

**2012 Legislative Leadership Conference ACCG**  
**Standard of Excellence Session:**  
**2013 Tax Reform Implementation: Is Your County Ready**

**Excise Tax Implementation Guide**

**I. Overview of the Law**

- a. Effective January 1, 2013, state and local sales tax on energy used in manufacturing will be exempted and phased out over the next three years.
- b. **Exception:** Education sales tax and TSPLOST are not included in the exemption
- c. **Manufacturer Definition:** O.C.G.A. § 48-8-3.2(10) states: Manufacturer means a person or business, or a location of a person or business that is engaged in the manufacture of tangible personal property for sale or further manufacturing. To be considered a manufacturer, the person or business, or the location, must be:
  - i. Classified as a manufacturer under the 2007 North American Industrial Classification System Sectors 21, 31, 32, or 33, or North American Industrial Classification System industry code 22111 or specific code 511110; or
  - ii. Generally regarded as a manufacturer
- d. **Machinery or Equipment:** used for purposes necessary and integral to the manufacture of tangible personal property are exempt.
  - i. A substantial purposes test will be applied to machinery or equipment that has a dual purpose, not all of which is exempt.
  - ii. Leased machinery that didn't qualify at lease inception and subsequently qualifies under the exemption shall have the exemption apply to all lease payments made subsequent to qualification.
- e. **What Energy is Exempt?**
  1. Energy necessary and integral to the manufacture of tangible personal property is exempt. This includes:
    - i. Energy used in administrative or other ancillary activities
    - ii. Energy used in related operations that convey, transport, handle, or store raw materials or finished goods at the plant
    - iii. Energy used for heating, cooling, ventilation, illumination, fire safety and prevention, and personal comfort and convenience.

**II. Qualification Process**

- a. Process is self-selection
  - i. Exemption certificate is downloaded by business from DOR's website
  - ii. Business submits completed certificate to energy providers
  - iii. Energy Providers are NOT responsible for determining whether the business should receive the exemption. Receipt of the exemption certificate is sufficient for the energy provider to begin exempting the business from the sales tax

### **III. Option to Levy the Excise Tax**

- a. O.C.G.A. § 48-13-112 authorizes local governments to levy and collect an excise tax upon the sale or use of energy.
  - i. Applies to LOST, SPLOST, HOST, MARTA, and MOST
  - ii. Excise tax is only levied when such sale or use would have constituted a taxable event but for the exemption.
  - iii. Excise tax will be phased in at the same rate as the exemption over 4 years.
- b. **How is the Excise Tax Calculated**
  - i. The excise tax is controlled by the maximum amount of local sales and use tax in effect.
  - ii. 2% limitation, except in a municipality that levies a water and sewer projects and costs tax (MOST) there will be a 3% limitation
  - iii. In the event of a reduction in the local sales and use tax rate, the excise tax rate shall also be reduced at the same time.
- c. **How Excise Tax is Shared with Cities**
  - i. The excise tax is shared with the cities in the same proportionate share under the distribution provisions of the local sales and use taxes in effect in that county.
  - ii. If there are two local taxes, the first half of the excise tax will be divided proportionate to one of the local taxes and the second half divided proportionate to the second local tax.
  - iii. The county shall take a 1% administrative fee off of the top to offset the cost of collection and administration.

### **IV. Collecting the Tax**

- a. **Meeting and Confer**
  - i. Timeline is spelled out under O.C.G.A. § 48-13-113 & 115.
  - ii. Notice to cities of meeting should have gone out by Sept. 1, 2012.
  - iii. Should be in process of having initial meeting
  - iv. If levying tax, counties and cities must enter into an IGA before a second meeting can occur to adopt the ordinance.
  - v. Second meeting to adopt the ordinance cannot be less than 30 days from the initial meeting.
- b. **Adopting the Ordinance**
  - i. The meeting to adopt the ordinance should occur by the first week in December in order to insure full integration by January 1, 2013.
  - ii. Ordinance must be provided to the energy providers in order for them to begin collecting the excise tax
  - iii. It is up to the local governments to identify all of the energy providers that service their jurisdiction. If the energy providers do not have notice of the excise tax, they will not be liable for collecting it.
  - iv. ACCG is working to find a way to make identifying energy providers more efficient for local governments.

**c. Collection and Distribution**

- i. The energy providers are charged with collecting the excise tax from the manufacturers that claim the energy exemption.
- ii. The excise tax revenues will be distributed to the counties on a monthly basis. For jurisdictions where the counties did not levy the excise tax but cities did, the energy providers will send the excise tax revenues directly to the cities.
- iii. The counties are then charged with distributing the revenue to any cities within the county that also levied the tax. Distribution is based on the IGA.
- iv. Distribution must occur within 30 days of the end of the month

**d. Audit Process**

- i. O.C.G.A. § 48-13-117, authorizes each local government that levies the excise tax to audit the energy providers to ensure that the tax is being collected and distributed in accordance with the ordinance.
- ii. The audit report shall include a report of the revenues pertaining to the excise tax under the law.

**V. Ag Exemption**

- a. 100% exemption beginning January 1, 2013. Not subject to excise tax
- b. O.C.G.A. § 48-8-3.3 lays out the definition of a Qualified Ag Producer
  - i. Own or lease land that produces more than \$2,500/yr in agriculture products
  - ii. In the business of providing for-hire custom agricultural services
  - iii. Qualifies for taxation under the qualifications of bona fide conservation use property as defined in Code Section 48-5-7.4 or for taxation under the provisions of the Georgia Forest Land Protection Act defined in Code Section 48-5-7.7
  - iv. Produces long term agricultural products from which there might not be annual income such as timber, pecans, and pulpwood. Must produce an annual average of at least \$2,500.
  - v. Must establish to the satisfaction of the Commissioner of Agriculture that person or entity is actively engaged in production of agriculture that produces more than \$2,500 in annual sales.

**c. Dept. of Ag Regulation**

- i. The Georgia Agriculture Tax Exemption (GATE) Certificate requires prior application from the person or entity and permission by the Commissioner.
- ii. A person or entity may be regarded as an Ag Producer under specific North American Industry Classification System (NAICS) Codes found online at [www.census.gov](http://www.census.gov).
- iii. The applicant must disclose: the types of agriculture products produced; name and address of business; authentic email address (if applying online); name of primary certificate holder and max of 2 more authorized users.

- iv. Applicant must attest that information is true and accurate. All information obtained will be shared with DOR.
- v. Commissioner may require proof of eligibility and attest the forms are on file from the previous year's tax records or schedules.
- vi. There will be an annual certification fee of \$25 for written applications and \$20 for online applications.
- vii. The GATE Certificate must be renewed annually.
- viii. DOR shall be forwarded all information obtained by the Dept. of Ag for the purposes of review, audit, and possible prosecution of violations.

**d. Energy Used in Ag Production**

- i. Unlike the manufacturing exemption, the agriculture exemption only exempts energy used in agriculture.
- ii. DOR is currently working on a regulation to establish the process by which a distinction can be made between general energy usage and energy used in agriculture.

**e. Dual Purpose Businesses**

- i. A person or entity cannot claim an agriculture and manufacturing exemption. They must choose one or the other.
  - 1. Decision may be based on percent of total energy usage that qualifies for the agriculture exemption versus getting all energy exempted under the manufacturing exemption.

**VI. Budget Impact**

**a. Estimating the Fiscal Impact**

- i. No data is collected by DOR or energy providers that accurately determine the fiscal impact to local governments.
- ii. Energy providers may provide, by request of the local governments, the sales tax revenue on non-exempt energy used by industrial businesses for your jurisdiction.
  - 1. Exception: must have more than 3 industrial customers in your jurisdiction to receive the revenue number.
  - 2. May begin requesting information in October.
  - 3. Number may not be accurate but it is a number
- iii. Only true way to assess the fiscal impact is to levy the tax effective January 1, 2013 and monitor revenue from excise tax for a year.
  - 1. Know that revenue for year one is only 25% of potential revenue when fully phased in.

**b. Excise Tax in General Fund**

- i. Proceeds are to be deposited to the general fund
- ii. Law provides that proceeds shall not be subject to any use or expenditure requirements provided for under any of the local sales and use taxes but shall be authorized to be expended in the same manner as otherwise would have been required under such local sales and use taxes.

**c. Administrative Fee**

- i. Law provides for the counties to take a 1% administrative fee to offset the costs of collection and administration.

- ii. Fee is to be taken from the total proceeds sent to the county by the energy providers prior to separating out proportional share to the cities.

## **VII. FAQ**

- a. If the county levies the tax, are the cities required to?
- b. Can we levy the tax on one of our local taxes but not the other?
- c. Can we abate the excise tax as an incentive to lure a local prospect?
- d. During the exemption phase in, do we get the full 1 or 2% of the excise tax or 25% of that 1-2%?
- e. If the county doesn't levy the tax but some of its cities do, does the county have to collect and distribute the proceeds?
- f. Do we have to enter into an IGA w/ cities that do not levy the tax?
- g. Do we adopt one ordinance for the county and cities together or does each local government have to adopt an ordinance?
- h. If a county levies the tax, then repeals it but later wishes to levy again, can they?
- i. Where can I get a copy of a Model Ordinance or IGA?
- j. Where can I find the answer to all of my excise tax questions?
  - i. [www.accg.org](http://www.accg.org) under Tools for Implementing the Excise Tax
  - ii. Contact Shaun Adams at: [sadams@accg.org](mailto:sadams@accg.org)