

House Bill 250 (AS PASSED HOUSE AND SENATE)

By: Representative Rice of the 95th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 6 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the local excise tax on the sale or use of energy, so as to provide for the revision
3 of certain provisions relating to the levy, collection, and administration of such excise tax;
4 to provide for nonapplicability of such tax to certain projects; to provide for procedures,
5 conditions, and limitations; to provide for civil and criminal penalties; to provide an effective
6 date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 6 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to the
10 local excise tax on the sale or use of energy, is amended by revising paragraph (1) in Code
11 Section 48-13-110, relating to definitions for the levy and collection of the local excise tax
12 on the sale or use of energy, to read as follows:

13 "(1) 'Dealer' has the same meaning as in Code Section 48-8-2 means any person who
14 sells energy at retail, offers to sell energy at retail, or has in his or her possession any
15 energy for sale at retail."

16 **SECTION 2.**

17 Said article is further amended by revising subsection (c) and by adding a new subsection
18 to Code Section 48-13-112, relating to levy and collection of the local excise tax on the sale
19 or use of energy, to read as follows:

20 "(c)(1) The excise tax levied pursuant to authorized by this article shall be imposed only
21 at the time that sales and use tax on the sale or use of such energy would have been due
22 and payable under Code Section 48-8-30 but for the exemption in Code Section 48-8-3.2.
23 The excise tax shall be due and payable in the same manner as would be otherwise
24 required under Article 1 of Chapter 8 of this title except as otherwise provided under this
25 article. The excise tax shall be a debt of the purchaser of energy until it is paid and shall
26 be recoverable at law in the same manner as authorized for the recovery of other debts.

27 The dealer collecting the excise tax shall remit the excise tax to the governing authority
 28 imposing the excise tax. Every dealer ~~subject to an~~ required to collect the excise tax
 29 levied as provided in this article shall be liable for the excise tax at the applicable rate on
 30 the charges for energy actually collected or the amount of excise taxes collected from the
 31 purchasers of energy, whichever is greater.

32 (2) Dealers shall be allowed a percentage of the amount of tax due and accounted for and
 33 shall be reimbursed in the form of a deduction in submitting, reporting, and paying the
 34 amount due if such amount is not delinquent at the time of payment. The rate of
 35 deduction shall be 3 percent of the amount due of the first \$3,000.00 of the combined
 36 total amount of all excise tax computed on a monthly basis and due to each governmental
 37 authority imposing the tax and a deduction of one-half of 1 percent of the portion
 38 exceeding \$3,000.00 of the combined total amount of all excise tax computed on a
 39 monthly basis and due to each governmental authority imposing the tax, but only if the
 40 amount due was not delinquent at the time of payment to the local government enacting
 41 such excise tax in accordance with Code Section 48-13-119."

42 "(f) An excise tax authorized under this article shall not apply to the sale or use of energy
 43 used for and in the construction of a competitive project of regional significance under
 44 paragraph (93) of Code Section 48-8-3 during the construction of such project within the
 45 time period specified under such paragraph (93)."

46 SECTION 3.

47 Said article is further amended by revising Code Section 48-13-113, relating to notice of
 48 meeting to determine the levy of the excise tax, to read as follows:

49 "48-13-113.

50 Prior to the adoption of the ordinance levying an excise tax authorized under this article,
 51 the county governing authority within a special district shall meet and confer with each of
 52 the municipalities within the special district. Any county that desires to have an excise tax
 53 authorized under this article levied within the special district shall deliver or mail a written
 54 notice to the mayor or chief elected official in each municipality located within the special
 55 district. If the governing authority of such county does not deliver or mail such notice
 56 within 30 days of the date of the written request of the mayor or chief elected official of a
 57 municipality within the special district, then such mayor or chief elected official shall
 58 deliver or mail a written notice to the mayor or chief elected official in each municipality
 59 located within the special district and to the county governing authority. Such notice shall
 60 contain the date, time, place, and purpose of a meeting at which the governing authorities
 61 of the county and of each municipality are to discuss whether or not the excise tax should
 62 be levied ~~be~~ within the special district. The notice shall be delivered or mailed at least ten

63 days prior to the date of the meeting. The meeting shall be held at least 30 days prior to
 64 the adoption of any ordinance levying an excise tax authorized under this article."

65 **SECTION 4.**

66 Said article is further amended by revising Code Section 48-13-115, relating to
 67 nonparticipation of county within special district to enter into intergovernmental agreement,
 68 to read as follows:

69 "48-13-115.

70 (a)(1) Within 30 days following the meeting required under Code Section 48-13-113, if
 71 the governing authority of the county within the special district fails or refuses to enter
 72 into an intergovernmental agreement with the governing authority of each municipality
 73 wishing to participate in such excise tax, then the governing authority of each
 74 municipality wishing to levy the excise tax shall be authorized to adopt an ordinance
 75 levying the excise tax within the corporate limits of such municipality. If a county elects
 76 not to participate in such excise tax by not signing such agreement, then the county shall
 77 not receive any proceeds from the excise tax. The proceeds of such excise tax shall be
 78 deposited in the general fund of each municipality.

79 (2) If, subsequent to the levy of an excise tax by a municipality under paragraph (1) of
 80 this subsection, a county determines to commence proceedings for the imposition of the
 81 excise tax authorized under this article, then proceedings for such imposition shall
 82 commence in the same manner as otherwise provided under Code Section 48-13-113.
 83 Except as to a municipality that levies a water and sewer projects and costs tax pursuant
 84 to Article 4 of Chapter 8 of this title, if a county complies with the requirements of this
 85 article and enacts an ordinance imposing the excise tax, the excise tax levied by such
 86 municipality shall cease on the day immediately prior to the day the new tax levied by the
 87 county commences. If such municipality elects not to participate, its current excise tax
 88 authorized under this article shall terminate on the date the county's tax levy becomes
 89 effective, and it shall not receive any proceeds under the county levy.

90 (b)(1) If a municipality located within a special district where the excise tax is imposed
 91 by the county is not participating in such excise tax and is not receiving proceeds of that
 92 excise tax, the governing authority of that nonparticipating municipality may give written
 93 notice to the governing authority of the county and the governing authority of each
 94 participating municipality within the special district of its decision to opt in to the existing
 95 intergovernmental agreement. Within 60 days of the date of such notice, an amended
 96 intergovernmental agreement shall be executed by the governing authority of the
 97 municipality exercising such opt in and the governing authorities of the county and each
 98 currently participating municipality.

99 (2) ~~Notwithstanding the provisions of paragraph (1) of subsection (a) of Code Section~~
 100 ~~48-13-116, when~~ When an amended intergovernmental agreement is executed pursuant
 101 to paragraph (1) of this subsection, the revised distribution of proceeds thereunder shall
 102 not become effective until the first day of ~~the first month which is at least 12 months~~
 103 ~~months of the next succeeding calendar quarter which begins more than 80 days~~ after the
 104 execution date of such amended intergovernmental agreement. The distribution of
 105 proceeds of the excise tax shall continue under the prior intergovernmental agreement
 106 until the date provided for in this paragraph.

107 ~~(c) Any county that desires to have an excise tax under this article levied county wide~~
 108 ~~within the special district commencing January 1, 2013, shall deliver the written notice~~
 109 ~~pursuant to Code Section 48-13-113 no later than September 1, 2012."~~

110 SECTION 5.

111 Said article is further amended by revising paragraph (1) of subsection (a) of Code Section
 112 48-13-116, relating to imposition of such excise tax, as follows:

113 "(a)(1) Except as otherwise provided in Code Section 48-13-115, an excise tax ~~imposed~~
 114 ~~under~~ authorized by this article shall become effective on the first day of the next
 115 succeeding ~~month following adoption of the ordinance unless otherwise specified in the~~
 116 ~~intergovernmental agreement required by subsection (a) of Code Section 48-13-114,~~
 117 ~~except that no such tax shall be imposed prior to January 1, 2013~~ calendar quarter which
 118 begins more than 80 days after the adoption date of an ordinance levying the excise tax."

119 SECTION 6.

120 Said article is further amended by revising Code Section 48-13-117, relating to procedures
 121 for manner of payment and collection, to read as follows:

122 "48-13-117.

123 (a) Except as otherwise provided in this Code section, the ~~The~~ manner of payment and
 124 collection of the excise tax and all other procedures related to the tax, including, but not
 125 limited to, periodic auditing of dealers collecting and remitting the excise tax authorized
 126 under this article, shall be as provided by each county and municipality electing to exercise
 127 the powers conferred by this article.

128 (b)(1) The amount of the excise tax authorized by this article shall be assessed upon
 129 either the dealer or the purchaser within three years after the time that sales and use tax
 130 on the sale or use of such energy would have been due and payable under Code Section
 131 48-8-30 but for the exemption in Code Section 48-8-3.2, except as otherwise provided
 132 in this Code section.

133 (2) In the case of a dealer or purchaser who knowingly and willfully evades all or any
 134 portion of the excise tax imposed by this article, the amount of such excise tax evaded
 135 may be assessed at any time upon such dealer or such purchaser, as the case may be.

136 (c) No action without assessment shall be brought against either the dealer or the purchaser
 137 for the collection of any excise tax authorized by this article after the expiration of the
 138 period for assessment.

139 (d)(1) A claim for refund of the excise tax levied pursuant to this article erroneously or
 140 illegally assessed and collected may be made by the dealer or the purchaser at any time
 141 within three years after the date of the payment of the excise tax to the governing
 142 authority. In making any such claim for refund, the procedures provided in Code Section
 143 48-5-380 shall apply.

144 (2) If a claim for refund of taxes paid for any taxable period is filed within the last six
 145 months of the period during which the county or municipality imposing the tax may
 146 assess the amount of taxes, the assessment period is extended for a period of six months
 147 beginning on the day the claim for refund is filed.

148 (e) Where, before the expiration of the time prescribed in this Code section for the
 149 assessment of the excise tax authorized by this article, both an authorized representative
 150 of the governing authority and the dealer or purchaser have consented in writing to its
 151 assessment after such time, the excise tax may be assessed at any time prior to the
 152 expiration of the agreed upon period. The period so agreed upon may be extended by
 153 subsequent agreements in writing made before the expiration of the previously agreed upon
 154 period. The governing authority is authorized in any such agreement to extend similarly
 155 the period within which a claim for refund may be filed.

156 (f) In determining the liability of any dealer or purchaser for the excise tax, the governing
 157 authority imposing such tax may not employ or otherwise hire an agent who is
 158 compensated in whole or in part by such governing authority for services rendered on a
 159 contingent basis or any other basis related to the amount of tax, interest, or penalty assessed
 160 against or collected from the dealer or purchaser. Any such contract or arrangement, if
 161 made or entered into, is void and unenforceable."

162 **SECTION 7.**

163 Said article is further amended by adding new Code sections to read as follows:

164 "48-13-119.

165 (a) Each dealer, on or before the twentieth day of each month, shall transmit returns and
 166 remit taxes due to any applicable governing authority imposing a tax authorized under this
 167 article showing the gross charges for energy taxable under the ordinance enacted pursuant
 168 to this article during the preceding calendar month. The governing authority imposing the

169 tax may provide by resolution or ordinance for quarterly or annual returns. The returns
170 required by this subsection shall be made upon forms prescribed, prepared, and furnished
171 by the governing authority imposing the tax.

172 (b) As used in this subsection, the term 'estimated tax liability' means a dealer's tax liability
173 under the ordinance enacted pursuant to this article, adjusted to account for any subsequent
174 change in the rate of tax authorized to be imposed under this article. If the estimated tax
175 liability of a dealer for any taxable period exceeds \$2,500.00, the dealer shall file a return
176 and remit to the governing authority imposing the tax not less than 50 percent of the
177 estimated tax liability for the taxable period on or before the twentieth day of the period.
178 The amount of the payment of the estimated tax liability shall be credited against the
179 amount to be due on the return required under subsection (a) of this Code section. This
180 subsection shall not apply to any dealer unless during the previous fiscal year the dealer's
181 monthly payments exceeded \$2,500.00 per month for three consecutive months or more.

182 48-13-120.

183 (a)(1) The governing authority imposing a tax authorized under this article may, for good
184 cause, extend the time for making any returns required under this article for not more than
185 30 days.

186 (2) No extension granted pursuant to paragraph (1) of this subsection shall be valid
187 unless granted in writing upon written application, and then the extension shall only be
188 valid for a period, as appropriate, of not more than 12 consecutive months or four
189 consecutive calendar quarters.

190 (3) Upon the granting of any extension authorized by this subsection, the dealer shall
191 remit to the governing authority imposing a tax authorized under this article on or before
192 the date the tax would otherwise become due without the extension an amount which
193 equals not less than 100 percent of the dealer's payment for the corresponding period of
194 the preceding tax year.

195 (4) No interest or penalty shall be charged by reason of the granting of an extension
196 pursuant to this subsection during the first ten days of each extension period. Thereafter,
197 interest shall be collected upon the unpaid balance of the dealer's liability at the rate
198 specified in Code Section 48-2-40.

199 (b) In the event any dealer fails to make a return and pay the tax as provided by this article
200 or makes a grossly incorrect return or a return that is false or fraudulent, the governing
201 authority imposing a tax authorized under this article shall make an estimate for the taxable
202 period of taxable charges of the dealer. Based upon its estimate, the governing authority
203 shall assess and collect the taxes, interest, and penalties, as accrued, on the basis of the

204 assessments against the dealer and such assessment may be assessed against the dealer at
205 any time.

206 48-13-121.

207 (a) Each dealer required to make a return and collect and remit any tax authorized under
208 this article shall keep and preserve:

209 (1) Suitable records of the energy charges taxable under this article;

210 (2) Any exemption certificates received by the dealer; and

211 (3) Other books of account which are necessary to determine the amount of tax due.

212 (b) All books, invoices, exemption certificates, and other records required by this Code
213 section to be kept shall be open to examination at all reasonable hours by the governing
214 authority imposing a tax authorized under this article.

215 (c) Any audit or examination by a governing authority imposing a tax authorized under
216 this article of the books and records of a dealer for the purpose of ascertaining the proper
217 amount of tax due shall be based primarily upon any sales tax audit report of the dealer,
218 any other tax audit report of the dealer, or any return created pursuant to Code Section
219 48-13-119 within the time periods described in subsection (b) of Code Section 48-13-117
220 or of subsection (b) of Code Section 48-13-120. Any information secured by the local
221 governing authority incident to any such audit or examination shall be confidential and
222 privileged to the same extent as provided in Code Section 48-2-15 for tax information
223 secured by the commissioner.

224 48-13-122.

225 The provisions of Code Section 48-2-41, relating to authority to waive interest on unpaid
226 taxes, and Code Section 48-2-43, relating to authority to waive penalties, shall apply to
227 taxes imposed by any local governing authority pursuant to this article, provided that the
228 local governing authority shall stand in lieu of the commissioner, and the county or
229 municipality shall stand in lieu of the state for purposes of this Code section.

230 48-13-123.

231 (a) When any dealer fails to make any return or to pay the full amount of the tax required
232 by an ordinance authorized by this article, there shall be imposed, in addition to other
233 penalties provided by law, a penalty to be added to the tax in the amount of 5 percent or
234 \$5.00, whichever is greater, if the failure is for not more than 30 days and an additional 5
235 percent or \$5.00, whichever is greater, for each additional 30 days or fraction of 30 days
236 during which the failure continues. The penalty for any single violation shall not exceed
237 25 percent or \$25.00 in the aggregate, whichever is greater. If the failure is due to

238 providential cause shown to the satisfaction of the governing authority imposing a tax
 239 authorized under this article in affidavit form attached to the return and remittance is made
 240 within ten days of due date, the return may be accepted exclusive of penalties and interest.
 241 In the case of a false or fraudulent return or of a failure to file a return where willful intent
 242 exists to defraud the governing authority of any tax due under an ordinance authorized by
 243 this article, a penalty of 50 percent of the tax due shall be assessed.

244 (b) All civil penalties and interest added to any tax imposed under an ordinance authorized
 245 by this article and collected by a county or municipality shall be included as revenue
 246 derived from such tax for purposes of the expenditure requirements imposed on such
 247 county or municipality as provided by this article.

248 48-13-124.

249 (a) It shall be unlawful for any dealer to knowingly and willfully fail, neglect, or refuse to
 250 collect the tax provided in this article, either by himself or herself or through his or her
 251 agents or employees.

252 (b) In addition to the penalty of being liable for and paying the tax himself or herself, any
 253 person who violates subsection (a) of this Code section shall be guilty of a misdemeanor
 254 of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine
 255 of not more than \$5,000.00 or imprisonment for not more than one year, or both. Upon the
 256 second or subsequent conviction of a person who violates subsection (a) of this Code
 257 section, the person shall be guilty of a felony and shall be punished by a fine of not more
 258 than \$10,000.00 or imprisonment for not more than five years, or both.

259 48-13-125.

260 (a) It shall be unlawful for any dealer required by this article to knowingly and willfully
 261 make, render, sign, or verify any return to make a false or fraudulent return with intent to
 262 evade the tax levied by this article.

263 (b) Any person who violates subsection (a) of this Code section shall be guilty of a
 264 misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be
 265 punished by a fine of not more than \$5,000.00 or imprisonment for not more than one year,
 266 or both. Upon the second or subsequent conviction of a person who violates subsection (a)
 267 of this Code section, the person shall be guilty of a felony and shall be punished by a fine
 268 of not more than \$10,000.00 or imprisonment for not more than five years, or both.

269 48-13-126.

270 (a) It shall be unlawful for any dealer subject to this article to knowingly and willfully fail
 271 or refuse to furnish any return required to be made by this article or to fail or refuse to

272 furnish a supplemental return or other data required by the governing authority of the
 273 county or municipality pursuant to any provision of this article.

274 (b) Any person who violates subsection (a) of this Code section shall be guilty of a
 275 misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be
 276 punished by a fine of not more than \$5,000.00 or imprisonment for not more than one year,
 277 or both. Upon the second or subsequent conviction of a person who violates subsection (a)
 278 of this Code section, the person shall be guilty of a felony and shall be punished by a fine
 279 of not more than \$10,000.00 or imprisonment for not more than five years, or both.

280 48-13-127.

281 (a) It shall be unlawful for any dealer subject to this article to knowingly and willfully fail
 282 to keep records or to fail to open the records to inspection as required by law.

283 (b) Any person who violates subsection (a) of this Code section shall be guilty of a
 284 misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be
 285 punished by a fine of not more than \$5,000.00 or imprisonment for not more than one year,
 286 or both. Upon the second or subsequent conviction of a person who violates subsection (a)
 287 of this Code section, the person shall be guilty of a felony and shall be punished by a fine
 288 of not more than \$10,000.00 or imprisonment for not more than five years, or both.

289 48-13-128.

290 (a) It shall be unlawful for any dealer to violate any other provision of this article for
 291 which punishment is not otherwise provided.

292 (b) Any person who violates subsection (a) of this Code section shall be guilty of a
 293 misdemeanor."

294 **SECTION 8.**

295 This Act shall become effective upon its approval by the Governor or upon its becoming law
 296 without such approval.

297 **SECTION 9.**

298 All laws and parts of laws in conflict with this Act are repealed.