *Knight v. Salisbury*, 262 S.C. 565, 571, 206 S.E. 2d 875, 877 (1974) ("These changes were prompted by the feeling that Columbia should not be the seat of county government, ... It is clearly intended that home rule be given to the counties and that county government should function in the county seats rather than at the State Capitol. If the counties are to remain units of government, the power to function must exist at the county level.") (Emphasis added).

More recently, the Supreme Court, in *Hosp. Ass'n v. Cty. of Charleston*, 320 S.C. 219, 464 S.E.2d 113, 117 (1995), held that

> As ratified, new Article VIII directed the General Assembly to implement what was popularly referred to as 'home rule' by establishing the structure, organization, powers, duties, functions, and responsibilities of local governments by general law. S.C. Const. art. VIII, §§ 7 and 9. In addition, new Article VIII mandated a liberal rule of construction regarding any constitutional provisions or laws concerning local government. S.C. Const. art. VIII, § 17.

In other words, in construing a statute purporting to give local government governing power and responsibilities, the statute should be construed so as to give the powers and duties in question to the local government, *e.g.* under the Transportation Act giving the powers and duties to the County to determine how the Penny Tax Revenues will be spent and accounted for.

Chapter 9 of Title 4 encompasses the general law adopted by the General Assembly for county government Home Rule. Specifically, S.C. Code Ann. § 4-9-25 provides for the Home Rule of counties, including Richland County:

> All counties of the State, ... , have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties. (Emphasis added).

As the Supreme Court stated, "[t]his broad grant of power is 'in addition to the powers conferred to [a county's] specific form of government [under S.C. Code Ann. § 4-9-30],' and is limited only by the requirement that the regulation, resolution, or ordinance be consistent with the Constitution and general law of this State." *Hosp. Ass'n v. Cty. of Charleston*, 464 S.E.2d at 113.

Defendants' allegations of authority ignore the fact that the Transportation Act is part of "Title 4—Counties." Section 4-37-30 empowers counties ("counties are empowered to impose"), not SCDOR, to create and impose the Penny Tax, subject to a successful referendum of the electorate of the county, for multiple projects for a specific period of time. SCDOR is given no such authority. Thus, SCDOR's direction to Richland County and the Council as to how to expend and allocate taxes is a blatant effort to keep the seat of government for counties at the State Capitol and not at the county seat.

The County has the likelihood of success on the merits regarding SCDOR actions in violation of home rule. Defendants do not have such likelihood of success on the merits. The injunction against the Defendants is rightfully due to Richland County in that the Defendants are harming the County by withholding its Penny Tax Revenues.

B. THE COUNTY DOES NOT HAVE AN ADEQUATE REMEDY AT LAW.

As discussed above in the Mandamus section, *supra,* the County has no other legal remedy. Further, Richland County has no remedy at law against SCDOR as an agency of the State or the Director in his official capacity as an officer of the State. If Defendants wrongfully

refuse to remit and/or allocate the Penny Tax Revenues to the Treasurer and the County does not receive it funds, this will render the County in breach of contract as to existing PDT contracts, and the Intergovernmental Agreement between the County, other political subdivisions and the CMRTA. Under South Carolina law, the County cannot bring suit to collect damages against the Department, as agency or the State, for tortious interference of contract.

South Carolina adopted the principal of sovereign immunity from the Common Law. Under Common Law, the sovereign cannot be sued unless it expressly consents to the suit. In *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), the Supreme Court abolished the Common Law doctrine of sovereign immunity. In 1986, the General Assembly passed the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10, et seq. (2005), finding, *inter alia:* "Thus, while total immunity from liability on the part of the government is not desirable, see *McCall v. Batson*, neither should the government be subject to unlimited nor unqualified liability for its actions." S.C. Code Ann. § 15-78-10(a) (2005). The Tort Claims Act further provides:

> The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter. ... The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in Section 15-78-70(b). (Emphasis added)

S.C. Code Ann. § 15-78-10(b) (2005). The Tort Claims Act does not provide a remedy for Richland County to suit Defendants for the monetary damages it will suffer as a result of Defendants acting outside the scope of their statutory authority.

C. THE COUNTY WILL SUFFER IRREPARABLE HARM.

Richland County, its citizens, the CMRTA and those dependent upon public transportation will suffer irreparable harm if the injunction does not issue against Defendants. The Referendum approved numerous projects and programs. See *Affidavit of Rob Perry*, ¶ 5.

The Richland County Transportation Improvement program ("CPTI") addressed Penny Tax Program funding, cash flow, alternative funding and project authorization schedules, *Id.*, ¶¶ 3 and 5. The projects in the CPTI have already been approved by the Referendum. *Id.*, ¶ 6.

To assist in the implementing the Penny Tax Program, the Council determined to contract with the independent contractors. The County contracted with a Project Development Team ("PDT") to manage the daily administration and some design and inspection functions for all non-dirt road County projects. *Id.* ¶ 11. In addition to the PDT contract, the County has executed contracts for tens of millions of dollars ($8,000,000 in design contracts and over $36,000,000 in construction contracts) in reliance on the Penny Tax Revenue. *Id.*, ¶ *10.* If the Penny Tax Revenues are withheld by Defendants, the County will incur the following additional expenses, which it will have no means of recovering:

a. costs associated with the suspension or termination of existing design and construction contracts and absent another source of funding, projects may never be completed and the funds already expended wasted (*Id.* ¶ 13);

b. Demobilization costs from suspended or cancelled contracts would not be recoverable and there would be substantial disruption to the CPTI (*Id.* ¶ 14); and

c. higher prices in procuring certain contracts (*Id.* ¶ ¶ 16 and 19).

Mr. David Adams, the duly elected Treasurer of the County, in his affidavit filed in support of this Motion, has listed "a variety of negative effects on this County". *Adams Affidavit*, ¶ 4. These negative effects include:

a. seriously affecting the Count's relationship with lending institutions (including those that issue bonds) and would constitute a "black eye" on the County's credit rating (Adams Affidavit, ¶ 5); and

b. increasing the rates at which the County refinances debt or borrows money in the future. *Id.*

Mr. Daniel Driggers is Chief Financial Officer of the County. His affidavit states that Defendants' refusal to remit the Penny Tax Revenues "will have a severe negative impact in the finances of the County." *Driggers Affidavit*, ¶ 4. These sever negative impacts include, among other things:

> a. the inability to pay the contractual obligations for the implementation of the specific projects ("Projects") approved by the voters in the Referendum (See Ordinance, attachment) and the County does not have the reserves to fund the Projects (*Id.* ¶ *5);*
>
> b. if the Projects are halted for lack of funding, potential loss of the contracts with local contractors, which would require the re-procuring of services, adding additional expense (*Id.* ¶ *6)*;
>
> c. elimination of the County's option to go to the bond market to take advantage of the currently available low interest rates, resulting in increased cost to the Projects, thus reducing the number of Project that could be build, unless the taxpayers have a tax increase to bear the additional cost (*Id.* ¶ 8);
>
> d. put the County's credibility with creditors and rating agencies at risk, resulting in higher interest cost for the Transportation Program and other County general obligation debt. (simply based on SCDOR's threat, has already required the County to disclose to the credit market and respond to numerous creditors) (*Id.* ¶ 9) and
>
> e. the County would have to default on its contractual obligation to make quarterly payments to the CMRTA services committed as part of the Referendum, thus depriving many County citizens of their only mode of transportation to and from work, medical appointments, etc. (*Id.* ¶ 11).

The County will be irreparably harmed by any one of the above occurrences. As discussed above, the County has no recourse (adequate remedy at law) to recover any of the increased costs resulting from Defendants' actions without statutory authority.

Additionally, credibility and trust with rating agencies and lending institutions, once lost, is exceedingly difficult, if not impossible (certainly in a reasonable period of time), to regain.

The Referendum also specifically provided for $300,991,000 to fund "implementation of near, mid and long-term service improvements" for the CMRTA. Ordinance, § 1 (c) and § 4(b). If Richland County cannot guarantee payments of the share of Penny Tax Revenues to CMRTA,

Richland County may not be able to fulfill its obligation under the Intergovernmental Agreement.[15]

The County also filed the *Affidavit of Robert A. Schneider*, executive Director of the CMRTA (d/b/a The COMET) in support of its Motion. The COMET provides both fixed rout bus (transit) services and DART (Dial-A-Ride Transit) services. DART provides services to individuals with disabilities that cannot ride the fixed rout buses. *Schneider Affidavit*, ¶¶ 5 and 11. Prior to the implementation of the Penny Tax, The COMET had only very limited services during week days , Saturdays and no bus fixed route services available on Sunday and most holidays. *Id.*, ¶.4. The Penny Tax Revenues budgeted for The COMET the upcoming fiscal year of July 1, 2016 – June 30, 2017 is $16,779,545. *Id.*, ¶ 6.

Before receiving the Penny Tax Revenue, The COMET operated the fix rout bus services approximately 225 hours on weekdays and approximately 90 hours Saturday. *Id.* ¶. 4. With the Penny Tax Revenues, The COMET now operates fixed rout services approximately 602 hours on weekdays and 337 hours on weekends. *Id.*, ¶ 8. The paratransit (DART) vehicles now make approximately 761 trips per week to transport mostly people who cannot get a driver's license due to medical conditions or infirmities. *Id.*, ¶ 11. For DART services, it is estimated that approximately 25% of Trips are to employment centers, approximately 25% to medical appointments and the remainder being trips for groceries, churches or other purposes. *Id.*, ¶ 12. The four major hospitals in the midlands and dialysis clinics, physical therapy, or oncology treatment are high-traffic services. *Id.*

[15] While the SCDOR originally stated it intent to fund 29% of revenue specified for The COMET for operations of the bus system, Defendants have reneged on this statement as discussed above. This perhaps occurred only because the County pointed out in its Complaint that Defendants had taken an intractable position the Penny Tax Revenues cannot be expended except for "capital costs" (therefore their insistence on the County using IRC §§ 263 and 263A to regulate permissible expenditures under the Transportation Act.

If Defendants refuse to remit or allocate the Penny Tax to the Treasurer and The COMET does not receive its distribution for the second quarter of 2016, The COMET will only be able to operate at the current levels until approximately August 14, 2016. *Id.*, ¶ 14. There is not sufficient time now for The COMET to institute a "scaled-down" service plan in light of the legal requirements that it hold hearing, public meetings, post public notice of rout changes and then implement the reduction. *Id.*, ¶ 13.

In the Answer filed June 20, 2016, Defendants take the position that the Transportation Tax Act only authorizes Penny Tax Revenues expenditure for capital purposes. Answer, ¶¶ 112 and 113. Clearly, the administrative costs for the operation of The COMET are not capital costs and are not facilities. Otherwise stated, Defendants seek to cut off funds supporting the operation of The COMET with no regard to the harm that will inevitably be caused to the citizens that are dependent on the public transportation system to get to work, to seek medical attention and other life needs.

Clearly, monetary damages, even if they were available—which they are not—would not provide a remedy to people who need medical attention or groceries, to people who need to get to their place of employment, to employers such as the four major hospitals that count on The COMET to get many of the employees to work. Richland County, the CMRTA and the citizens and businesses will suffer irreparable injury unless the Defendants are enjoined from remitting and allocating the Penny Tax Funds and from directing the County and the Council, the duly elected representatives of people of Richland County, how and on what it can spend the Penny Tax Revenue. The County's Motion for a temporary injunction should be granted.

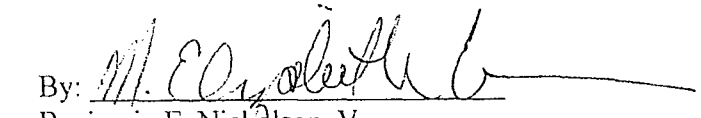
VI. CONCLUSION

The narrow issue before this Court on the Petition for Writ of Mandamus is simply whether the Defendants, acting through the Director, have the statutory authority to refuse to remit the quarterly tax revenue to the Treasurer and to withhold that remittance until the County accepts the judgment of Defendants as to how the Penny Tax Revenues can be expended under the Act.

As to the Motion for Injunction, it is clear that the likelihood of success is strongly in favor of Richland County in its Declaratory Judgment action regarding the lack of statutory authority to support Defendants actions.

For the reasons stated above, the Court should grant Richland County's Motion and issue a Writ of Mandamus directing the Defendants to remit and allocate to the Treasurer the 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. The Court should also enjoin or otherwise prohibit the Defendants from issuing directives, demands, or orders on any matter related to Richland County's and Council's spending of the Penny Tax Revenues.

Respectfully submitted,

By: 

Benjamin E. Nicholson, V
M. Elizabeth Crum
McNAIR LAW FIRM, P.A.
1221 Main Street (29201)
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800
nnicholson@mcnair.net
lcrum@mcnair.net

Ray N. Stevens
Ray E. Jones
Parker Poe Adams & Bernstein LLP
1201 Main St., Ste. 1450 (29201)
PO Box 1509
Columbia, SC 29202
Telephone: (803) 255-8000
Facsimile: (803) 255-8017
raystevens@parkerpoe.com
rayjones@parkerpoe.com

Of Counsel
Larry C. Smith
Richland County Attorney
P.O. Box 192
Columbia, SC 29202

Attorneys for the Plaintiff, Richland County

June 23rd, 2016

Columbia, South Carolina

the original document.
Certified By: Michelle Ogle
Title: Interim Clerk of Council
Date: 7/30/12

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. 039-12HR

AN ORDINANCE TO LEVY AND IMPOSE A ONE PERCENT (1%) SALES AND USE TAX, SUBJECT TO A REFERENDUM, WITHIN RICHLAND COUNTY PURSUANT TO SECTION 4-37-30 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED; TO DEFINE THE PURPOSES AND DESIGNATE THE PROJECTS FOR WHICH THE PROCEEDS OF THE TAX MAY BE USED; TO PROVIDE THE MAXIMUM TIME FOR WHICH SUCH TAX MAY BE IMPOSED; TO PROVIDE THE ESTIMATED COST OF THE PROJECTS FUNDED FROM THE PROCEEDS OF THE TAX; TO PROVIDE FOR A COUNTY-WIDE REFERENDUM ON THE IMPOSITION OF THE SALES AND USE TAX AND THE ISSUANCE OF GENERAL OBLIGATION BONDS AND TO PRESCRIBE THE CONTENTS OF THE BALLOT QUESTIONS IN THE REFERENDUM; TO PROVIDE FOR THE CONDUCT OF THE REFERENDUM BY THE RICHLAND COUNTY ELECTION COMMISSION; TO PROVIDE FOR THE ADMINISTRATION OF THE TAX, IF APPROVED; TO PROVIDE FOR THE PAYMENT OF THE TAX, IF APPROVED; AND TO PROVIDE FOR OTHER MATTERS RELATING THERETO.

Pursuant to the authority by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

SECTION 1. Findings and Determinations: The County Council (the "County Council") of Richland County, South Carolina (the "County"), hereby finds and determines:

(a) The South Carolina General Assembly has enacted Section 4-37-30 of the Code of Laws of South Carolina 1976, as amended (the "Act"), pursuant to which the county governing body may impose by ordinance a sales and use tax in an amount not to exceed one percent, subject to the favorable results of a referendum, within the county area for a specific purpose or purposes and for a limited amount of time to collect a limited amount of money.

(b) Pursuant to the terms of Section 4-37-10 of the Code of Laws of South Carolina 1976, as amended, the South Carolina General Assembly has authorized county government to finance the costs of acquiring, designing, constructing, equipping and operating highways, roads, streets, bridges, greenways, pedestrian sidewalks, bike paths and lanes, and other transportation-related projects either alone or in partnership with other governmental entities. As a means to furthering the powers granted to the County under the provisions of Section 4-9-30 and Sections 6-21-10, *et. seq* of the Code of Laws of South Carolina 1976, as amended, the County Council is authorized to form a transportation authority or to enter into a partnership, consortium, or other contractual arrangement with one or more other governmental entities pursuant to Title 4, Chapter 37 of the Code of Laws of the South Carolina 1976, as amended. The County Council has decided to provide funding for highways, roads, streets, bridges, mass transit, greenways, pedestrian sidewalks, bike paths and lanes, *inter alia*, without the complexity of a transportation authority or entering into a partnership, consortium, or other contractual arrangements with one or more other governmental entities at this time; provided that nothing herein shall preclude County Council from entering into partnerships, consortiums, or other contractual arrangements in the future. County Council may utilize such

provisions in the future as necessary or convenient to promote the public purposes served by funding highways, roads, streets, bridges, mass transit, greenways, pedestrian sidewalks, and bike paths and lanes as provided in this Ordinance.

(c) The County Council finds that a one percent sales and use tax should be levied and imposed within Richland County, for the following projects and purposes: For financing the costs of highways, roads, streets, bridges, greenways, pedestrian sidewalks, and bike paths and lanes and other transportation-related projects facilities, and drainage facilities related thereto, and mass transit systems operated by Richland County or (jointly) operated by the County, other governmental entities and transportation authorities.

For a period not to exceed twenty-two (22) years from the date of imposition of such tax, to fund the projects at a maximum cost not to exceed $1,037,900,000 to be funded from the net proceeds of a sales and use tax imposed in Richland County pursuant to provisions of the Act, subject to approval of the qualified electors of Richland County in referendum to be held on November 6, 2012. The imposition of the sales and use tax and the use of sales and use tax revenue, if approved in the referendum, shall be subject to the conditions precedent and conditions or restrictions on the use and expenditure of sales and use tax revenue established by the Act, the provisions of this Ordinance, and other applicable law. Subject to annual appropriations by County Council, sales and use tax revenues shall be used for the costs of the projects established in this Ordinance, as it may be amended from time to time, including, without limitation, payment of administrative costs of the projects, and such sums as may be required in connection with the issuance of bonds, the proceeds of which are applied to pay costs of the projects. All spending shall be subject to an annual independent audit to be made available to the public.

(d) County Council finds that the imposition of a sales and use tax in Richland County for the projects and purposes defined in this Ordinance for a limited time not to exceed twenty-two (22) years to collect a limited amount of money will serve a public purpose, provide funding for roads and transportation, mass transit, and greenbelts to facilitate economic development, promote public safety, provide needed infrastructure, promote desirable living conditions, enhance the quality of life in Richland County, and prepare Richland County to meet present and future needs of Richland County and its citizens.

Section 2. Approval of Sales and Use Tax Subject to Referendum.

(a) A sales and use tax (the "Sales and Use Tax"), as authorized by the Act, is hereby imposed in Richland County, South Carolina, subject to a favorable vote of a majority of the qualified electors voting in a referendum on the imposition of the Sales and Use Tax to be held in Richland County, South Carolina on November 6, 2012.

(b) The Sales and Use Tax shall be imposed for a period not to exceed twenty-two (22) years from the date of imposition.

(c) The maximum cost of the projects to be funded from the proceeds of the Sales and Use Tax shall not exceed, in the aggregate, the sum of $1,037,900,000, and the maximum amount of net proceeds to be raised by the Sales and Use Tax shall not exceed $1,070,000,000, which includes administrative costs and debt service on bonds issued to pay for the projects. The estimated principal amount of initial authorization of bonds to be issued to pay costs of the projects and to be paid by a

portion of the Sales and Use Tax is $450,000,000. The proceeds of these bonds shall be used for a portion of the following projects:

Project: 1: Improvements to highways, roads (paved and unpaved), streets, intersections, and bridges including related drainage system improvements.
Amount: $656,020,644

Project 2: Continued operation of mass transit services provided by Central Midlands Regional Transit Authority including implementation of near, mid and long-term service improvements.
Amount: $300,991,000

Project 3: Improvements to pedestrian sidewalks, bike paths, intersections and greenways.
Amount: $80,888,356

A list of the 2012 Roadway Projects and the 2012 Pedestrian/Bike/Greenway Projects are attached hereto as Appendix A and incorporated herein by reference.

(d) The Sales and Use Tax shall be expended for the costs of the following projects, including payment of any sums as may be required for the issuance of and debt service for bonds, the proceeds of which are applied to such projects, for the following purposes:

(i) Improvements to highways, roads (paved and unpaved), streets, intersections, and bridges including related drainage system improvements. Amount: $656,020,644;

(ii) Continued operation of mass transit services provided by Central Midlands Regional Transit Authority including implementation of near, mid and long-term service improvements. Amount: $300,991,000; and

(iii) Improvements to pedestrian sidewalks, bike paths, intersections and greenways. Amount: $80,888,356.

(e) The Sales and Use Tax, if approved in the referendum conducted on November 6, 2012, shall terminate on the earlier of:

(i) April 1, 2035; or

(ii) the end of the calendar month during which the Department of Revenue determines that the Sales and Use Tax has raised revenues sufficient to provide the greater of either the costs of the projects as approved in the referendum or the cost to amortize all debts related to the approved projects.

(f) The amounts of Sales and Use Tax collected in excess of the required proceeds must first be applied, if necessary, to complete each project for which the Sales and Use Tax was imposed. Any additional revenue collected above the specified amount must be applied to the reduction of debt principal of Richland County on transportation infrastructure debts only.

(g) The Sales and Use Tax must be administered and collected by the South Carolina Department of Revenue in the same manner that other sales and use taxes are collected. The Department may prescribe amounts that may be added to the sales price because of the Sales and Use Tax.

(h) The Sales and Use Tax is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36 of Title 12 of the Code of Laws of South Carolina, and the enforcement provisions of Chapter 54 of Title 12 of the Code of Laws of South Carolina. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 of the Code of Laws of South Carolina are exempt from the tax imposed by this Ordinance. The gross proceeds of the sale of food lawfully purchased with United States Department of Agriculture Food Stamps are exempt from the Sales and Use Tax imposed by this Ordinance. The Sales and Use Tax imposed by this Ordinance also applies to tangible property subject to the use tax in Article 13, Chapter 36 of Title 12 of the Code of Laws of South Carolina.

(i) Taxpayers required to remit taxes under Article 13, Chapter 36 of Title 12 of the Code of Laws of South Carolina must identify the county in which the personal property purchased at retail is stored, used, or consumed in this State.

(j) Utilities are required to report sales in the county in which the consumption of the tangible personal property occurs.

(k) A taxpayer subject to the tax imposed by Section 12-36-920 of the Code of Laws of South Carolina 1976, as amended, who owns or manages rental units in more than one county must report separately in his sales tax return the total gross proceeds from business done in each county.

(l) The gross proceeds of sales of tangible personal property delivered after the imposition date of the Sales and Use Tax, either under the terms of a construction contract executed before the imposition date, or written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the Sales and Use Tax provided in this ordinance if a verified copy of the contract is filed with the Department of Revenue within six months after the imposition date of the Sales and Use Tax provided for in this Ordinance.

(m) Notwithstanding the imposition date of the Sales and Use Tax with respect to services that are billed regularly on a monthly basis, the Sales and Use Tax authorized pursuant to this ordinance is imposed beginning on the first day of the billing period beginning on or after the imposition date.

Section 3. Remission of Sales and Use Tax; Segregation of Funds; Administration of Funds; Distribution to Counties; Confidentially.

(a) The revenues of the Sales and Use Tax collected under this Ordinance must be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administrating the Sales and Use Tax, not to exceed one percent of such revenues, the State Treasurer shall distribute the revenues quarterly to the Richland County Treasurer and the revenues must be used only for the purposes stated herein. The State Treasurer may correct misallocations by adjusting

subsequent distributions, but these distributions must be made in the same fiscal year as the misallocation. However, allocations made as a result of city or county code errors must be corrected prospectively.

(b) Any outside agencies, political subdivisions or organizations designated to receive funding from the Sales and Use Tax must annually submit requests for funding in accordance with procedures and schedules established by the County Administrator. The County Administrator shall prepare the proposed budget for the Sales and Use Tax and submit it to the County Council at such time as the County Council determines. At the time of submitting the proposed budget, the County Administrator shall submit to the County Council a statement describing the important features of the proposed budget.

County Council shall adopt annually prior to the beginning of each fiscal year a budget for expenditures of Sales and Use Tax revenues. County Council may make supplemental appropriations for the Sales and Use Tax following the same procedures prescribed for the enactment of other budget ordinances. The provisions of this section shall not be construed to prohibit the transfer of funds appropriated in the annual budget for the Sales and Use Tax for purposes other than as specified in the annual budget when such transfers are approved by County Council. In the preparation of the annual budget, County Council may require any reports, estimates, and statistics from any county agency or department as may be necessary to perform its duties as the responsible fiscal body of the County.

Except as specifically authorized by County Council, any outside agency or organization receiving an appropriation of the Sales and Use Tax must provide to County Council an independent annual audit of such agency or organization financial records and transactions and such other and more frequent financial information as required by County Council, all in form satisfactory to County Council.

(c) The Department of Revenue shall furnish data to the State Treasurer and to the Richland County Treasurer for the purpose of calculating distributions and estimating revenues. The information which must be supplied to the County upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of S.C. Code Ann. §12-54-240. Any person violating the provisions of this section shall be subject to the penalties provided in S.C. Code Ann. § 12-54-240.

Section 4. Sales and Use Tax Referendum; Ballot Question.

(a) The Commission shall conduct a referendum on the question of imposing the Sales and Use Tax in the area of Richland County on Tuesday, November 6, 2012, between the hours of 7 a.m. and 7 p.m. under the election laws of the State of South Carolina, mutatis mutandis. The Commission shall publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of projects and purposes as set forth herein, and the cost of projects, and shall publish such election and other notices as are required by law.

(b) The referendum question to be on the ballot of the referendum to be held in Richland County on November 6, 2012, must read substantially as follows:

RICHLAND COUNTY SPECIAL SALES AND USE TAX

QUESTION 1

I approve a special sales and use tax in the amount of one percent (1%) to be imposed in Richland County, South Carolina (the "County") for not more than twenty-two (22) years, or until a total of $1,070,000,000 in sales tax revenue has been collected, whichever occurs first. The sales tax revenue will be used to pay the costs of administrative expenses and the following projects:

Project: 1: Improvements to highways, roads (paved and unpaved), streets, intersections, and bridges including related drainage system improvements.
Amount: $656,020,644

Project 2: Continued operation of mass transit services provided by Central Midlands Regional Transit Authority including implementation of near, mid and long-term service improvements.
Amount: $300,991,000

Project 3: Improvements to pedestrian sidewalks, bike paths, intersections and greenways.
Amount: $80,888,356

YES

NO

Instructions to Voters: All qualified electors desiring to vote in favor of levying the special sales and use tax shall vote YES and

All qualified electors opposed to levying the special sales and use tax shall vote NO

QUESTION 2

I approve the issuance of not exceeding $450,000,000 of general obligation bonds of Richland County, payable from the special sales and use tax described in Question 1 above, maturing over a period not to exceed twenty-two (22) years, to fund projects from among the categories described in Question 1 above.

YES

NO

Instructions to Voters: All qualified electors desiring to vote in favor of the issuance of bonds for the stated purposes shall vote YES and

All qualified electors opposed to the issuance of bonds for the stated purposes shall vote NO

(c) In the referendum on the imposition of the Sales and Use Tax in Richland County, all qualified electors desiring to vote in favor of imposing the tax for the stated purposes shall vote "yes" and all qualified electors opposed to levying the tax shall vote "no." If a majority of the electors voting in the referendum shall vote in favor of imposing the Sales and Use Tax, then the Sales and Use Tax is imposed as provided in the Act and this Ordinance. Expenses of the referendum must be paid by Richland County government.

(d) In the referendum on the issuance of bonds, all qualified electors desiring to vote in favor of the issuance of bonds for the stated purpose shall vote "yes" and all qualified electors opposed to the issuance of bonds shall vote "no." If a majority of the electors voting in the referendum shall vote in favor of the issuance of bonds, then the issuance of bonds shall be authorized in accordance with S.C. Constitution Article X, Section 14, Paragraph (6). Expenses of the referendum must be paid by Richland County government.

Section 5. **Imposition of Tax Subject to Referendum**.

The imposition of the Sales and Use Tax in Richland County is subject in all respects to the favorable vote of a majority of qualified electors casting votes in a referendum on the question of imposing the Sales and Use Tax in the area of Richland County in a referendum to be conducted by the Board of Elections and Voter Registration of Richland County on November 6, 2012, and the favorable vote of a majority of the qualified electors voting in such referendum shall be a condition precedent to the imposition of a sales and use tax pursuant to the provisions of this Ordinance.

Section 6. **Miscellaneous**.

(a) If any one or more of the provisions or portions hereof are determined by a court of competent jurisdiction to be contrary to law, then that provision or portion shall be deemed severable from the remaining terms or portions hereof and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance; if any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied to any particular case in any jurisdiction or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, those circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever; provided, however, that the Sales and Use Tax may not be imposed without the favorable results of the referendum to be held on November 6, 2012.

(b) This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

(c) The headings or titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation, or effect of this ordinance.

(d) This Ordinance shall take effect immediately upon approval at third reading.

(e) All previous ordinances regarding the same subject matter as this ordinance are hereby repealed.

Enacted this 18th day of July, 2012.

RICHLAND COUNTY, SOUTH CAROLINA

By: _____
Kelvin Washington, Chairman
Richland County Council

(SEAL)

ATTEST THIS 24th DAY OF

July, 2012:

Michelle Onley
Interim Clerk to County Council

RICHLAND COUNTY ATTORNEY'S OFFICE

Elizabeth A. McL
Approved As To LEGAL Form Only
No Opinion Rendered As To Content

Date of First Reading:	June 5, 2012
Date of Second Reading:	June 19, 2012
Date of Public Hearing:	June 19, 2012
Date of Third Reading:	July 18, 2012

The Supreme Court of South Carolina

Michael Letts, Appellant,

v.

Richland County and Richland County Board of Canvassers, Respondents.

S.C. Election Commission,

In Re: Richland County Sales Tax Referendum Questions 1 and 2

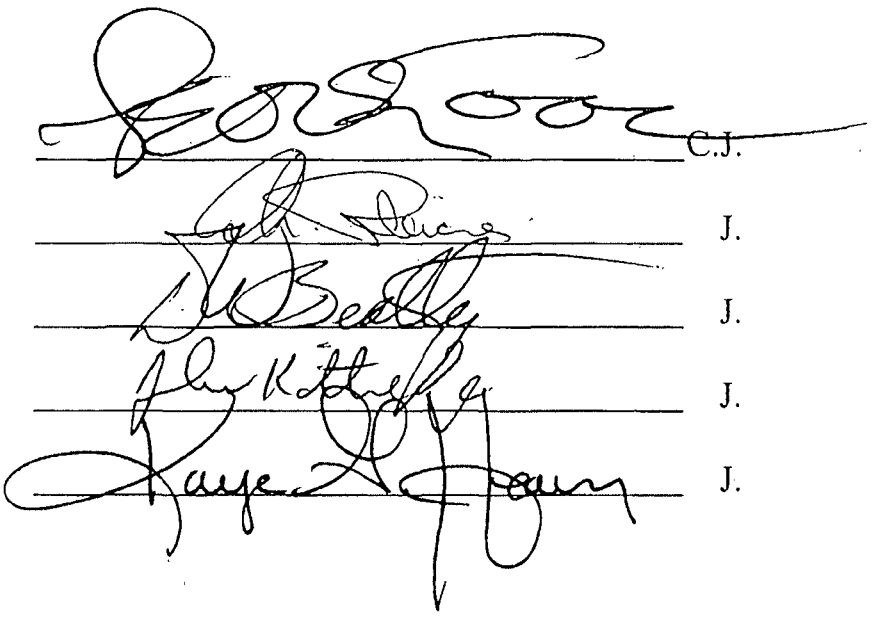
Appellate Case No. 2012-213679

ORDER

In November, the voters in Richland County voted to approve a referendum to impose a penny sales tax increase. Petitioner filed a protest with the Richland County Board of Elections and Voter Registration (County Board), which denied the protest. Petitioner filed an appeal with the State Board of Canvassers (State Board) and asked for a *de novo* hearing. The State Board denied the request for a *de novo* hearing and affirmed the decision of the County Board.

Petitioner now seeks a writ of certiorari to review the decision of the State Board. Richland County and the Central Midlands Regional Transit Authority (Intervenors) have filed a motion to dismiss and expedite, a motion to strike Tabs E-J of the Appendix prepared by petitioner, and a return opposing the petition for a writ of certiorari.

We deny the motion to dismiss and grant the motion to strike. This matter has been expedited, and the petition for a writ of certiorari is denied.



Columbia, South Carolina

March 21, 2013

cc:
Helen Tyler McFadden
John Carroll Moylan, III
Matthew Terry Richardson
Francenia B. Heizer
James G. Carpenter
Jennifer J. Miller
Marci Andino
Billy Way, Jr.
Lillian McBride
Alan McCrory Wilson

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2016-CP-40-3102

Richland County, South Carolina,)
)
Plaintiff,)
)
vs.) TRANSCRIPT OF RECORD
)
The South Carolina Department of Revenue and Rick Reames, III, in his official capacity as its Director, et al.,)
)
Defendants.)

June 28, 2016
Columbia, South Carolina

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JUDGE.

A P P E A R A N C E S:

BENJAMIN E. NICHOLSON, ESQ.
LARRY C. SMITH, ESQ.
MARY ELIZABETH CRUM, ESQ.
RAY E. JONES, ESQ.
Attorneys for the Plaintiff

JAMES E. SMITH, JR., ESQ.
DYLAN W. GOFF, ESQ.
DANA R. KRAJACK, ESQ.
NICOLE M. WOOTEN, ESQ.
Attorneys for the Defendants

DEBORAH M. McCURDY, RPR
Official Court Reporter

PLAINTIFF EXHIBITS

NO	DESCRIPTION	ID	EV
1	Chart	51	51

DEFENDANT EXHIBITS

NO	DESCRIPTION	ID	EV
1	Chart	69	69

JUNE 28, 2016

THE COURT: Good morning, counsel.

MR. SMITH: Good morning, Your Honor.

MR. NICHOLSON: Good morning, Your Honor.

THE COURT: Let's proceed with Civil Action 16-CP-40-3102, Richland County v. The South Carolina Department of Revenue and Rick Reames, III, in his official capacity as Director, Defendants; and Third-Party Plaintiff, Richland PDT; a joint venture consisting of M. B. Kahn Construction, ICA Engineering, and Brownstone Construction Group, LLC, as a unit and individually, Third-Party Defendants.

Is the county ready to proceed?

MR. NICHOLSON: Yes, sir.

THE COURT: Is the Department ready to proceed?

MR. SMITH: Yes, Your Honor.

THE COURT: All right, Mr. Nicholson, I believe you filed this action. You may proceed.

MR. NICHOLSON: Yes, Your Honor. May it please the Court? I'd like to introduce my fellow attorneys that are here at the County's table.

We have Mr. Larry Smith, who is the County Attorney; we have Liz Crum, of the McNair firm; we

have Ray Jones, of the Parker Poe firm. Behind we have from left to right, Ray Stevens of the Parker Poe firm, who is the Former Director of D.O.R.; and we have Rob Tyson and Betsy Gray, of the Sowell Gray firm, who are not appearing in the action, but who represent the Central Midlands Regional Transit Authority, which has a dog in this fight, as we will talk about in a little bit.

May it please the Court? This case is an unprecedented attempt by the South Carolina Department of Revenue to extend its power and to try and regulate not the collection, but the use of taxes.

What D.O.R. is doing is a fundamental change in what D.O.R., and before that the Tax Commission, did in terms of making sure that taxes were properly collected.

In what democracy does the tax collector say how the tax revenue he collects is spent? The people, who are their elected officials, such as Richland County citizens and Richland County Council, say how the tax revenues are spent, not the tax collector.

As noted in our legal briefs, we will show that D.O.R. has no authority whatsoever to prevent

the penny tax revenues collected in Richland County from being remitted -- that is, paid -- to the State Treasurer, and then they are supposed to pay them to Richland County. And we will show that D.O.R. has no choice in the matter.

The General Assembly has statutorily mandated that D.O.R. has to pay this money. That is the basis of the County's petitioner for writ of mandamus.

I would also note that if the D.O.R. has the authority that it claimed it has, then it would become the single most powerful union of government, being able to not only collect the money, but tell everybody how to use it. That is not democracy, at least how we know it.

D.O.R. is a creature of statute. It cannot decide to create any new powers that are not expressly given to it by the General Assembly.

As the Court will note in the briefs we provided, the Supreme Court has said many times: 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.

And the key part of that is expressly stated.

Unlike the County -- and I'll draw this distinction in a minute -- any state agency only has the authority expressly given to it by the legislature. By law, their authority is limited.

Let's contrast that to Richland County. Richland County is an independent governmental entity formed under the Home Rule part of Article 8, Section 7 of the South Carolina Constitution.

As noted in our Supreme Court, as ratified, Article 8 directed the General Assembly to implement what was properly referenced to as Home Rule by establishing the structure, organization, powers, duties, functions, and responsibilities of local governments by general law.

And not only that, the Supreme Court has said that, Unlike state agencies, counties are granted broad liberal interpretations of their duties.

So, on the one hand, we have a state agency which has a very limited scope of authority which only extends as expressly stated by statute. On the other side, we have a county that under the constitutional legislative concepts of Home Rule have broad authority. And that is an important fact and legal point to keep in mind as both sides go through these legal arguments.

We're here to talk about the -- the formal name of this act is the Optional Methods for Financing Transportation Facilities Act, South Carolina Code 4-37-10, and so forth. I'm going to call it the Transportation Act for short.

This is a statute that authorizes the penny sales tax and it is found in the laws governing counties, not D.O.R., in Title 4. And this is the statute that empowers counties under its constitutional rights under Home Rule to implement a penny tax for local transportation needs.

I think it is very important that we look at the preamble. This is something that -- the preamble to legislation is something that our Supreme Court has said is very important for legislative intent.

It says: Preamble of an act may be used as a guide in determining legislative intent and to define the purpose of the act. That is State v. Thrift. And we have cited many cases through the same effect. So let's look at the preamble to the Transportation Act.

Your Honor -- I'm sorry, Your Honor, I am a trial lawyer, I have got to have exhibits, I can't help myself.

The preamble says: In furtherance of the powers granted to the counties of this state, pursuant to provisions of Section 4-9-30 -- and I am going to stop for a minute. 4-9-30 is the legislative enactment of the constitutional Home Rule Act.

So in the preamble, which states what this legislation means, the legislature specifically states: In furtherance of the powers granted to the counties of this state, pursuant to Home Rule. That is an important thing. The preamble and the legislative intent says Home Rule right there.

And then it goes on to say that: Each of the counties of this state is authorized to establish transportation authorities.

Transportation authorities are not an issue at this point. There is not a transportation authority in Richland County. We are talking about the County itself. So when the statute talks about transportation authority, we are not talking about that.

But it says that: Each of the counties is authorized to finance -- skipping a few words -- the cost of acquiring, designing, constructing, equipping, and operating highways, roads, streets,

and bridges, and other transportation related projects. That is Act 52, Section 1, South Carolina Acts and Joint Resolutions, '95.

So here we have Home Rule is authorized by 4-9-30, cited in the preamble. Again, this is hugely important because this says this is a local tax. This isn't a statewide tax, this is a county tax to be administered by the County, to be regulated by the County.

Now, this doesn't directly impact the authority argument, but the Court will hear from us later that one of D.O.R.'s positions that it has taken repeatedly before this Court and publicly is that only capital costs, only the sticks and bricks for projects are allowed expenditures of penny tax funds.

But, Your Honor, I would point to the fact that the word "operating" means administrative costs. And D.O.R. has never said what in the world they think "operating" could mean. And the reason is, because it means what it says. That means administrative costs. That means the costs of operating the bus system. D.O.R. would have this Court cut off funding for CMRTA to the extent it is funded by the penny tax revenues. Yet, the

preamble to the very statute we are talking about uses the term "operating."

So, we will show in our arguments later, Your Honor, D.O.R.'s arguments about it can spend this, can spend that, which it doesn't have authority to make anyway, are simply wrong.

All right. Now, Your Honor, the County seeks a writ of mandamus. We cite a substantial amount of law in this brief. I am just going to simply go through the elements and how we are going to prove each one of them, instead of going through the lengthy recitation of law.

The County has a duty to show that D.O.R. has to perform the act. The County has to show that D.O.R. has a ministerial nature of the act. That means it is mandatory, we don't have discretion. The County has to show we have a specific legal right by which the discharge of D.O.R.'s duty is necessary and the County has to show a lack of any other legal remedy.

So what is a ministerial act? It is an act the D.O.R. doesn't have discretion to say whether it can do it or not. And when we go through the language on the act as far as the duties of D.O.R., I think that is clear.

Let's look at Section 4-37-30(A)(15). This is part of the Transportation Act. And it says in pertinent part, quote:

> The revenues of the tax collected in each county by the Department of Revenue, pursuant to this section, must be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund of the state.

Unquote.

The Supreme Court has said on multiple times and multiple cases that the words "must" or "shall" as used in a statute are mandatory language. Mandatory language is a basis of a ministerial act. Therefore, clearly, by the very language of Subsection (15), D.O.R. must remit the State Treasurer the County's tax revenues. In its plain ordinary meaning, "remit" means "to pay." I don't think anybody disputes that.

Let's look at the other section that has a mandatory duty. And that is Section 4-37-30(A)(a), And it says that, in pertinent part:

> 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 tax uses are collected.

Again, we use the word "must." So D.O.R. is doing what it is statutorily mandated to do in collecting the tax. That is its job. That has always been its job. That will continue to be its job in the foreseeable future as far as we know. They are the experts going to the taxpayers and saying, You owe this tax. We are going to collect it. That is what they do.

Now, to its credit, D.O.R. has not ignored this obvious language and has admitted that these are mandatory ministerial duties.

At Page 20 to its brief, the second paragraph under Heading 3, D.O.R. concedes the following, quote:

> The Department acknowledges the provisions of South Carolina Code Annotated Section 4-37-30 cited by the Plaintiffs, which seem to suggest the Department is statutorily mandated to allocate collected penny tax funds. As such, its duty is only ministerial.

Unquote.

There may be some incorrect grammar, but that

was just a quote.

After that point in its brief, D.O.R. tries to back out of its admission by going through a bunch of general statutes and other statutes that they say gives them the authority to say how the penny tax revenues should be used, but I think it is critically important for purposes of this action that there is no question but that this is mandatory language and those are ministerial duties.

Now, there are other ministerial duties that D.O.R. has. Section 4-37-50 and 4-37-30(A)(16). Those really -- those are ministerial duties. They are mandatory. They really don't touch that much on the dispute right now, so I'm not going to go into those.

So we have outlined specific statutory sections that says D.O.R. owes the County. And it says "must pay." So I think we have established that there is a duty for D.O.R. to pay.

Now, the next part of the mandamus we have to meet, the element we have to meet, is the County's specific legal right. And, again, let's go back to the Transportation Act that says this is a Home Rule statute and this penny tax is a

county-specific tax only for Richland County. It exists in other counties who have passed ordinances and referendums such as Charleston and Dorchester, but clearly the tax we're talking about here right now is Richland County only. And it says that it can be set up an by individual county after ordinance and referendum. Richland County has done that. There is no dispute about that.

The reason the County has a specific legal right to this money that is set up by D.O.R.'s duty is -- the Code is 4-37-30(15) says, quote:

> The State Treasurer shall distribute the revenues and all interest earned on the revenues while on deposit with him quarterly in the county in which the tax is imposed.

So the County by statute has the specific legal right to receive these funds.

The next one we have to prove is no other legal remedy for the County. There is no administrative remedy in the Transportation Act for what D.O.R. is doing. Neither party has stated that the Administrative Procedures Act applies. Frankly, if the Court doesn't order D.O.R. on a writ of mandamus to remit the penny tax revenues,

the D.O.R. could presumably hold the money forever and there would never be any sort of ability for the County to fight it.

So this is the remedy, the writ of mandamus. It exists to make government officials do what they are statutorily mandated to do.

So, the County has met the requirements for this Court to issue a writ of mandamus. We have established the mandatory command for the Transportation Act, D.O.R. must remit the money. We have established that the Transportation Act says that the money must be paid to the County by the State Treasurer. The County has no other legal remedy.

So it seems clear on its face, that that is the law. However, D.O.R. has raised some very novel legal concepts in attempt to cloud an otherwise fairly simple legal equation. Not one of those arguments have any legal basis, and some are so new as to be shocking.

I am not going to go into all of D.O.R.'s claims. I am going to cite a little bit of law for the Court to consider and a few cases for the Court to think about when D.O.R. is trying to explain how it may have authority to withhold these penny tax

revenues in the face of such mandatory language.

As the Court knows, the law says when you are doing statutory construction, which is what this is all about, when a statute deals with something specifically, then the specific language controls over a general statement. So specific parts of the statute, or any statute, control over a general statement of law elsewhere in the statute.

You also have to read a statute as a whole. You can't pick and choose little pieces from which to make your argument. That is kind of where we are getting with what the D.O.R. is trying to do with its capital costs argument.

A statute should not construed so that it would result in an absurd result. That is important when you look at D.O.R.'s arguments, particularly when you look at their arguments about the general authority of D.O.R. They cite statutes citing their general authority. And they say under that general authority they have the ability to say what the use is of revenues that they collect.

If that is true, then D.O.R. has the general authority to tell every agency, every county, every municipality, even the court system, how to use tax revenues collected. So that would be an absurd

result. That is the point of that law.

You have to look at the legislative intent of the statute as a whole, not just a piece of it. And D.O.R. in the past, when it has tried to exceed its authority, has been slapped down by the Supreme Court. I'll cite -- and this was back when D.O.R. was the South Carolina Tax Commission before it was called the Department of Revenue. In Hay v. South Carolina Tax Commission, 1979, the Supreme Court said:

> D.O.R. -- or then the Tax Commission -- has no authority to enact new laws in the nature of regulation to satisfy its own theory of income tax.

And before that, in 1962, in Hayward v. South Carolina Tax Commission, the Supreme Court said:

> The Tax Commission had no legal authority to enact new laws in the nature of regulations to satisfy its own theory as to the enforcement of the income tax laws of this state.

D.O.R. has no authority to satisfy its own theory as to the enforcement of income tax laws of this state. That means they can't make it up as they go along, a statute has to expressly tell them

what they are going to do.

There is a case we cited more recently in the Court of Appeals, ESA Services, LLC, v. South Carolina Department of Revenue, 2011. In that case the D.O.R. was trying to get involved with an intergovernmental agreement, it involved a revitalization agreement with a private entity, and the language in that says, quote:

> However, the Department's authority does not extend to negotiating or interpreting the terms of the revitalization agreement because the act clearly assigns council -- that it is County Council -- with any responsibility. Unquote.

So we have here a number of cases where D.O.R. has tried to exceed its authority, albeit none on this grand scale, but the Supreme Court in every occasion just said: If it is not expressly stated, you don't have the authority.

Now, Your Honor, rather than drag the authority argument on forever, which could happen if I go into the law of D.O.R.'s argument, I want to cite and talk about one case. And I would ask the Court when D.O.R -- to consider that case and

the legislation behind that case when D.O.R. is presenting all its arguments that it had the authority notwithstanding this language to withhold the penny tax revenues.

This oddly is one of those cases that is cited by both sides in their favor. Both D.O.R. and The County have cited City of Myrtle Beach v. Tourism Expenditure Review Committee, a Supreme Court case from 2014, in their favor.

And, Your Honor, I will hand up a copy of that case if you don't have it.

THE COURT: I have it.

MR. NICHOLSON: You've got it?

THE COURT: Yes.

MR. NICHOLSON: All right. Your Honor, that case deals with a different tax. It deals with the South Carolina Accommodations Tax. So it is not directly on point because it doesn't talk about the penny transportation sales tax. However, it is very important, for this reason.

The City of Myrtle Beach determined the Accommodations Tax Act, which provided for a sales tax on the rental of sleeping accommodations, like hotels, and that kind of thing. They call it the A Tax. And enacting the South Carolina

Accommodations Tax, the legislature created a Tourism Expenditure Review Committee. It is called TERC, T-E-R-C, for short. And the reason was to, quote: Ensure counties and municipalities comply with the basic requirements and restrictions set forth in the act. Unquote.

And that would determine whether proposed government spending was compliant or noncompliant with the purpose of the Accommodations Act.

THE COURT: Let me interrupt you, Mr. Nicholson.

MR. NICHOLSON: Yes, sir.

THE COURT: Doesn't that case say that counties and municipalities receiving a tax fund must submit annual reports, which TERC reviewed, to ensure all expenditures complied with the act or restrictions? In other words, that TERC agency was given the authority to review expenditures? Isn't that correct?

MR. NICHOLSON: That is exactly our point. The General Assembly gave TERC the authority. The General Assembly could have given D.O.R. that authority. Instead, they chose to create an entirely new entity. That is because the General Assembly presumably didn't trust D.O.R. to say how

the revenues should be spent. D.O.R.'s purpose is to collect tax, not to say how it is spent. So the Court, you know exactly what I'm saying, and I'm not going to belabor it any further.

The statute says, in creating the accommodations tax, created TERC, and created a body that judged whether or not the county appropriately used revenues. Should -- or had the General Assembly felt that D.O.R. should have that authority, it could have done the same. It didn't.

So, Your Honor, when D.O.R. is going through all their arguments about their authority to do what they are doing, I think the Court has already noted and has ably read the case, D.O.R. isn't TERC. D.O.R. doesn't have a statutorily expressed grant right of review.

So, Your Honor, for purposes of this part of the County's motion that deals with writ of mandamus:

(1) The Transportation Act clearly and unambiguously mandates D.O.R. and its Director must remit the penny tax revenues;

(2) The County is the correct entity to seek this relief as the State Treasurer must transfer the funds to Richland County;

(3) Richland County does not have an adequate remedy at law as it has no ability to obtain monetary relief from the Defendants, and;

(4) Although not an element per se for the County to receive its writ of mandamus, D.O.R. can't cite a single statute like you find in TERC that supports their authority.

Again, no one -- certainly not the General Assembly -- designated D.O.R. as the watchdog over how any county uses its tax revenues. We think that is clear. And the City of North Myrtle Beach case shows the authority simply isn't there.

Your Honor, at this point I'll ask the Court, does the Court wish me to proceed on that portion of the County's motion for temporary injunction, the flip side to the mandamus argument, or would the Court prefer to hear responsive arguments on mandamus first?

THE COURT: I would just as soon you continue with your entire argument.

MR. NICHOLSON: Thank you, sir.

All right. The flip side of the County's petition for writ of mandamus is the County's Rule 65 motion for temporary injunction. As noted in the County's brief, this Court does have

authority to enjoin a state agency.

And the elements that Richland County must meet to receive an injunction are that: The Defendant's threatened actions will cause the County irreparable harm; that the County has a likelihood of success on the merits; and, (3) the County has no adequate remedy of law.

Now, we have discussed -- I have discussed the legal reasons why D.O.R. does not have authority to do what it is doing. It hasn't been granted the authority by the legislature.

A second part to that argument that I touched on early on in the arguments is that D.O.R.'s purported reasons -- at least not one that they have presented any evidence of -- for trying to hold the money back is that they claim that the County shouldn't be spending any of the penny tax revenues on administrative or operating costs. They say it should only be capital costs.

So D.O.R. in their answer and counterclaim has in fact said that the entire ordinance is invalid. If the entire ordinance the County passed is invalid, the penny tax revenues don't exist and the two-thirds of the funding for the CMRTA would go away.

THE COURT: Does the County ordinance provide for administrative costs?

MR. NICHOLSON: The County ordinance specifically did, yes, sir. The County ordinance provided it, the referendum provided it. The voters read it. It said administrative costs. Again, that goes back to Home Rule. That goes back to the preamble, the transportation statute that said: Operating, operating, operating.

The County relies on -- we talked earlier about the law about you can't pick and choose little phrases out of context. The County pulls and says that -- excuse me, the D.O.R. says that capital costs are the only costs that the County can use penny tax revenues for. And they pull it out --

THE COURT: Do you have a conflict between the state statute and the county referendum?

MR. NICHOLSON: No, sir, because, two reasons. First of all --

THE COURT: The County. Go ahead.

MR. NICHOLSON: Two reasons. First of all, the County referendum provides for administrative costs, specifically, in the text of the referendum and in the text of the ordinance. And they are

allowed to do that because the Transportation Act says that they are allowed to include operating -- the costs of operating these things.

Not only that, if you look at the act as a whole, D.O.R.'s citation to capital costs relies on a very narrow provision in 4-37-30(A)(1)Subsection (c). All that subsection says is, This is what has to be in the referendum.

If you look above that, the actual statutory authority as to what this entire act is for is Subsection (A), and the words "capital costs" is not included -- is not included -- in Subsection (A), what that simply means is that the referendum and the ordinance have to state the monetary amounts. But it in no way is a limitation of what the County can use this for, particularly when the preamble that states the legislative intent of the act says "operating."

So what D.O.R. has done is has taken two words out of the statute about what should be in the ordinance to tell the taxpayers how much the project is going to cost and try to somehow twist that and turn that and create some sort of general rule that they only capital costs are allowable. And from that they try to issue regs. And from

that they -- the next thing you know, they are going to tell people what color shirts they have got to wear on these projects.

The plain and ordinary meaning of the word "operating" means "to run something." So it means the operating costs of projects as well.

Your Honor, you know, let's takes D.O.R.'s argument to the logical extreme. If D.O.R. is empowered to say what capital costs are, then D.O.R. would be empowered to tell the County exactly what kind of projects it could put in its ordinance, exactly what kind of projects it could put in its referendum, it could tell the County the kinds of projects it should build, it could tell the County all kinds of things. Where does the authority end? It is the same --

THE COURT: Is it not true that the D.O.R. has only suggested the application of the Internal Revenue code section to define capital costs?

MR. NICHOLSON: Oh, Your Honor, they have done more than that. D.O.R. has issued a proposed regulation. Comments on that regulation were due yesterday. And that proposed regulation would apply to every county that has a transportation bill passed. And if that regulation is enacted,

not only does the bus system in Columbia no longer have penny tax funding, the bus system in Charleston is in big financial trouble, because people rely on the words "operating" in the preamble and not the words "capital costs" stuck in a part of the statute that has nothing to do with the actual authority of what the County is supposed to do.

So what we get back to, again, is a statutory authority of D.O.R. versus the power granted to the County in the Home Rule. And I know this Court is very familiar with Home Rule, and I won't belabor all the law on that. But, again, the Home Rule is liberally construed in favor of the County, and the specific mention of particular powers may not be construed as limiting it to any matter to general power of the counties as stated by the South Carolina Code 4-9-25.

So what we have here is a state agency taking two words in a different part of the statute that don't have anything to do with the empowering of what is to be built or isn't to be built trying to take the County's authority under Home Rule to determine what should be included in the building of these projects and the operating costs, as

specifically stated by the legislature. And the D.O.R. is trying to say, This is our interpretation. This is the way it has got to be done. We are going to tell you, County, Richland County, how you should view the statute on these.

The Transportation Act is part of Title 4, Counties, Section 4-37-30, empowers the county -- I say, quote: Counties are empowered to impose, unquote, a tax, not D.O.R.

Your Honor, D.O.R. works for the County. The County doesn't work for D.O.R. here. D.O.R.'s job is to collect the taxes. That is it.

Your Honor, going through the other elements, no adequate remedy at law. As I said before, the County doesn't have an adequate remedy at law. That is one of the reasons we have got the right to a writ of mandamus. You can't sue D.O.R. under the Tort Claims Act, so there is no authority -- there is no other remedy at law for the County.

The final element the County has to prove is that it would suffer irreparable harm.

Your Honor, should D.O.R. lock or not allow the penny tax revenues to be paid, the harm to the County, the harm to the Central Midlands Regional Transit Authority, COMET buses, the harm to the

citizens of Richland County will be significant, irreparable and possibly cause harm to public health and safety.

The County has introduced -- is filing four affidavits showing irreparable harm: Rob Perry, the Transportation Director of Richland County; Daniel Driggers, Chief Financial Officer of the County; David Adams, the duly elected Treasurer of Richland County; and Robert Snyder, who is the Executive Director of CMRTA.

To summarize the pages and pages of affidavits -- and I will save the Court in going through everything, but let's talk about CMRTA and the economy. As was stated in the briefs, the CMRTA and the COMET bus system and the DART bus system rely substantially on penny tax revenues to operate it.

Prior to the penny tax revenues being used to pay for the bus system, services were at a minimum. And with the penny tax revenues -- excuse me, without the penny tax revenues, services could be decreased by as much as two-thirds. This includes the Dial-A-Ride transit or DART Services for individuals with disabilities, as outlined in Mr. Snyder's affidavit. DART vehicles make about

760 trips per work to transport mostly people who cannot get a driver's license due to medical conditions or infirmaries, and it is estimated the DART service is about 25 percent of the trips are to employment centers, about 25 percent to medical appointments, and the remainder being trips for groceries, churches, and other purposes. The four major hospitals in the midlands and dialysis clinics, physical therapy, and oncology treatments are high traffic services for DART.

Should COMET even survive and DART survive with the lack of the penny tax revenues, service would be cut by probably two-thirds. People rely on COMET, probably some of the people in this room. It is a travesty. Those people now have to wait a year to have adequate transportation as D.O.R. tries to throw this entire situation into question.

And, again, not only here, because this decision has ramifications for Charleston County bus system. Charleston County relies on that county's transportation penny tax to fund that bus system as well.

THE COURT: There is some indication in some of those documents that the D.O.R. did not intend to interfere with the penny tax allocation to the

bus system.

MR. NICHOLSON: That is a good question, Your Honor.

On May 19th, D.O.R. sent a letter to the CMRTA saying it would not withhold that portion of the penny tax revenues that would go to the operating costs of the bus system.

On May 20th, Richland County filed this lawsuit.

In D.O.R.'s answer and counterclaims, they have taken the position that the entire county ordinance and referendum is invalid. They have taken the position that only capital costs, not operating costs, can be paid.

And, therefore, as you read the County's answer and counterclaim, D.O.R. will cut off operating funds for the bus system.

Perhaps it is because in the County's complaint the County noted the incongruity of D.O.R. releasing money for operating expenses for the bus system and yet refusing to allow operating expenses for the transportation.

D.O.R. can answer that question. But the fact remains that they are now saying, No funding at all for the bus system. Otherwise, they wouldn't be

taking the position in their answer and counterclaims that the entire ordinance was invalid.

So -- and, of course, D.O.R. is not going to be harmed in the least. It is not their money. It is not D.O.R.'s money. So we don't think that given the harm that can occur to the citizens of Richland County by the near destruction of the bus system by D.O.R. that the equities weigh in any favor to D.O.R.

Briefly, I will talk about the financial issues and costs to the County that would occur if the Defendants are not stopped. The County would have the inability to pay contractual obligations for the implementation of all the specific projects that were approved by the voters in referendums.

If projects are halted for lack of funding, it could be a potential loss of contracts with willful -- contracts would require re-procuring of services. That adds an additional expense. You don't tell a contractor to walk off a job and ask them to come back without having to pay the contractor localization costs, immobilization costs, all sorts of things like that.

It would result in the elimination of the

County's ability to go to the bond market and take advantage of the current historic low interest rate. Who knows what may happen tomorrow. But the interest rates, if they go up in a year and the County can't use its finance path because these penny revenues are in limbo, then the County's ability to get low cost, low interest bonds may be reduced and it could cost the county millions of dollars.

It also puts the County's credibility with creditors at risk because the County has issued bonds and has continued to issue bonds at a high credit rating, but if the penny tax revenues are stuck in limbo, that could cause problems.

Again, we have actual hard transportation costs that would be increased. The suspension or termination of existing contracts absent another source of funding will result in immobilization costs and additional contracting costs.

You know, Your Honor, at the end of the day, because D.O.R.'s duty here is so unprecedented, it is hard to predict exactly what will happen. It is hard to predict what will happen when a major income stream of a billion dollars is put into question by the actions of a state agency.

So that is all the more reason that the significant risk to the County, the significant risk to the riders of the COMET and the DART bus system are so important that they would suffer irreparable harm if D.O.R. is not prevented from interfering with the flow of this penny tax revenue.

So, in summation, Your Honor, given the law that clearly provides no authority to D.O.R. to interfere with the payment of the penny tax revenues, given D.O.R.'s unprecedented attempt to expand its otherwise statutorily limited power to try and say how money should be spent as opposed to just collecting taxes, given the lack of standing of D.O.R. to withhold the penny tax revenue, the complete absence of D.O.R. should the County's motion be granted, and given the disastrous consequences for the riders of COMET, DART, and CMRTA, and, finally, given the complete mess that D.O.R.'s actions would cause the County's operations and financing, the County respectfully requests that the Court grant the relief requested and, (1) order that the Defendant must exercise their statutory duty to remit penny tax revenues due in July, and all future penny tax revenues

henceforth; and that the Court order on Rule 65 that the Defendants are mandatorily enjoined from taking any action inconsistent with the remittance of the penny tax revenues due in July and all future penny tax revenues henceforth.

Thank you, Your Honor.

THE COURT: Let me ask you one other question.

MR. NICHOLSON: Yes, sir.

THE COURT: Do you take the position that the County is in compliance with its own ordinance at this point in time?

MR. NICHOLSON: Yes, sir.

THE COURT: Thank you.

Mr. Smith?

MR. SMITH: May it please the Court, Your Honor?

Your Honor, it is a privilege to be in your courtroom today representing the South Carolina Department of Revenue.

I am joined by my colleague and law partner, Dylan Goff. And Nicole Wooten and Dana Krajack are at counsel table, also counsel for the Department of Revenue.

Your Honor, this case is about following the law and doing what the law expressly requires.

There would simply be no dispute if the County stayed within the black letter law.

Your Honor, there was talk about that D.O.R. has put at risk a funding stream of the County for an important project for the bus system. It is the County's actions which has put that funding at risk.

We know what has taken place. It is very clear. The South Carolina General Assembly passed Statute 4-37-30 to establish the transportation penny sales tax for a specific purpose, Your Honor. It was for, as stated in the preamble and in the statute itself, it was for highways, roads, streets, bridges, mass transit, greenways, other transportation related project facilities. It doesn't say anything, Your Honor, about a small business -- a small local business enterprise or a mentor/mentee program, or a PR program. Those types of expenditures are not permitted within the language of the statute.

The ordinance that was passed by the County, as we all know, the ordinance does not have the power to expand what is granted to the counties by the statute and so it can do no more than call for the referendums that is allowed by the statute to

raise a penny tax for the same items: For highways, roads, bridges, greenways. The County cannot hold a referendum for a tax for a small business enterprise program. They can't hold a transportation tax referendum for a mentee/mentor program. They can't hold a referendum for a PR program, Your Honor.

The fact is, all the citizens of Richland County who participated in that election, certainly all the citizens who are paying the tax, expect it to be spent according to what the law allows. No more, no less.

You heard a lot that somehow there is some notion that the Department of Revenue is opposed to administrative costs. That is absolutely not the case, Your Honor. As a matter of fact, you pointed out 263, which was just merely a suggestion, but the County needs to do something to provide some confidence to D.O.R., and frankly the citizens of Richland County, that their expenditures, their administrative expenditures, are associated with transportation related projects.

It is a suggestion by D.O.R., it would seem to me that the County would want to do that for the benefit of the people that they serve.

Your Honor, D.O.R. is not telling the County how to spend the money. State law is telling Richland County how to spend the money. And there is an important public trust between the County and certainly the state who holds these funds to be passed to the County, that that law be followed.

Quite simply, Your Honor, you could fix this today by ordering that the County comply with the elements of their own statute, and we'll be happy to pay the money to the County. No interest in D.O.R. to deny access to Richland County for the tax dollars that would be there to service transportation related projects. But because of what has happened and what has been discovered and the audit that calls significantly into question the expenditures that have been taking place in the past, authority -- let's talk about authority, Your Honor -- it is clear and express, the South Carolina Department of Revenue is created to administer and enforce the revenue laws of this state. It doesn't say some of the laws. It says it is there to enforce all the laws, including this law, Your Honor.

And, Your Honor, in this law it goes further, and more specifically, as my colleague talked about

in looking at the specificity, looking at the Transportation Act statute. It says: We are to administer, to enforce, regulate. And, Your Honor, we can terminate the tax. And let's talk about it. I will get more into this a little bit later, but we have the authority to end the tax. So if we are forced to hand over transportation dollars to a county who is not spending it on transportation projects, we'll never get to the point where those projects have been fully funded because they are spending it on stuff that is not allowed within the statute. And so our right or statutory authority to terminate gets frustrated because they are not following the plain meaning of the statute.

Your Honor, we do have ministerial acts to complete, but that does not mean we blindly pass money to a county without any analysis. There is a process. Administrative work means to manage the process. And there is plenty of law out there, and I will provide to the Court, and I provided also yesterday to opposing counsel and the Court I think a very important Attorney General's opinion that describes this very situation. It looked at the State Treasurer, and it talked about how the State Treasurer is certainly vested with ministerial

duties to disburse proceeds within the context that was raised in dealing with our investment fund. But a ministerial role, it isn't like there is no discretionary control over whether payments are to be made. It talks further that a county treasurer, while it might be the legal custodian of a fund whose duty it was to see that the proper steps were taken to prevent the funds in the treasury from being improperly disposed of.

81 CJS State Section 393 speaks directly to the position that we're in today. And, Your Honor, it is not a question of authority for us to withhold the fund, we have a duty to withhold the fund. It is clear that it is a duty of the state comptroller or other proper officer, before issuing a warrant for the payment on account to affect the state to make an administrative determination, which is our responsibility to administer in this act, that the expenditure is within the law. The comptroller or proper officer has the legal right to refuse disbursement of funds when such officers consider it illegal until there is a judicial determination on the validity of the proposed expenditure.

And, Your Honor, that is why we are here

today.

Richland County has this same duty to ensure that the tax money that it holds, that it is spent within the confines of the law as it is expressed.

The materials we have provided Your Honor go through and provide a multitude of examples -- and I will point to Page 4 of the affidavit of Tim Donovan, Your Honor -- describing numerous and millions of dollars' worth of illegal expenditures. They include millions of dollars in blanket, retainer PR contracts that are not tracked. The County could not identify what hours were spent on them, what services were provided. They aren't associated with any particular transportation project whatsoever. The County also created with these transportation funds a small and local business enterprise program. It may be a great idea, Your Honor, but it is not allowed to be funded for the transportation penny tax. And the County has admitted this, but they haven't been willing to install some small measure that says when you are going to spend on administrative costs, it is going to be associated with a project that is allowed within the law.

They spent hundreds of thousands on

mentor/mentee programs, all of which bear no rational relationship at all to a transportation related project.

Your Honor, they hold the keys to the solution of this situation. Simply willing to provide a commitment that they are going to ensure that the administrative expenses that they associate relate to a project, a transportation project. That is all that is suggested at 263. And they can come up with their own version of a test and measure. We offered that, Your Honor, as a suggestion. Can they do PR work in the context of the law as an associated administrative expense? Certainly. We have never objected to there being PR work. When you have a new bridge that is being developed or a new road, you need to go talk to the members of the community and let them know what is taking place. Certainly there is going to be PR related expenses. It is about spending the money in accordance with the law in a way that gives confidence to the citizens of Richland County, to the voters who promoted it, that it is being done in the proper fashion.

THE COURT: What gives D.O.R. the standing to raise these issues?

MR. SMITH: Well, Your Honor, that is a great point, because the reality is --

THE COURT: Answer the question.

MR. SMITH: And I will -- if not us, there is no one. We don't have a state qui tam law. It is fundamental under our authority to enforce the laws to -- and, under the duties that I just described, we have an obligation as a trustee of those funds to ensure it is being spent according to the law.

The fact is, Your Honor -- how about this for an example? If a small business program is not sufficient or a mentor/mentee-ship program is not so far out of the statute provision, what if the County says it spent money on a fire station? I believe it is a wonderful thing for certain communities. It is important to have fire stations out there. But clearly outside the scope of what is allowed here.

What D.O.R. wants -- I mean, what the County wants you to do, Judge, is say, We can spend it however we want to, even outside the permits of the law, and you can't stop us. And no one can.

We don't have a state qui tam, as I mentioned. There is no way for a citizen to bring a case for a broad waste of the use of government dollars. It

is incumbent on D.O.R. It is our obligation to enforce revenue laws and ensure that the money is being spent according to the law.

So what -- the absurdity here is what the County is asking. The County is asking this Court to require us blindly to transfer dollars when we know there are serious problems with how it is being spent. And all -- all we're asking is come up with some rational steps, Your Honor. You can spend administrative costs. We never said that you can't do that per se. All it needs to be is related to transportation programs, or transportation projects.

Your Honor, for the purposes of their argument about mandamus, the fact is, this is just not a purely ministerial duty, as is the case that was pointed out with the treasurer, as is the case that has been identified through the previous authority, we have an obligation to examine, and we have done that.

And you see in the affidavits that we provided that there are expenditures that are outside the law. And we have a duty -- and I would like to go over with the Court our chart. Your Honor, you asked that a chart be put together, and we did

that.

May I approach?

THE COURT: I have it.

MR. SMITH: You have a copy of it?

THE COURT: Yes, sir.

MR. SMITH: Has it been marked?

THE COURT REPORTER: Defendant's 1.

MR. SMITH: So it has been marked as Plaintiff's Exhibit 1[Defendant's Exhibit 1], Your Honor. And this shows the Court the process by which D.O.R. handles the transportation penny tax revenue.

And, overall, what it indicates is anything but a purely ministerial process. And that is indicated because of the language of the statute that we are required to administer the tax. Administer means managing the tax. And administering also within the context of CJS, Your Honor, that section requires that we examine the proprietary nature of the expense. And it requires a duty upon us to refuse disbursement for funds which we consider to be outside the scope of the statute.

There is also the process by which we are permitted to audit the funds and determine how they

are being used. It is not a question of we simply pass the funds to the County and then we're done and it is over. We continue to administer, continue to be engaged with the County to ensure statutory compliance. And so the information flows back up to D.O.R. about how the County is spending the money.

And it continues on, Your Honor, because, as you recall, we have the obligation under the statute to terminate the tax. The County in their ordinance, when they put it forward and they listed a number of projects, when those projects are funded and D.O.R. is tracking the funding of those projects, D.O.R. years later ends the tax, terminates it.

So with that right, if they are allowed to do what they have done in the past, which is to spend on projects -- on items -- on things that are clearly not authorized in the statute, then who knows when we'll ever fund the projects that the people of our county voted for. They could -- I mean, taking what they have asked you to do, Your Honor, we would spend millions and millions and millions of dollars on stuff that are totally unrelated to the projects and maybe never get to a

point where we funded what the people of our county thought they were voting for.

We have considerable deliberative discretion that takes place. And just as it was in the case of the treasurer, and these other examples, it is not a question of us simply, Here is the money. We've got it. We hand it over. We audit and we review and ensure compliance. And when we find it is not being complied with the law, we have a duty not to pay it over.

I want to address a couple of comments of counsel. The TERC, the Myrtle Beach case, the TERC Committee has that authority to review a tax expenditure to ensure compliance. It is not like that same authority doesn't exist with penny taxes. What happened here is the patency devolution of that power to the TERC. That power exists today with D.O.R., always has existed. Granted, you know, as my colleague said, this is not an event that has occurred often, thankfully. Usually we expect counties to follow the law. Usually we expect them to spend the money on what it says you can spend money on. And not any more than that.

So our point on the North Myrtle Beach case is we have this authority. It is in our statute and

it is in the case law.

Lastly, Your Honor, we have worked to resolve this. You see in the correspondence that has gone back and forth. It is not -- it shouldn't be hard to resolve this impasse between these two agencies. I think both genuinely want to do the right thing. I think it has gotten in positions that seem intractable. But it is quite simple. All we have asked, Your Honor, is that they simply spend according to what the black -- which we are -- again, it is not us saying this, it is state law saying this -- and that they spend associated administrative costs related to those projects. And that it also, lastly, relates to the amount received from Tim Donovan's affidavit, one of his jobs in that process of reviewing compliance is not only to look to make sure it is spent and associated with a particular allowed element within the statute, but also to make sure it is proportional so you are not spending $300,000 worth of PR on a million-dollar stretch of road. And he describes his review of the records from the County on that basis.

THE COURT: What are you asking this Court to do?

MR. SMITH: Your Honor, we are asking this Court to, on our injunctive relief -- two options Your Honor, two ways. All we would like is for this Court to direct the County to follow the statute, to spend according to what it says.

THE COURT: Your prayer says declaratory judgment and county ordinance is void on its face.

MR. SMITH: Well, that is. I mean, that is -- that is not before you today. That is if we continue to litigate this matter. We think there are serious problems with the ordinance. And there are serious conflicts, as the Court saw, within what the statute allows or what the -- but, you know, to fix this, Your Honor, if all we were talking about, as you have seen in the record that has been presented to you, if all this was about was about the buses, then this would be a legislative fix at another time, but this is not simply about buses. It is about an unwillingness to see the obvious nature of what has transpired in the past and unwillingness to make some commitment to be in compliance.

You notice none of counsel's argument said that we can create a mentor/mentee-ship program under this law. Never heard counsel once say that

a PR program is allowed under this law. Never heard them defend a single bit of those expenditures. They would rather we just simply ignore them and say that there is no cause for D.O.R.'s concern. So that is why this is not hard to fix, Your Honor. We simply want an order directing them to stay within the confines of the statute. We will certainly be continuing to promulgate regulations and educate other counties on the proper way to expend them, because that right is given to the Department through our right to regulate. And we will certainly pursue that.

But fixing this in the short-term is not a hard thing to in my mind. And we would be delighted to pass the money to the County, as long as they commit, or as long as this Court directs that they stay within the confines of the law. Otherwise, I think the receiver is well within the Court's discretion.

We have a plan. The statute provides a plan. And should the Court decide that there is some concern that the County would be unwilling or not able to comply with the law, that seems to be a good solution for the Court to consider.

But, either way, for the benefit of the

citizens of Richland County, this community, our state, this does need to get resolved. We need to have confidence that D.O.R. is going to comply with the law. And we are happy to make sure the money gets to the County and gets to the citizens that it serves.

Thank you, Your Honor.

THE COURT: All right. Mr. Nicholson, any reply?

MR. NICHOLSON: May it please the Court?

As a housekeeping matter, Your Honor, I had previously provided the court reporter a copy of the organizational chart that the County provided you, and I would ask that that be moved into evidence as I guess Plaintiff's 2.

THE COURT REPORTER: I marked this one Defendant's, and this one Plaintiff's.

MR. NICHOLSON: Plaintiff's 1, then. I move Plaintiff's 1 into evidence.

THE COURT: Without objection.

(WHEREUPON, Plaintiff's Exhibit No. 1 was marked for identification and received into evidence.)

MR. NICHOLSON: A couple of things, to start out. First of all, the advantage of having a dozen

lawyers helping you is that they remind you of everything you missed. And I have repeatedly talked about the preamble at 4-37-10 talking about "operating." And what I also mentioned to the Court that the real meat of this statute in terms of what counties can and cannot do is in 4-36-30 Subsection (A)(1)(a), and that the stuff that D.O.R. was talking about was in (c), but if you look at (a), and it has Subsection (i) and (ii) and (iii), that specifically gives the County authority. In this statute it says: Projects of the types specified in Subsection (i), operated by the county, or jointly operated by the county or the governmental entity.

So, Your Honor, I omitted to tell you that the word "operated" is used in the statute itself, as it is used in the preamble. There is absolutely no question but that the County may use operating administrative expenses.

THE COURT: I'm not sure the D.O.R. argues with you on that.

MR. NICHOLSON: Your Honor, D.O.R. doesn't like the statute at all, apparently, but they kind of come up with what they may. I mean, for example, all this talk about the County adopting

the standard or not adopting the standard, the County uses GASB. The County uses governmental accounting standards that every other county and municipality in the state uses. And that is what we told D.O.R. the County would use. And D.O.R. didn't like that. So D.O.R. insisted that we use an Internal Revenue code section. So in the April 27th, 2016, letter that was written by Mr. Reames to Tony McDonald, attached in the exhibits to our complaint, they say: Council has not acted to implement a common uniform standard to ensure appropriate expenditures of the penny tax fund as recommended by the Department.

Well, we told them, we do, the same one that every single governmental entity in this state used, probably every governmental entity in the country. And they want us to use an IRS code section that only taxpayers use.

So, you know, that is a little bit of red herring there.

Your Honor, a couple of -- I can address a lot of things, but I am going to just try to specifically address to you the points that Mr. Smith made.

First of all, the whole theory that the

authority of D.O.R. to administer and collect taxes gives it the power to say how tax revenues are spent is what I was talking about earlier. That is a -- those statutes are general statutes. The specific statute that go on later to talk about -- the D.O.R. has stuff that says, Well, if you don't file your tax return, you can do this. Or it talks about power over taxpayers filing tax returns. There are specific enforcement things that are stated that the code is replete with that actually flesh out all this stuff.

General grants of authority don't give the agency the authority to do whatever the heck it wants to. That is where we get back to the fact that agencies are limited. And that is why the Supreme Court has repeatedly shot down D.O.R -- before that the Tax Commission -- saying, You can't do these things.

I mean, let's look at, for example, they say that they have the right to administer -- by administering this tax, they have the right -- the penny tax -- have the right to say, Well, how do you use it?

Well, if that is true, what about all the other sales use tax out there? I mean, the word

"administer" is used everywhere. So I guess if D.O.R. said it had the authority to tell the County how to use the penny tax revenues because of the sales and use tax, and the word "administer" gives it that authority, then I guess it has the right to tell the County and others how to use the South Carolina statewide sales tax at 12-3-610. I guess D.O.R. has the authority to tell people how to use the local options tax, 4-10-20. I guess D.O.R. has the authority to tell counties how to use capital projects taxes, 4-10-300. I guess D.O.R. has the authority to say how a personal property tax relief should be implemented by tax users 4-10-540. The same with local property credit, 4-10-720. The same for the education capital improvement tax, 4-10-410. The same for school district taxes that are separate for all these school districts all over the state. The same for the Catawba Indian tax. And the same for the Tourism and Development tax. Those are all sales and use taxes, Your Honor. And administering those taxes gives D.O.R. the authority somehow to say that, We can tell you how you can use them, then, man, that is one powerful agency.

You were referenced to a couple of other

things. Mr. Smith mentioned specifically 4-37-30(A)(5)(b). That is the section that talks about -- it is the sunset provision. He is talking about the termination of the tax. The argument of D.O.R. is, Well, we get to tell you what kind of projects or how to capitalize your projects or what kind of cost to your project because we have to say when the tax terminates. But, Your Honor, that is an extreme, extreme interpretation of that language.

First of all, it is optional language. The tax can be terminated the earlier of the final day of the maximum time specified at the imposition of the referendum and ordinance. So the tax can terminate on a date before D.O.R. has any duty to do anything. So it is an optional duty.

Not only that, this provision that D.O.R. is relying on is a sunset provision. You see this in these kind of cases. All D.O.R. needs for this is an accounting of dollars and cents. D.O.R. has the ability -- and they do this on other sales and use taxes that are capped -- to find out how much is spent. The County's only obligation here, such that it is, is to give D.O.R. the amount of money the County has spent for the tax. D.O.R. then adds

it all up. If they want to add it up in a certain way or another way, that is up to D.O.R., I suppose, and that might be a fight for another day, but D.O.R.'s ability to add up the total amount of tax is a far cry from saying to the County, You must use this tax for certain purposes.

Historically, that is how these kind of provisions are used with the Capital Project Sales Tax Act at 4-10-340. It is a sunset provision. It is simply arithmetic. It is taking the numbers. It doesn't say, like the City of Myrtle Beach said in TERC, You shall have the ability to tell the County what it needs to spend money on.

Now, Your Honor, the audit statute was cited by D.O.R. That section states:

> The Department of Revenue shall use available personnel to conduct audits involving all taxes to promote voluntary compliance and to collect revenues of general funds of the state in designating accounts. Unquote.

That says nothing about authority to tell the County how to spend its money. Not only that, it doesn't really apply, this whole audit thing. If you look at the letters attached to the complaint

that D.O.R. sent the County, they didn't use the word "audit," they say, We would like to do a review.

THE COURT: Did they do an audit?

MR. NICHOLSON: They did a review, Your Honor, because you know what? They don't have the authority to do an audit.

THE COURT: Did they do an audit in April of 2015?

MR. NICHOLSON: They call it an audit, Your Honor.

THE COURT: Okay.

MR. NICHOLSON: If you look at that statute, the statute doesn't apply to the County, because it talks about voluntary compliance and it talks about private taxpayers, not local government.

THE COURT: You think they have no authority to audit the County in terms of the use of the penny tax fund?

MR. NICHOLSON: It is irrelevant to this argument right now, Your Honor, so I don't want to get too far astray. We can go down that line of statute, but my purpose for bringing that statute at that point is simply the statute says nothing about the authority of D.O.R. to regulate how the

tax money is used. So I don't want to confuse things as far as that is concerned.

It really is interesting because, Your Honor, D.O.R. has kind of dovetailed their motion for injunctive relief for a receiver into the argument.

Let's talk about again the fact that a state agency is a creature of statute. Again, Heyward v. South Carolina Tax Commission said that D.O.R. can't satisfy its own theory as to enforcement of income tax laws to the state.

And one of the things that was mentioned at length to the Court in the arguments was the Attorney General's opinion that we received late yesterday that was dated November 16th, 2011.

And the proposition that D.O.R. states for that particular Attorney General's opinion, as well as CJS, which of course is a general treatise of law and not any specific state law, was that fiduciary duties exist by D.O.R. giving it some authority beyond its ministerial authority.

And, Your Honor, but that Attorney General's opinion dealt entirely with the State Retirement System. It dealt with the investment of the retirement fund of state employees.

And to really put an end to the entire

argument, the entire opinion was based on fiduciary duties created by statute. Section 9-16-40 says that: If someone is handling state retirement funds, they are a fiduciary.

If you look in the revenue statutes, there is not a single reference to fiduciary. You know, if a fiduciary is someone who you impose trust and confidence in, and S.C.D.O.R.'s duty to the taxpayer is statutory, I, for one, don't go on and question the credibility of D.O.R. every night and having trust and confidence in them. They are not my fiduciary. I would suspect that people they audit don't think they are their fiduciary either. That entire argument is nonsense. It has got no basis in law. The CJS section they cite cites an Alabama case about the comptroller of that state having the authority to hold back funds.

Well, guess what? In the Lyons case in Alabama, in 2002, Alabama Supreme Court, cited by CJS, cited by D.O.R., the statute expressly gave the comptroller general the authority to hold the funds.

Again, it all gets back to statutory authority. Everything that D.O.R. has cited actually is in favor of the County's position.

Your Honor, since the D.O.R. addressed D.O.R.'s motion for their motion for injunctive relief and a receiver, should I respond to that now?

THE COURT: Yes, sir.

MR. NICHOLSON: All right, thank you, sir.

All the affidavits, all the statements that are upon information and belief, all these arguments by D.O.R. are just nothing but a story that is full of sound and fury signifying nothing.

As stated in the County's motion for the mandamus, there is no statutory authority granting D.O.R. to seek an injunction. When a state agency -- our Supreme Court has said when a state agency does not have control over how another agency of the state does something, there is no standing for that agency to get involved. That is Camp v. Board of Public Works. You have got to show a special interest. D.O.R. has to show a special interest in Richland County. They don't even own the funds. They don't own the fund. They don't have fiduciary standing. They are simply a -- collect the money. And once they collect the money, they have a statutory duty to remit it. There is no fiduciary standing. There is no case

law. There is no CJS law. There is never any law that D.O.R. can rely to create some kind of standing based on fiduciary duty. It doesn't exist. It simply doesn't exist. There is no common law standing. Again, they tried common law argument. And that was the CJS case and the Lyons case from Alabama.

THE COURT: What about the South Carolina Public Interest Foundation v. D.O.T.?

MR. NICHOLSON: Well, Your Honor --

THE COURT: The 2015 case which gave the Public Interest Foundation standing based on public importance?

MR. NICHOLSON: Your Honor, that case gave a private individual, in the case it specifically said private individual standing because --

THE COURT: Public Information, I mean, Public Interest Foundation is not an individual.

MR. NICHOLSON: Well, a legal entity is an individual. There is no authority for a state legislative entity to do that.

THE COURT: Okay. All right.

MR. NICHOLSON: And, in fact, you know, there is a taxpayer lawsuit pending against the County on the same issues that D.O.R. is talking about. I

see Mr. Carpenter right there. I am sure he is listening with great interest to the arguments here.

THE COURT: I am very familiar with Mr. Carpenter. I have got a history with him.

MR. NICHOLSON: Your Honor, so there is no -- a part of what we know --

THE COURT: Is there anything that prevents the state agency from claiming that standing under the public interest --

MR. NICHOLSON: Yes, sir.

THE COURT: -- exception?

MR. NICHOLSON: Yes, sir. I would say that there are two things.

First of all, the public interest exception refers to, yes, a foundation, but also its individual not -- it doesn't say something about publication.

The second is, you still have to have standing. And if you look at the Citizens of Lee County case or the Sea Pines case, you have got to show imminent prejudice of a personal nature and not merely of a general common interest to the public.

There is no showing here of how D.O.R. has

been injured. I mean, to have standing you have to suffer an injury. D.O.R. is claiming it is a fiduciary of the taxpayers, and that somehow gives it standing. But D.O.R. doesn't have standing unless the legislature gives it standing.

I'll give you an example. If we want to talk about, for example -- this goes to the receiver argument. One of our arguments is that D.O.R. doesn't have the authority to argue that it has standing with regard to seeking a receiver because that kind of authority to seek injunction for standing, for standing or for receivership, is something that has to be specifically granted by the legislature. For example, the Director of the Department of Insurance, by statute, by 38-5-160, specifically is given the power to ask a judge to issue an injunction or ask a judge to issue a receiver if there is something they don't like about the way insureds do business there.

This is another example of the limitation of authority of state agencies. If the General Assembly had intended D.O.R. to have the ability to seek an injunction or the ability to seek a receiver, they would have said so in the statute. And they haven't done that. And, again, there is

no protected right under the Transportation Act that D.O.R. has. Their right -- their duties are to pay the money. They don't have any right to hold the money. There is in no legally protected right, which is one of the basic elements of standing required by our Supreme Court and by the U.S. Supreme Court.

They have cited that equity gives them standing. That is -- equity is a source of judicial power or authority, to fashion a remedy when the law is inadequate. Equity cannot be the source of standing. That has to be only by legislative enactment.

And, again, we still get to the whole thing. It comes back around to the whole thing. Does D.O.R. have the authority to do what it is doing? If it doesn't have the authority to do what it is doing, it doesn't have standing no matter what.

So, really, if they have to remit the money -- and none of these statutes they cite give them the authority, like the TERC statute gives the City of Myrtle Beach, then they can't have standing.

With regard to receivership, receivership is a statutory right in South Carolina. It is purely a statutory right. They cite a lot of law from other

states. But in Gulliver v. Hughes, our Supreme Court said a long time ago that a receivership was controlled purely by statute. And that statute is 15-65-10. And that says that before someone can get a receiver appointed through judgment, they have got to establish a, quote, apparent right to a property, unquote. D.O.R. does not have an apparent right to this property. They simply collect it, hold it, give it to the treasurer to give to the county.

And, finally, Your Honor, we also have the acquiescence. The Supreme Court said in Brookshire v. Farmers Reliance that you can't wait for years and then have a receiver appointed for the same things you are concerned about. D.O.R. is taking the position that the ordinance is illegal. But D.O.R. -- I mean, the referendum and ordinance occurred in 2012. The penny tax revenues were being withheld starting May of 2013. It is now June of 2016 and only now is D.O.R. trying to get a receiver appointed. So the Supreme Court has said you just can't sit out there and then wait for a receiver to be appointed later.

THE COURT: Well, if, as they allege, there has been misuse of the penny tax funds, if not

them, then who or what would have any jurisdiction or interest in curtailing such activity?

MR. NICHOLSON: Well, Your Honor, technically that issue is not before the Court.

THE COURT: I understand that.

MR. NICHOLSON: But, ultimately -- and this goes back to Home Rule -- if the taxpayers don't like the way that County Council is spending the money -- as Senator Lindsey Graham has said on many occasions, elections have consequences. I'm not going to suggest that the County agrees that the taxpayer standing lawsuit Mr. Carpenter has brought is proper in any way, but certainly that is being attempted. I don't see the Attorney General in this case.

And, Your Honor, ultimately if wrongdoing occurred and criminal action occurred, those people will be prosecuted under the criminal laws of this state and imprisoned. But that -- other than two people who did commit crimes by failing to pay taxes -- nothing to do with this -- have been convicted and sentenced, as they should have been, but that doesn't have anything to do with all the sound and fury and fluff that is thrown in the air by D.O.R.

So, I understand the Court's question, but I believe that ultimately the citizens of Richland County will make the determination. That is what Home Rule is all about.

Thank you, Your Honor.

THE COURT: Or law enforcement?

MR. NICHOLSON: Most definitely law enforcement, Your Honor. Most definitely law enforcement.

THE COURT: Including agencies such as the State Grand Jury?

MR. NICHOLSON: The State Grand Jury, SLED, Solicitor's Office. If someone committed a crime, they ought to do the time. The County certainly believes in that and is in favor of that. But there has been no allegation and no proof in this lawsuit. There hasn't been a single statement in any affidavit filed in this case by the County that shows that.

THE COURT: All right. Thank you, Mr. Nicholson.

MR. NICHOLSON: Your Honor, quickly, we had a motion to strike certain portions of the affidavits that were filed by the County because it had legal conclusions. We just ask the Court take that under

advisement.

THE COURT: I will. Thank you very much.

MR. SMITH: Thank you.

THE COURT: I have read it.

MR. SMITH: Thank you, Your Honor. If I may reply with a few comments of counsel, and also make the housekeeping measure of moving Defendant's Exhibit 1 into evidence, if it please, Your Honor.

MR. NICHOLSON: No objection, Your Honor.

(WHEREUPON, Defendant's Exhibit No. 1 was marked for identification and received into evidence.)

THE COURT: Just to head you in one direction. Mr. Nicholson says the Department has no standing to move as you have for a temporary injunction.

MR. SMITH: You know, we just dispute that, Your Honor. And I think the statute --

THE COURT: How do you dispute it?

MR. SMITH: Well, we dispute it by the authority that is given to us under the law to enforce the statutes and enforce the revenue laws of this state and to utilize the court system to do that.

There is nothing that says we don't have that authority. There is everything in the law that

says we have not only the authority, but the duty to enforce the laws and revenue laws in the state. And this is the forum to do it in.

I think there are couple of important items to address based on comments of opposing counsel, and I want to make it clear. D.O.R. does not dispute that the word "operating" is in the preamble. We do dispute that that means that they can spend that money on mentor/mentee programs, and the other such. We don't dispute that they use government accounting standards. And that is beside the point, Your Honor. That is not a question. Government accounting standards, they tell you how to keep the books. They tell you the process by which you make the accounting of the monies. What they have not done is tell you what is appropriate. They have not put in a process to establish a proprietary nature of the spending. And that is what 263 does.

What they talk about in the government accounting standards are totally separate from what -- making sure that the standard for the appropriate nature of the expenditures is in place.

We are not telling the County how to spend the money. The law does that. It is very clear. What

we are saying, and what we have the authority, the duty, is to not give them money to spend it illegally. That is what we're saying. And we clearly have that authority.

If you look at what they cited, Your Honor, in their case, the Sumter County v. Hurst, it goes way back to 1939, but it talks about a public officer receiving money for public use and being the custodian and the trustee. They use "trustee" as a term of art in quotes in the headnotes saying that we sit in the same situation as a custodian of these monies as a trustee and we have a duty to make sure that there is compliance and we enforce the tax laws. That is what we're doing today.

The termination question, it is very important Your Honor. That authority -- and, yes, there is a date to terminate, but if you take their argument and they are allowed to spend it on whatever they choose to spend it on outside the statute and we continue to pass them the money blindly, not looking at what we see, it is obviously outside the statute, then the citizens who voted for it, the taxpayers who paid for it, are going to pay for more than what the projects require and they are going to be taxed more than what their authority is

to tax them. It is right for us to stand up and oppose that when we see it.

We are -- and if you look to the chart I provided, we did -- we are providing -- did conduct an audit, have the right to conduct an audit. And if you look, we also -- it is not just a question of the proprietary nature of an expenditure, but we also look at errors made. At times one county is given more money than they should, we come back, take a look at it, errors are corrected. There is an ongoing administration of these funds and it is done through an audit and it is done through our work to ensure compliance with the revenue laws of our state.

You know, it is twice an opportunity to make their case, Your Honor, before Your Honor, and they would not address the nature of the expenditures that D.O.R. has objected to, not until Your Honor asked questions directly about them. It depicts this, going forward in our view in the Department of Revenue, is they need to simply commit. What bothered me was they have already said they would commit, but they have not shown that in actions that they are going to stay within the confines of what the penny tax has been taken from the people

of Richland County that have utilized or the purpose for which the law allows it to be used for. No more, and no less. And that is what the Department of Revenue is asking for, Your Honor.

Thank you.

THE COURT: Anything further?

MR. SMITH: Nothing, Your Honor.

MR. NICHOLSON: Simply, Your Honor, the County is following the law. GASB does tell you how to you use direct and indirect expenditures.

THE COURT: I'm sorry, I couldn't quite understand you?

MR. NICHOLSON: GASB, the governing and county standard does talk about the direct and indirect costs and it does provide these things. Your Honor, the County is following the law. D.O.R. doesn't like the law, period. And the County rests its case.

Thank you, Your Honor.

THE COURT: All right, counsel, I will take your arguments under advisement, I will read your briefs, and I'll let you know.

Now, let me just, for clarification, what is the timetable for the release or not release of the present state of the funds that have been

collected, let me put it that way?

MR. SMITH: Your Honor, there is no additional payment due until mid July.

THE COURT: Mid July?

MR. SMITH: If we were not in here and none of this was going on, there would not be a payment until mid July.

THE COURT: What do you mean by mid July?

MR. SMITH: 13th, 14th, is what I have been informed. It depends on when the process works with the Treasurer's Office.

MR. NICHOLSON: Your Honor, if I may, my understanding is that --

THE COURT: That is when it is due, Mr. Smith?

MR. SMITH: Yes, Your Honor, that is when we would pay, as a matter of course.

MR. NICHOLSON: Your Honor, it is my understanding that normally the money does come in mid July. Our problem is that -- and it can't come in the first of July because the June receipts, tax receipts, are still being processed by D.O.R. I think I'm correct in saying that. And so it takes a little while administratively for them to do that. We just didn't want to be in a position where D.O.R. freezes and doesn't do anything and

then suddenly the money doesn't come in, they say, Well, we haven't done anything because the Court hasn't ordered us to do anything. So if D.O.R. does what it is supposed to do and then sends the information -- or remits the money to the State Treasurer -- and I was assured by another D.O.R. attorney who is not here, so I am not going to mention it, that D.O.R. would quickly process the money to the State Treasurer, and then the State Treasurer literally cuts a check and sends it to County, the County receives it, Your Honor, around mid July.

The reason for the request for immediate relief was to make sure that D.O.R. didn't drag things out and go, Oh, we can't do this because we haven't been doing the administrative process.

THE COURT: I'm assuming they are doing --

MR. SMITH: Yes.

THE COURT: -- the normal process.

MR. NICHOLSON: But that, Your Honor, is the basis for our request, for our original request for relief before July 1st.

THE COURT: Based on the, quote, treasurer?

MR. NICHOLSON: Yes, Your Honor.

THE COURT: You are about to get a note.

MR. NICHOLSON: Oh, it says I missed about an hour of argument, so I have got to start over.

THE COURT: Well, I'll let Ms. Crum do those.

MR. NICHOLSON: Your Honor, if the Court would allow us to move tomorrow for amended proposed orders based on arguments that were made today and new matters that were raised?

THE COURT: I have no problem with that.

MR. SMITH: Fine, Your Honor. We might do the same.

THE COURT: Noon tomorrow. And that is in my hands.

MR. NICHOLSON: Yes, sir. Electronically?

MR. SMITH: By e-mail, Your Honor?

THE COURT: Yes, that's fine. I trust e-mail at this stage.

All right, thank you very much, counsel.

MR. NICHOLSON: Thank you, Your Honor.

MR. SMITH: Thank you, Your Honor.

(WHEREUPON, the proceedings were concluded.)

(END OF TRANSCRIPT)

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

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

Preamble:

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

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

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

Section-by-Section Discussion

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

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

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

In lieu of the standard incorporating the principles of Section 263A of the Internal Revenue Code, a county may request the use of an alternative standard for Department approval. The alternative standard must be justifiable, reflect the public purpose of the county's imposition ordinance and Chapter 37, Title

4, and be reasonable in the type and amount of eligible costs. If the Department denies the county's alternative standard proposal, the county may appeal the denial.

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

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

Notice of Public Hearing and Opportunity for Public Comment:

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

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

Preliminary Fiscal Impact Statement:

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

Statement of Need and Reasonableness:

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

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

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

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

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

The proposal to add SC Regulation 117-338 is needed to ensure that counties that adopt the local transportation sales and use tax under Chapter 37, Title 4 adopt a reasonable standard for determining eligible costs that may be paid from the revenue derived from the local transportation sales and use tax.

The proposal is reasonable in that the Department's safe harbor standard incorporates the principles of Internal Revenue Code Section 263A, which are well known and documented through Treasury regulations and other material published by the Internal Revenue Service. The proposal is also reasonable because it allows counties to submit an alternative standard for review and approval by the Department.

DETERMINATION OF COSTS AND BENEFITS:

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

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None.

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

None.

Statement of Rationale:

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

Text:

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

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

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

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

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

117-338.2. Safe Harbor Standard.

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

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

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

117-338.3. Alternative Standard.

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

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

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

117-338.4. Ineligible Costs.

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

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

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S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

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

DAVIDSON & LINDEMANN, P.A.

BY: _____

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Appellant-Respondent
Richland County

Columbia, South Carolina

April 13, 2017

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S.C. SUPREME COURT

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant-Respondent Richland County certifies that the Record on Appeal complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

DAVIDSON & LINDEMANN, P.A.

BY: _____

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Appellant-Respondent Richland County

Columbia, South Carolina

April 13, 2017

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APR 24 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2016-001839
Case No. 2016-CP-40-3102

Richland County, South Carolina, ... Appellant-Respondent,

Central Midlands Regional Transit Authority, ... Respondent,

v.

The South Carolina Department of Revenue and
Rick Reames, III, in his official
capacity as its Director, ... Respondents-Appellants,

v.

Richland PDT, a joint venture consisting of
M.B. Kahn Construction Co., Inc., ICA Engineering, Inc.,
and Brownstone Construction Group, LLC,
as a unit and Individually, ... Third-Party Defendants.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Appellant-Respondent Richland County, does hereby certify that service of the **Record on Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 13th day of April 2017:

Benjamin E. Nicholson, V, Esquire
M. Elizabeth Crum, Esquire
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211

Ray N. Stevens, Esquire
Ray E. Jones, Esquire
Parker Poe Adams & Bernstein, LLP
Post Office Box 1509
Columbia, South Carolina 29202

Larry Smith, Esquire
Richland County Attorney
Post Office Box 192
Columbia, South Carolina 29202

Milton G. Kimpson, Esquire
Dana R. Krajack, Esquire
Nicole M. Wooten, Esquire
Lauren Acquaviva, Esquire
South Carolina Department of Revenue
Post Office Box 12265
Columbia, South Carolina 29211

John S. Nichols, Esquire
Bluestein Nichols Thompson & Delgado, LLC
Post Office Box 7965
Columbia, South Carolina 29202

James E. Smith, Jr., Esquire
Dylan W. Goff, Esquire
James E. Smith, Jr., P.A.
1422 Laurel Street
Columbia, South Carolina 29201

Elizabeth Van Doren Gray, Esquire
Robert E. Tyson, Jr., Esquire
Alexis K. Lindsay, Esquire
Sowell Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, South Carolina 29211

Robert E. Lyon, Jr., Esquire
John K. DeLoache, Esquire
South Carolina Association of Counties
Post Office Box 8207
Columbia, South Carolina 29202-8207

