

ARTICLE 4.

EDUCATION CAPITAL IMPROVEMENTS SALES AND USE TAX ACT

SECTION 4-10-410. Citation of act.

This act may be cited as the "Education Capital Improvements Sales and Use Tax Act".

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor's signature on June 12, 2008).

SECTION 4-10-415. Definitions.

For purposes of this article, the following terms and words are defined as follows:

(1) "Area commission" means the governing body, however described, of a technical college under the jurisdiction of the State Board for Technical and Comprehensive Education which has a campus located in the county which contains the site of a capital improvement financed by revenue of the tax authorized pursuant to this article.

(2) "School district board of trustees" means the governing body of a school district.

(3) "County" means a county within which the sales and use tax authorized by this article is imposed.

(4) "County auditor" means the county auditor of the county.

(5) "County treasurer" means the county treasurer of the county.

(6) "Election authority" means the authority charged with the conduct of countywide elections within the county.

(7) "Higher education board of trustees" means the governing body of a public institution of higher learning, other than a technical college, as defined in Section 59-103-5, which has a campus located in the county which contains the site of a capital improvement financed by revenue of the tax authorized pursuant to this article.

(8) "Memorandum of agreement" means a written document executed by the school district board of trustees and the area commission or higher education board of trustees, or both of these entities, to provide for the school district's sharing of the revenue of the tax authorized pursuant to this article. The agreement must contain, inter alia, the revenue distribution formula expressed in percentages and the specific capital improvement projects for which the shared revenue must be used. The memorandum of agreement is not effective unless it has been ratified by a recorded vote of at least two-thirds of the membership of the school district board of trustees and a recorded vote of at least two-thirds of the membership of the area commission or higher education board of trustees, or both, as applicable. When ratified by all parties and incorporated into the resolution adopted by the school district board of trustees, the memorandum of agreement is binding on all parties.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor's signature on June 12, 2008).

SECTION 4-10-420. Authority to impose county sales and use tax; sharing revenues among school districts.

(A) Subject to the requirements of this article, there may be imposed a one percent sales and use tax within a county for specific education capital improvements for the school district or school districts listed in the referendum question as provided pursuant to Section 4-10-425(C). Pursuant to a memorandum of agreement, a portion of the revenue of the tax may be shared with and distributed to the area commission or higher education board of trustees, or both such governing bodies for specific education capital improvements on the campus or campuses of the recipient governing body located in the

county as listed in the referendum question pursuant to Section 4-10-425(C). The proceeds of the tax must be distributed as provided in this article. The boards of trustees of the school districts, in the resolution adopted pursuant to Section 4-10-425, shall provide specific capital improvement projects for which the proceeds of the tax distributed to those school districts must be expended. Where an area commission or higher education board of trustees shares in the revenues, the resolution must incorporate the memorandum of agreement.

A school district board of trustees shall use the school district's share of the distribution only to pay for those capital improvements provided in the resolution and included in the referendum question directly, or to service general obligation debt incurred by the districts for such improvements, or a combination of these purposes.

An area commission or higher education board of trustees, or both, shall use its share of the distribution only to pay for its capital improvements provided in the memorandum of agreement and included in the referendum question directly, or to replace tuition revenues pledged to service state institution bonds issued for such improvements, for some other applicable method of financing capital improvements provided by law, or a combination of these purposes. If any necessary approvals required by law for the issuing of state institution bonds or other method of financing are not forthcoming, the area commission and higher education board of trustees, as appropriate, shall then use the revenue for the projects approved to the extent possible and may prioritize among their projects for their completion.

(B)(1) The tax allowed by this article may not be imposed in a county in which there is currently imposed or scheduled to be imposed a local sales and use tax for public school capital improvements authorized pursuant to any local law enacted by the General Assembly.

(2) Notwithstanding any other provision of law, a local sales and use tax for public school capital improvements authorized by a local law enacted by the General Assembly may not be imposed in a county while the tax authorized pursuant to this article is imposed in that county.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor's signature on June 12, 2008).

SECTION 4-10-425. Procedure for imposing tax; referendum; ballot.

(A) The tax authorized by this article may be imposed in the county upon the adoption of an approving resolution by the board of trustees of a school district, and the subsequent approval of the imposition of the tax by referendum open to all qualified electors residing in the county in which the question includes each specific education capital improvement included in the resolution and any incorporated memorandum of agreement.

The approving resolution must specify some period, stated in calendar years, not to exceed fifteen years, for which the tax must be imposed, the date of the referendum, and the question to appear on the referendum ballot. The approving resolution, upon adoption, must be forwarded to the election authority. The referendum required by this article may only be conducted in even-numbered years at the time of the general election.

(B) Upon receipt of a resolution from the board of trustees of a school district, the election authority shall conduct a referendum on the question of imposing the tax in the county. Notice of the election must be provided in the manner provided by the general election law and include the question to be voted upon in the referendum. Expenses of the referendum must be paid by the school district or school districts for which the referendum is being held.

(C) The ballot to be voted upon in the referendum must read substantially as follows:

EDUCATION CAPITAL IMPROVEMENTS SALES AND USE TAX ACT REFERENDUM FOR _____ COUNTY

Must a special one percent sales and use tax be imposed in _____ County for not more than _____ years with the revenue of the tax used to pay, directly or indirectly, the cost of the following education capital improvement projects in _____ County

(1) _____

(2) _____ etc.?

Yes []

No []

Those voting in favor of the question shall deposit a ballot with a check or cross mark in the square after the word "Yes", and those voting against the question shall deposit a ballot with a check or cross mark in the square after the word "No".

The ballot may contain a short explanation of the question to be voted upon in this referendum.

(D) Upon receipt and certification of the returns of the referendum, the election authority shall by resolution certify the results of the referendum by resolution and within ten days thereafter file the resolution with the clerk of court for the county and with the South Carolina Department of Revenue. The result of the referendum, as declared by resolution of the election authority and as filed with the clerk of court, is not open to question except by a civil action instituted in the county within twenty days of the filing of the resolution. If a majority of the total votes cast is in favor of imposing the tax, then the tax is imposed as provided in this section; otherwise the tax is not imposed.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor's signature on June 12, 2008).

SECTION 4-10-430. Commencement and termination.

(A) If the tax is approved in the referendum, the tax must be imposed beginning upon the first day of the fourth full month following the filing of the declaration of results of the referendum with the Department of Revenue.

(B) The tax terminates upon the earlier of:

(1) the final day of the maximum time specified for the imposition; or

(2) sixty days following the filing with the Department of Revenue of certified copies of a resolution adopted by the board of trustees of the school district requesting termination of the tax. Where revenues of the tax are shared pursuant to a memorandum of agreement as provided pursuant to Section 4-10-420, the termination resolution must be adopted by all parties to the memorandum of agreement.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor's signature on June 12, 2008).

SECTION 4-10-435. Collection and administration by Department of Revenue.

(A) The tax levied pursuant to this article must be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected. The Department of Revenue may prescribe the amounts which may be added to the sales price because of the tax.

(B) The tax authorized by this article is in addition to all other local sales and use taxes and applies to the gross proceeds of the sales in the county which are subject to the tax imposed by Chapter 36 of Title 12 and the enforcement provisions of Chapter 54 of Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 are exempt from the tax imposed by this article. The gross proceeds of the sale of unprepared food items which may lawfully be purchased with United States Department of Agriculture food coupons are exempt from the tax imposed by this article. The tax imposed by this article also applies to tangible personal property subject to the use tax in Chapter 36 of Title 12.

(C) Taxpayers required to remit use taxes under Chapter 36 of Title 12 shall identify the county in which the tangible personal property purchased at retail is stored, used, or consumed in this State.

(D) Utilities are required to report sales in the county in which consumption of the tangible personal property occurs.

(E) A taxpayer subject to the tax imposed by Section 12-36-920 who owns or manages rental units in more than one county shall separately report in his sales tax return the total gross proceeds from business done in each county.

(F) The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under this article in the county, either under the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the special local sales and use tax provided in this section if a verified copy of the contract is filed with the Department of Revenue within six months after the imposition of the special local sales and use tax.

(G) Notwithstanding the imposition date of the sales and use tax authorized pursuant to this article, with respect to services that are regularly billed on a monthly basis, the sales and use tax is imposed beginning on the first day of the billing period beginning on or after the imposition date.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor's signature on June 12, 2008).

SECTION 4-10-440. Remitting revenues to State Treasurer; distribution and use of proceeds.

(A) The revenues of the sales and use tax collected under this article must be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund of the State. If revenue of the tax is shared, the school district shall forward a certified copy of the resolution and an incorporated memorandum of agreement to the State Treasurer. After deducting the amount of refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues monthly as provided pursuant to subsection (B) of this section. The State Treasurer may correct misallocation costs or refunds by adjusting proportionately subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocation.

(B) The State Treasurer shall distribute proceeds of the tax due the school district to the county treasurer for the benefit of the school district. If revenues are shared, any revenue due the area commission or higher education board of trustees, or both of these entities, must be distributed by the State Treasurer monthly to approved accounts of those entities. All such distributions must be proportionately reduced by amounts attributable to refunds and administration as provided pursuant to subsection (A) of this section.

(C) Except as provided in Section 4-10-445, withdrawals by a school district of tax proceeds from the county treasurer must be made in the same manner as are funds appropriated to the school districts by the State. Pending these withdrawals, taxes must be deposited in an account for the school district, separate and distinct from accounts established for any other purpose, and investment earnings derived from monies in such an account must be credited to the account. **The school district shall maintain records which demonstrate that tax proceeds are spent only for the purposes as approved by its board of trustees and in accordance with this article.**

(D) The proceeds of the sales and use tax paid to the county treasurer for the benefit of a school district must be applied only for the purposes set forth in the resolution adopted pursuant to Section 4-10-425.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor's signature on June 12, 2008).

SECTION 4-10-445. Application of proceeds to debt service.

(A) If a school district has provided in its resolution adopted pursuant to Section 4-10-425, that any portion of the proceeds of the sales and use tax allocated to it must be applied to debt service on general obligation bonds, the school district shall notify the county treasurer in writing no later than the first day of August of each year of the amount of sales and use taxes to be applied to offset the debt service millage

levy for such general obligation bonds. The amount so specified must not exceed the amount of sales and use tax proceeds held by the county treasurer for the school district as of the June thirtieth immediately preceding such first day of August. The notice applies only to debt service payments to be made in the eighteen-month period following that June thirtieth.

Upon receipt of notice from a school district pursuant to this section, the county treasurer shall certify to the county auditor, by the fifteenth day of August of the amount of sales and use taxes designated by the school district for application to general obligation bond debt service payments. The county auditor shall reduce the next levy of property taxes required to pay debt service on such general obligation bonds by the amount of sales and use tax revenues certified as held by the county treasurer and designated by the school district for the purpose. This amount of sales and use taxes thereafter must not be released to the school district, but must be held by the county treasurer to pay debt service on general obligation bonds. However, any sales and use taxes held by the county treasurer in excess of the amounts designated by the school district for payment of debt service on such general obligation bonds must be expended as directed by the school district in accordance with this article. Any investment earnings derived from the sales and use tax must be expended as directed by the school district in accordance with this article. Any sales and use taxes allocated to a school district and not required to accomplish the purposes described in the resolution of the school district adopted pursuant to Section 4-10-425 may be applied to debt service on any general obligation bonds of the school district.

(B) If the school district presents the county treasurer with a surety bond or letter of credit from a financial institution which is rated in one of the two highest rating categories by two national ratings agencies, the county treasurer may treat the amount available under such surety as if it were taxes held by the county treasurer and shall provide the certificate called for in the foregoing paragraph to the auditor by including the amount available under the surety or letter of credit so long as such amount is not in excess of ninety percent of the actual sales and use taxes allocated to the school district in the prior fiscal year, or which would have been allocated if the sales and use tax had been in force for all of the prior fiscal year. The county auditor shall reduce the next levy of ad valorem property taxes required to pay debt service on bonds to which the tax is applicable by the amount so certified by the county treasurer. If the sales and use taxes thereafter allocated to the school district are less than the amount required to pay debt service on bonds during the eighteen-month period established in Section 4-10-445(A), the county treasurer shall draw upon the surety to provide for timely payment of such general obligation bonds. The costs of such surety, including any reimbursements for payments thereon, are deemed to be part of the debt service requirements for such general obligation bonds covered by such surety and may be paid from amounts available in the fund created in accordance with Section 4-10-445(A). Any reimbursement to the financial institution providing such surety may be paid from the fund from taxes collected in the year after any draw.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor's signature on June 12, 2008).

SECTION 4-10-450. Availability of data to calculate distributions and estimate revenues.

The Department of Revenue shall furnish data to the State Treasurer and to a school district and others receiving tax revenues pursuant to this article for the purpose of calculating distributions and estimating revenues. The information which must be supplied to the school district 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 Section 12-54-240. A person violating this section is subject to the penalties provided in Section 12-54-240.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor's signature on June 12, 2008).

SECTION 4-10-460. Renewal or reimposition of tax.

The tax authorized in this article may be renewed and imposed within a county in the same manner as proceedings for the initial imposition of the tax. A referendum on the question of reimposition of a tax must not be held earlier than within the calendar year which is two years before the calendar year in which the tax then in effect is scheduled to terminate, but any reimposition is effective immediately upon the termination of the tax previously imposed.

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor's signature on June 12, 2008).

SECTION 4-10-470. Counties in which tax may be imposed.

(A) The Education Capital Improvements Sales and Use Tax authorized by this article may only be imposed in counties which have collected at least seven million dollars in state accommodations taxes as imposed pursuant to Section 12-36-920(A) in the most recent fiscal year for which full collection figures are available. Once a county meets this threshold it thereafter remains eligible to impose this tax.

(B)(1) The Education Capital Improvements Sales and Use Tax authorized by this article also may be imposed in a county which does not meet the collection requirements of subsection (A) so long as:

(a) at any time, no portion of the county area is subject to more than two percent total sales tax;

(b) the county only has one school district which encompasses at least the entire county area in which the tax is to be imposed; and

(c) the county collected at least seven hundred fifty thousand dollars in state accommodations taxes as imposed pursuant to Section 12-36-920(A) in Fiscal Year 2012-2013.

(2) Notwithstanding any other provision of this article, if the Education Capital Improvements Sales and Use Tax is imposed pursuant to this subsection, then:

(a) stated in calendar years, the tax may not be imposed for more than ten years;

(b) at least ten percent of the proceeds must be used to provide property tax relief by using the proceeds to offset the existing debt service millage levy on general obligation bonds pursuant to Section 4-10-445; and

(c) the total debt service on bonds issued by a school district resulting from the imposition, net of any premium or accrued interest, shall not exceed ninety percent of the total amount of Education Capital Improvements Sales and Use Tax proceeds estimated to be allocated to the school district during the imposition, minus any amounts dedicated to property tax relief. The Board of Economic Advisors shall provide the estimate of the total amount.

(3) Notwithstanding any other provision of law, if, within a county there is imposed the Education Capital Improvements Sales and Use Tax pursuant to this subsection, then no other sales tax may be imposed if the subsequent imposition causes the total sales tax to exceed two percent in any portion of the county area. This limitation applies so long as this subsection is utilized to impose the Education Capital Improvements Sales and Use Tax.

(4) Notwithstanding any other provision of law, if the tax imposed pursuant to this subsection and another sales tax are approved at the same referendum, and the approval of both subjects any portion of the county area to more than two percent total sales tax, then only the tax whose approving resolution was adopted first may be imposed, and the other tax is deemed to not have been approved.

(5) For purposes of this subsection, a sales tax is a tax levied pursuant to this chapter, pursuant to Chapter 37, Title 4, or pursuant to any local law enacted by the General Assembly.

(C) Notwithstanding any other provision of this section, the Education Capital Improvements Sales and Use Tax authorized by this article also may be imposed in a county so long as the county or school district imposed a local sales and use tax to fund education capital improvements on January 1, 2014. The

Education Capital Improvements Sales and Use Tax may be imposed pursuant to this subsection at any time after the local sales and use tax terminates.”

HISTORY: 2008 Act No. 316, Section 1, eff upon approval (became law without the Governor's signature on June 12, 2008).

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