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Scoppe: How SC's Big Mac tax turned into the Big Mess tax
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By Cindi Ross Scoppe

Columbia, SC — THEY CALLED it the Big Mac tax. They should have called it the Big Mess tax. And anyone who is surprised that the local hospitality tax is still a mess 16 years later — encouraging local governments to either flout its requirements or make up ridiculous projects to spend the money on, or both, as Richland County is doing — wasn't paying attention.

Sort of like the Legislature wasn't paying attention when it passed the law that allowed cities and counties to tax "prepared meals and beverages" (whatever those are) as long as they spend the proceeds on "tourism-related" projects (whatever those are).The Legislature didn't set out to give cities and counties additional taxing authority. It never does. Instead, as is its wont when it "allows" local governments to impose a tax, it was actually reining in a taxing authority that local governments had discovered they already had.

In this case, legislators were reacting to a 1995 Supreme Court ruling that said state law didn't prohibit Charleston from collecting a tax on restaurant meals and hotel stays — or, more to the point, a dissent that claimed the majority had just given local governments authority to tax anything and everything.

Of course the court hadn't done that, but the new House Republican majority, fresh off its first big tax victory (exempting homeowners from most school property taxes), was itching for an excuse to limit local governments' ability to raise property taxes. The minority opinion gave them the ammunition they needed.

So, operating under the illusion that local governments now had unfettered taxing authority, House Republicans passed a bill the next year to abolish some local taxes, prohibit cities and counties from levying any taxes that the Legislature didn't specifically authorize and require a two-thirds vote for local governments to raise or impose any taxes. The bill also allowed local governments to tax food sold in all restaurants — and not just those that served alcohol, as Charleston did; hence the "Big Mac" moniker — but only if the proceeds were used to promote or deal with the effects of tourism, as Charleston's were.

The Senate balked at the limits on local governments, but gave in the next year after managing to tone down some of the most restrictive provisions. The bill that became law in 1997 allowed cities and counties to tax hotel rooms and "prepared food and beverages" to pay for tourism projects and expenses. It also prohibited taxes that weren't specifically authorized by the Legislature, set out the rules under which local governments could levy a temporary sales tax to pay for infrastructure projects (as some already were doing) and required a "positive majority" (that is, a majority of the full body, rather than only those voting) to increase taxes above the rate of inflation.

Even if you believe that local governments need Big Daddy at Gervais and Main telling them how to act, the law was far from perfect, and despite the fact that this has been glaringly obvious ever since, lawmakers never have bothered to correct its imperfections.

Like the fact that it doesn't define "prepared food and beverages." Legislators clearly intended to cover only food and beverages sold in bars and restaurants, but they didn't say that, so some local governments interpreted it to include those stale packaged sandwiches at a convenience store or packages of cut fruit at a grocery store. And despite periodic protests about these interpretations, the Legislature never has changed the law to clearly state either that the tax applies to more than restaurant food or that it doesn't.

Likewise, the Legislature didn't define "tourism-related," and the lack of a definition has led cities and counties to

stretch all reasonable definitions of the term to cover local parks and recreation projects that no tourist would even realize existed, much less make a trip to visit.

Again, the Legislature clearly meant tourism to be defined the way any rational person would define it; it even amended the law in 1999 to insert “tourism-related” before the words “cultural, recreational, or historic facilities,” when lawmakers realized they had omitted the qualifier for that item of the list of allowable expenditures. But they didn’t bother to define the term, and the absence of that definition has led to at least one lawsuit, which was argued last year but has not been decided, a renewed effort by tourism officials to push for some clarification, and expenditures such as Richland County’s on an overgrown pond in Lower Richland.

The reason the law is so ill-written is that, like so very many of our laws, it wasn’t something that lawmakers gave careful thought to. Despite the time it took to pass it, it was a knee-jerk reaction, in this case to the audacity of a city deciding it needed to bill tourists for the extra police, fire and other services required of a tourism magnet.

But the main problem with the 1997 law isn’t that it doesn’t define “tourism-related” or “prepared food” — although that’s a problem; laws ought to be clear, so we don’t have to litigate their meaning, or play fast and loose with it. The problem is that the Legislature put a limit on how local governments could use the restaurant tax, which has led to local governments squandering money on frivolous pork-barrel projects while actual needs go wanting, not just in Richland County but across the state.

A bigger problem still, because a restaurant tax might not be the smartest kind of tax around, is that the Legislature doesn’t let elected city and county council members decide how — or even how much — to levy taxes to provide services for the communities they are elected to serve. So Richland County legislators tell Greenville officials what they can and can’t tax, and Charleston County legislators tell Lexington County officials what they can and can’t tax. Those decisions ought to be made by the officials who are elected for the purpose of providing services to those communities. Not by legislators on the other side of the state. Especially not legislators who can’t even write a coherent law.

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Read more here: http://www.thestate.com/2013/09/04/2958624/scoppe-how-scs-big-mac-tax-turned.html#storylink=cpy

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