



## **Local Option Sales Tax (LOST): Definitions, Legal Requirements, and FAQ**



**January 2011**

## **What is Local Option Sales Tax (LOST)?**

The LOST is a 1 percent sales tax activated by a local referendum and imposed on the purchase, sale, rental, storage, use, or consumption of tangible personal property and related services. LOST is a special district tax. State law (O.C.G.A. §48-8-81) creates 159 special districts in Georgia for the purpose of levying a LOST. The boundaries of the special districts are the same as the boundaries of the 159 counties in Georgia.

LOST taxes are imposed on the sale of motor fuels, and in the majority of counties, LOST taxes also apply to the sale of food and alcoholic beverages (LOST enacted in Taliaferro and Webster counties after October 1, 1996 exempts food and beverages).

The LOST is one of the most significant sources of revenue for municipal governments in Georgia, second only to the property tax. In 2008, cities collected in excess of \$510 million in LOST revenues. Statewide, LOST revenues account for 16% of municipal general fund revenues.

## **What can LOST revenues be used for?**

The General Assembly initially authorized the levy of a LOST in 1975 both for the purpose of providing property tax relief for residents and to assist local governments in funding all or any portion of those services provided by governing authorities pursuant to and in accordance with Article IX, Section II, paragraph III of the Georgia Constitution. In counties that impose the LOST, each city and county receiving LOST proceeds must show on the property tax bill the reduced city and county millage rate and reduced dollar amount as a result of the receipt of LOST revenues. After the rollback has been applied, revenues generated from growth in LOST tax collections each year may be used by counties

and cities to fund capital and M&O costs for local services.

## **How is the property tax rollback calculated?**

The law specifies that in the year following the initial year that the tax is levied (and for all subsequent years), each jurisdiction's governing authority must calculate the millage rate necessary to produce property tax revenues which, combined with other local revenues, would generate sufficient funds to cover the jurisdiction's general fund expenditures for that year. The millage rate is reduced by the amount that would produce an amount equal to that jurisdiction's LOST distribution from the previous year. The remainder is the millage rate that is used to calculate property tax bills. The LOST rollback amount must be prominently shown on each city and county's property tax bill.

## **What if a city does not impose a property tax?**

In 2010, over 100 cities in Georgia reported to the Georgia Department of Community Affairs that they do not collect property tax revenues. For jurisdictions that do not impose a property tax, LOST revenues still have the affect of keeping taxes low, because the LOST distribution can be used to fund the operation and maintenance of government services. Without those revenues, a jurisdiction would be required to raise some other category of revenues to pay for services or many cities would be required to impose or increase property taxes. The law stipulates that for jurisdictions with a millage rate of zero, there is no requirement to print property tax bills to show the LOST rollback amount.

## **What is a Qualified Municipality (O.C.G.A. § 48-8-80)**

The term “qualified municipality” refers to municipalities which impose a tax other than the LOST 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.

Municipalities that meet these conditions can share in the distribution of the LOST. As of November, 1, 2010, the Georgia Department of Revenue had LOST distribution agreements for 470 qualified municipalities in 154 Georgia counties.

## **Why doesn't every county have a LOST that is subject to renegotiation as set out in O.C.G.A. §48-8-89?**

- LOST is an optional tax that must be approved by voters in a referendum. Cherokee, Cobb, and Gwinnett counties do not have a LOST.
- Bulloch, Chattooga, Colquitt, Habersham, Houston, Mitchell, and Rabun counties have a constitutional LOST designated for educational purposes. Their distributions go directly to the boards of education in each county and are not subject to renegotiation.
- Towns County has a LOST that is distributed between the county and its qualified cities, and a second penny of LOST that is earmarked for education.
- In 2004, the General Assembly authorized the Columbus consolidated government to call a referendum for a 2nd penny of LOST. In 2008, the referendum passed by an overwhelming margin (nearly 70%). 100% of LOST revenues go to

the unified government, so there is no negotiation of the LOST distribution.

- 100% of LOST revenues in the Cussetta-Chattahoochee consolidated government go to the unified government, and there is no negotiation for the distribution.
- Echols County receives 100% of LOST revenues because there are no incorporated municipalities in the county. In 2008, voters in Echols county approved a referendum on the issue of consolidation, therefore, during the 2012 LOST renegotiation process, 100% of the LOST revenues will go to the consolidated government.
- DeKalb and Rockdale counties levy a HOST and are prohibited from levying a LOST because doing so would cause them to exceed the 2% statutory cap on local sales taxes that can be levied in a county. HOST is a county sales tax that is primarily used to provide county property tax relief. Up to 20% of the HOST tax proceeds may be used for capital projects. While there is no requirement that HOST includes revenue sharing with cities, it is an option under the law.

## **What is an absent municipality? O.C.G.A. § 48-8-89(b)**

LOST distribution certificates must be executed between counties and one or more qualified municipalities in the county whose combined population represents 50% of the total qualified municipal population. Small qualified municipalities can elect to be “absent” municipalities, which mean they may choose not to participate in the negotiation process or are not included in the negotiation process. The calculation of distribution of LOST funds for absent municipalities is one of the most complex provisions in state law pertaining to local government revenues. Generally, distributions are calculated based on 1) the absent municipalities’ percent share of the

total municipal population in the county; and 2) the municipal share of LOST proceeds in the county.

## **How is LOST distributed, collected, and administered?**

In each special district where the LOST is imposed, the counties and qualified municipalities enter into a *distribution agreement*. This one-page form identifies each local government that will receive a portion of the sales tax revenues, and lists the percentage that each local government will receive. Proceeds from the LOST are collected by the Georgia Department of Revenue and disbursed directly to each county and qualified municipality within the special district based upon this distribution agreement. One percent of the revenues collected are paid into the state's general fund to cover the cost for administering the tax, and a percentage is paid to the dealer for collecting and reporting the tax. (Note: the percentage paid to the dealer shall be at the rate and subject to the requirements specified under subsections (b) through (f) of O.C.G.A. § 48-8-50.) *Monthly reports on sales tax distributions* can be viewed on the Georgia Department of Revenue website.

## **What are the criteria for determining the distribution of LOST proceeds?**

The law does not specify a formula for distributing LOST proceeds. Instead, it outlines eight factors that can be used by local governments in negotiating the LOST distribution. According to O.C.G.A. § 48-8-89, 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.

The law does not provide specific information about how to calculate each of these eight factors. Also absent from the law is a ranking of the criteria by degree of importance, although the law does expressly state that population is not intended to be more heavily weighted as a criterion. In some cases, reliable data may not be available, which makes the negotiation of distributions more difficult. With little guidance from state law, cities and counties around the state have developed a variety of techniques and methodologies which may be used as a starting point for the 2012 renegotiations.

## What are the triggers for renegotiation of the LOST?

Local governments within the special district can agree to renegotiate the distribution certificate at any time. The law also contains several triggers whereby renegotiation of the distribution certificate is required, including:

- (1) The decennial census. The law requires that all distribution certificates will expire on December 31 of the second year following the year the decennial census is conducted. *Therefore, by no later than December 30, 2012, a new distribution certificate must be filed and received by the Commissioner of the Georgia Department of Revenue.* (O.C.G.A. § 48-8-89 (d) (1))
- (2) If a new qualified municipality is in the special district. The law (OCGA 48-8-89.1) outlines a process by which new qualified municipalities can seek recognition from the DOR Commissioner so that they can be considered eligible for a share of the LOST distributions within a special district. The law provides for a deadline by which the new qualified municipality and the governing authorities of the county and all other qualified municipalities in the special district must execute a new distribution certificate. If the distribution certificate is modified for a new qualified municipality, the distribution for every other qualified municipality in the special district remains the same as in the existing certificate.
- (3) If a city increases its population by 15% or more through annexation, it is termed to be a “newly expanded qualified municipality” and the distribution certificate may be renegotiated. If the distribution certificate is modified for a newly expanded qualified municipality, the distributions for every other qualified municipality in the special district remain the same as in the existing certificate.

- (4) If the DOR has determined that a city is no longer a qualified municipality, that municipality is no longer eligible to receive LOST revenues. Their share of proceeds is split on a pro rata basis between the county and each other qualified municipality within the special district using the percentages in the existing certificate, until a new certificate is filed.
- (5) Any changes in service provision may trigger a new distribution, e.g., if the county and city revise the Service Delivery Agreement to allow the city to provide parks and recreation services county-wide, the revenue distribution may be changed to account for new revenues the city will use to pay for the new county-wide service.

## What are the most important dates to remember for renegotiation triggered by the 2010 census? (See timeline on page 9)

*July 1, 2012:* Deadline by which a county governing authority, on behalf of all eligible political subdivisions in the special district, must notify the DOR commissioner in writing that renegotiation proceedings have begun. If the county governing authority does not issue the call by that date, any eligible municipality may issue the call and also notify the commissioner and all eligible political subdivisions within the special district.

*December 30, 2012:* Deadline to file certificate with DOR.

## What changes have been made to the LOST law that will impact 2012 renegotiations?

Since the 2002 renegotiation process, several changes have been made to the LOST law, most notably the provision of a new process for mediation and “baseball arbitration” if the jurisdictions cannot come to agreement on a

distribution process. Key steps are outlined below.

*60 days following commencement of renegotiations:* If the county and qualified municipalities fail to reach an agreement, the dispute must be submitted to nonbinding arbitration, mediation, or such other means of resolving conflicts in a manner which attempts to reach a resolution of the dispute.

*Baseball arbitration. 60 days following submitting the dispute to nonbinding arbitration, mediation, or other means of resolving conflicts:* If the county and qualified municipalities in the special district fail to reach an agreement within 60 days of submitting the dispute to nonbinding arbitration, mediation, or such other means of resolving conflicts, any of the parties may file a petition in superior court of the county seeking resolution of the items remaining in dispute.

Cities representing at least 50% of the qualified municipal population of cities not in a county or other city proposal may separately submit to the judge and the other parties a written best and final offer specifying the distribution of the tax proceeds. Each qualified municipality may submit one such offer. Only cities that have negotiated an offer with the county may propose alternate distribution methods; absent municipalities may not make another offer under the terms of the LOST baseball arbitration.

*30 days after the last day of the 60 day alternative dispute resolution period:* Deadline to file petition in superior court of the county seeking resolution of the remaining disputed items. If no party files the petition, the tax will lapse.

### **Steps in the baseball arbitration process:**

- The petition is assigned to a judge who must not be a judge in the circuit in which the county is located.
- The county and qualified municipalities must submit to the judge their best and

final offer specifying the distribution of the LOST proceeds. The judge will accept one offer from the county and one from each qualified municipality 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 that are not represented in the offer submitted by the qualified municipalities representing at least one-half of the aggregate municipal population of all qualified municipalities located wholly or partially within the special district.

- Each offer must take into account the allocation required for any absent municipalities.
- The judge shall conduct hearings as he/ she deems necessary and shall render a decision based on what he/ she considers the best and final offer.
- The judge shall enter a final order containing a new distribution certificate and transmit a copy of it to the commissioner of the DOR.

### **Appeal of the judge's final order:**

Grounds for appeal of the judge's final order include:

- The judge's disregard of the law;
- Partiality of the judge; or
- Corruption, fraud, or misconduct by the judge or a party.

### **During the period of mediation/ arbitration, what happens to LOST revenues?**

While mediation and arbitration are underway, LOST revenues will continue to be collected and distributed according to the percentages specified in the most recent distribution certificate until a new certificate is properly filed.

If the county and qualified municipalities do not submit a new distribution certificate by December 31, 2012, the tax is terminated and may not be reimposed until the tax is approved by referendum of the voters in the special district, pursuant to Code Section 48-8-85. When the imposition of the tax is terminated, revenues from the tax are retained by the Department of Revenue until the commissioner receives a new distribution certificate. 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 will be deposited into the state general fund.

## **Renegotiation Process Q&A**

LOST renegotiation isn't pretty. It's a zero-sum game - one jurisdiction's gain corresponds directly to a loss of revenue in another jurisdiction. Failure to secure a fair distribution split in a jurisdiction may translate to property tax increases and/or reduction in or elimination of services. State law does not include a process to insure fairness of the distribution, and only provides a set of eight vague criteria for distributing revenues. In fact, data doesn't exist to measure some of the factors. As a result, the negotiation process and the final decision is a political process. It's important for municipal officials to be well-versed in the art of negotiation, to fully understand the complex interrelationships between sales taxes and service demands and most importantly, to listen to the experiences and advice of city officials who have been through the process before.

### **Who makes the call to begin renegotiation following the release of the decennial census figures?**

The law states that the county can call the renegotiation process at any time, but must do so by July 1, 2012. In calling for the renegotiation process, the county is required to provide written notification to the DOR Commissioner and all eligible municipalities in the county. If the

county fails to make the call by the July 1, 2012, deadline, any qualified municipality can call for the process to begin and must notify all eligible jurisdictions and the DOR Commissioner.

### **Does the law specify where renegotiation meetings must take place?**

There is no statutory requirement for where meetings must be held. Ideally, meetings should be conducted in a neutral location.

### **Which officials from each jurisdiction should be at the table during the negotiations?**

Municipal officials who have been involved in previous LOST renegotiations suggest that the negotiation team should be kept as small as possible; for example, the county commission chairman or county manager and one representative (e.g., the mayor or city manager) from each qualified municipality. Decisions about who should be involved on the negotiation team should take into account previous experience in negotiating past LOST agreements in order to insure that the best decisions can be made. A small negotiation team will be able to make decisions more efficiently. However, it is important that the full city council and key staff should be continually updated on the details of each meeting of the negotiating team so that everyone is in the loop on key decisions and all the council member understand what the negotiating team has agreed to do.

Just as it is important to maintain a unified front among the officials in one city, it's equally important to maintain solidarity among the qualified municipalities within a county. Prior to any negotiations beginning, it is helpful for all the qualified municipalities wholly or partially within the county to meet as a group to discuss the negotiation process. Conducting an open and candid dialogue among city officials before meeting with county leaders will serve all cities

well. Failure to work together with other cities in the county could allow the county to pit cities against each other during the negotiation process, or could allow small cities to be hurt as larger cities work to protect their own interests. In many counties around the state, cities have organized and meet frequently as a county municipal association. Having this close relationship allows cities to work well together and to look out for each other during the negotiation process.

### **What's different about the renegotiation process in 2012?**

In 2002, some counties said that if negotiations failed, they would allow the tax to lapse and the county would then call for the imposition of a HOST tax. This tactic forced many cities to agree to negotiation distributions based on a simple population split. Changes to the LOST law since 2002 mean that the LOST will not lapse unless both parties agree to let it lapse. Remember the baseball arbitration process is a last resort tool to reach agreement but does not have to be invoked if both parties agree to allow the tax to lapse - an outcome most parties would not like to see happen.

### **Should cities include service delivery arrangements in the discussion of LOST renegotiation?**

Several of the eight criteria enumerated in the LOST law deal with service delivery within the special district. During the renegotiation process, decisions about how to distribute LOST revenues are inextricably entwined with decisions about service delivery (several of the criteria point to service delivery decisions) and existing or pending revenue or intergovernmental agreements, including SPLOST.

### **GMA Contacts for Questions about LOST**

**Paul Radford, GMA Deputy Director, 678-686-6203 or [pradford@gmanet.com](mailto:pradford@gmanet.com)**

**Mark Baggett, Governmental Relations Associate 678-686-6287 or [mbaggett@gmanet.com](mailto:mbaggett@gmanet.com)**

**Becky Taylor, Manager, Research & Federal Relations 678-686-6276 or [btaylor@gmanet.com](mailto:btaylor@gmanet.com)**

# Top 10 LOST Lessons

- 1. Get started now. Identify your negotiating team.** It may not necessarily be the mayor or chairman. All officials should be involved, but the assignment of a core team is important. Get the smartest people with the most experience in the room. If the county fails to issue the call for renegotiations by July 1, a municipality can file, so go ahead and prepare a letter to issue the call just in case.
- 2. Agree in advance on the process for conflict resolution.** Before negotiations begin, all parties should meet to discuss and come to agreement on what to do if there is an impasse, including what method will be used to handle disputes, including arbitration, mediation, or other means to resolve conflicts.
- 3. Be analytical, not political; and do your homework.** Understand city and county needs and gather information needed to outline all 8 criteria identified in the law. Ideally, the process should be data-driven.
- 4. Know the county position.** Know everything about the county, how they provide services, how they pay for services, and be ready with a comeback for points made by county negotiators. Just as important, understand all the valid points on both sides.
- 5. Know your allies - build constituencies and stick together.** Work with the other cities in your county. Avoid surprises, don't try to take shortcuts or you could end up with each city negotiating with the county.
- 6. Remember - LOST and service delivery are inextricably linked.** When negotiating the LOST distribution, discussions about responsibility and

cost for providing various services are unavoidable. It may be a good idea to phase in LOST distribution under some circumstances, such as, if a city and county agree to a multi-year phase-in of one of the parties taking over county-wide provision of recreation services. Phasing in of LOST distributions may be desirable to give the government taking over the service access to more revenue to pay for that service while helping the other party adjust over time for the reduction in LOST revenues.

- 7. Learn from examples of previous LOST negotiations.** Talk to city officials who have been through the process before. While no two negotiations are the same, understanding what to expect and how to prepare for both the expected and unexpected can be critical to your city's success.
- 8. Know when to stop if things start to go bad.** Consider working with your attorney to develop a defensible position. Get your city's offer ready in case you have to go to baseball arbitration.
- 9. Understand the consequences of failure.** For cities and counties, failure to negotiate in good faith and come to an agreement will hurt everyone. If you beat each other up over LOST, other sales tax referenda (SPLOST, T-SPLOST, ESPLOST) could fail.
- 10. Send your designated city negotiating officials to GMA training sessions.** GMA regional training, to be provided this spring by GMA, is targeted to benefit the officials who will actually serve on the negotiating team and will afford these officials the opportunity to get tips on negotiating strategies and data analysis from experts in the field.

# LOST Renegotiations following 2010 Census: Sample Timeline

