COUNTY AGENDA REQUEST

Department:	Commissioners	Presenter(s):	Commissioner Steve Brown
Meeting Date:	Thursday, November 15, 2012	Type of Request:	New Business

Wording for the Agenda:

Consideration of Commissioner Brown's recommendation to continue imposing the Energy Excise Tax in Fayette County.

Background/History/Details:

In 2012, the General Assembly enacted a major tax reform package through the passage of House Bill 386 (HB 386). Among other things, HB 396 enacted a sales and use tax exemption 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, meaning local tax revenues will be impacted. This exemption applies ONLY to the use of energy in manufacturing as, for example, in producing cars or carpets. 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 four-year phase in of 25% per year until fully phased in 2016.

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.

Due to the county's currently strained budget, Commissioner Brown is recommending the creation of the County Energy Excise Tax option that has been made available to replace local sales and use tax proceeds that will be otherwise lost due to the energy sales tax exemption. This is not a new tax, but a way to maintain the existing revenue the County already receives.

What action are you seeking from the Board of Commissioners?

Approval of Commissioner Brown's recommendation to continue imposing the Energy Excise Tax in Fayette County.

If this item requires funding, please describe:

Not Applicable.

Has this request been considered within the past two years?	No	If so, when?	
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

Approved by Finance	Yes	Reviewed by Legal	
Approved by Purchasing	Not Applicable	County Clerk's Approval	Yes
Administrator's Approval	Yes		

Staff Notes:

To: Fayette County Board of Commissioners

From: Commissioner Steve Brown

Date: November 8, 2012

Subject: County Energy Excise Tax / November 15 BOC Meeting

The General Assembly enacted a major tax reform package in 2012 through the passage of 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 any county has any combination of LOST, SPLOST, HOST or MARTA, you get a 2% energy tax. I believe Fayette's current energy tax rate is 2%.

- 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 two 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.

Due to our current strained budget, I believe we should create the County Energy Excise Tax 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.

AGAIN, THIS IS NOT A NEW TAX, BUT A WAY TO MAINTAIN THE EXISTING REVENUE WE ALREADY RECEIVE.

At the ACCG District 3 meeting, I was informed that action needed to occur on this measure by December 1, 2012. Unfortunately, the Georgia Department of Revenue cannot tell us how much funding is at stake with the loss of the current energy excise tax, so I wholeheartedly recommend that the Board of Commissioners approve the County Energy Excise Tax through ordinance.

I have given the ACCG model ordinance to the County Attorney for him to retrofit for our county's needs.

MODEL ORDINANCE

IMPOSING AN EXCISE TAX ON THE SALE, USE, STORAGE, OR CONSUMPTION OF ENERGY

WHEREAS, O.C.G.A. § 48-13-110 *et seq.,* authorizes counties and municipalities to impose an excise tax on the sale, use, storage, or consumption of energy; and

WHEREAS, imposition of the excise tax on the sale, use, storage, or consumption of energy is contingent upon the enactment of an ordinance of the county or municipality; and

WHEREAS, _____ County desires to impose such excise tax and pursuant to O.C.G.A. § 48-13-113 has met and conferred with each municipality in the county and no such municipality desires to participate in such excise tax.[1]

OR

WHEREAS, _____ *County desires to impose such excise tax and pursuant to O.C.G.A. § 48-13-113 has met and conferred with each municipality in the county and has executed an intergovernmental agreement with the following jurisdictions: the City of* _____*, the City of*_____*, the City of* _____*, and the City of*_____ *which desire to participate in such excise tax.* [2]

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of _____ County does hereby ordain as follows:

Section 1. Energy Excise Tax Definitions

As used in this ordinance, the terms: "dealer;" "energy;" "local sales and use tax;" and "purchaser" shall have the same meanings as provided in O.C.G.A. § 48-13-110.

Section 2. Imposition; Rate; Remitting; Recovery; Liabilities

(a) In accordance with the provisions of O.C.G.A. § 48-13-110 *et seq.*, there is imposed within the territorial limits of the special district created pursuant to O.C.G.A. § 48-13-111, an excise tax on the sale, use, storage, or consumption of energy when such sale, use,

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[1] Use this if the county will be imposing the tax without the city or cities.

[2] NOTE: If the county will be imposing the tax and one or more municipalities are to participate, then an intergovernmental agreement is required under O.C.G.A. § 48-13-114 to provide for the distribution of proceeds.

storage, or consumption would have constituted a taxable event for purposes of sales and use tax under O.C.G.A. § 48-8-1 *et seq.* but for the exemption in O.C.G.A. § 48-8-3.2.[3]

Section 3. Excise tax rate; phase-in. [4]

(a) Such excise tax shall be levied and collected by the governing authority of _____ County pursuant to O.C.G.A. §§ 48-13-112 and 48-13-114 and as provided in this section.

(b) Except as otherwise provided in this section, the rate of such excise tax shall be phased in over a four-year period as follows:

> (1) For the period commencing January 1, 2013, and concluding at the last moment of December 31, 2013, such excise tax shall be at a rate equivalent to 25 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in O.C.G.A. § 48-8-3.2;
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> (2) For the period commencing January 1, 2014, and concluding at the last moment of December 31, 2014, such excise tax shall be at a rate equivalent to 50 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in O.C.G.A. § 48-8-3.2;
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> (3) For the period commencing January 1, 2015, and concluding at the last moment of December 31, 2015, such excise tax shall be at a rate equivalent to 75 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in O.C.G.A. § 48-8-3.2; and
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> (4) On or after January 1, 2016, such excise tax shall be at a rate equivalent to 100 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in O.C.G.A. § 48-8-3.2.

(c) In accordance with O.C.G.A. § 48-8-3.2 (c)(4), if a project of regional significance under O.C.G.A. § 48-8-3(92) is started in the special district, it shall not be subject to the phase-in

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[3] NOTE: The excise tax is tied to O.C.G.A. § 48-8-3.2. There is no authorization under O.C.G.A. § 48-13-110 *et seq.* to levy this tax on bona fide energy used in agriculture. Please review carefully the definitions and scope of O.C.G.A. §§ 48-8-3.2 & 48-8-3.3 to determine the proper scope of the agricultural provisions.

[4] Under O.C.G.A. § 48-13-112(a)(3), if the tax is imposed before January 1, 2016, the rate will gradually phase in as the rate of local sales and use tax phases out. Under O.C.G.A. § 48-13-114, after the actual rate imposed follows the rate of local sales and use tax (defined in O.C.G.A.A § 48-13-110(3). It will be either 1% or 2 %, with the exception of a city which levies municipal option water and sewer tax, in which case the rate would be 3%.

period contained in paragraphs (1), (2), and (3) of subsection (b) of this section, and the sale, use, storage, or consumption of energy in connection therewith shall be subject to the rate specified in paragraph (4) of subsection (b) of this section notwithstanding the January 1, 2016 limitation in that paragraph (4).

(d)(1) Following such initial imposition during the phase-in time period, on or after January 1, 2016, the rate of the excise tax levied and collected by the governing authority of _____ county shall be directed by O.C.G.A. § 48-13-112(d). Such rate shall be controlled by the maximum amount of local sales and use tax in effect in the special district, but in no event more than 2 percent *(except in the case where the municipal option water and sewer tax is levied where that rate will be 3%. See FN 4 below)*.

(2) In the event the total rate of local sales and use taxes in effect in the special district decreases from 2 percent to 1 percent, the rate of the excise tax under this ordinance shall likewise be reduced at the same time such local sales and use tax rate reduction becomes effective.

(3) In the event the total rate of local sales and use taxes in effect in the special district increases from 1 percent to 2 percent, the rate of the excise tax under this ordinance shall likewise be increased at the same time such local sales and use tax rate increase becomes effective.

Section 4. Imposition; Remittance; Recovery

In accordance with O.C.G.A. §48-13-112(c), such excise tax shall be:

(1) Imposed only at the time sales and use tax on the sale or use of such energy would have been due and payable under O.C.G.A. § 48-8-30 but for the exemption under O.C.G.A. § 48-8-3.2;

(2) Due and payable in the same manner as would be required under O.C.G.A. § 48-8-1 *et seq.*, except as other provided in O.C.G.A. § 48-8-110 *et seq.*;

(3) A debt of the purchaser of energy until it is paid and shall be recoverable at law in the same manner as authorized for the recovery of other debts;

(4) Remitted to the governing authority of _____ County by the dealer collecting such excise tax; and

(5) A liability of the dealer at the applicable rate on the charges actually collected or the amount of excise taxes collected from purchasers, whichever is greater.

Section 5. Exemption Certificates

(a) The governing authority of _____ County, or the collecting officer appointed under Section 8 of this ordinance, shall make diligent efforts to identify all energy providers and purchasers in the special district and to ascertain whether such a purchaser has completed a uniform exemption certificate provided from the website of the Georgia Department of Revenue seeking to qualify such purchaser for the exemption under O.C.G.A. § 48-8-3.2. Such certificate shall be utilized by such governing authority or collecting officer for the purpose of determining the applicability of the excise tax under this ordinance.

(b) An energy provider shall be authorized to rely upon such uniform exemption certificates. An energy provider shall not be liable for failing to collect and remit the excise tax imposed pursuant to this ordinance if the purchaser has failed to submit such uniform exemption certificate to the energy provider.

Section 6. Commencement of Collections

The excise tax imposed pursuant to this ordinance shall become effective on _____,[5] and shall be due and payable to the governing authority of _____ County monthly on or before the twentieth day of every month and each respective month in which such taxes are collected, and payment shall be accompanied by a return for the preceding monthly period showing the gross sales and purchases arising from all sales and purchases taxable under this ordinance during the preceding calendar month.

Section 7. Distribution and expenditure of proceeds [6]

Pursuant to O.C.G.A. § 48-13-114, the excise tax proceeds shall be paid into the general fund of _____ County and 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 or may be expended for any lawful purpose as determined by the governing authority of _____ County.

[5] Under O.C.G.A. § 48-13-116 (a)(1), the effective date of the tax cannot be sooner than January 1, 2013. The actual date is the first day of the next succeeding month following the adoption date of this ordinance unless otherwise specified in the intergovernmental agreement.

[6] This option should be used only when no municipalities are participating in the tax.

OR

Section 7. Allocation, distribution, and expenditure of proceeds[7]

(a) Pursuant to O.C.G.A. § 48-13-114 (b), the excise tax proceeds shall be allocated and distributed by the governing authority of _____ County at the end of each calendar month. An amount equal to 1 percent of such proceeds collected by _____ County shall be paid into the general fund of _____ County to defray the costs of collection and administration.

(b) The remainder shall be distributed in accordance with the intergovernmental agreement as required under O.C.G.A. § 48-13-114 (b) and (c). Within 30 days following the end of each calendar month, the remainder shall be distributed to the general fund of _____ County and the general fund of each participating municipality in accordance with the applicable provisions of O.C.G.A. § 48-13-114 (c)(1) or (2) as follows:

(1) If two local sales and use taxes are in effect in the special district, an amount equal to one-half of the proceeds shall be distributed to the general fund of _____ County and the general fund of each participating municipality located in the county according to the same proportionate share as specified under the distribution provisions of the first local sales and use tax and an amount equal to one-half of the proceeds of the excise tax shall be distributed to the general fund of _____ County and the general fund of each participating municipality located in such county according to the same proportionate share as specified under the distribution provisions of the second local sales and use tax; or

(2) If only one such local sales and use tax is in effect in the special district, then the proceeds of the excise tax shall be distributed to the general fund of _____ County and the general fund of each participating municipality located in the county according to the same proportionate share as specified under the distribution provisions of the local sales and use tax.

(c) Except as provided in subsection (a) of this section, proceeds of the excise tax deposited in the general fund of _____ County may be expended for any lawful purpose as determined by the governing authority of _____ County.

Section 8. Administrative Provisions; Audits; Examinations; Collecting Officer

(a) The governing authority of _____ County shall be authorized to designate a collecting officer[8] for collection and administration of the excise tax under this ordinance.

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[7] This option should be used when an intergovernmental agreement has been executed with one or more participating municipalities.

[8] The collecting officer could be any appropriate person as determined by the governing authority. The tax commissioner could be designated if the tax commissioner consents to the designation.

(b) The collecting officer shall be authorized to provide for procedures necessary to the proper implementation of this ordinance, including, but not limited to, periodic auditing of dealers collecting and remitting the excise tax. The collecting officer, or the designee of the collecting officer, is specifically authorized to examine the books , papers, records, financial reports, equipment, , or other facilities of any purchaser which is required to remit the excise tax under this ordinance.

(c) In accordance with O.C.G.A. § 48-13-118, as part of the audit report required under O.C.G.A. § 36-81-7, the auditor shall include, in a separate schedule, a report of the revenues pertaining to the excise tax under this ordinance.

Section 9. Repealer

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

Section 10. Effective Date

The ordinance shall become effective _____, _____.[9]

BE IT ORDAINED this ____ day of _____, _____, by the Board of Commissioners of _____ County, Georgia.

_____

Chairperson

CERTIFICATION

I hereby certify that the foregoing is a true and correct copy of an original ordinance duly adopted by the Board of Commissioners of _____ County on the ____ day of _____, _____.

In witness whereof, I hereunto set my hand and affix the seal of the County, this ____ day of _____, _____.

_____

County Clerk

[Affix Seal]

[9] Under O.C.G.A. § 48-13-116 (a)(1), the effective date of the tax cannot be sooner than January 1, 2013. The actual date is the first day of the next succeeding month following the adoption date of this ordinance unless otherwise specified in the intergovernmental agreement.