

ATAX STATE GUIDELINES: SUMMARY REGARDING 65% FUNDS

GENERAL:

What is a tourist/tourism activity?

- People taking trips outside their home communities for any purpose, except daily commuting to and from work. Home community usually is defined as 50+ miles but there is some wiggle room here
- Tourism-related events are designed *primarily* for those outside of the community. What steps were taken to promote the event outside of the community? Use a conversion study if needed to determine actual number of tourists that attended.

What is the “Two-Year Rule”?

- The law says that you have two years from receipt to spend any remaining funds from the 65% tourism-related fund, which must be used for tourism-related expenditures. This also means that whoever is granted the 65% funds from the municipality has also paid the purveyor of goods the amount prior to the 2-year limit.

Is the county or municipality required to expend all of its Tourism-related Funds in the geographical area or areas where the proceeds of the tax are collected?

(Ruling 98-22) No. However, counties and municipalities are required to make such expenditures primarily in the geographical areas of the county or municipality where the tax was collected, if practicable.

FUNDABLE:

- **Website** (tourism)
- **Fireworks** (for free-standing events designed to attract tourists like 4th of July)
- **Sporting Events:** When the primary purpose of the event is to attract tourists, not to fund scholarships. Funds can only be used strictly for the advertisement & promotion of the events to tourists (not locals), not for operational costs (more information provided). Sporting events must affirmatively document the percentage of tourists vs. total attendance by credible means & must be notarized. However, sporting events such as tournaments and other competitions which award scholarships or donate proceeds from an event to charitable organizations are not eligible for A-Tax funding to any extent or for any purpose as this results in the use of public funds to support private philanthropic or charitable interests. While laudable, the TERC’s interpretation of this subsection is that such a use of public funds to benefit third parties beyond the immediately authorized recipient is also inappropriate as it amounts to a “re-granting” of A-Tax funds not contemplated by the statute.

- **Sporting Facilities:** if such facilities are expressly constructed for the purpose of hosting competitive events that will attract tourists to regional or national competitions or tournaments.
- **Conventions/Meetings:** If it is designed to attract tourists to the community and the expenditure is found to serve a public purpose.
- **Health Facilities for Tourists**
- **Out-of-Market Billboards**
- **Construction & Maintenance of Access Roads & Utilities for civic & cultural activities**
- **Municipal & County Services (Garbage, Police, etc)** if these local governments have a high concentration of tourism and these services can be attributed to tourism activity.
- **Promotion & Advertising of Cultural Arts** For purposes of complying with the “promotion of the arts and cultural events requirement found in 6-4-10(4)(b)(2), TERC interprets this subsection to authorize:
 - a. Expenditures for advertising to increase attendance at museums or other facilities dedicated to the display of arts or at individual cultural events from either within or without of the local market, or
 - b. Dedication of a percentage of the total budgeted expenditures for a specific cultural event, not including the expenditures to rent or operate a facility, which percentage may not exceed the percent of out-of-market tourists in relation to the total attendance of the event.

It is understood that the applicant must affirmatively document the percentage of tourist vs total attendance by credible means which shall include details on how the numbers were obtained and verified. Such documentation shall be attested to by an authorized officer, member or employee of the applicant before an SC Notary Public. An expenditure for construction and maintenance of individual cultural activities may not be made under this section.

NOT FUNDABLE:

- **Sporting Events with Scholarships:** Sporting events such as tournaments and other competitions which award scholarships or donate proceeds from an event to charitable organizations are not eligible for A-Tax funding to any extent or for any purpose as this results in the use of public funds to support private philanthropic or charitable interests. While laudable, the TERC’s interpretation of this subsection is that such a use of public funds to benefit third parties beyond the immediately authorized recipient is also inappropriate as it amounts to a “re-granting” of A-Tax funds not contemplated by the statute. They also cannot use money to fund scholarships to attract better players.
- **Training Programs for the Hospitality Industry**
- **Health Clinics for Hospitality Industry (Ok if for tourists)**
- **Welcome Signs**

- **Promotion of events staged by colleges, senior centers, local choirs** unless it is advertised and intended to attract tourists from the outside
- **Travel & lodging for high school bands**
- **Cultural programs in the schools**
- **Buildings for Chamber of commerce** Unless they operate as the Visitor's Bureau or Visitor's Center
- **Transportation for senior citizens' programs, or programs related to drug abuse, AIDS awareness or similar items for residents**
- **The county's or municipality's employees to attend educational workshops, conferences or programs involving tourism**
- **Mosquito Control**
- **Anything that involves a "re-granting"** TERC has determined that once funds are received by an organization, then it is only acceptable for that particular organization to spend the funds. Many times, an organization receives funds and then "re-grants" those funds to a smaller organization for disbursement. This is not an appropriate use of tourism monies per Section 6-4-10 of the S.C. Code of Laws. However, if a recipient would like to spend the funds on advertising and promoting the various tourism events or aspects of these other organizations, then it would be an acceptable expenditure under Section 6-4-10.
- **For Profit Entities** An attorney general's opinion and interpretation from SCDOR attorneys state that the 65% funds must also go to a non profit recipient because public funds cannot be used for private purposes.

POSSIBLY FUNDABLE, BUT NOT LIKELY:

- **Beautification & Maintenance of Exits off State Highways, Lighting** It depends. Two factors must be evaluated. First, is the project designed to attract or provide for tourists. Secondly, is the beautification a service that would normally be provided by the county or municipality. Although the Committee has in the past found the purchase and installation of lighting of interstate and highway exits and the installation of landscaping an acceptable expenditure, the Committee feels as though that the maintenance and operating costs of these assets might not be the best use of accommodations tax funds. This is something considered a "normal expense" of the municipality or county. Although the Committee is not recommending funds be withheld at this time, we would like for entities to consider this for the future and notify the Committee of steps being taken to fund the lights from some source other than state accommodations tax funds. However, the creation of a public garden such as Edisto Gardens in Orangeburg or Brookgreen Gardens in Horry County is the creation of destination tourist facility and would not be considered a normal county or municipal service.
- **Historical Markers/Monuments:** If the monument is in the nature of a large structure designed to honor a group or entity or recognize a specific historical location, then it may be permissible to use Tourism-related Funds for such monument. For example, a monument along

the lines of the United States Holocaust Memorial Museum or the Vietnam Veterans Memorial may have a sufficient impact on tourism to warrant receiving Tourism-related Funds.

- **Acquisitions by local museums:** Whether the museum acquisition is designed to enhance the ability of the county and municipality to attract tourists is a question of fact to be determined from all the facts and circumstances.
- **Museums:** If in area of high concentration, then it may be a possibility since it allows for construction/maintenance of facilities for civic or cultural activities, but the TERC will still analyze the “tourism economic impact.” If approved, they must document visitors in order to qualify as not simply a local benefit.
- **Farmers Markets:** Generally, no. In order to use Tourism-related Funds to fund expenses of farmers’ markets the county or municipality must show that: (1) it has a high concentration of tourism; (2) the services are only needed because of the additional tourist activity (they are not a normal service provided by the county or municipality); and (3) the amount that they spend on such costs are based on the estimated percentage of costs directly attributable to tourists. For example, the market in historic Charleston functions as much as a tourist attraction as it does a local farmer’s market, thus Tourism-related Funds could be used to offset expenses of running and upkeep on that market. However, a local market in Lexington probably would not be eligible to receive Tourism-related Funds since it does not generally attract tourists.
- **Local Government Salaries:** Generally, no unless the county or municipality can show that the employee’s position is necessary to attract or provide for tourists. Additionally, since these employees are providing a county or municipal service, the salary or wage must: (a) be for services that would normally not be provided by the county; (b) the county or municipality must have a high concentration of tourism activity; and (c) the amount of Tourism-related Funds spent on the salary or wages must be based on the estimated percentage of costs attributable to tourists.
- **A county’s or municipality’s supplies such as checks, paper, copier machines, etc.** As a general rule, no, these do not qualify as tourism-related expenditures. However, if paper or postage is used to advertise or promote tourism, Tourism-related funds could be used to pay for these expenditures. For example, if a county or municipality used paper and postage to send brochures about upcoming events to tourists that have visited the area in the past, this would be an appropriate tourism-related expenditure.