

A Guide to Local Option Sales Tax Negotiations

April 2011

TABLE OF CONTENTS

INTRODUCTION	3
BACKGROUND	3
THE RENEGOTIATION PROCESS	4
DEADLINES FOR RENEGOTIATING LOST DISTRIBUTIONS	6
THE PURPOSES OF THE LOST	6
THE NEED FOR CITY-COUNTY COOPERATION	7
COVERAGE AND EXEMPTION	7
A COMMITMENT TO RENEGOTIATION	7
PRELIMINARY RENEGOTIATION ISSUES	8
Who is Eligible to Receive LOST Funds.....	8
Who is Eligible to Participate in the Negotiations.....	8
The Scope of the Negotiations	9
Putting Together a Negotiation Team	9
The Value of Consultants and Facilitators	9
Resolving Disputes	9
DETERMINING LOST DISTRIBUTIONS	
Population and the Eight Criteria	10
TECHNICAL RENEGOTIATION ISSUES	15
Maintaining a Record	15
Use of Distribution Formulas	15
Negotiating Adjustments and Side Agreements.....	15
Service Agreements	15
Phase-In Agreements	16
Hold Harmless Agreements.....	16
OPEN MEETINGS LAW	16
CONCLUSION	16
APPENDICES	
APPENDIX A: RELEVANT LAW	17

APPENDIX B: BLANK DISTRIBUTION CERTIFICATE 35
APPENDIX C: MODEL LETTER COMMENCING RENEGOTIATION..... 37
APPENDIX D: DISTRIBUTION FORMULAS..... 39

INTRODUCTION

The Local Option Sales Tax (LOST) law requires counties and “qualified cities” receiving general purpose LOST revenue to renegotiate distribution agreements within two years of each decennial census. As such, “qualified cities” and counties must begin renegotiation of their distribution agreements on or before July 1, 2012.

ACCG has worked with a task force of county managers and finance officers to prepare this guidebook to assist county officials with the process for renegotiating the LOST distribution certificates. One objective of this guide is to outline a framework or process by which county officials can approach the renegotiation with a realistic aspiration to find common ground with its cities without needing to resort to “baseball arbitration” in the court system.

The eight criteria required to be considered under O.C.G.A. § 48-8-89 are outlined starting on page 10. Each criterion is discussed and methods for quantifying the criteria are suggested. A copy of the law governing the implementation and distribution of the LOST is provided in Appendix A. Appendix B is a copy of a blank distribution certificate, Appendix C is a sample letter for commencing renegotiations, and Appendix D contains a list of formulas that can be used to create a new distribution.

The negotiations will be complicated by the fact that no one distribution formula will result in a sales tax distribution that achieves maximum equity for all county residents paying the sales tax. The debate will focus on the fairness of the LOST revenue distribution, but no objective standard exists to determine that one distribution formula is inherently superior. This guide is intended to assist in framing the issues to be confronted in the negotiations and reducing the tension that the negotiations may evoke. Local government officials should work diligently and with a spirit of cooperation to reach a compromise on a new distribution agreement that is equitable for all taxpaying citizens of the community.

BACKGROUND

The original LOST law, passed in 1975 and amended in 1976, established the LOST as a one-percent county sales tax shared with cities based upon population.¹ The county portion of the revenue was dedicated to rolling back property taxes only in the unincorporated area of the county. City residents received a rollback from the city.

In 1979, the entire LOST law was ruled unconstitutional.² The Supreme Court held that nothing in the Georgia Constitution authorized counties to provide revenue to municipalities. Subsequent to the Supreme Court’s decision, the General Assembly immediately passed new legislation in 1979 that set up 159 special tax districts that corresponded with county boundaries.³ The law established LOST as a joint city-county tax and provided that revenues would be divided among the qualified local governments. To meet the constitutional issues raised in the earlier litigation, the new act required counties to use their share of the proceeds to roll back property taxes countywide and not just in the unincorporated areas. Many counties, as a result of the legal history of the tax and ensuing negotiations, wound up with the same percentage of proceeds to be applied on a countywide basis that they would have originally gotten when the proceeds were only to be applied against unincorporated property taxes. The result was an initial distribution for many counties that created an inequity that is still in place in most of those counties.

Under the 1979 law, a city was “qualified” if it imposed a tax other than the local option sales tax and offered at least three of the following local government services: (1) water; (2) sewage; (3) garbage collection; (4) police protection; (5) fire protection; or (6) library.⁴ The 1979 LOST legislation did not require that counties

¹ 1975 Ga. Laws 984, § 2 (as amended by 1976 Ga. Laws 1019).

² *Augusta v. Mangelly*, 243 Ga. 358 (1979).

³ O.C.G.A. § 48-8-81; *Taylor County v. Cooper*, 245 Ga. 251 (1980).

⁴ O.C.G.A. § 48-8-80.

and qualified cities periodically renegotiate the distribution of LOST revenues.⁵ Once the initial distribution certificate was filed, it remained in effect until the participating governments signed a new agreement. Thus, local governments that feared they would lose revenues under a new LOST distribution agreement could block efforts to renegotiate the distribution.

In 1994, the General Assembly passed legislation which amended the 1979 law to require cities and counties to periodically renegotiate their revenue distribution arrangements.⁶ This bill also established guidelines for the renegotiation process and eight criteria to be considered by the parties involved in the renegotiation process.

In 1997, the General Assembly passed legislation requiring each county and its cities to adopt a service delivery strategy.⁷ The intent of the legislation was to require local governments to take a careful look at the services they provide in order to identify overlaps or gaps in service provisions and develop a more rational approach to allocating delivery and funding of these services among the various local governments and authorities in each county. Several of the eight criteria to be considered in LOST renegotiations have already been considered and incorporated into the new service delivery strategy agreements.

In 2009, the General Assembly further modified the renegotiation process by implementing a “baseball arbitration”-type contingency in the event a county and its municipalities cannot agree upon a distribution agreement.⁸ The “baseball arbitration” process essentially puts the renegotiation process before the superior court of the county as a third-party arbiter whose decision is binding. This marks a significant change in the mechanics of the renegotiation process. During the renegotiations required by the 2000 census, the parties approached the negotiations with the knowledge that the failure to reach a new agreement by the end of 2002 would mean the LOST would expire. Because of the time limit, a party could stall or oppose compromise until the deadline loomed in order to pressure the other side to reach an agreement. Under the new law, no one party can cause the lapse of the LOST. Now, if negotiations fail, any party to the distribution agreement (other than “absent municipalities”) can petition the court for “baseball arbitration.” Not only does this initiate proceedings whereby the court will decide the distribution agreement, it also preserves the existing agreement until a new one is created by the court.⁹

THE RENEGOTIATION PROCESS

It is the responsibility of the county governing authority to initiate the renegotiation process on behalf of all eligible parties.¹⁰ Note that “commencing” formal renegotiations need not be much more than notifying the Commissioner of the Department of Revenue in writing that the renegotiation process has begun and perhaps scheduling a date for discussions by staff or by the elected officials. If the county does not call for the renegotiations by July 1, 2012, any “qualified city” within the county may initiate the renegotiation process.¹¹ The local governments have 60 days to renegotiate the distribution certificate once negotiations commence. If they fail to do so within that time period, the law requires them to submit immediately to nonbinding mediation, arbitration, or another alternative dispute resolution process.¹² The initial dispute resolution process is meant to facilitate a resolution; however, it is nonbinding and must conclude within 60 days.

The final stage of renegotiation is reached only if a county and its municipalities fail to come to terms on a

⁵ 1979 Ga. Laws 446, §§ 1–2.

⁶ 1994 Ga. Laws 1816, §§ 1–2.

⁷ 1997 Ga. Laws 1567, § 1 (as codified in O.C.G.A. §§ 36-70-20 to -28).

⁸ 2010 Ga. Laws 958, § 1.

⁹ O.C.G.A. 48-8-89(d)(4)(F).

¹⁰ O.C.G.A. 48-8-89(d)(2).

¹¹ Id.

¹² O.C.G.A. § 48-8-89(d)(3).

distribution agreement during the initial 60 day direct renegotiation period and the subsequent 60 day alternative dispute resolution period. The final stage is referred to as “baseball arbitration.” This new stage is binding and puts the superior court of the county in a position to craft the terms of the LOST distribution agreement. If, upon reaching this point in the renegotiations, the county and participating municipalities agree that they would rather not have the court create the distribution agreement, the local governments may decline to petition the superior court and the LOST will expire December 31, 2012.¹³

It is unlikely that all the local governments within a county will permit the LOST to expire. Therefore, after failing to reach an agreement during the earlier renegotiation stages, one or more parties will petition the superior court of the county to initiate “baseball arbitration.” The petition must be made within 30 days after the expiration of the alternative dispute resolution period.¹⁴ There are several steps in this process:

- To initiate “baseball arbitration” and ensure the existing distribution agreement does not lapse, any party that participated in the negotiations may file a petition in the superior court of the county seeking resolution of the matters in dispute.
- The dispute will not be assigned to a judge in the circuit in which the county is located.¹⁵
- The county and the group of participating qualified municipalities must submit to the court and to each other “a written best and final offer specifying the distribution of the tax proceeds.” Note that the county’s offer may represent the county and any qualified “absent municipalities.”¹⁶ Also, a coalition of “absent municipalities” constituting at least one-half of the unrepresented municipal population may submit an offer as well. However, any “absent municipality” represented in the county’s offer may not be included in any coalition of “absent municipalities.”¹⁷ Each offer must take into account the allocation required for any absent municipalities.¹⁸
- The judge conducts hearings at his or her discretion.
- The judge will then choose the best and final offer submitted to the court without modification and will make a finding of facts.¹⁹
- After choosing the best and final offer, the judge will enter a final order containing a new distribution certificate and transmit a copy of it to the commissioner of the Department of Revenue.²⁰

The judge’s final order is subject to appeal only on the grounds that the judge disregarded the law, impartiality, or corruption, fraud, or misconduct by the judge or a party.²¹ As discussed above, while the matter is pending before the court, the existing distribution agreement may not expire.²²

¹³ O.C.G.A. § 48-8-89(d)(1).

¹⁴ O.C.G.A. § 48-8-89(d)(4)(A).

¹⁵ Id.

¹⁶ O.C.G.A. § 48-8-89(d)(4)(B).

¹⁷ O.C.G.A. § 48-8-89(d)(4)(C).

¹⁸ O.C.G.A. § 48-8-89(d)(4)(D).

¹⁹ Id.

²⁰ Id.

²¹ O.C.G.A. § 48-8-89(d)(4)(E).

²² O.C.G.A. § 48-8-89(d)(4)(F).

DEADLINES FOR RENEGOTIATING LOST DISTRIBUTION AGREEMENTS

July 1, 2012	The Department of Revenue Commissioner must be notified in writing by the county governing authority that renegotiation is underway. If the county governing authority does not issue the call by that date, any eligible city may issue the call and notify the Commissioner
60 Days After Negotiations Start	If agreement on a renegotiated distribution certificate is not reached, the parties must submit the dispute to nonbinding arbitration or mediation.
Within 30 Days After Arbitration Fails	If the parties fail to come to an agreement during the 60 day nonbinding dispute resolution period, one of the parties may file a petition with the superior court of the county within 30 days. If the parties fail to petition the court for “baseball arbitration,” the LOST will expire December 31, 2012.

THE PURPOSES OF THE LOST

Debate continues on what LOST revenues are intended to finance. Some officials argue that the law specifies that LOST revenues should be used only to provide property tax relief. If so, the sum of LOST and property tax revenues should not exceed the property tax revenue that would have been collected if the sales tax did not exist. Other officials maintain that LOST revenues should be and are being used by local governments to finance or improve existing services that would not be possible without the tax.

These two purposes are inextricably tied together. To the extent that a local government uses LOST proceeds to roll back property taxes, it must utilize other tax mechanisms to finance existing services and improvements; to the extent that LOST revenues pay for existing, mandated or expanded local government services, property taxes are not increased to pay for these services.

The debate on the purpose of the LOST revenues centers on Official Code of Georgia (O.C.G.A) § 48-8-91 and § 48-8-89. (See Appendix A for the text of the law). O.C.G.A. § 48-8-91 requires that, in the second year after the imposition of the local option sales tax, property taxpayers must have illustrated on their tax bill the amount of property taxes they would have been paying without the local option sales tax, reduced by the amount of receipts of the preceding year, with the resulting net millage levy for the calendar year. By contrast, O.C.G.A. § 48-8-89 (a) states that the LOST is to be used “for the purpose of assisting such political subdivisions in funding all or any portion of those services which are to be provided by such governing authorities pursuant to and in accordance with Article IX, Section II, Paragraph III of the Constitution of this state.” The referenced provision of the Georgia Constitution lists a number of services which may be provided by local governments including police and fire protection, solid waste disposal, garbage collection, public health facilities and services, streets and roads, parks and recreational programs, libraries, water and sewage treatment and collection. Furthermore, O.C.G.A. § 48-8-89 (d) requires consideration of service delivery responsibilities and other factors in renegotiating distribution of the LOST proceeds. This lends weight to the argument that LOST may be used for providing services. Yet at the same time, the LOST enactments make it clear that the LOST should not be used to unnecessarily enrich some local governments at the expense of others. O.C.G.A. § 48-8-89 (b) specifies that the General Assembly intended that no distribution agreement could allocate LOST revenues in such a way that it provided any local government with revenue beyond a sum that would be raised from revenue resources other than LOST.

Almost all observers agree that the LOST legislation does not require local governments to use sales tax revenues to achieve only one purpose or the other. They can choose to use the LOST revenues for both purposes, selecting the mix they think is best. Whatever the legislative intentions were, LOST revenues are being

used to finance services rather than simply to roll back property taxes in almost all counties. In any event, it is clear that all LOST revenues are to be used to pay for local services that would otherwise be paid for out of property taxes. Thus, all distribution formulas should recognize that LOST revenues expand the total revenues available to local governments to pay for services.

THE NEED FOR CITY-COUNTY COOPERATION

In Georgia, the local option sales tax has become an increasingly important source of general fund revenue for counties and municipalities. Loss of the sales tax as a revenue source will require local governments to raise property taxes or cut the current level of services provided. It is essential that all parties to the renegotiation keep the importance of the sales tax as a revenue source in mind, especially if negotiating sessions get contentious. Counties and cities must be prepared to cooperate and compromise if they are to retain this valuable revenue source.

Throughout the renegotiations it is important for all parties to consider each proposal from the taxpayers' point of view. All citizens in the county should receive an equitable return on their sales tax dollar regardless of whether they live in an incorporated or unincorporated area of the county.

How local option sales taxes are distributed is ultimately a political decision that will be made by elected local government leaders. The challenge for local leaders is to exercise their home rule powers by negotiating in a responsible and responsive manner. It is the hope of the Association County Commissioners of Georgia (ACCG) that elected officials will use this manual to help guide them through the renegotiating process in as efficient, effective and harmonious a manner as possible.

COVERAGE AND EXEMPTION

Only those local governments that impose and collect LOST and that have not renegotiated their distribution certificate using the 2010 decennial census must renegotiate and file a new certificate with the Georgia Department of Revenue. Counties that levy local sales and use tax for educational purposes pursuant to a local constitutional amendment are exempt from the renegotiation process.²³ The eight counties currently having such taxes are: Towns, Rabun, Mitchell, Colquitt, Houston, Habersham, Chattooga and Bulloch.

A COMMITMENT TO RENEGOTIATION

As an initial matter, all of the parties necessary to renegotiate the LOST distribution should agree that they want to continue the LOST and make a commitment to negotiating in good faith and completing negotiations in a timely fashion. A useful first exercise for negotiating local governments would be to examine the role of LOST in their finances and estimate the impact that losing LOST revenues would have on local property taxes.

Additionally, the negotiating parties may want to set some ground rules for the negotiations, such as agreeing what should be done in the event that an agreement is not reached within a certain time period or identifying mediators that might be tapped to assist in the negotiations. The participating governments may also want to consider adopting a joint resolution expressing the intent to come to agreement and to keep the best interests of the citizens foremost in seeking a resolution to the negotiations.

²³ O.C.G.A. § 48-8-89(d)(9). Regulations for local sales and use taxes for educational purposes can be found in O.C.G.A. §§ 48-8-140 to -144.

PRELIMINARY RENEGOTIATION ISSUES

Before beginning formal negotiation, the elected officials of the participating local governments in each county should agree on a structure for the negotiation process. In determining a structure, the local governments should consider these issues: Are any cities no longer qualified to receive LOST?

- Are there any newly qualified cities?
- Do any cities qualify for “absent” municipality status?
- What will be the scope of negotiations?
- Who will participate in the negotiations?
- What will be the timing of the negotiations?
- What will be the process or mechanism for resolving disputes that are not solved by a specified time limit?

The following sections highlight some of the questions that local governments should address as they consider how to structure the renegotiation of the LOST revenue distributions. Additionally, the negotiating parties should keep some record of their negotiations to demonstrate that they have acted in good faith and considered the criteria specified by law.

Who is Eligible to Receive LOST Funds

To receive a portion of the LOST revenue, a municipality must meet the definition of a “qualified municipality.” The law defines “qualified municipalities” as those incorporated municipalities that impose a tax other than the tax authorized by this article and which provide at least three of the following services:²⁴

1. Water;
2. Sewage;
3. Garbage collection;
4. Police protection;
5. Fire protection; or
6. Library.

Counties should check all municipalities within their boundaries to ensure they meet the minimum requirements to participate in the LOST negotiations. Some municipalities that were qualified during the last renegotiation may no longer be eligible to receive revenue under the new distribution certificate and some municipalities that have not received LOST revenue in the past may now be eligible to receive a portion of the funds.

Who is Eligible to Participate in the Negotiations

Each county must, at a minimum, renegotiate and execute the LOST distribution agreement with qualified municipalities whose combined populations represent at least one-half of the total qualified municipal population in the county.²⁵ The “absent municipalities” section of the law provides that a county’s distribution certificate does not have to be signed by all qualified municipalities as long as the combined population of the “absent” municipali-

²⁴ O.C.G.A. § 48-8-80.

²⁵ O.C.G.A. § 48-8-89(b).

ties is less than one-half of the aggregate population of all qualified municipalities in the county.²⁶ However, the individual absent municipalities must each receive a per capita share of all of the proceeds that are designated for distribution to all of the qualified municipalities in the county.²⁷ This prevents small municipalities from coercing the county by refusing to sign a distribution certificate in order to get more than their fair share. It also protects the smaller cities from the larger governments by guaranteeing a minimum share for the smaller cities.

The Scope of Negotiations

After committing to negotiating a new distribution certificate, the next logical step in the negotiation process is for the participants to determine what is on the table for discussion and agreement. Counties and cities have, as required by state law, all addressed service delivery issues in their service delivery strategy agreements. These agreements should be referenced to provide framework for the LOST negotiations. In particular, service delivery changes that have been made since the renegotiations following the 2000 Census should be reflected in the new LOST distribution agreement. Once the new distribution certificates are filed, counties and cities receiving a new distribution percentage will have the opportunity to renegotiate their service delivery strategy agreements.

Putting Together a Negotiation Team

Because state law is silent on this issue, local governments must decide who will be involved in the renegotiation of the LOST distribution certificate and what role each participant will play. Local governments should look at how elected officials and government employees will be involved in the renegotiation.

The elected executives of each negotiating government may conduct the negotiations or each governing body could appoint a member or members to represent them in the negotiations. It is important to select a diverse and knowledgeable group to ensure the issues are reviewed from several perspectives. An example of a diverse group may include an elected official, manager, and a finance officer.

Other key county staff should be tapped to develop supporting information whether or not they are on the negotiating team. For example, the public works director could develop data useful to demonstrate commuting patterns. The negotiating team should remain relatively small (three to six people). Too many people actively involved in the negotiations could hamper the process.

Value of Consultants and Facilitators

While relying on county staff is critical, it may be extremely beneficial to engage private consultants to assist the county in developing its proposal for distribution of LOST proceeds and, just as importantly, to review and assess any counterproposals from the cities. An objective outside view can be well worth the cost and can be very helpful in putting together a reasonable and justifiable proposal.

The negotiating governments may agree that the negotiations would benefit from the services of a facilitator. A facilitator is a person trained to help groups achieve their purposes. It may be productive to use a facilitator from the outset of negotiations in order to set a positive tone and encourage good faith deliberations. The facilitator might be a local resident with experience and training in the field or a person from outside the county. No matter who is involved in the negotiations, the final approval of the redistribution agreement must be made by the elected officials of each participating local government in an open meeting.

Resolving Disputes

If no agreement is reached within 60 days after the start of the renegotiations, the dispute must be submitted to non-binding arbitration, mediation or such other means of resolving conflicts in a manner, which, in the judgment

²⁶ O.C.G.A. §§ 48-8-89(b), -89.1(c).

²⁷ O.C.G.A. § 48-8-89(b).

of the Revenue Commissioner, reflects a good faith effort to resolve the dispute.²⁸

Early in the negotiation process, local governments may want to agree on how disputes will be resolved if the negotiating parties reach an impasse. Techniques to resolve such disputes are well-established and trained mediators and facilitators are widely available in Georgia. Thus, if local governments negotiating an agreement anticipate an impasse, it might be useful to invite experts on dispute settlement to present alternative methods and explain their advantages and disadvantages. Elected officials from both sides could agree upfront to abide by these recommendations if negotiations come to an impasse. Alternatively, a panel made up of members of the community could review the proposals from both sides and make a recommendation to the negotiating parties.

For assistance in locating a facilitator, local governments may contact their regional commissions or the Department of Community Affairs, Information and Management Division at (404) 679-0602 or staff at ACCG by calling at (404) 522-5022.

The payment of the third party facilitator, mediator or arbitrator depends upon the agreement of the county and participating cities. It could be determined by the same percentage as the existing LOST distribution or population. An important consideration to remember in picking a mediator is that the person should not have any previous ties with the county or participating municipalities. If an impasse results, the recommendations of the mediator are not likely to be accepted if one side believes the mediator had a vested interest in the outcome of the negotiations.

County commissioners should keep the public informed throughout the negotiations and work with the local media to showcase inequities that exist under the current LOST distribution arrangements. Local citizens can also be invited to sit in the negotiations and observe the deliberations to ensure transparency.

DETERMINING LOST DISTRIBUTIONS

Population and the Eight Criteria

While population tends to be the simplest and perhaps most common basis for determining distributions, the LOST statute recognizes that the provision of governmental services does not always correlate to population. As noted earlier, the law requires consideration of the following eight criteria in determining LOST distributions. These criteria express the General Assembly's intent that LOST distributions consider service delivery as well as population.

Questions or issues are presented after each criterion to assist in identifying fairness concerns and methods of measuring the items to be considered with respect to each local government. To gain a more complete understanding of the issues to be considered, it is recommended that you read through all of the criteria and questions before getting into detailed consideration of each criterion as many of the questions and issues presented overlap.

- I. The service delivery responsibilities of each political subdivision to the population served by the political jurisdiction and served during normal business hours, conventions, trade shows, athletic events and the inherent value to the community of a central business district and the unincorporated areas of the county and the obligation of all residents of the county for the maintenance and prosperity of the central business district and the unincorporated areas of the county.²⁹**

²⁸ O.C.G.A. § 48-8-89(d)(3).

²⁹ O.C.G.A. § 48-8-89(b)(1).

In most counties outside of metro Atlanta central business districts lie in the larger cities within the county. If service delivery is tied to population, some cities will maintain that residential population is not appropriate because it does not take into account increases in population during business hours and special events. However, increased service demands resulting from daytime or special event populations in the city also causes an increase in the demand for county services provided within the city. County social services and criminal justice services are two examples of services that are disproportionately burdened by increases in a city's daytime or special events population.

Subjective estimates for daytime and special events populations are likely to create dissension in the negotiations. It is impossible to accurately measure periodic shifts in population. Studies done by either side in the negotiations will surely be disputed and the negotiations could break down. The parties to the negotiation should look for measurable criteria that have been quantified by a neutral third party. Examples may include census data, data collected by the Department of Revenue or data derived from county and city financial audits.

A more appropriate way to measure service delivery demand regardless of when those demands occur is by looking at general fund expenditures. Expenditure data should be limited to expenditures within the general fund because most of the services accounted for in this fund are supported through property and sales taxes. Cities should be reminded throughout the negotiations that LOST was created to give local governments an alternative revenue source to the property tax because most people felt like the local tax burden was unevenly distributed. The General Assembly made it clear that the LOST revenue should be used to offset property taxes.³⁰

Services found in enterprise funds and special revenue funds are not a burden on the property tax system and therefore are not appropriate to include, because the LOST law specifies that the LOST revenue will be used to provide a credit against property taxes. The formulas used in the renegotiations should apply criteria only to the general fund of each government because the services in these funds are primarily supported through property taxes.

When population increases in a city's central business district, the city is likely to have a corresponding increase in revenues to offset additional service demands. However, the county will incur additional service demands without a corresponding increase in revenue. For example, when a city hosts a convention or trade show the city collects an increased level of hotel/motel excise tax. Businesses also use more utilities, which generates more revenue for the city if they provide utility services. Even if the city does not own any utilities, they will still receive a franchise fee from private utility providers. Without the increase in daytime and special event populations, many businesses could not thrive and the city would not enjoy the revenue they receive from occupation and business license taxes. Meanwhile, unlike cities, there is a commensurate increase in county service demand to those same people. However, there are no county revenues that increase to accommodate the increase in demand.

2. The service delivery responsibilities of each political subdivision to the resident population of the subdivision.³¹

Don't get caught in the "unincorporated trap." If the cities propose that you consider residential population in the distribution formula, they may want to count only the unincorporated resident population when determining the county's population. Remember that "resident" population for the county is the entire county—not the unincorporated county. Consequently, county services are essentially all the services provided throughout the county.

Resident population can be an important statistic in the 2010–2012 renegotiations if counties apply it properly. Basing the county's share of LOST revenue exclusively on the unincorporated population would be logical only if the county provided a property tax rollback exclusively to the unincorporated residents of the county. However, since the county is required by law to provide a countywide rollback, the county's share of the LOST proceeds necessarily benefit all residents of the county regardless of whether they live in the unincorporated or the in-

³⁰ See O.C.G.A. §§ 48-8-89(b), -91(a).

³¹ O.C.G.A. § 48-8-49(b)(2).

corporated areas of the county. It is critical to remember that if, as a result of renegotiations, the county's LOST revenues are not based on total county population then the unincorporated residents will be giving away part of their rightful benefit to city residents.

Residential population can also be very effective in measuring service delivery and property tax burdens. On average, according to a report on the fiscal impacts of land use on local government by Jeffrey H. Dorfman at the University of Georgia, for every dollar in property taxes collected from a residential property, it takes \$1.35 to service that property. Conversely, for every dollar in property taxes collected from commercial property, it takes less than \$0.40 to provide services to that property. This means the residential population reflects the greater percentage of service delivery burden than point of sale, which only measures the service delivery burden resulting from commercial properties. The scattered residential populations of unincorporated areas are, therefore, more expensive to serve than the dense commercial properties found most often in cities, a fact which the distribution agreement should recognize.

It is vital that counties identify trends in population growth within unincorporated areas and cities. If the county anticipates the residential population to grow at a greater percentage in the unincorporated area of the county, the new distribution certificates should not only reflect the population shift that has occurred over the past ten years, but also the projected population shift for the upcoming decade. The new distribution certificates are likely to remain in effect for the next ten years, and counties experiencing faster growth in the unincorporated area will lose more equity each year if the new distribution certificate does not account for anticipated population growth.

3. The existing service delivery responsibility of each political subdivision.³²

Counties and cities renegotiating LOST should refer back to their agreed upon service delivery strategies to determine the responsibilities of each political subdivision. If services become an issue, it is important to look at services that are supported through property taxes. Counties should emphasize the number of services they provide that are mandated by the state and the limited control they have to cut costs for providing these services. Cities were created to serve a population within the county that has requested a higher level of service. To truly achieve tax equity with LOST funds, the base services that the county provides to everyone should be funded first then any remaining revenue could be split between the county and cities for the higher level services.

Residents of municipalities may disproportionately use some county services. For example, if a greater concentration of social problems (e.g. homeless, mentally ill, substance abusers and indigents) manifest inside the city, then the county's criminal justice system, public health services and public welfare services may be disproportionately used by city residents.

If a county or city has picked up additional service delivery responsibilities since the 2000–2002 negotiations, including any services transferred during the service delivery strategy negotiations, the shift in service demand should be reflected in the new LOST distribution. For example, some cities during service delivery negotiations shifted all responsibility for recreation to the county. The additional service demands on the county justify a larger share of LOST, since the county service delivery responsibilities were expanded and the city's diminished. However, if a county or city adds or expands a proprietary fee-based service, a LOST increase would not be justified. For example, if a city goes into the cable TV service financed by user fees that generate a profit, a greater LOST share would not be appropriate. In other words, adjustments to LOST based on changes in service delivery should be limited to services financed out of the local governments' general funds.

4. The effect of a change in sales tax distribution on the ability of each political subdivision to meet its short-term and long-term debt.³³

³² O.C.G.A. § 48-8-89(b)(3).

³³ O.C.G.A. § 48-8-89(b)(4).

Short-term and long-term debt cannot be secured through the dedication of LOST proceeds. General Obligation (GO) debt is backed by dedicated property taxes. Collateral or the general taxing authority of the government would back any other long-term or short-term debt. LOST revenues are dedicated to rolling back property taxes that fund operating expenditures. Debt associated with sales tax proceeds is usually found in conjunction with a SPLOST because SPLOST funds are used to finance long-term capital projects.³⁴ Generally, this criterion would only become an issue if a proposed shift in distribution in LOST proceeds to a particular county or city would be so significant as to affect the local government's bond rating.

5. The point of sale and use which generates the tax to be apportioned.³⁵

Your cities may urge use of this criterion for splitting LOST revenue with counties. Cities are likely to argue that most of the businesses reside within their city boundaries and that they are the primary engines that produce sales tax.

Once again, do not get caught in the “unincorporated trap.” All sales take place in the county, whether located in the incorporated or unincorporated area of the county. In other words, any sale that might be credited to a city must also be credited to the county. Maintenance of public infrastructure such as roads and provision of public services such as patrol, EMS, courts, jail, and 9-1-1, are needed both inside and outside municipal boundaries to permit commercial activities within a central business district. For these reasons, point of sale lacks credibility when considering distribution of LOST funds between a county government and its municipalities. Moreover, point of sale is another one of those criteria that must be subjectively measured, making it difficult for all parties in the negotiations to agree on the data. The Department of Revenue has repeatedly stated that they cannot distinguish between unincorporated and incorporated sales. Because point of sale is difficult to measure accurately and, more importantly, does not reflect service delivery burden, it should not be used in any formula for LOST renegotiations.

Keep in mind that sales tax is not a tax on business but a tax on consumers. The real producers of sales tax are the consumers. In most cases unincorporated county residents and residents from outside the county make up a large share of consumer spending.

Point of sale as it relates to service delivery only acknowledges the service burden from commercial properties. Remember, as noted previously, that for every dollar in property taxes collected from a residential property, it takes \$1.35 to service that property. Conversely, for every dollar in property taxes collected from commercial property, it takes less than \$0.40 to provide services to that property. If LOST is to provide property tax relief or fund services, the residential component of the digest is more valuable than the commercial component.

Finally, cities have other sources of revenue to fund services provided to commercial properties. Many cities collect hotel/motel taxes, occupation or business license taxes, parking fees and utility fees that provide an alternative revenue source for funding the service demands of the commercial properties.

6. The existence of intergovernmental agreements among and between the political subdivisions.³⁶

All existing intergovernmental agreements should be reflected in the county service delivery strategy. Note that many counties made side agreements with their cities as part of previous LOST negotiations. In such agreements, a county or city may have shifted shares of LOST proceeds to one or the other government in order to compensate for shifts in service responsibilities. For example, a city may have agreed to accept a lesser percentage of LOST proceeds because the city and the county agreed that the county would take over full responsibility for recreation in the county and use the additional LOST proceeds to help pay for that service. Likewise, a county may have given up some share of its LOST proceeds under service delivery negotiations to a city where the city agrees to expand its service responsibilities in the unincorporated area of the county.

³⁴ See generally O.C.G.A. § 48-8-121.

³⁵ O.C.G.A. § 48-8-89(b)(5).

³⁶ O.C.G.A. § 48-8-89(b)(6).

Given that there may have been such agreements between the county and one or more of its cities either as part of the previous LOST renegotiations or separately decided under service delivery strategy negotiations, it is important that county staff review minutes, contracts, and service delivery agreements at least as far back as the most recent negotiations to be sure they are properly taken into account in the upcoming negotiations.

7. The use by any political subdivision of property taxes and other revenues from some taxpayers to subsidize the cost of services provided to other taxpayers of the levying subdivision.³⁷

Some county services are provided only to unincorporated residents or residents within a special district in the county. If these services are funded through a countywide property tax levy, and the city is also providing the service to the same city residents, then the city may have a legitimate complaint that their citizens are being double taxed for the service. At this point in time, however, there should be no double taxation by counties regarding a countywide funded service that only benefits the unincorporated areas of the county. Double taxation has, by law³⁸, been addressed and resolved during the required service delivery strategy negotiations. If, for some reason, double taxation of city residents still needs to be addressed, it can be handled once the service delivery strategy agreements are opened for review.

On the other hand, while double taxation of city residents by the county should have been resolved through county service delivery strategy agreements, several inequitable situations continue to exist where cities indirectly tax or impose fees on unincorporated residents to subsidize city services.

For example, most unincorporated residents are not aware that they are paying franchise fees in their utility bills. Except for cable, utility franchises provide revenue only to cities. The power company, for example, determines the amount of fee due to the city based upon the franchise agreement between the power company and the city. However, when the fee is collected from the power customers, 50% of the amount due to the city are incorporated into the power company's base rate and charged to all power customers--incorporated and unincorporated--at the same rate. The effect of the scheme is that unincorporated residents are paying substantial franchise fee revenues through their power bills to cities levying franchise fees to support general city services like police, fire, and garbage.

In addition, some cities that provide water and sewer services to unincorporated areas of the county are effectively requiring unincorporated residents to subsidize general city services through city charges for water and sewer. This is because in many instances, utility rates charged to the unincorporated customer by the city are higher than the rates charged to the city customers. The higher rate is not necessarily justified by any higher cost to run lines into the unincorporated areas. Instead, these cities generate a "profit" (water and sewer revenues collected beyond the sum needed for maintenance and operation of the services) which they transfer to their general fund to be used for general city services.

LOST renegotiations are an appropriate opportunity for resolving these inequities.

8. Any coordinated plan of county and municipal service delivery and financing.³⁹

Again, refer back to the county service delivery strategy agreement.

³⁷ O.C.G.A. § 48-8-89(b)(7).

³⁸ O.C.G.A. § 37-70-24 (3)(A).

³⁹ O.C.G.A. § 48-8-89(b)(8).

TECHNICAL RENEGOTIATION ISSUES

Maintain a Record

Local governments are encouraged to keep some form of minutes of their renegotiation meetings. This will ensure that there is a record demonstrating each of the eight criteria set forth in O.C.G.A. § 48-8-89(b) and other critical matters were properly considered as well as what decisions were made.

Use of Distribution Formulas

Local governments may find it helpful to use a formula that attempts to quantify some elements of the eight criteria. Some formulas and sample calculations showing how to use these formulas are set forth in Appendix D.

Negotiators are advised not to simply pick the formula which appears to result in the largest possible distribution for their local government but to carefully read and understand the formulas and the assumptions underlying the formulas and use them to develop a method for splitting the revenue to achieve tax equity for all county residents. Negotiators may decide to use any combination of the formulas in Appendix D or they may decide to devise their own formula to best reflect their unique situation.

Caveat: Insist on Using Unincorporated Data.

When using population, tax digest, budget expenditure, point of sale or any other criteria to formulate LOST distributions, counties should insist that countywide – not unincorporated – data, be used in any formula allocating LOST revenues. In other words, when LOST shares are to be calculated, residents of municipalities should also be counted as county residents and property within cities should also be counted as being on the county's tax digest. As previously noted, this is because counties are required by law to rollback property taxes based on LOST collections on a countywide – not unincorporated – basis.

Negotiators may choose a combination of methods or formulas to allocate LOST revenues. For example, a county could distribute seventy-five percent of revenues according to population and twenty-five percent based upon percentage shares of total property taxes levied by the county and eligible city governments. In other words, if negotiators elect to use a combination of methods, distributions may be calculated by weighing each factor according to its relative importance.

Additionally, counties and cities should take into consideration the availability of alternate funding sources cities may use to fund general operations without increasing property taxes. For example, there are currently 114 cities that do not levy any property taxes. These cities are able to support their general government operations entirely with LOST revenue and other revenue sources. Some cities that provide public utilities are able to subsidize general city operations with some of the revenues derived from utility customers.

Negotiating Adjustments and Side Agreements

In trying to arrive at a fair LOST agreement, local governments may want or need to consider the use of inter-governmental contracts or “hold harmless” agreements to address or implement side agreements.

Service Agreements. For example, a county might propose that in return for a larger share of the LOST revenues, it would take over the maintenance of all parks or the operation of all recreation programs in the county. Similarly, for a larger share of LOST revenues, a city might agree to provide solid waste collection services in heavily populated unincorporated areas. Any such service agreements should subsequently be incorporated into the county service delivery plan.

Phase-In Agreements. There are several alternatives that can be used to help “ease the pain” for cities or counties that may receive less revenue under a renegotiated certificate. The parties could agree to phase-in the new revenue allocations. These agreements can provide stability in local government finances and make the transition to the new distribution easier. The most straightforward approach is a multi-year phase-in. If this route is chosen, the affected governments execute and file a series of distribution certificates simultaneously with each certificate applicable to a specific year.

Hold Harmless Agreements. A “hold harmless” provision could be structured in a variety of ways. For example, to help a local government that would like to use LOST revenues to pay off the debt on a capital facility in the next couple of years, the other negotiating local governments could agree to allow that government to receive a larger share of the LOST revenues for a specified period of time until the debt is retired in exchange for a smaller share in subsequent years after the debt is retired. This could be accomplished by simultaneously executing and filing a series of distribution certificates reflecting the agreement. While it may be complex to implement given the Department of Revenue will only accept distribution agreements using percentages to allocate revenues,⁴⁰ another approach, using intergovernmental agreements, would be to set a floor for the dollar amounts to be received by a jurisdiction or agree to maintain the current dollar distribution up to a certain absolute amount of LOST revenues after which any increase in sales tax revenues beyond that point would go to the other local governments.

OPEN MEETINGS LAW

The distribution arrangement and any other agreements must be approved by each participating local government in an open meeting.⁴¹ If a quorum of the governing body of any of the participating local governments attends a meeting where the negotiation occurs, that meeting and its body are subject to the requirements of the open meeting law.⁴² Likewise, if the governing body of any of the participating local governments appoints a committee to negotiate the distribution arrangement that includes members of the governing body, then that committee is subject to all of the requirements of the open meeting law.⁴³

CONCLUSION

As is evident from this guide, there is no one “correct” way to reach a final agreement. It is clear, however, that a great deal is at stake: revenues, service delivery, intergovernmental relations and the public perception of many local elected officials in the state.

In sum, counties should remind their cities during renegotiations that the fundamental purpose of the LOST is for property tax relief and not to provide additional revenues beyond a sum that would be raised from revenue sources other than LOST. Furthermore, counties should insist that any formula or date used to in determining LOST allocations must reflect the county’s incorporated and unincorporated areas.

If you have any questions regarding the LOST or concerning the upcoming LOST renegotiations, please feel free to contact ACCG staff at (404) 522-5022.

⁴⁰ O.C.G.A. § 48-8-89(b).

⁴¹ The Georgia Open Meetings laws are located at O.C.G.A. §§ 50-14-1 to -6.

⁴² O.C.G.A. § 50-14-1.

⁴³ Id.

Appendix A

The Law

JOINT COUNTY AND MUNICIPALITY SALES AND USE TAX

(L.O.S.T.)

The following is the text of the statutes governing the joint county and municipal sales and use tax amended as of 2010:

48-8-80. “Qualified municipality” defined.

As used in this article, the term “qualified municipality” means only those incorporated municipalities which impose a tax other than the tax authorized by this article and which provide at least three of the following services:

- (1.) Water;
- (2.) Sewage;
- (3.) Garbage collection;
- (4.) Police protection;
- (5.) Fire protection; or
- (6.) Library.

48-8-81. Creation of special districts.

Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of one of the 159 special districts.

48-8-82. Authorization of counties and municipalities to impose joint sales and use tax; rate; applicability of tax to sales of motor fuels.

When the imposition of a joint county and municipal sales and use tax is authorized according to the procedures provided in this article within a special district, the county whose geographical boundary is conterminous with that of the special district and each qualified municipality located wholly or partially within the special district shall levy a joint sales and use tax at the rate of 1 percent. Except as to rate, the joint tax shall correspond to the tax imposed and administered by Article 1 of this chapter. No item or transaction which is not subject to taxation by Article 1 of this chapter shall be subject to the tax levied pursuant to this article, except that the joint tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined by Code Section 48-8-2 and shall be applicable to the sale of food and beverages only to the extent provided for in paragraph (57) of Code Section 48-8-3.

48-8-83. Special districts where joint tax to be levied.

Effective January 1, 1980, the joint tax provided in Code Section 48-8-82 shall be levied in each special district in which prior to January 1, 1980, a joint county and municipal sales and use tax was levied pursuant to Ga. L. 1975, p. 984, Section 2 (as amended by Ga. L. 1975, Ex. Sess., p. 1729, Section 1; Ga. L. 1976, p. 1019, Sections 1-13; Ga. L. 1977, p. 1008, Section 1; Ga. L. 1978, p. 1429, Sections 1-3; Ga. L. 1978, p. 1460, Sections 1-3; Ga. L. 1978, p. 1678, Section 1; Ga. L. 1978, p. 1695, Section 1; Ga. L. 1979, p. 446, Section 1) or in which a referendum election had authorized the levying of such a tax within the special district.

48-8-84. Resolution by governing authorities of counties and municipalities in special districts imposing tax; time.

If the imposition of the tax provided for in Code Section 48-8-82 is to be levied pursuant to Code Section 48-8-83, the governing authority of the county whose geographical boundary is conterminous with that of the special district and the governing authority of each qualified municipality located wholly or partially within the district shall each adopt a resolution on or prior to January 1, 1980, imposing the tax authorized by Code Section 48-8-82 on behalf of the county and each qualified municipality located wholly or partially within the special district.

48-8-85. Referendum election to decide imposition of tax; procedure; resolution; call for election; publication; ballot; result; subsequent elections; declaration and certification of result; expense.

- (a) Whenever the governing authority of any county or qualified municipality located wholly or partially within a special district in which a joint county and municipal sales and use tax was not imposed on January 1, 1980, wishes to submit to the electors of the special district the question of whether the tax authorized by Code Section 48-8-82 shall be imposed, any such governing authority shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a resolution of the governing authority calling for a referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of the imposition of the tax to the voters of the special district for approval or rejection. The election superintendent shall set the date of the election for a day not less than 30 nor more than 45 days after the date of the issuance of the call. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of the county. The ballot shall have written or printed thereon the following:

“ [] YES Shall a retail sales and use tax of 1 percent be levied
[] NO within the special district within _____ County?”

- (b) All persons desiring to vote in favor of levying the tax shall vote “Yes,” and those persons opposed to levying the tax shall vote “No.” If more than one-half of the votes cast are in favor of levying the tax, then the tax shall be levied in accordance with this article; otherwise, the tax may not be levied, and the question of the imposition of the tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be his further duty to canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election.

48-8-86. Adoption of resolution imposing tax by governing authorities of county and municipality; time; effective date in general and with respect to services billed monthly; certified copy of resolution to commissioner.

If the imposition of the tax provided in Code Section 48-8-82 is approved in a referendum election as provided by Code Section 48-8-85, the governing authority of the county whose geographical boundary is conterminous with that of the special district and the governing authority of each qualified municipality located wholly or partially within the district shall each adopt a resolution during the first 30 days following the certification of the result of the election imposing the tax authorized by Code Section 48-8-82 on behalf of the county and each qualified municipality located wholly or partially within the special district. The resolution shall be effective on the first day of the next succeeding calendar quarter which begins more than 80 days after the adoption of the resolution. With respect to services which are regularly billed on a monthly basis, however, the resolution shall become effective with the first regular billing period coinciding with or following the otherwise effective date of the resolution. A certified copy of the resolution shall be forwarded to the commissioner so that it will be received within five days after its adoption.

48-8-87. Administration and collection of tax by commissioner; applicability of Article I of this chapter; first application of moneys to taxpayers' state tax liabilities; compensation of dealers if payments not delinquent; rate.

The tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of each county whose geographical boundary is conterminous with that of a special district and of each qualified municipality located wholly or partially therein. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article I of this chapter, except that the joint tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

48-8-88. Required information on sales tax returns; purpose.

Each sales tax return remitting taxes collected under this article shall separately identify the location of each retail establishment at which any of the taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all taxes imposed by this article are collected and distributed according to situs of sale.

48-8-89. Distribution of proceeds; certificate specifying percentage of proceeds for each political subdivision; determination of proceeds for absent municipalities; procedure for filing certificates; effect of failure to file renegotiation of certificate.

- (a) The proceeds of the tax collected by the commissioner in each special district under this article shall be disbursed as soon as practicable after collection as follows:
 - (1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration;
 - (2) Except for the percentage provided in paragraph (1) of this subsection, the remaining proceeds of the tax shall be distributed to the governing authority of each qualified municipality within the special district and to the governing authority of the county whose geographical boundary is conterminous with that of the special district for the purpose of assisting such political subdivisions in funding all or any portion of those services which are to be provided by such governing authorities pursuant to and in accordance with Article IX, Section II, Paragraph III of the Constitution of this state.

- (b)** It is the intent of the General Assembly that no agreement as to the distribution of the proceeds of the tax shall enrich any political subdivision beyond a sum which in the absence of the distribution would be raised through other sources of revenue. The distribution shall be in accordance with a certificate which shall be executed in behalf of each respective governing authority, except as otherwise provided in this subsection, and which shall encompass all respective political subdivisions, shall be filed with the commissioner, and shall specify by percentage that portion of the remaining proceeds of the tax available for distribution which each such political subdivision shall receive. On or after July 1, 1995, the distribution of proceeds of the tax as specified in the certificate shall be based upon, but not be limited to, the following criteria:
- (1)** The service delivery responsibilities of each political subdivision to the population served by the political jurisdiction and served during normal business hours, conventions, trade shows, athletic events and the inherent value to a community of a central business district and the unincorporated areas of the county and the obligation of all residents of the county for the maintenance and prosperity of the central business district and the unincorporated areas of the county;
 - (2)** The service delivery responsibilities of each political subdivision to the resident population of the subdivision;
 - (3)** The existing service delivery responsibility of each political subdivision;
 - (4)** The effect of a change in sales tax distribution on the ability of each political subdivision to meet its short-term and long-term debt;
 - (5)** The point of sale and use which generates the tax to be apportioned;
 - (6)** The existence of intergovernmental agreements among and between the political subdivisions;
 - (7)** The use by any political subdivision of property taxes and other revenues from some taxpayers to subsidize the cost of services provided to other taxpayers of the levying subdivision; and
 - (8)** Any coordinated plan of county and municipal service delivery and financing.

Notwithstanding the fact that a certificate shall not contain an execution in behalf of one or more qualified municipalities within the special district, if the combined total of the populations of all such absent municipalities is less than one-half of the aggregate population of all qualified municipalities located within the special district, the submitting political subdivisions shall, in behalf of the absent municipalities, specify a percentage of that portion of the remaining proceeds which each such municipality shall receive, which percentage shall not be less than that proportion which each absent municipality's population bears to the total population of all qualified municipalities within the special district multiplied by that portion of the remaining proceeds which are received by all qualified municipalities within the special district. For the purpose of determining the population of the absent municipalities, only that portion of the population of each such municipality which is located within the special district shall be computed. No certificate may contain a total of specified percentages in excess of 100 percent. The certificate shall be filed with the commissioner by March 1, 1980, for those special districts in which the tax authorized by this article is being levied on January 1, 1980. For all other special districts in which the tax shall be imposed subsequent to January 1, 1980, the certificate shall be filed with the commissioner within 60 days after the tax is imposed within the district. The commissioner shall continue to distribute the proceeds of the

tax as otherwise provided in this Code section until the first day of the next calendar year following the month in which the commissioner receives a certificate as provided in this Code section, which certificate shall provide other percentages upon which the commissioner shall make the distribution to the political subdivisions entitled to the proceeds of the tax. At such time, the commissioner shall thereafter distribute the proceeds of the tax in accordance with the directions of the certificate.

- (c) If the certificate provided for in subsection (b) of this Code section is not received by the commissioner by the required date, the authority to impose the tax authorized by Code Section 48-8-82 shall cease on the first day of the second calendar month following the month in which the tax was initially imposed and the tax shall not be levied in the special district after such date unless the reimposition of the tax is subsequently authorized pursuant to Code Section 48-8-85. When the imposition of the tax is so terminated, the commissioner shall retain the proceeds of the tax which were to be distributed to the governing authorities of the county and qualified municipalities within the special district until he receives a certificate in behalf of each such governing authority specifying the percentage of the proceeds which each such governing authority shall receive. If no such certificate is received by the commissioner within 120 days of the date on which the authority to levy the tax was terminated, the proceeds shall escheat to the state and the commissioner shall transfer the proceeds to the state's general fund.
- (d) (1) A certificate providing for the distribution of the proceeds of the tax authorized by this article shall expire on December 31 of the second year following the year in which the decennial census is conducted. No later than December 30 of the second year following the year in which the census is conducted, a renegotiated certificate meeting the requirements for certificates specified by subsection (b) of this Code section shall be filed with and received by the commissioner. The General Assembly recognizes that the requirement for government services is not always in direct correlation with population. Although a renegotiated certificate is required within a time certain of the decennial census, this requirement is not meant to convey an intent by the General Assembly that population as a criterion should be more heavily weighted than other criteria. It is the express intent of the General Assembly in requiring such renegotiation that eligible political subdivisions shall analyze local service delivery responsibilities and the existing allocation of proceeds made available to such governments under the provisions of this article and make rational the allocation of such resources to meet such service delivery responsibilities. Political subdivisions in their renegotiation of such distributions shall at a minimum consider the criteria specified in subsection (b) of this Code section.

(2) The commissioner shall be notified in writing of the commencement of renegotiation proceedings by the county governing authority in behalf of all eligible political subdivisions within the special district. The eligible political subdivisions shall commence renegotiations at the call of the county governing authority before July 1 of the second year following the year in which the census is conducted. If the county governing authority does not issue the call by that date, any eligible municipality may issue the call and so notify the commissioner and all eligible political subdivisions within the special district

(3) Following the commencement of such renegotiation, if the parties necessary to an agreement fail to reach an agreement within 60 days, such parties shall submit the dispute to nonbinding arbitration, mediation, or such other means of resolving conflicts in a manner which attempts to reach a resolution of the dispute. Any renegotiation agreement reached pursuant to this paragraph shall be in accordance with the requirements specified in paragraph (1) of this subsection.

(4) (A) If the parties necessary to an agreement fail to reach an agreement within 60 days of submitting the dispute to nonbinding arbitration, mediation, or such other means of resolving conflicts, as required by paragraph (3) of this subsection, any of such parties may file a petition in superior court of the county seeking resolution of the items remaining in dispute. Such petition shall be filed no later than 30 days after the last day of the 60 day alternative dispute resolution period required by paragraph (4) of this subsection. Such petition shall be assigned to a judge pursuant to Code Section 15-1-9.1 or 15-6-13 who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to Code Section 15-1-9.2.

(B) Following the filing of the petition as specified under subparagraph (A) of this paragraph, the county and qualified municipalities representing at least one-half of the aggregate municipal population of all qualified municipalities located wholly or partially within the special district shall separately submit to the judge and the other parties a written best and final offer specifying the distribution of the tax proceeds. There shall be one such offer from the county and one such offer from qualified municipalities representing at least one-half of the aggregate municipal population of all qualified municipalities located wholly or partially within the special district. The offer from the county may be an offer representing the county and any qualified municipalities representing at least one-half of the aggregate municipal population of all qualified municipalities located wholly or partially within the special district.

(C) Any qualified municipality or municipalities located wholly or partially within the special district who are not a party to an offer under subparagraph (B) of this paragraph, and who represent at least one-half of the aggregate municipal population of all qualified municipalities who are not a party to an offer under subparagraph (B) of this paragraph, shall be authorized to separately submit to the judge and the other parties a written best and final offer specifying the distribution of the tax proceeds. There shall be one such offer from such qualified municipality or municipalities.

(D) Each offer under subparagraphs (B) and (C) of this paragraph shall take into account the allocation required from any absent municipalities in accordance with subsection (b) of this Code section. The judge shall conduct such hearings as the judge deems necessary and shall render a decision based on the requirements and intent of paragraph (1) of this subsection and the criteria in subsection (b) of this Code section. The judge's decision shall adopt the best and final offer of one of the parties submitted under subparagraphs (B) and (C) of this paragraph specifying the allocation of the tax proceeds and shall also include findings of fact. The judge shall enter a final order containing a new distribution certificate and transmit a copy of it to the commissioner.

(E) A final order entered under subparagraph (D) of this paragraph shall be subject to appeal by application upon one or more of the following grounds:

- (i.)** The judge's disregard of the law;
- (ii.)** Partiality of the judge; or
- (iii.)** Corruption, fraud, or misconduct by the judge or a party.

(F) During the process set forth in this paragraph, the commissioner shall continue to distribute the sales tax proceeds according to the percentages specified in the most recently filed distribution certificate of in accordance with subsection (f) of Code Sec-

tion 48-8-89.1, as applicable, until a new distribution certificate is properly filed.

(5) If a new distribution certificate as provided for in this Code section is not received by the commissioner, the authority to impose the tax authorized by Code Section 48-8-82 shall cease, and the tax shall not be levied in the special district after such date unless the reimposition of the tax is subsequently authorized pursuant to Code Section 48-8-85. When the imposition of the tax is so terminated, the commissioner shall retain the proceeds of the tax which were to be distributed to the governing authorities of the county and qualified municipalities within the special district until the commissioner receives a certificate on behalf of each such governing authority specifying the percentage of the proceeds which each such governing authority shall receive. If no such certificate is received by the commissioner within 120 days of the date on which the authority to levy the tax was terminated, the proceeds shall escheat to the state, and the commissioner shall transfer the proceeds to the state's general funds.

(6) If the commissioner receives a new distribution certificate by the required date, the commissioner shall distribute the proceeds of the tax in accordance with the directions of the new distribution certificate commencing on January 1 of the year immediately following the year in which such certificate was executed by the parties or the judge or the first day of the second calendar month following the month such certificate was executed by the parties or the judge, whichever is sooner.

(7) Costs of any conflict resolution under paragraph (3) or (4) of this subsection shall be borne proportionately by the affected political subdivision in accordance with the final percentage distributions of the proceeds of the tax as reflected by the new distribution certificate.

(8) Political subdivision shall be authorized, at their option, to renegotiate distribution certificates on a more frequent basis than is otherwise required under this subsection.

(9) No provision of this subsection shall apply to any county which is authorized to levy or which levies a local sales tax, local use tax, or local sales and use tax for educational purposes pursuant to a local constitutional amendment or to any county which is authorized to expend all or any portion of the proceeds of any sales tax, use tax, or sales and use tax for educational purposes pursuant to a local constitutional amendment.

48-8-89.1. Procedure for certifying additional qualified municipalities; issuance of new distribution certificate; cessation of authority to collect tax ceases upon failure to file new certificate.

(a) If there exists within any special district in which the tax authorized by this article is imposed a qualified municipality which was not a qualified municipality on the date of filing with the commissioner of the most recently filed certificate under Code Section 48-8-89, such qualified municipality may request the commissioner to give notice of the qualified municipality's existence as provided in this subsection. Upon receipt of such a request, the commissioner shall, unless he determines that the requesting entity is not a qualified municipality, within 30 days give written notice of the qualified municipality's existence to the county which is coterminous with the special district in which the qualified municipality is located and to each other qualified municipality within the special district. Such written notice shall include the name of the new qualified municipality, the effective date of the notice, and a statement of the provisions of this Code section.

(b) Within 60 days after the effective date of the notice referred to in subsection

(a) of this Code section, a new distribution certificate shall be filed with the commissioner for the special district or, within 30 days, after the last day of the 60 day alternative dispute resolution period required by paragraph (3) of subsection (d) of Code Section 48-8-89, the county, any qualified municipality located wholly or partially within the special district, or any new qualified municipality as specified under subsection (a) of this Code section located wholly or partially within the special district may file a petition in superior court seeking resolution of the items remaining in dispute pursuant to the procedure set forth in paragraph (4) of subsection (d) of Code section 48-8-89. In the event such a petition is filed, a new qualified municipality as specified under subsection (a) of this Code section located wholly or partially within the special district shall be subject to the same requirements applicable to qualified municipalities located wholly or partially within the special district under paragraph (4) of subsection (d) of Code Section 48-8-89. This distribution certificate shall specify by percentage what portion of the proceeds of the tax available for distribution within the special district shall be received by the county in which the special district is located and by each qualified municipality located wholly or partially within the special district, including the new qualified municipality. No distribution certificate may contain a total of specified percentages in excess of 100 percent.

- (c) Except as otherwise provided in this subsection, a distribution certificate required by this Code section must be executed by the governing authorities of the county within which the special district is located and each qualified municipality located wholly or partially within the special district, including the new qualified municipality. Notwithstanding the fact that a certificate shall not contain an execution in behalf of one or more qualified municipalities within the special district, if the combined total of the populations of all such absent municipalities is less than one-half of the aggregate population of all qualified municipalities located within the special district, the submitting political subdivisions shall, in behalf of the absent municipalities, specify a percentage of that portion of the remaining proceeds which each such municipality shall receive, which percentage shall not be less than that proportion which each absent municipality's population bears to the total population of all qualified municipalities within the special district multiplied by that portion of the remaining proceeds which are received by all qualified municipalities within the special district. For the purpose of determining the population of the absent municipalities, only that portion of the population of each such municipality which is located within the special district shall be computed.
- (d) If a new certificate is not filed for any special district as required by this Code section, the authority to impose the tax authorized by Code Section 48-8-82 within that special district shall cease on the first day of January of the year following the year in which the required distribution certificate could last have been timely filed. In any special district in which the authority to impose the tax is terminated pursuant to this subsection, the tax may thereafter be reimposed only pursuant to the procedures specified in Code Sections 48-8-84 through 48-8-86.
- (e) If a new certificate is filed as required by this Code section, the commissioner shall begin to distribute the proceeds as specified in the new certificate on the first day of January of the first calendar year which begins more than 60 days after the effective date of the notice referred to in subsection (b) of this Code section. The commissioner shall continue to distribute the proceeds of the tax according to the new certificate until a subsequent certificate is filed and becomes effective as provided in Code Section 48-8-89.

(f) (1) As used in this subsection, the term:

(A) “New qualified municipality” means a municipal corporation which has been chartered by local Act since the date of filing with the commissioner of the most recently filed certificate under Code Section 48-8-89 within a county which has a special district for the provision of local government services consisting of the unincorporated area of the county where the population of the unincorporated area of the county, after removal of the population of the new municipality from the unincorporated area, constitutes less than 20 percent of the population of the county according to the most recent decennial census.

(B) “Newly expanded qualified municipality” means a municipal corporation which since the date of filing with the commissioner of the most recently filed certificate under Code Section 48-8-89 has increased its population by more than 15 percent through one or more annexations and is located in the same county as a new qualified municipality.

(2) Notwithstanding any other provision of this Code section, if there exists within any special district in which the tax authorized by this article is imposed a new qualified municipality or a newly expanded qualified municipality or both, such qualified municipality or municipalities may request the commissioner to give notice of the qualified municipality’s or municipalities’ existence and status as a new qualified municipality or newly expanded qualified municipality as provided in this subsection. Upon receipt of such a request, the commissioner shall, unless he or she determines that the requesting entity is not a new qualified municipality or newly expanded qualified municipality, within 30 days give written notice of the qualified municipality’s existence and status to the county which is conterminous with the special district in which the qualified municipality is located and to each other qualified municipality within the special district. Such written notice shall include the name of the new qualified municipality or newly expanded qualified municipality, the effective date of the notice, and a statement of the provisions of this subsection.

(3) Within 60 days after the effective date of the notice referred to in paragraph (2) of this subsection, a new distribution certificate shall be filed with the commissioner for the special district or, within 30 days after the last day of the 60 day alternative dispute resolution period required by paragraph (3) of subsection (d) of Code Section 48-8-89, the county, any qualified municipality located wholly or partially within the special district, or any new qualified municipality or newly expanded qualified municipality located wholly or partially within the special district may file a petition in superior court seeking resolution of the items remaining in dispute pursuant to the procedure set forth in paragraph (4) of subsection (d) of Code Section 48-8-89. The new distribution certificate shall address only the proceeds of the tax available for distribution from the percentage allocated to the county in the current distribution certificate and shall specify as a percentage of the total proceeds of the tax what portion of the proceeds shall be received by the county in which the special district is located and by the new qualified municipality and newly expanded qualified municipality located wholly or partially within the special district, if any.

(4) Except as otherwise provided in this paragraph, a distribution certificate required by this subsection must be executed by the governing authorities of the county within which the special district is located each new qualified municipality located wholly or

partially within the special district, and each newly expanded qualified municipality, if any. If a new certificate is not filed within 60 days as required by paragraph (3) of this subsection, the commissioner shall distribute the proceeds of the tax available for distribution from the percentage allocated to the county in the current distribution certificate such that:

(A) The new qualified municipality receives an allocation equal on a per capita basis to the average per capita allocation to the other qualified municipalities in the county (according to population), to be expended as provided in paragraph (2) of subsection (a) of Code Section 48-8-89; and

(B) Any newly expanded qualified municipality receives a total allocation of tax proceeds (including any amount previously allocated) equal on a per capita basis to the average per capita allocation to the other qualified municipalities in the county (according to population), to be expended as provided in paragraph (2) of subsection (a) of Code Section 48-8-89.

Every other qualified municipality shall continue to receive the share provided by the existing distribution certificate or otherwise provided by law. The county shall receive the remaining proceeds of the tax, to be expended as provided in paragraph (2) of subsection (a) of Code Section 48-8-89. For the purpose of determining the population of qualified municipalities, only that portion of the population of each such municipality which is located within the special district shall be computed. For the purpose of determining population under this Code section, all calculations of population shall be according to the most recent decennial census, including the census data from such census applicable to any annexed territory.

(5) The commissioner shall begin to distribute the proceeds as specified in the newly filed certificate or, if such a certificate is not filed, as specified in paragraph (4) of this subsection on the first day of the first month which begins more than 60 days after the effective date of the notice referred to in paragraph (2) of this subsection. The commissioner shall continue to distribute the proceeds of the tax according to the existing certificate and the certificate applicable to the county and the new qualified municipality or, if such a certificate is not filed, as specified in paragraph (4) of this subsection until a subsequent certificate is filed and becomes effective as provided in Code Section 48-8-89.

48-8-89.2. Distribution of tax proceeds upon qualified municipality ceasing to be qualified.

If the commissioner determines that a qualified municipality entitled to receive tax proceeds under this article has ceased to be a qualified municipality, he shall thereafter distribute the percentage of the proceeds of the tax to which that qualified municipality was entitled to the county which is conterminous with the special district and to each other qualified municipality within the special district pro rata according to the percentages of the tax to which each other such political subdivision is otherwise entitled; and such distribution formula shall remain in effect until a new certificate is filed and becomes effective as provided in Code Section 48-8-89.

48-8-89.3. Levy of tax in certain special districts; distribution of proceeds to qualified municipality.

(a) Notwithstanding any other provision of this article to the contrary, the tax provided for in Code Section 48-8-82 shall be levied in any special district in which:

- (1) Prior to January 1, 1980, a joint county and municipal sales and use tax was levied pursuant to Ga. L. 1975, p. 984, Section 2 (as amended by Ga. L. 1975, Ex. Sess., p. 1729, Section 1; Ga. L. 1976, p. 1019, Sections 1-13; Ga. L. 1977, p. 1008, Section 1; Ga. L. 1978, p. 1429, Sections 1-3; Ga. L. 1978, p. 1460, Sections 1-3; Ga. L. 1978, p. 1678, Section 1; Ga. L. 1978, p. 1695, Section 1; Ga. L. 1979, p. 446, Section 1) or in which a referendum election had authorized the levying of such a tax within the special district;
- (2) The tax provided for in Code Section 48-8-82 was actually collected during the period of January 1, 1980, to January 1, 1989; and
- (3) There exists a qualified municipality which lies wholly or partially within the special district and which:

(A) Was a qualified municipality at the time of filing of the distribution certificate most recently filed with the commissioner under Code Section 48-8-89; and

(B) Was not assigned any percentage of the net proceeds of the tax under such distribution certificate.

In any special district which meets the criteria specified in this subsection, the tax provided for in Code Section 48-8-82 shall be levied without regard to any past defects in compliance with the procedures specified by this article for the imposition of the tax.

- (b) A qualified municipality described in paragraph (3) of subsection (a) of this Code section, for which receipt of a portion of the net tax proceeds was not specified in the certificate most recently filed with the commissioner under Code Section 48-8-89, may request the commissioner to thereafter distribute a portion of the net tax proceeds to the qualified municipality as provided in this Code section. Upon receipt of such a request, the commissioner shall thereafter, unless he determines that the requesting municipality does not meet the criteria specified in this Code section, give written notice of a new distribution formula to the county which is conterminous with the special district, to the requesting qualified municipality, and to each other qualified municipality within the special district. Such new distribution formula shall be determined as follows:
 - (1) Begin with the percentages specified in the distribution certificate most recently filed with the commissioner;
 - (2) Assign to the requesting municipality a percentage of the net proceeds which is equal to the total percentage of the net proceeds previously distributed to all other qualified municipalities in the special district multiplied by a fraction, the numerator of which is the population of the requesting municipality and the denominator of which is the population of all qualified municipalities within the special district;
 - (3) Deduct the percentage of the net proceeds so assigned to the requesting municipality from the percentages previously assigned to all other qualified municipalities within the special district, such deductions to be pro rata on the basis of population; and
 - (4) Make no change in the percentage of the net proceeds previously distributed to the county which is conterminous with the special district.
- (c) This new distribution formula shall be implemented at the earliest date deemed

administratively practicable by the commissioner, and the notice specified in subsection (b) of this Code section shall include such date. This new distribution formula shall remain in effect until a subsequent distribution certificate is filed and becomes effective as provided in Code Section 48-8-89.

- (d) For the purpose of all population based calculations under this Code section, only that portion of the population of a qualified municipality which is located within the special district shall be computed.

48-8-90. Crediting of tax paid by purchaser in another tax jurisdiction; payment of difference between lesser similar tax payment and tax imposed by article; proof of payment; limitation on credit.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction outside the state, the tax may be credited against the tax authorized to be imposed by this article upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this article, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this article. The commissioner may require such proof of payment in another local tax jurisdiction as he deems necessary and proper. No credit shall be granted, however, against the tax imposed under this article for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the special district or in the county which is coterminous with the special district; and taxes so paid in another jurisdiction shall be credited first against the tax levied under this article and then against the tax levied under Article 3 of this chapter, if applicable.

48-8-91. Condition precedent to authority to impose tax following first year of imposition; annual adjustment of millage rate for ad valorem taxation of tangible personal property; formula; information required on tax bills; effect on tax bills when millage rate is zero.

- (a) As a condition precedent for authority to levy the tax or to collect any proceeds from the tax authorized by this article for the year following the initial year in which it is levied and for all subsequent years, the county whose geographical boundary is conterminous with that of the special district and each qualified municipality therein receiving any proceeds of the tax shall adjust annually the millage rate for ad valorem taxation of tangible property within such political subdivisions as provided in this subsection. The governing authority of each such political subdivision shall compute the millage rate necessary to produce revenue from taxation of tangible property in its respective political subdivision which, when combined with other revenues reasonably expected to be received by the political subdivision during the year other than revenues derived from the tax imposed pursuant to this article, would provide revenues sufficient to defray the expenses of the political subdivision for the year. The millage rate so ascertained shall then be reduced by a millage rate which, if levied against the tangible property within the political subdivision, would produce an amount equal to the distribution of the proceeds of the tax imposed by this article which were received by the political subdivision during the preceding year. The tax bill of each ad valorem taxpayer in the political subdivision shall show in a prominent manner the millage rate first ascertained as provided in this subsection and shall show such millage rate reduced by the millage rate required to raise an amount of revenue equal to the distribution of the proceeds of the tax imposed by this article during the previous year. The remainder shall be the millage rate upon which each taxpayer's bill shall be based. The tax authority of each such political subdivision shall cause to be shown in a prominent

manner on the tax bill of each ad valorem taxpayer the dollar amount of reduction of ad valorem property taxes which the taxpayer has received as a result of the political subdivision's sharing in the proceeds of the tax authorized to be imposed by this article; provided, however, that the dollar amount of reduction of ad valorem property taxes shall not be calculated or shown on those forms used for the registration and taxation of motor vehicles or trailers.

- (b) This Code section shall not be construed to require a county or municipality to prepare and mail ad valorem property tax bills when the ad valorem property tax millage rate in the county or municipality has been reduced to zero as a result of the receipt of proceeds from the tax levied pursuant to this article.

48-8-92. Referendum election to decide discontinuing imposition of tax; procedure; resolution; call for election; publication; ballot; result; subsequent elections; declaration and certification of result; expense.

- (a) Whenever the governing authority of any county and the governing authorities of at least one-half of qualified municipalities located wholly or partially within a special district in which the tax authorized by this article is being levied wish to submit to the electors of the special district the question of whether the tax authorized by Code Section 48-8-82 shall be discontinued, such governing authorities shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a joint resolution of the governing authorities calling for the referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of discontinuing the levy of the tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of the county. The ballot shall have written or printed thereon the following:

“ YES Shall the 1 percent retail sales and use tax being
levied within the special district within _____
 NO County be terminated?”

- (b) All persons desiring to vote in favor of discontinuing the tax shall vote “Yes,” and all persons opposed to discontinuing the tax shall vote “No.” If more than one-half of the votes cast are in favor of discontinuing the tax, then the tax shall cease to be levied on the first day of the second calendar quarter following the month in which the commissioner receives the certification of the result of the election; otherwise, the tax shall continue to be levied, and the question of the discontinuing of the tax shall not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to

hold and conduct such elections under the same rules and regulations as govern special elections. It shall be such superintendent's further duty to canvass the returns, declare and certify the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election.

48-8-93. Nonimposition of tax on property ordered by and delivered to purchaser outside special district; conditions of delivery.

No tax provided for in Code Section 48-8-82 shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the special district in which the joint tax is imposed regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Interstate Commerce Commission or the Georgia Public Service Commission.

48-8-94. Taxability of building and construction materials sold or used under contract entered into prior to approval of tax levy.

- (a) As used in this Code section, the term "building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.
- (b) No tax provided for in Code Section 48-8-82 shall be imposed by a county or municipality upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to approval of the levy of the tax by the county or municipality and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the tax.

48-8-95. Authorization of commissioner to promulgate rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the tax authorized to be imposed by this article.

§ 48-8-96. Taxation of property in consolidated governments; change in tax rates.

- (a) With respect to any consolidated government created by the consolidation of a county and one or more municipalities in which consolidated government homestead property (exclusive of improvements) is valued for purposes of local ad valorem taxation according to a base year assessed value which does not change so long as the property is actually occupied by the same owner as a homestead, the provisions of this Code section shall control over any conflicting provisions of Article I of this chapter or this article.
- (b) If the tax authorized by this article is in effect in the special district containing a consolidated government referred to in subsection (a) of this Code section, then the rate

of tax imposed under this article in such special district may be increased from 1 percent to 2 percent if such increase is approved by:

- (1) A resolution of the governing authority of the consolidated government in the same manner as otherwise required for the initial 1 percent sales tax pursuant to Code Section 48-8-84; and
- (2) A referendum conducted in the same manner as otherwise required for the initial 1 percent sales tax pursuant to Code Section 48-8-85, except that the ballot shall have written or printed thereon the following:

“ YES Shall the retail sales and use tax levied within the special district within _____ County be increased
 NO from 1 percent to 2 percent?”

(c) Such increased tax rate shall become effective on the first day of the next succeeding calendar quarter which begins more than 80 days after the date of the election at which such increase was approved by the voters. The proceeds of the increased tax shall be divided in the same proportions as the original tax.

(d) Such increased tax rate may be decreased from 2 percent to 1 percent if such decrease is approved by:

- (1) A resolution of the governing authority of the consolidated government in the same manner as otherwise required under Code Section 48-8-92; and
- (2) A referendum conducted in the same manner as otherwise required for discontinuation of the tax under Code Section 48-8-92, except that the ballot shall have printed or written thereon the following:

“ YES Shall the retail sales and use tax levied within the special district within _____ County be decreased
 NO from 1 percent to 2 percent?”

(e) Such decreased tax rate shall become effective on the first day of the second calendar quarter following the month in which the commissioner receives certification of the result of the election.

(f) If the tax authorized by this article is to be newly imposed in the special district containing a consolidated government referred to in subsection (a) of this Code section, then such tax may be imposed in such special district at the rate of 2 percent if such rate is approved by:

- (1) A resolution of the governing authority of the consolidated government in the same manner as otherwise required pursuant to Code Section 48-8-84; and
- (2) A referendum conducted in the same manner as otherwise required pursuant to Code Section 48-8-85, except that the ballot shall have written or printed thereon the following:

“ YES Shall the retail sales and use tax of 2 percent be levied within
 NO the special district within _____ County?”

- (g)** Such 2 percent tax may be discontinued if such discontinuation is approved by:
- (1)** A resolution of the governing authority of the consolidated government in the same manner as otherwise required under Code Section 48-8-92; and
 - (2)** A referendum conducted in the same manner as otherwise required for discontinuation of the tax under Code Section 48-8-92, except that the ballot shall have printed or written thereon the following:
- (h)** (For effective date, see note.)
- (1)** In the case of increase from 1 percent to 2 percent, the amount in excess of the initial 1 percent sales and use tax shall not apply to the sale of motor vehicles.
 - (2)** In the case of a newly imposed 2 percent sales and use tax under this Code section, only the amount in excess of a 1 percent sales and use tax shall not apply to the sale of motor vehicles.
- (i)** In all respects not otherwise provided for in this Code section, the levy of a tax under this article by a consolidated government referred to in subsection (a) of this Code section shall be in the same manner as the levy of the tax by any other county.

Appendix B

Blank Distribution Certificate

Appendix C

Model Letter Commencing Renegotiations

MODEL LETTER COMMENCING RENEGOTIATION

This model letter is for your information only. The county governing authority is responsible for issuing the call for the LOST renegotiations on behalf of all parties eligible to participate in the LOST distribution within the county.

_____, 20__

Honorable _____, Mayor

City of _____

Re: Renegotiation of Local Option Sales Tax Distribution

Dear Mayor _____:

As you know, O.C.G.A. § 48-8-89 requires counties and cities to periodically renegotiate the distribution or revenues received from the local option sales tax. Renegotiation must take place during the 2011-2012 calendar year. Failure to file a new distribution certificate with the Commissioner of Georgia Department of Revenue by December 31, 2012 will result in the repeal of the LOST levy for _____ County and each participating city.

In particular, the law states that renegotiations "...shall be commenced...on or before July 1, 2012." It is the responsibility of the county governing authority to issue the call for LOST renegotiations and to notify the Commissioner of the Georgia Department of Revenue that the renegotiation has been initiated. Pursuant to this call, the renegotiation process required by O.C.G.A. §48-8-89(d) shall commence on _____.

An initial meeting is scheduled for _____, to be held in the _____ room of the _____ at which time preliminary information and the structure of the negotiations will be discussed. A letter similar to this one has been sent to the mayors of the cities of _____, _____, and _____ issuing this call for renegotiation. In addition, by copy of each letter, the Commissioner of the Georgia Department of Revenue shall be notified that the LOST renegotiation process for _____ County will commence on _____.

If you have any questions or suggestions, please let me know.

Yours truly,

Chairman

Cc: Doug MacGinnitie, Commissioner, Georgia Department of Revenue

Appendix D

Distribution Formulations

Exhibit I: Some Methods of Determining LOST Revenue Shares

1. Government population shares

City government share = $\frac{\text{City 1 resident population}}{\text{total county population} + \text{total municipal population within the county}}$

County government share = $\frac{\text{total county population}}{\text{total county population} + \text{total municipal population within the county}}$

2. Percentage of service provided by each government

City government share = $\frac{\text{City 1 population} \times \% \text{ of services provided by City 1}}{\text{total county population}}$

County government share = $\frac{(\text{City 1 pop.} \times \% \text{ of services provided by county to City 1 residents}) + (\text{City 2 pop.} \times \% \text{ of service provided by county to City 2 residents}) + \text{unincorporated area population}}{\text{total county population}}$

3. Shares of property taxes

City government share = $\frac{\text{property taxes paid by owners of property in City 1 to City 1 government}}{\text{total property taxes paid to county and to all qualified cities in county}}$

County government share = $\frac{\text{property taxes paid to county on all property in county}}{\text{total property taxes paid to county and all qualified cities in county}}$

4. Shares of property tax digest

City government share = $\frac{\text{city property tax digest}}{(\text{total county property tax digest} + \text{property tax digest of all qualified cities})}$

County government share = $\frac{\text{total county property tax digest}}{(\text{total county property tax digest} + \text{property tax digest of all qualified cities})}$

5. Shares of total expenditures

City government share = $\frac{\text{expenditures by city government}}{\text{total expenditures by all local governments in county}}$

County government share = $\frac{\text{expenditures by county government}}{\text{total expenditures by all local governments in county}}$