MEMORANDUM

FROM : Craig M. Schneider

RE : SCHOOL UTILITY TAX

DATE : DECEMBER 12, 2013

According to KRS § 160.603, no school district board of education shall levy a school utility tax authorized by KRS § 160.613 until after doing the following:

1. Giving notice of any proposed levy by causing to be published, at least 1 time in a newspaper of general circulation published in the county or by posting at the courthouse door if there is no such newspaper, the fact that the levy is being proposed. The advertisement shall state that the district board of education will meet at a place and on a day fixed in the advertisement, not earlier than 1 week and not later than 2 weeks from the date of the advertisement, for the purpose of hearing comments and complaints regarding the proposed increase and explaining the reasons for such proposal.
2. Conducting a public hearing at the place and on the date advertised for the purpose indicated above.

The imposition of the utility tax would be limited to Southgate, Kentucky. KRS § 160.593(1). However, two or more boards of education (i.e. Southgate and Campbell County) may agree in writing to identical school utility taxes. KRS § 160.593(2). If two taxing districts so agree, the receipts from said tax shall be held in a common fund and disbursed therefrom to each district on the basis of average daily attendance. KRS 160.593(2); *Board of Education v. Independent Bd. of Education*, 681 S.W.2d 429 (Ky. Ct. App. 1984 (“the money is distributed proportionately”).

The Campbell County Fiscal Court will be responsible for levying the utility gross receipts tax, within 15 days of such request, at the rate requested. OAG 69-367, 72-365, 80-22. A board of education of a school district has no discretion as to the subject of the utility gross receipts license tax. OAG 66-551. A utility gross receipts tax levied by a school district shall be levied upon the gross receipts derived from the furnishing of “cable services” (including satellite, KRS § 160.614) as well as “communications services” which includes local and long-distance telephone services, electric power, water, and natural, artificial, and mixed gas. KRS §§ 160.6131(2)(a), 160.6131(5).

The utility gross receipts license tax for schools shall not exceed 3% of the gross receipts derived from the furnishing, within the school district, of utility services, except that “gross receipts” shall not include amounts received for furnishing energy or energy-producing fuels, used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production, and shall not include amounts received for furnishing any of the above utilities which are to be resold. KRS § 160.613(1). If any user of utility services purchases the utility services directly from any supplier who is exempt either by state or federal law from the utility gross receipts license tax, then the consumer, if the tax has been levied in the consumer's district, shall be liable for the tax and shall pay the tax directly to the department. KRS § 160.613(2).

The order or resolution levying a school utility tax shall go into effect not less than 45 days and not more than 90 days after its passage. KRS § 160.597(1)(a). A school district’s levy of a utility gross receipts license tax is subject to levy recall. *Owensboro Cablevision v. Libs*, 863 S.W.2d 331 (Ky. Ct. App. 1993); *Board of Educ. v. Brooks*, 824 S.W.2d 43 (Ky. Ct. App. 1992). During the 45 days immediately following the passage of the order or resolution, any 5 qualified voters who reside in the school district levying the tax may commence petition proceedings to protest the tax by filing with the county clerk an affidavit stating that they constitute the petition committee and that they will be responsibile for circulating the petition and filing it in the proper form within 45 days from the passage of the order or resolution. KRS § 160.597(1)(b). After the affidavit is filed and a copy is provided to the school board, the petition must then be filed within 45 days of the passage of the order or resolution. KRS § 160.597(1)(c). The petition must be signed by a number of registered and qualified voters equal to at least 10% of the total number of votes cast in the last preceding presidential election. KRS § 160.597(1)(c).

Upon the filing of the petition, the order or resolution shall be suspended. KRS § 160.597(1)(d). The county clerk then has 30 days to make a determination as to whether the petition contains enough signatures to put the order or resolution to a vote. KRS § 160.597(1)(e). If the county clerk finds the petition to be insufficient, the “petition committee” is notified and a final determination of the sufficiency is subject to circuit court review. KRS § 160.597(1)(g), (h). If the county clerk finds the petition to be sufficient, the county clerk shall, at the option of the district board of education, either submit the question to the voters of the school district at the next regular election or submit the question to the voters of the school district at a called common school election, which is to be held not less than 35 days nor more than 45 days from the date the signatures on the petition are validated by the county clerk. KRS § 160.597(2). The majority of the votes then determines whether the order or resolution shall go into effect. KRS § 160.597(2).

If no recall petition is filed or if Southgate voters (upon recall) vote to uphold the tax, then the tax goes into effect. The taxes are due and payable monthly and shall be remitted to the Kentucky Department of Revenue (“Department”). KRS § 160.615. The Department shall then distribute the taxes collected to each school district imposing the tax on a monthly basis and in accordance with district boundary information. KRS § 160.6154(1). From each distribution, the Department shall deduct an amount which represents the proportionate share of the Department's actual operating and overhead expenses incurred in the collection and administration of the taxes not to exceed 1% of the amount collected. KRS § 160.6154(2).

Any utility, cable service provider, or satellite broadcast and wireless cable service provider required to pay a school utility tax may increase its rates in any school district in which it is required to pay the school tax by the amount of the school tax imposed, up to three percent (3%). KRS § 160.617.