

#29

1836

12-0-1620
(Do Not Write Above This Line)

**AN ORDINANCE
BY COUNCILMEMBER**

AN ORDINANCE TO AMEND THE CITY OF ATLANTA CODE OR ORDINANCES IN ORDER TO AUTHORIZE THE IMPLEMENTATION AND IMPOSITION OF AN EXCISE TAX ON ENERGY SOLD OR USED IN MANUFACTURING IN THE CITY AND TO PROVIDE FOR RATES, PHASE-IN PERIOD, TIME FOR IMPOSITION, RECOVERY OF THE EXCISE TAX, ADMINISTRATIVE PROCEDURES, AUDITS, ALLOWED EXPENDITURES OF THE PROCEEDS, TERMINATION, AND AN EFFECTIVE DATE TO COMMENCE COLLECTIONS; AND FOR OTHER PURPOSES.

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1ST ADOPT 2ND READ & REFER
- PERSONAL PAPER REFER

Date Referred: 11/5/12
 Referred To: Finance/Exec
 Date Referred: 11/19/12
 Referred To: Finance/Exec
 Date Referred:
 Referred To:

First Reading

Committee _____
 Date _____
 Chair _____
 Referred To _____

Committee: Fin/Exec
 Date: 11-14-12
 Chair: Licia R. Hopper
 Action: Fav, Adv, Hold (See rev. side)
 Other: _____
 Members: [Signature]
Howard Shuck (NAY)
Jadran
 Refer To: _____

Committee _____
 Date _____
 Chair _____
 Action: Fav, Adv, Hold (See rev. side)
 Other _____
 Members _____
 Refer To _____

Committee: Fin/Executive
 Date: 11-28-12
 Chair _____
 Action: Fav, Adv, Hold (See rev. side)
 Other _____
 Members: _____
AUTOMATICALLY TERMINATED
AND
FILED BY CLERK
PER CHARTER SECTION 2-407
 Refer To: _____

Committee _____
 Date _____
 Chair _____
 Action: Fav, Adv, Hold (See rev. side)
 Other _____
 Members _____
 Refer To _____

FINAL COUNCIL ACTION
 2ND 1ST & 2ND 3RD
 Readings
 Consent V Vote RC Vote

CERTIFIED
 DEC 19 2013
 ATLANTA CITY COUNCIL PRESIDENT

CERTIFIED
 DEC 03 2013
 Rhonda Davidson Johnson
 MUNICIPAL CLERK

MAYOR'S ACTION

RCS# 2410
11/19/12
3:42 PM

Atlanta City Council

12-O-1620

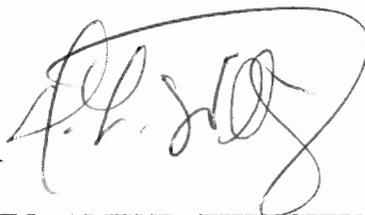
IMPOSITION OF EXCISE TAX; PROVIDE RATES
AUDITS; EXPENDITURES AND TERMINATION
REFER

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 0

Y Smith	Y Archibong	Y Moore	NV Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	NV Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

12-O-1620

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AN ORDINANCE TO AMEND THE CITY OF ATLANTA CODE OR ORDINANCES IN ORDER TO AUTHORIZE THE IMPLEMENTATION AND IMPOSITION OF AN EXCISE TAX ON ENERGY SOLD OR USED IN MANUFACTURING IN THE CITY AND TO PROVIDE FOR RATES, PHASE-IN PERIOD, TIME FOR IMPOSITION, RECOVERY OF THE EXCISE TAX, ADMINISTRATIVE PROCEDURES, AUDITS, ALLOWED EXPENDITURES OF THE PROCEEDS, TERMINATION, AND AN EFFECTIVE DATE TO COMMENCE COLLECTIONS; AND FOR OTHER PURPOSES.

WHEREAS, beginning January 1, 2013, state and local sales and use tax on energy used in manufacturing in the State of Georgia (the "State") will be phased out over a four (4)-year period, pursuant to House Bill 386, adopted by the Georgia General Assembly on April 19, 2012 ("HB 386"); and

WHEREAS, pursuant to HB386, a county may contact its municipalities by September 1, 2012 and enter into an intergovernmental agreement to allocate the proceeds of the excise tax; and

WHEREAS, pursuant to HB386, if a county elects not to notify a city or enter into an intergovernmental agreement by September 1, 2012, then the municipalities are authorized to levy an excise tax within the corporate limits of the municipality; and

WHEREAS, Fulton County (the "County") has elected not to notify the City of Atlanta (the "City") or enter into an intergovernmental agreement by September 1, 2012; and

WHEREAS, the City has analyzed the revenue generated from this sales tax and determined that the loss of the revenue would have a significant impact on the City's revenue; and

WHEREAS, the City desires to amend its Code of Ordinances in order to impose a replacement excise tax by ordinance.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS as follows:

Section 1: That Part II, Chapter 146, of the City of Atlanta Code of Ordinances be amended by adding a new Article, Article V- Energy Excise Tax, which shall read:

Sec. 146-30. Short Title.

This Article shall be known as the Energy Excise Tax"

Sec. 146-31. Findings and Intent.

This ordinance is adopted to address the interest of public finance. Georgia law authorizes counties and municipalities to impose an excise tax on the sale or use of energy but the imposition of the excise tax on the sale or use of energy in the law is contingent upon the enactment of an ordinance of the municipality in question. In order for the municipality to properly impose such excise tax the municipality must follow all of the provisions of Article 6 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, one provision of which is the enactment of this Article.

Sec.146-32. Definitions.

- (1) 'Dealer' shall have the same meaning as provided for in the Official Code of Georgia Annotated, Section 48-13-110.
- (2) 'Energy' shall have the same meaning as provided for in the Official Code of Georgia Annotated, Section 48-13-110.
- (3) 'Local Sales and Use Tax' shall have the same meaning as provided for in the Official Code of Georgia Annotated, Section 48-13-110.
- (4) 'Purchaser' shall have the same meaning as provided for in the Official Code of Georgia Annotated, Section 48-13-110.

Sec. 146-33. Energy Excise Tax Imposed.

- (1) In accordance with the provisions of Article 6 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, there is imposed within the territorial limits of the City, an excise tax on the sale or use of energy when such sale or use would have constituted a taxable event for purposes of sales and use tax under Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated but for the exemption found in the Official Code of Georgia Annotated, Section 48-8-3.2.
- (2) The sale or use of energy when such sale or use would have constituted a taxable event for purposes of sales and use tax under Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated but for the exemption found in the Official Code of Georgia Annotated, Section 48-8-3.2 includes, but is not limited to, the sales and use of energy that is necessary and integral to the manufacture of tangible personal property such as:
 - (a) Machinery or equipment used to convey or transport industrial materials, work in process, consumable supplies, or packaging materials at or among manufacturing plants or to convey and transport finished goods to a

distribution or storage point at the manufacturing plant. Specific examples may include, but are not limited to, forklifts, conveyors, cranes, hoists, and pallet jacks;

- (b) Machinery or equipment used to gather, arrange, sort, mix, measure, blend, heat, cool, clean, or otherwise treat, prepare, or store industrial materials for further manufacturing;
- (c) Machinery or equipment used to control, regulate, heat, cool, or produce energy for other machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Specific examples may include, but are not limited to, boilers, chillers, condensers, water towers, dehumidifiers, humidifiers, heat exchangers, generators, transformers, motor control centers, solar panels, air dryers, and air compressors;
- (d) Testing and quality control machinery or equipment located at a manufacturing plant used to test the quality of industrial materials, work in process, or finished goods;
- (e) Starters, switches, circuit breakers, transformers, wiring, piping, and other electrical components, including associated cable trays, conduit, and insulation, located between a motor control center and exempt machinery or equipment or between separate units of exempt machinery or equipment;
- (f) Machinery or equipment used to maintain, clean, or repair exempt machinery or equipment;
- (g) Machinery or equipment used to provide safety for the employees working at a manufacturing plant, including, but not limited to, safety machinery and equipment required by federal or state law, gloves, ear plugs, face masks, protective eyewear, hard hats or helmets, or breathing apparatuses, regardless of whether the items would otherwise be considered consumable supplies;
- (h) Machinery or equipment used to condition air or water to produce conditions necessary for the manufacture of tangible personal property, including pollution control machinery or equipment and water treatment systems;
- (i) Pollution control, sanitizing, sterilizing, or recycling machinery or equipment;
- (j) Industrial materials bought for further processing in the manufacture of tangible personal property for sale or further processing or any part of the industrial material or by-product thereof which becomes a wasteful

product contributing to pollution problems and which is used up in a recycling or burning process;

- (k) Machinery or equipment used in quarrying and mining activities, including blasting, extraction, and crushing; and
- (l) Energy used at a manufacturing plant.

Sec. 146-34. Energy Excise Tax Rate and Phase-In.

- (1) The rate of the excise tax levied and collected pursuant to this Article shall be phased in over a four-year period as directed by the Official Code of Georgia Annotated, Sections 48-13-112(a)(3) and 48-13-112(b) and as set forth below:
 - (a) 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 the Official Code of Georgia Annotated, Section 48-8-3.2;
 - (b) 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 the Official Code of Georgia Annotated, Section 48-8-3.2;
 - (c) 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 the Official Code of Georgia Annotated, Section 48-8-3.2; and
 - (d) 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 the Official Code of Georgia Annotated, Section 48-8-3.2.
- (2) In accordance with Official Code of Georgia Annotated, Section 48-8-3.2 (c)(4), if a project of regional significance under Official Code of Georgia Annotated, Section 48-8-3(92) is started in the special district, it shall not be subject to the phase-in period contained in paragraphs (a), (b), and (c) of subsection (1) of this section, and the sale, use, storage, or consumption of energy in connection

therewith shall be subject to the rate specified in paragraph (d) of subsection (1) of this section notwithstanding the January 1, 2016 limitation in that paragraph (d).

- (3) 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 the City shall be directed by the Official Code of Georgia Annotated, Section 48-13-112(d). Such rate shall not be more than 3 percent because the municipality levies a water and sewer projects and costs tax pursuant to Article 4 of Chapter 8 of this Title 48 of the Official Code of Georgia Annotated.
- (4) In the event the total rate of local sales and use taxes in effect in the special district decreases from 3 percent to 2 percent, the rate of the excise tax under this Article shall likewise be reduced at the same time such local sales and use tax rate reduction becomes effective.
- (5) In the event the total rate of local sales and use taxes in effect in the special district increases from 2 percent to 3 percent, the rate of the excise tax under this article shall likewise be increased at the same time such local sales and use tax rate increase becomes effective.

Sec. 146-35. Energy Excise Tax Imposition, Remittance and Recovery.

- (1) The excise tax levied and collected pursuant to this Article shall be imposed at the time and be recoverable as governed by the Official Code of Georgia Annotated, Section 48-13-112(c).
- (2) The excise tax shall be 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 as governed by the Official Code of Georgia Annotated, Section 48-13-112(c).
- (3) The dealer collecting the excise tax shall remit the excise tax to the City if the City is the governing authority imposing the excise tax as governed by the Official Code of Georgia Annotated, Section 48-13-112(c).
- (4) Every dealer subject to an excise tax under this Article shall be liable for the excise tax at an applicable rate on the charges actually collected or the amount of the excise taxes collected from the purchasers, whichever is greater as governed by the Official Code of Georgia Annotated, Section 48-13-112(c).

Sec. 146-36. Exemption Certificates.

- (1) The governing authority of the City, or the collecting officer appointed under this Article, shall make diligent efforts to identify all energy providers and purchasers

in the City and to ascertain whether such purchasers have completed a uniform exemption certificate provided by the Georgia Department of Revenue seeking to qualify such purchaser under the exemption found in the Official Code of Georgia Annotated, Section 48-8-32.2. 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 Article.

- (2) An energy provider shall be authorized to rely upon such uniform exemption certificates provided by the Georgia Department of Revenue. The energy provider shall not be liable for failing to collect and remit the excise tax imposed under this Article if a purchaser has failed to submit the uniform exemption certificate provided by the Georgia Department of Revenue to such energy provider.

Sec. 146-37. Commencement of Collections and Due Date.

- (1) The excise tax imposed pursuant to this ordinance shall become effective on the first day of the first month after adoption and approval of an ordinance by the governing authority of the City authorizing the collection of the tax.
- (2) The excise tax levied pursuant to this Article shall be imposed only at the time that sales and use tax on the sale and use of such energy would have been due and payable under the Official Code of Georgia Annotated, Section 48-8-30 but for the exemption in Official Code of Georgia Annotated, Section 48-8-3.2.
- (3) The excise tax shall be due and payable in the same manner as would otherwise be required under Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated.
- (4) All sales and purchases taxable under this Article during the preceding calendar month shall be due and payable to the City of Atlanta 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 Article during the preceding calendar month.

Sec. 146-38. Expenditure of Proceeds.

The proceeds of the excise tax levied and collected pursuant to this Article 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 governed by the Official Code of Georgia Annotated, Section 48-13-112(c). Any proceeds received by the City pursuant to this Article shall be deposited in the General Fund of the City.

Sec. 146-39. Termination of Municipal Excise Tax.

- (1) If the City has levied and collected an excise tax within the corporate limits of municipality under this Article because the county in which the City is located has refused or failed to enter into an intergovernmental agreement with each municipality wishing to participate in such excise tax as allowed by the Official Code of Georgia Annotated, Section 48-13-115(a)(1) and then the county determines to commence proceedings for the imposition of the excise tax as allowed by the Official Code of Georgia Annotated, Section 48-13-115(b)(2), then the excise tax levied and collected by the municipality shall cease to the extent as provided for by the Official Code of Georgia Annotated, Section 48-13-115(b)(2).
- (2) If the county has commenced proceedings for the imposition of the excise tax as allowed by the Official Code of Georgia Annotated, Section 48-13-115(b)(2) and the excise tax levied and collected by the municipality has terminated and the municipality has chosen to participate in the county excise tax, then this Article shall remain effective for the purposes of Article 6 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated and particularly for the rates required by the Official Code of Georgia Annotated, Section 48-13-112.

Sec. 146-40. Administrative Provisions and Audit.

- (1) The City governing authority shall be authorized to designate a collecting officer for collection and administration of the excise tax under this ordinance.
- (2) 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.
- (3) The collecting officer, or designee, may examine the books, papers, records, financial reports, equipment and other facilities of and locations within the City of any purchaser which is required to remit the excise tax to the energy dealer under this Article.
- (4) As part by the audit report required by the Official Code of Georgia Annotated, Section 36-81-7 the auditor shall include, in a separate schedule, a report of the revenues pertaining to the excise tax under this Article.

Section 2: : That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.