GORDON COUNTY, GEORGIA
MEMORANDUM

To:	Board of County Commissioners
From:	Randall Dowling, County Administrator
Subject:	Energy Excise Tax Summary
Date:	August 16, 2012

BACKGROUND

Effective January 1, 2013, the state will begin to phase out the 6% sales tax on energy used in the manufacturing process at 25% each year until 100% is reached on January 1, 2016. This sales tax elimination is being done for economic development purposes. However, this sales tax elimination will affect the county's LOST and SPLOST revenue collection.

To recoup the county's portion of this sales tax, the new state law allows each county to impose a local excise tax up to 2% on energy used in manufacturing at the same rate as the phase out period above, 25% each year until 100% is reached on January 1, 2016. If the county imposes this 2% sales tax on energy, the manufacturers located in the county will only receive a 4% sales tax reduction.

PROCESS

If the county and its cities want to impose this local energy sales tax, certain items must be accomplished including the following in accordance with O.C.G.A. 48-13-110 to 48-13-118:

1) By September 1, 2012, a written notice must be delivered by the county to the mayors of each city at least 10 days prior to a meeting to discuss this issue. The notice should contain the date, time, place, and purpose of the meeting to decide whether or not a local energy excise tax should be imposed. This meeting must be held at least 30 days prior to the adoption of any ordinance.

2) After the meeting, if the decision is to impose the energy excise tax, an intergovernmental agreement must be prepared and signed by the county and the participating cities. If any city does not want to participate, that city's portion of the excise tax will go to the county. If the county does not want to participate, then each city can impose this sales tax only within their city limits.

3) After 30 days following the meeting, an ordinance can be prepared and adopted by the county imposing this 2% energy sales tax. The sales tax will become effective on the first day of the next succeeding month following the adoption of the ordinance but no earlier than January 1, 2013. The sales tax can be terminated with the adoption of another ordinance that terminates the tax.

4) The county will act as tax collector for this energy sales tax and will collect the sales tax from the energy providers and distribute the proceeds to each participating city on a monthly basis. The county will retain 1% of the total monthly collections as an administrative charge. Since Gordon County has two sales taxes, the LOST and the SPLOST, the county's energy sales tax can be the maximum 2%. According to the new state law, the distribution to each of the participating jurisdictions must mirror the LOST and SPLOST distribution formulas - ½ of the proceeds must be distributed to each participating jurisdiction using the current SPLOST distribution formula and the other ½ of the proceeds must be distributed using the current LOST distribution formula. These proceeds are to be placed in the General Fund of each jurisdiction and be spent for any lawful purpose.

WHAT OTHER NEARBY COUNTIES ARE DOING

Bartow County – will implement on Jan. 1, 2013.
Cherokee County – probably will not implement.
Floyd County – probably will not implement.
Whitfield County – probably will not implement.
Catoosa County – no decision has been made.
Paulding County – no response.

SAMPLE SCHEDULE

1) Overall proposal considered by county on Tues. Aug. 21 (during commission meeting).
2) If approved, ten day letter sent to the cities on Wed. Aug. 22.
3) Meeting held with cities on Tues. Sept. 4 to discuss this issue (during commission meeting).
4) If approved, prepare intergovernmental agreement during Sept., get it approved on Tues. Sept. 18 by the county, and get each participating city to approve/sign it during Sept. A model intergovernmental agreement has been prepared by ACCG.
5) Prepare county ordinance imposing the 2% energy sales tax (1st reading Oct. 16 and second reading/adoption on Nov.6). A model ordinance has been prepared by ACCG.
6) Copies of county ordinance sent to all energy providers in the county to inform them.
7) Sales tax goes into effect on Jan. 1, 2013 without interruption.

Attachments: 1) ACCG's Summary of the Energy Excise Tax
2) GMA's Summary of the Energy Excise Tax

Randy Dowling

From: Whitley, Carmenza [CWhitley@ACCG.org]
Sent: Monday, July 23, 2012 4:47 PM
Subject: County Energy Excise Tax/Summary/Model Resolution/Model Intergovernmental Agreement
Attachments: EnergyExciseTaxSummary.pdf; Energy Excise Tax Model Ordinance js5final.docx; Energy Excise Tax Model Intergovernmental Agreement js3final.docx; Energy Excise Tax Model Signing Resolution for IGA js3final.docx

To County Attorneys, Managers, Administrators and Clerks:

Energy Sales and Use Tax Exemption
As most of you are aware, The General Assembly enacted a major tax reform package this past session, HB 386. Among many things addressed in this legislation was the enactment of a sales and use tax exemption for energy used in the manufacturing process. This exemption applies not only to state sales and use taxes but also to local sales tax levies like SPLOST and LOST so local tax revenues will be impacted.

Note that this exemption applies ONLY to the use of energy in manufacturing as, for example, in producing cars or carpet. It does not apply to the sale of energy for other purposes such as heating and air conditioning.

The energy exemption is subject to a 4-year phase in of 25% per year until fully phased in 2016.

County Energy Excise Tax
Additionally, HB 386 authorizes, but does not require, counties to levy a new local excise tax on energy. The new authorization was designed to allow counties and cities to recoup the revenues lost to them as a result of the new exemption. The amount of the proceeds from the county energy excise tax, if levied, would equal county revenues lost due to the new sales tax exemption.

Some Highlights of the Energy Excise Tax:

- The local energy excise tax can be levied by county ordinance. It is not subject to a referendum.
- Initially, the rate of the excise tax phases in over the same 4 year period as the sales and use tax phases out.
- Following phase in, the excise tax caps at 2%. If your county has any combination of LOST, SPLOST, HOST or MARTA, you get a 2% energy tax. If you have only one of them your energy tax rate is only 1%. The only exception to this will be Atlanta where it is capped at 3% due to the municipal option water and sewer tax.
- This is essentially a county tax. There must be a meet and confer with the cities. If a city declines to participate, it will be collected countywide but the city gets no proceeds. If cities choose to participate, they will get a share based upon the same split they get through the 2 underlying local sales & use taxes.
- If cities participate, an intergovernmental agreement is required.
- While it can still be levied at a later date, counties that wish to ensure that county tax revenues lost due to the energy sales tax exemption are replaced have until December 31, 2012 to levy the local energy excise tax.

Please keep in mind, there is no requirement that counties impose this excise tax. It is purely an option that has been made available to replace local sales and use tax proceeds that will be otherwise be lost due to the energy sales tax exemption.

Model Ordinance/Intergovernmental Agreement/Resolution/Summary
In order to assist counties in this matter, ACCG has prepared a summary, a model ordinance, a model intergovernmental agreement, and a model resolution authorizing execution of the intergovernmental agreement. These documents are included as attachments to this email. These are model documents only and should be reviewed by the county attorneys and altered as necessary.

List of Energy Users
At the present time ACCG does not have a list identifying the providers or the energy users, but please note that ACCG is working with the energy providers as well as with the Georgia Department of Revenue to identify energy users who would be subject to the excise tax. That information will be provided to counties as it becomes available.

Please contact Joe Scheuer or Clint Mueller at ACCG if you have any questions.

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Elimination of the Sales Tax on Energy Used in Manufacturing

Beginning January 1, 2013, the state and local sales and use tax on energy used in manufacturing will be phased out over a 4-year period. Education SPLOST and ELOST are exempt from this phase-out.

A county or a city may elect, by ordinance, to phase-in a 2% excise tax to replace the sales tax on energy used in manufacturing over the same 4 year period. The rate of the phase-in would mirror the schedule of the phase-out of the sales tax (25% per year).

A county has until September 1, 2012, to contact the municipalities and enter into an intergovernmental agreement to allocate the proceeds of the excise tax based upon current LOST and SPLOST distribution agreements. If the county elects not to notify the city or enter into an intergovernmental agreement, then the municipalities are authorized to levy an excise tax within the corporate limits of the municipality. The county will not receive any proceeds from the municipal excise tax.

If a municipality decides not to be a part of the countywide excise tax, the tax will still be collected countywide, however the municipality will not receive any proceeds. If a municipality later decides to participate with the county after the tax is enacted, they must notify the county and within 60 days amend the intergovernmental agreement. The municipality will then receive revenue from the excise tax, starting 12 months after the amended intergovernmental agreement is finalized.

Also, within the first 4 years of the phase out, the Governor may bypass the phase-out schedule and waive the local and state sales tax for a competitive project of regional significance. The definition of what is a competitive project of regional significance is rather broad.

How to prepare

Municipalities need to analyze the significance of the revenue generated from this sales tax on energy and make a determination on whether or not to go forward with the replacement excise tax if the county chooses not to enact the excise tax. If by September 1, 2012, a municipality has not received written notice from the county requesting a meeting to enter into an intergovernmental agreement, the municipality, after 30 days, may enact the excise tax by ordinance. If the county or the cities fail to phase-in an excise tax by January 1, 2013, revenue to replace the sales tax on energy used in manufacturing will be forfeited.

GMA will provide a sample ordinance for municipalities to use to enact this excise tax.

Overview of Local Excise Tax on Energy Used in Manufacturing

What is this tax?

This is an optional local excise tax on energy used in manufacturing. It should not be considered a new tax but a method of replacing local sales tax revenues on energy used in manufacturing which are being phased out under the tax reform legislation. The local excise tax is levied at the same rate as the local sales taxes and is shared between the county and the cities based upon the same proration of local sales taxes.

How is the tax enacted?

The tax is enacted through the adoption of an ordinance by the board of commissioners (no referendum is required). If a city(s) wants to be included, it must sign an intergovernmental agreement with the county. If the county fails to adopt the ordinance before the end of 2013, any city can adopt their own ordinance and collect the tax within their jurisdiction.

How is the tax collected?

The tax is collected by the county from companies that sell energy (i.e. electricity, gas, oil, or other types of fuel) to manufacturers within the county. The county retains a one percent administrative fee for collecting the tax and distributing proceeds to the participating city(s). The county is also given the authority to conduct audits.

How can this tax be used?

Unlike the restricted sales tax revenues this tax replaces, these excise tax revenues are unrestricted and can be used in the general fund for any purpose. A county may choose to use all or a portion of these excise tax revenues in the same way as the sales tax revenues which they are replacing but is not required to do so.