



# County of Greenville

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*"... At Your Service"*

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November 12, 2007

Tommie Reece, Chairman  
Board of Trustees  
Greenville County School District  
301 Camperdown Way  
Greenville, SC 29602

Dear Chairman Reece,

Let me express sincere appreciation for the professionalism of Jeff Knotts and the financial team at the Greenville County School District. Jeff and his team have worked hard to provide significant amounts of information to this office over the past several months in a timely and accurate fashion and their conscientiousness and hard work assisted greatly in the process of property reassessment and rollback millage calculations.

As you are aware, there have been substantial changes to state law governing the operating millage increases of tax authorities in South Carolina including the Greenville County School District (GCSD). This office has been working diligently to ensure that all laws are implemented accurately and correctly for the 2007 tax bills. It has been my personal goal to ensure that all questions related to these changes were given sound analysis and a thorough review including, where necessary, a request for an independent regulatory and legal opinion.

Additionally, this office has worked to provide ample opportunity for all tax authorities including GCSD to present their views of the new legal framework governing millage increases. Pursuant to that process, there have been numerous conversations and correspondence over the last several weeks regarding the 2007 operating millage rate for the Greenville County School District (GCSD). A recap summary of these events is helpful.

**I) October 4, 2007 GCSD Letter**

GCSD indicated agreement with the auditor's operating rollback millage calculation in the amount of 104.3 mills. GCSD also requested that the auditor levy total operating millage of 110.1 mills pursuant to the EIA Maintenance of Effort requirements under Section 59-21-1030. At this point, GCSD posited the position that the new millage cap under Section 6-1-320 did not limit a millage increase required by the EIA Maintenance of Effort provisions. In previous conversations and information provided to the

Auditor's Office prior to the October 4 letter, GCSD indicated that the formula calculation under Act 602 for 2007 did not allow for any increase in operating millage and, in fact, no increase under Act 602 was requested in the October 4 letter.

2) October 5, 2007 Auditor's Request for Property Opinion

Subsequent to receipt of the October 4 letter from GCSD and pursuant to conversations with the South Carolina Department of Revenue (DOR), the Auditor's Office requested a Property Opinion from DOR to clarify the interaction of the three areas of legislation which govern the operating millage increases of GCSD. This clarification was sought because the expressed opinions of GCSD and DOR were in conflict regarding the Auditor's responsibility under the various legal provisions.

3) October 8, 2007 GCSD Attorney Letter

GCSD's attorney expanded upon GCSD's argument that EIA Maintenance of Effort was not limited by the new millage cap under Section 6-1-320 by providing case history and Attorney General opinions. Also, GCSD's attorney indicated that a revenue item revision resulted in a "rounding" adjustment to the millage required under the EIA Maintenance of Effort provisions so that it now "happens to correspond with the millage rate limitation that Section 6-1-320(A) would impose on the District". GCSD asked that its operating tax millage be increase to 110 mills.

4) October 18, 2007 SC Department of Revenue Determination 2007-1

In response to the Auditor's October 5 request for clarification, the DOR held the following in Determination 2007-1:

*When setting the millage for the Greenville County School District, the Greenville County Auditor is limited to an increase in millage that is the lower of the increase allowed by Section 6-1-320 or the increase allowed by Act 602.*

In subsequent conversations with DOR, it is clear that DOR is taking the position that the statutory changes to Section 6-1-320 which created the new overall operating millage rate cap also resulted in a statutory elevation of the millage limitation under Act 602 to the degree that the Act 602 limitation now limits any increase in operating millage that would otherwise be required under EIA Maintenance of Effort.

5) October 18, 2007 GCSD Attorney Letter

GCSD indicated that it believed that DOR was "profoundly mistaken" in its Determination 2007-1 decision but argued that "the issue is irrelevant for the District this year because Act 602 results in a millage rate that exceeds both the general limit of Section 6-1-320(A) and the minimum effort of Section 59-21-1030". Further, GCSD now provided a calculation under Subsection (C) of Act 602 to substantiate the requested operating millage level of 110 mills and argued that the Subsection (C) calculation was "mandatory funding independent of the additional 4 mill limit of Subsection (D)" Referencing that the calculation was "agreed by the Auditor's Office last year" and as support for its arguments regarding the calculation under Act 602, GCSD provides a copy of a September 11, 2006 letter from the Auditors Office signed by the Deputy

Auditor which allowed an increase in GCSD's 2006 operating millage rate for both the minimum effort requirement of Section 59-21-1030 and a four mill tax increase under Act 602. Also, this letter reiterates GCSD request to increase tax operating millage to the level of 110 mills for 2007.

6) October 29, 2007 GCSD Attorney Letter

Pursuant to a request by the Auditor Office, GCSD's attorney provided a discussion on what constitutes a "new" unfunded state or federal mandate in this letter. Additionally, GCSD's attorney addressed the application of Subsection (F) of Act 602 on the rollback millage calculation and reiterated similar arguments as the previous October 18 letter regarding the operating tax increase calculations of Subsections (C) and (D) of Act 602.

7) November 1, 2007 Meeting: GCSD & Auditor

A meeting was held at County Square involving GCSD's finance director, attorney and deputy superintendent and Greenville County's attorney and the Auditor. At this meeting, the Auditor expressed concerns regarding GCSD's interpretation of Act 602 as it related to application of the overall four mill limitation. GCSD representatives responded to questions and verbally reiterated their interpretation of Act 602 expressing their belief that GCSD's 2007 operating millage should be increased more than four mills to the level of 110 mills.

8) November 5, 2007 Meeting: Delegation Members & Auditor

Upon the earlier recommendation of SCDOR and in order to gain further clarification as to the intent of the legislature with regard to the provisions of Act 602, the Auditor met with several members of the upstate delegation. Pursuant to this meeting, Senator Mike Fair, Chairman of the Upstate Delegation, agreed to request legal clarification from the South Carolina Attorney General as to the provisions of Act 602.

9) November 6, 2007 Senator Fair Request for AG Opinion

Senator Fair requested an opinion from the Attorney General with regard to the provisions of Act 602. Specifically, whether paragraph's (C) and (D) of Act 602 allowed for an operating tax millage increase in excess of four mills for GCSD.

10) November 9, 2007 Attorney General Opinion

The AG Opinion held the following:

*"...while subsection (C) allows for millage rate increases based on certain factors, subsection (D) places an overall limitation on how much the District may increase its millage rate in a given year despite the factors the Legislature suggest the District take into account that justify millage rate increases generally."*

*"Even though Act 602 may be subject to alternative readings, employing the rules of statutory construction, we are of the opinion that the better interpretation of this legislation is that subsection (D) of Act 602 limits the overall increase in the District's annual operating millage to four mills."*

## II) November 9, 2007 GCSD Letter

In this response to the AG opinion, GCSD argues that the four mill tax increase limitation applies explicitly to the school board but not the Auditor. GCSD calls upon the Auditor to increase its operating tax millage to a level of 110 mills.

After review of the foregoing documents and the statutes to which they refer and in consultation with the SC Department of Revenue and the office of the Greenville County Attorney, the Auditor's Office has concluded that the 2007 operating millage tax increase request of the Greenville County School District is legally capped at a level of 108.2 mills which represents rollback millage of 104.2 plus the maximum four mill tax increase allowed under Act 602.

While understanding that GCSD disagrees with the legal conclusions reached by DOR in Determination 2007-1, the Greenville County Auditor's Office is legally obligated to follow the direction set forth in this DOR Determination Letter when discharging its statutory obligations. Accordingly, as set forth by DOR Determination 2007-1, the increase in the 2007 operating millage for GCSD cannot exceed the lesser of the millage increase limitation set forth in Section 6-1-320 or Act 602.

Section 6-1-320 limits the increase in operating millage for 2007 to 5.6% (combined CPI and growth as published by the Budget & Control Board) which results in a maximum potential increase under this statute for 2007 of 5.8 mills (5.6% of 104.2 mills).

Act 602 Subsection (C) sets forth the following reasons for which the School Board can increase its budget: (1) inflation, (2) new unfunded federal and state mandates, and (3) reductions in federal and state monies. This same subsection requires that these increases be reduced by new total anticipated income from all sources. Additionally, Subsection (D) of Act 602 reads: "The board may increase the budget to the amount necessary to raise revenue to the level of combined mandates, reductions, and inflation, not to exceed four mills in any one year".

While I understand that GCSD contends that Subsections (C) and (D) are independent of each other and, thereby, allow a tax increase for all the items listed in Subsection (C) in addition to the four mill limitation in Subsection (D), the November 9, 2007 opinion issued by the South Carolina Attorney General does not support this argument. Rather, the AG opinion holds that Act 602 limits the overall increase in GCSD's operating millage to four mills.

In its November 9, 2007 response to the AG opinion GCSD now argues that the four mill limitation of Act 602 applies only to the board but does not apply to the Auditor. As support for this position GCSD states that "today's letter fails to opine on the county auditor's duty under the E.I.A minimum effort". However, this argument neglects the fact that DOR's Determination Letter 2007-1 addressed this issue and restricted the Auditor from establishing millage higher than the limit of Act 602: "*the Greenville County Auditor is limited to an increase in millage that is the lower of the increase allowed by Section 6-1-320 or the increase allowed by Act 602.*" Also, the November 9, 2007 AG Opinion held without distinguishing between the GCSD Board or the Auditor that "*subsection (D) of Act 602 limits the overall increase in the District's annual operating millage to four mills*". Thus, in order to comply with South Carolina law as

interpreted by the SC Department of Revenue and the Attorney General's Office, the Greenville County Auditor is restricted from levying operating millage for GCSO which exceeds a four mill increase from the prior year (the lesser of Section 6-1-320 or Act 602).

Act 602 does not statutorily require verification by the Auditor's Office of the items upon which GCSO is basing a tax increase claim under the Act. Therefore, the Auditor's Office will accept the certification by GCSO that all items for which it is claiming a right to raise taxes under Act 602 legally comply with one of the three requirements (inflation, new unfunded mandate, reductions in funds) set forth in the Act. As such, the Act 602 limitation for 2007 is four mills since the items set out by GCSO support this maximum level of increase allowed by Act 602.

Since the correspondence from the auditor's office related to the 2006 operating tax millage rate was provided by GCSO's attorney's in his letter dated October 18, 2007 as support for GCSO's position, I felt compelled to research the issue and comment on the 2006 tax calculation. Pursuant to my research, it is clear that an error was made in the calculation of the 2006 operating millage of GCSO. While I was not Auditor at the time it appears that the 2006 operating millage for GCSO was overstated by four mills in an apparent misapplication of the interaction between the EIA Maintenance of Effort provisions and Act 602 restrictions.

Prior to the change in Section 6-1-320 as laid out in SCDOR's Determination 2007-1, the courts and Attorney General held that the four mill limitation under Act 602 must yield to any requirement under the EIA Maintenance of Effort statute if those provisions required the levy of millage in an amount which exceeded the four mill limitation. Per a review of the court cases and Attorney General opinions provided by GCSO's attorney, the EIA Local Maintenance millage has never been held to be an "additional" levied amount (i.e. levied in addition to the local limitation) nor has the Act 602 local limitation (as with other local legislation) been held to be "in addition" to the EIA Local Maintenance Requirement. Rather, the courts and AG have held that a local millage limitation could not restrict a school district from levying operating millage at a level sufficient to comply with the EIA Local Maintenance Requirement (i.e. statewide law trumps local legislation). As noted earlier, the DOR held in Determination 2007-1 that the changes to Section 6-1-320 enacted by the legislature last year changed the interaction of these two provisions so that local legislation now acts to restrict any requirement to levy millage under the EIA Local Maintenance statute.

Per a review of the operating millage history of GCSO, there is no evidence that an annual increase of more than four mills in operating millage was allowed or levied for the five year period preceding 2006 (2001 – 2005). This seems to further substantiate that the increase of 8.5 mills in tax year 2006 was an error. While the Auditor's Office is apparently not prescribed under law with a statutory duty in regard to this prior year error (per review of Section 12-43-285), by this letter I am also notifying the Greenville County School District of the error in its 2006 operating millage calculation and recommending that the School Board ascertain its legal obligation under applicable statutes.

In summary, the Greenville County School District has certified a tax increase in its operating millage to a level of 110 mills (a 5.8 mill increase) and requested that the Greenville County Auditor levy this operating millage level on the 2007 tax bills. Pursuant to the direction

provided by the South Carolina Department of Revenue in Determination 2007-1 and in accordance with the four mill limitation prescribed by Act 602 as enunciated by the November 9, 2007 Attorney General opinion, the Greenville County Auditor is legally restricted from levying operating millage for the Greenville County School District at a level that exceeds 108.2 mills (rollback millage of 104.2 plus a 4 mill increase). The Greenville County School District is hereby notified that its operating millage for the 2007 tax bills must be legally set at a level of 108.2 mills.

Sincerely,

Scott Case, CPA  
Greenville County Auditor

cc: Jeff Knotts  
Mr. Burke Royster  
Mark Tollison  
Joe Kernell  
Greenville County Council  
Greenville County School Board  
Upstate Legislative Delegation