

4. On December 16, 2004, the Jefferson County Commission adopted Ordinance No. 1769 which provides for the levy of the Education Tax and repealed a prior version of such ordinance (the "Education Tax"). Ordinance No. 1769 is hereinafter referred to as the "Sales and Use Taxes Ordinance". The Education Tax, which generally parallels the statewide sales and use taxes levied by the State of Alabama, consists of (i) a privilege or license (commonly called sales) tax on persons engaged in the business of selling at retail in the County any tangible personal property or in the business of conducting or operating places of amusement or entertainment in the County, generally measured by the gross receipts or sales of such businesses and (ii) an excise (commonly called use) tax on the storage, use or other consumption of tangible personal property in the County, generally measured by the sales price of the property. The use tax complements the sales tax and applies only where property placed in use in the County was not purchased in a retail sale in which the sales tax was collected. (See, Exhibit B for a true and correct copy of Ordinance No. 1769 (the "Ordinance 1769")).

5. The general rate for the Education Tax is one percent (1%), except it follows State law as to exemptions and exceptions.

6. Ordinance 1769 provides that the Education Tax will become effective on January 1, 2005 and will be due and payable monthly on or before the 20<sup>th</sup> day of each month. 3

7. Section 10 of Ordinance 1769 expressly provides that the Education Tax shall be levied only for such period as shall be necessary to collect revenues for the full payment and retirement of the Series 2004-A Warrants, the Series 2004-B Warrants and the Series 2004-C Warrants, and when the Series 2004-A Warrants, the Series 2004-B Warrants and the Series 2004-C Warrants have been fully paid in accordance with the terms thereof, the levy of the Education Tax shall automatically be terminated without further action by the County Commission.

8. The Alabama Legislature recently passed House Bill 573 ("ACT 226") which has been signed into law by the Governor. (Exhibit C) ACT 226 is a local law that applies only in Jefferson County. ACT 226 is a local act which would allow the Jefferson County Commission to levy sales or use taxes in the amount of one cent for general purposes by simultaneously terminating and replacing the one cent Education Tax (sometimes referred to hereinafter as the "Replacement One Cent Tax"). ACT 226 provides: "4(d) Upon initial levy by the county of the taxes authorized by this act, the county commission shall simultaneously cancel the county's existing sales and use taxes currently being levied by the county under Ordinance 1769 of the county commission, as amended, that are pledged to the existing school warrants, provided that the county has previously or will simultaneously retire or defease the existing school warrants. The sales and use

taxes authorized by this act and the sales and use taxes authorized to be levied by the county pursuant to Ordinance 1769 of the county commission shall not both apply to any taxable sale or storage, use, or consumption so as to result in a cumulative tax rate from both such taxes that is greater than one percent."

9. Alabama Code Section 40-12-4 is a general law that provides for and authorizes the governing bodies of all the various counties to levy certain taxes, including a one cent sales or use tax, to generate revenue for all the public school systems within the county.

#### ACT 226 VIOLATES ARTICLE IV SECTION 105 OF THE ALABAMA CONSTITUTION

10. Section 105 of the Constitution of 1901 reads:

"No special, private, or local law, except a law fixing the time of holding courts, shall be enacted in any case which is provided for by a general law, or when the relief sought can be given by any court of this state; and the courts, and not the legislature, shall judge as to whether the matter of said law is provided for by a general law, and as to whether the relief sought can be given by any court; nor shall the legislature indirectly enact any such special, private, or local law by the partial repeal of a general law."