

House Bill 1251 (AS PASSED HOUSE AND SENATE)

By: Representatives Hill of the 180th and Stephens of the 164th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales
2 and use taxes, so as to provide for a program of tax refunds for companies creating new
3 tourism attractions; to provide for a short title; to provide for definitions; to provide for
4 legislative findings; to provide for conditions of eligibility and approval; to provide for
5 agreements; to provide for procedures, conditions, and limitations; to provide for powers,
6 duties, and responsibilities of the commissioner of economic development and the
7 Department of Economic Development and the governing authorities of counties and
8 municipalities; to provide for powers, duties, and authority of the state revenue commissioner
9 and the Department of Revenue; to provide for related matters; to provide for an effective
10 date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
14 taxes, is amended by adding a new article to read as follows:

15 style="text-align:center">"ARTICLE 5

16 48-8-240.

17 This article shall be known and may be cited as the 'Georgia Tourism Development Act.'

18 48-8-241.

19 As used in this article, the term:

20 (1) 'Agreement' means a tourism attraction agreement for a new tourism attraction
21 project entered into, pursuant to Code Section 48-8-245, on behalf of the Department of
22 Economic Development and an approved company.

23 (2) 'Approved company' means any corporation, limited liability company, partnership,
 24 limited liability partnership, sole proprietorship, business trust, or any other entity that
 25 is seeking to undertake a new tourism attraction project pursuant to Code Section
 26 48-8-245 and is approved, pursuant to subsection (b) of Code Section 48-8-244, by the
 27 commissioner of economic development and by the governing authority of the city where
 28 the new tourism attraction project is to be located if within a city or otherwise by the
 29 governing authority of the county where the new tourism attraction project is to be
 30 located.

31 (3) 'Approved costs' means:

32 (A) Obligations incurred for labor and to vendors, contractors, subcontractors, builders,
 33 suppliers, deliverymen, and materialmen in connection with the acquisition,
 34 construction, equipping, and installation of a new tourism attraction project;

35 (B) The costs of acquiring real property or rights in real property and any costs
 36 incidental thereto;

37 (C) All costs for construction materials and equipment installed at the new tourism
 38 attraction project;

39 (D) The cost of contract bonds and of insurance of all kinds that may be required or
 40 necessary during the course of the acquisition, construction, equipping, and installation
 41 of a new tourism attraction project which is not paid by the vendor, supplier,
 42 deliveryman, or contractor or otherwise provided;

43 (E) All costs of architectural and engineering services, including but not limited to
 44 estimates, plans and specifications, preliminary investigations, and supervision of
 45 construction and installation, as well as for the performance of all the duties required
 46 by or consequent to the acquisition, construction, equipping, and installation of a new
 47 tourism attraction project;

48 (F) All costs required to be paid under the terms of any contract for the acquisition,
 49 construction, equipping, and installation of a new tourism attraction project;

50 (G) All costs required for the installation of utilities, including but not limited to water,
 51 sewer, sewage treatment, gas, electricity, communications, and similar facilities; and
 52 off-site construction of utility extensions if paid for by the approved company; and

53 (H) All other costs comparable with those described in this paragraph.

54 (4) 'Incremental sales and use tax' means those state and local sales and use taxes
 55 generated by the new tourism attraction project above the amount of such sales and use
 56 taxes generated by the previous use of the property on which such project is located.

57 (5) 'New tourism attraction' means a cultural or historical site; a recreation or
 58 entertainment facility; a sports stadium or arena; an area of natural phenomena or scenic
 59 beauty; a convention hotel and conference center; an automobile race track with lodging

60 and restaurant and other tourism amenities; a golf course facility with lodging and
 61 restaurant and other tourism amenities; marinas and water parks with lodging and
 62 restaurant facilities; or an entertainment destination center designed to attract tourists to
 63 the State of Georgia. A new tourism attraction shall be subject to the following
 64 conditions:

65 (A) A new tourism attraction shall include commercial lodging facilities if the facilities
 66 constitute a significant portion of a new tourism attraction project or the facilities are
 67 to be located on recreational property leased from a county, a municipal corporation,
 68 the state, or the federal government; and

69 (B) A new tourism attraction shall not include the following:

70 (i) Facilities that are primarily devoted to the retail sale of goods, shopping centers,
 71 restaurants, or movie theaters; or

72 (ii) Recreational facilities that do not serve as likely destinations where individuals
 73 who are not residents of this state would remain overnight in commercial lodging at
 74 the new tourism attraction.

75 (6) 'New tourism attraction project' or 'project' means the real estate acquisition,
 76 including the acquisition of real estate by a leasehold interest with a minimum term of 30
 77 years, construction, and equipping of a new tourism attraction; the construction and
 78 installation of improvements to facilities necessary or desirable for the acquisition,
 79 construction, and installation of a new tourism attraction, including but not limited to
 80 surveys; installation of utilities, which may include water, sewer, sewage treatment, gas,
 81 electricity, communications, and similar facilities; and off-site construction of utility
 82 extensions if paid for by the approved company.

83 48-8-242.

84 The General Assembly finds and declares that the general welfare and material well-being
 85 of the citizens of this state depend in large measure upon the development of tourism in the
 86 state; that it is in the best interest of this state to induce the creation of new tourism
 87 attractions within this state in order to advance the public purposes of relieving
 88 unemployment by preserving and creating jobs that would not exist if not for the sales and
 89 use tax refund offered by the State of Georgia to approved companies and preserving and
 90 creating sources of tax revenues for the support of public services provided by the state;
 91 that the purposes to be accomplished under the provisions of this article are proper
 92 governmental and public purposes for which public moneys may be expended; and that the
 93 inducement of the creation of new tourism attraction projects is of paramount importance
 94 to the economy of the state, mandating that the provisions of this article are to be liberally
 95 construed and applied in order to advance public purposes.

96 48-8-243.

97 (a) In consideration of the execution of the agreement, each approved company shall be
98 granted a sales and use tax refund from the incremental sales and use tax on the sales
99 generated by the approved company and arising at the new tourism attraction.

100 (b) The approved company shall have no obligation to refund or otherwise return any
101 amount of this sales and use tax refund to the persons from whom the sales and use tax was
102 collected.

103 (c) For all new tourism attractions the term of the agreement granting the sales and use tax
104 refund shall be ten years, commencing on the later of:

105 (1) The final approval of the agreement for purposes of the sales and use tax refund; or

106 (2) The date the new tourism attraction opens for business and begins to collect sales and
107 use taxes;

108 (d) Any sales and use tax collected by an approved company on sales transacted after final
109 approval but prior to the commencement of the term of the agreement shall be refundable
110 as if collected after the commencement of the term and applied to the approved company's
111 first year's refund after activation of the term and without changing the term.

112 (e) The total sales and use tax refund allowed to the approved company over the term of
113 the agreement shall be equal to the lesser of the total amount of the sales and use tax
114 liability of the approved company or 25 percent of the approved costs for the new tourism
115 attraction project, subject to the following conditions:

116 (1) The sales and use tax refund shall accrue over the term of the agreement in an annual
117 amount equal to the lesser of the sales and use tax liability of the approved company for
118 that year or 2.5 percent of the approved costs; and

119 (2) Notwithstanding the 2.5 percent limitation of paragraph (1) of this subsection, any
120 unused sales and use tax refunds from a previous year may be carried forward to any
121 succeeding year during the term of the agreement.

122 (f) On or before March 31 of each year during the term of the agreement, an approved
123 company shall file with the department a claim for the sales and use tax refund collected
124 by the approved company and remitted to the department during the preceding calendar
125 year pursuant to subsection (e) of this Code section.

126 (g) The department, in consultation with other appropriate state agencies, shall promulgate
127 administrative regulations and require the filing of a refund form designed by the
128 department to reflect the intent of this article.

129 48-8-244.

130 (a) The commissioner of economic development, in consultation with other appropriate
 131 state agencies, shall establish standards for the filing of an application for new tourism
 132 attraction projects by the promulgation of administrative regulations.

133 (b) An application for a new tourism attraction project filed with the Department of
 134 Economic Development shall include, but not be limited to:

135 (1) Marketing plans for the new tourism attraction project that target individuals who are
 136 not residents of this state;

137 (2) A description and location of the new tourism attraction project;

138 (3) Capital and other anticipated expenditures for the new tourism attraction project and
 139 the anticipated sources of funding for such project;

140 (4) The anticipated employment and wages to be paid at the new tourism attraction
 141 project;

142 (5) Business plans which indicate the average number of days in a year in which the new
 143 tourism attraction project will be in operation and open to the public; and

144 (6) The anticipated revenues to be generated by the new tourism attraction project.

145 (c) The commissioner of economic development and the local governing authority
 146 specified in paragraph (2) of Code Section 48-8-241 may grant approval to the new tourism
 147 attraction project if the project shall:

148 (1) Have approved costs in excess of \$100 million and such project is to be a new
 149 tourism attraction.

150 (2) Have a significant and positive economic impact on the state considering, among
 151 other factors, the extent to which the tourism attraction project will compete directly with
 152 existing new tourism attractions in this state and the amount by which increased state and
 153 local tax revenues from the new tourism attraction project will exceed the refund to be
 154 given to the approved company;

155 (3) Produce sufficient revenues and public demand to be operating and open to the public
 156 for a minimum of 200 days per year; and

157 (4) Not adversely affect existing employment in the state.

158 48-8-245.

159 The Department of Economic Development shall enter into an agreement with any
 160 approved company which may also include as a partner any local development authority,
 161 and the terms and provisions of each agreement shall include, but not be limited to:

162 (1) The projected amount of approved costs, provided that any increase in approved costs
 163 incurred by the approved company and agreed to by the Department of Economic
 164 Development shall apply retroactively for purposes of calculating the carry forward for

165 unused sales and use tax refunds as set forth in subsection (e) of Code Section 48-8-243
166 for tax years commencing on or after July 1, 2010;
167 (2) A date certain by which the approved company shall have completed the new tourism
168 attraction project and begun operations. Upon request from any approved company that
169 has received final approval, the Department of Economic Development shall grant an
170 extension or change, which in no event shall exceed 18 months from the date of final
171 approval, to the completion date as specified in the agreement with an approved
172 company; and
173 (3) A statement specifying the term of the agreement in accordance with subsection (c)
174 of Code Section 48-8-243."

175 **SECTION 2.**

176 This Act shall become effective on July 1, 2010.

177 **SECTION 3.**

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