

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

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Appellate Case No. 2018-000794

Case No. 2016-CP-40-02875

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**RECEIVED**

AUG 12 2019

SC Court of Appeals

South Carolina Public Interest Foundation, Edward D. Sloan, Jr., and William B. DePass, Jr., individually and on behalf of all others similarly situated,.....Appellant,

v.

Richland County,.....Respondent,

And

Central Midlands Regional Transit Authority,.....Intervenor/Respondent.

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**SOUTH CAROLINA DEPARTMENT OF REVENUE'S  
MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE**

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Pursuant to Rule 213, SCACR, the South Carolina Department of Revenue (hereinafter "Department" or "DOR") respectfully moves for leave to file a brief in this case as *Amicus Curiae*.

Pursuant to Rule 213, SCACR, Department is conditionally filing its brief with this motion.

**INTEREST OF THE DEPARTMENT OF REVENUE**

By statute, the Department is authorized to "administer and enforce the revenue laws of this State." S.C. Code Ann. § 12-4-10 (2014). The Supreme Court has previously held that "DOR's

extensive administrative, oversight, and enforcement responsibilities in the Transportation Act and throughout Title 12 of the South Carolina Code confer upon DOR a duty in ensuring the County's expenditures of Penny Tax revenues comply with the revenue laws DOR is charged with enforcing." *Richland County v. South Carolina Department of Revenue*, 422 S.C. 292, 306, 811 S.E.2d 758, 765 (2018).

Furthermore, the Department has become aware that the substance of the temporary injunction concerning the expenditure of Penny Tax funds on The Comet bus system in the *Richland County v. South Carolina Department of Revenue* matter, after remand to the Circuit Court, has been distorted in briefs filed by the parties in this matter. The Department has an interest in clarifying its position on the import of the Circuit Court's Temporary Injunction.

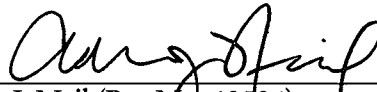
#### **THE DEPARTMENT'S POSITION IS IMPORTANT**

In its brief, Intervenor/Respondent Central Midlands Regional Transit Authority ("CMRTA") represented that DOR has made a final determination that all "costs and expenses associated with the day to day operation of a mass transit system is permitted under the Transportation Act." (Final Brief of CMRTA, p. 16.) According to CMRTA, the Department "has interpreted the language [in the Transportation Act] to permit the spending at issue and this Court must give deference to that interpretation." Certainly there are guidelines for the expenditures of Penny Tax funds attached to the Circuit Court's temporary injunction ("the Guidelines"), but, as is explained more fully in the attached brief, contrary to CMRTA's characterization, the Department has not finally concluded that all of CMRTA's operations costs are allowed by the Transportation Act. In short, the Guidelines referenced by CMRTA are merely part of a temporary injunction that is effective only "until further order of [the Circuit] Court or dismissal of this action." (Temp. Inj., p. 7.)

The Department's interest in providing accurate information to the appellate courts regarding DOR's positions concerning proper expenditures of Penny Tax funds gives rise to this *Amicus Curiae* brief.

### CONCLUSION

Because the Parties in this matter have misconstrued the consequence of the Circuit Court's temporary injunction and the accompanying Guidelines, it is important that the Department be allowed to speak as *amicus curiae* in this matter to provide accurate information and context concerning the effect of the Guidelines on expenditures related to the operations of the CMRTA.



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Adam J. Neil (Bar No. 69594)  
Managing Counsel for Litigation  
Jason P. Luther (Bar No. 78021)  
General Counsel for Litigation  
Dana R. Krajack (Bar No. 3608)  
P.O. Box 12265  
Columbia, SC 29211-9979  
Phone: 803-898-5149

Attorneys for *Amicus Curiae*  
South Carolina Department of Revenue

Columbia, South Carolina  
August 9, 2019

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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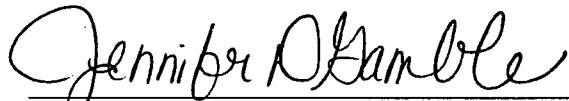
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**PROOF OF SERVICE**

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I, the undersigned employee of the South Carolina Department of Revenue, Office of General Counsel, do hereby certify that I have served the South Carolina Department of Revenue's Motion for Leave to File Brief of *Amicus Curiae* and Brief of *Amicus Curiae* – South Carolina Department of Revenue, Trial Court Case No. 2016-CP-40-02875, Appellate Case No: 2018-000794, in connection with the above-captioned matter by causing a copy of the same to be deposited in the United States Mail on the below date, postage prepaid to the following parties at their address of record: Elizabeth Van Doren Gray, Esquire, Robert E. Tyson, Jr., Esquire & Benjamin R. Gooding, Esquire, Robinson

Gray Stepp & Laffitte, LLC, PO Box 11449, Columbia, SC 29211 for Intervenor/Respondent; James G. Carpenter, Esquire, The Carpenter Law Firm, PC, 819 East North Street, Greenville, SC 29601 for Appellant; Andrew F. Lindemann, Esquire, Lindemann, Davis & Hughes, P.A., PO Box 6923, Columbia, SC 29260 for Respondent; Ray E. Jones, Esquire, Parker, Poe, Adams & Bernstein, LLP, PO Box 1509, Columbia, SC 29202 for Respondent; Wm. Grayson Lambert, Esquire, Burr & Forman LLP, Post Office Box 11390, Columbia, SC 29211 for Amicus Curiae Transportation Association of South Carolina and James K. Gilliam, Esquire, Burr & Forman LLP, 2411 Oak Street, Suite 206, Myrtle Beach, SC 29577 for Amicus Curiae Transportation Association of South Carolina



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Jennifer D. Gamble  
Paralegal, Office of General Counsel  
South Carolina Department of Revenue

Columbia, South Carolina  
August 12, 2019

STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
OFFICE OF THE GENERAL COUNSEL

Physical Address:  
300A Outlet Pointe Blvd.  
Columbia, SC 29210



August 12, 2019

Mailing Address:  
PO Box 12265  
Columbia, SC 29211-9979

**RECEIVED**

AUG 12 2019

SC Court of Appeals

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Re: South Carolina Public Interest Foundation, Edward D. Sloan, Jr., and William B. DePass, Jr., individually and on behalf of all others similarly situated, Appellants v. Richland County, Respondent and Central Midlands Regional Transit Authority, Intervenor/Respondent  
Trial Court Case Nos: 2016-CP-40-02875  
Appellate Case No: 2018-000794

Dear Ms. Kitchings:

Enclosed for filing is the South Carolina Department of Revenue's Motion for Leave to File Brief of *Amicus Curiae*, fourteen bound, and one unbound copies of the Brief of *Amicus Curiae* – South Carolina Department of Revenue in the above case. Also enclosed is a Proof of Service on the Appellant(s), Respondent(s) and Counsel for Amicus Curiae Transportation Association of South Carolina.

Should you have any questions, please do not hesitate to contact me at 803-898-5149 or Adam.Neil@dor.sc.gov.

Sincerely,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

Handwritten signature of Adam J. Neil in black ink.

Adam J. Neil  
Managing Counsel for Litigation

c: Elizabeth Van Doren Gray, Esquire for Intervenor/Respondent(s)  
Robert E. Tyson, Jr., Esquire for Intervenor/Respondent(s)  
Benjamin R. Gooding, Esquire for Intervenor/Respondent(s)  
James G. Carpenter, Esquire for Appellant(s)  
Andrew F. Lindemann, Esquire for Respondent(s)  
Ray E. Jones, Esquire for Respondent(s)  
Wm. Grayson Lambert, Esquire for Amicus Curiae Transportation Association of South Carolina  
James K. Gilliam, Esquire for Amicus Curiae Transportation Association of South Carolina

Enclosures  
AJN:jdg