Department of Law
State of Georgia

THURBERT E. BAKER
ATTORNEY GENERAL

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OFFICIAL OPINION

Mr. Russell W. Hinton
State Auditor
Georgia Department of Audits and Accounts
254 Washington Street, S.W.
Suite 214
Atlanta, Georgia 30334-8400

RE: Interest earned on educational purpose sales taxes and on special county one percent sales and use taxes is required to be used exclusively for the purpose or purposes specified in the resolution or ordinance calling for imposition of the respective tax.

Dear Mr. Hinton:

You have asked if interest earned on educational purpose sales taxes (the "education tax") or on special county one percent sales and use taxes (the "special county tax") is required to be used exclusively for the purpose or purposes specified in the resolution or ordinance calling for imposition of the respective tax. An answer to your question involves a review of the provisions of the Constitution and the statutes authorizing the education tax and the special county tax in order to ascertain the legislative intent and purpose in enacting the law. O.C.G.A. § 1-3-1(a); 1999 Op. Att'y Gen. 99-11.

The education tax is authorized by Paragraph IV of Section VI of Article VIII of the Georgia Constitution. The proceeds of the education tax must be used for capital outlay projects for educational purposes or to retire previously incurred general obligation debt issued for capital outlay projects of the school system. GA. CONST. Art. VIII, Sec. VI, Para. IV(b). The resolution adopted by the local board of education calling for imposition of the tax and the ballot question submitted to the voters in the subsequent referendum must each describe the specific capital outlay projects to be funded or the specific debt to be retired. GA. CONST. Art. VIII, Sec. VI, Para. IV(c)(1). The Constitution requires that the education tax shall correspond to and be levied in the same manner as the special county tax. GA. CONST. Art. VIII, Sec. VI, Para. IV(a). *See also* O.C.G.A. § 48-8-141 (Supp. 2000).

The special county tax is authorized by Part 1 of Article 3 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated. Under O.C.G.A. § 48-8-121(a)(1) (Supp. 2000), the proceeds of the tax must be used and accounted for in accordance with a limitation expressed in two parts. First, proceeds of the tax must be used by the county exclusively for the purpose or purposes specified in the resolution or ordinance calling for the imposition of the tax. Second, the county is required to keep the proceeds in an account separate from other county funds, and such proceeds must not in any manner be commingled with other funds of the county. O.C.G.A. § 48-8-121(a)(1) (Supp. 2000). *See also* O.C.G.A. §§ 48-8-111(f)(2) (Supp. 2000) and 48-8-121(c) (Supp. 2000) (if general obligation debt is issued in conjunction with the special county tax, then such debt "shall be payable first from the separate account in which are placed the proceeds" of the special county tax). The two-part limitation set forth at O.C.G.A. § 48-8-121(a)(1) applies to both the education tax and the special county tax. *See* GA. CONST. Art. VIII, Sec. VI, Para. IV(a) *and* O.C.G.A.§ 48-8-141 (Supp. 2000).

The requirement of a separate account and the mandate that the proceeds placed in the account not be commingled with other funds, as set forth in the second part of the statutory limitation, demonstrate a legislative intent that *all* money in the account, including any interest, is dedicated for the purposes specified in the involved resolution or ordinance, as required by the first part of the statutory limitation. This determination of legislative intent is consistent with the general rule that "interest follows principal." *See Phillips v. Washington Legal Found.*, 524 U.S. 156, 165 (1998) ("[t]he rule that 'interest follows principal' has been established under English common law since at least the mid-1700's").

Under the "interest follows principal" rule, interest earned on public funds is an incident of principal and becomes a part of the account fund. *See Webb's Fabulous Pharmacies, Inc. v. Beckwith,* 449 U.S. 155, 164 (1980) ("[t]he earnings of a fund are incidents of ownership of the fund itself"); *Grand Rapids Pub. Sch. v. City of Grand Rapids*, 381 N.W. 2d 783, 785 (Mich. App. 1985) ("in absence of a clear statutory provision to the contrary, the general principle is that interest on public funds designated for a specific purpose follows those funds"); *Board of County Comm'rs v. Laramie County Sch. Dist. No. One*, 884 P.2d 946, 954 (Wyo. 1994) ("interest is an accretion or increment to the fund earning such interest and follows those funds") and *Marshall v. Commonwealth*, 20 S.W.3d 478 (Ky. Ct. App. 2000) (interest earned on school tax funds placed in interest bearing accounts must be paid to county school districts, rather than used for sheriff/tax collector's office expenses). *See also* 1984 Op. Att'y Gen. 84-6 (under Article III, Section IX, Paragraph VI(b) of the Georgia Constitution, which appropriates an amount equal to all money derived from motor fuel taxes for the immediately preceding fiscal year for roads and bridges, the language "all money derived from motor fuel taxes" includes interest on motor fuel revenues). Consequently, interest earned on education taxes and on special county taxes becomes part of the tax proceeds in the account fund, which fund is required to be used exclusively for the purpose or purposes specified in the resolution or ordinance calling for imposition of the respective tax.

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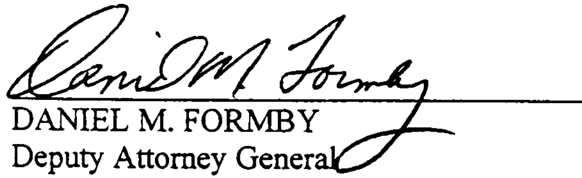
Issued this 17th day of May, 2001.

Sincerely,

THURBERT E. BAKER
Attorney General

Prepared by:



DANIEL M. FORMBY
Deputy Attorney General

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