

House Bill 234 (AS PASSED HOUSE AND SENATE)

By: Representatives Stephens of the 164th, Smyre of the 132nd, Smith of the 131st, Bryant of the 160th, Purcell of the 159th, and others

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 extend for a limited period of time the sales and use tax exemption
3 regarding the sale or use of engines, parts, equipment, or other tangible personal property
4 used in the maintenance or repair of certain aircraft; to provide for a program of tax refunds
5 for companies creating new tourism attractions or expanding existing tourism attractions; to
6 provide for a short title; to provide for definitions; to provide for legislative findings; to
7 provide for conditions of eligibility and approval; to provide for agreements; to provide for
8 procedures, conditions, and limitations; to provide for powers, duties, and responsibilities of
9 the Governor, the Department of Community Affairs, and the governing authorities of
10 counties and municipalities; to provide for related matters; to provide for severability; to
11 provide for an effective date; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 SECTION 1.

14 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
15 taxes, is amended in Code Section 48-8-3, relating to exemptions from sales and use tax, by
16 revising paragraph (86) as follows:

17 "(86) For the period commencing on July 1, 2007, and ending on June 30, ~~2011~~ 2013,
18 the sale or use of engines, parts, equipment, and other tangible personal property used in
19 the maintenance or repair of aircraft when such engines, parts, equipment, and other
20 tangible personal property are installed on such aircraft that is being repaired or
21 maintained in this state so long as such aircraft is not registered in this state;"

22 SECTION 2.

23 Said chapter is further amended by adding a new article to read as follows:

24 "ARTICLE 625 48-8-270.26 This article shall be known and may be cited as the 'Georgia Tourism Development Act.'27 48-8-271.28 As used in this article, the term:29 (1) 'Agreement' means a tourism attraction agreement for a tourism attraction project
30 entered into, pursuant to Code Section 48-8-275, on behalf of the Department of
31 Community Affairs and an approved company.32 (2) 'Approved company' means any corporation, limited liability company, partnership,
33 limited liability partnership, sole proprietorship, business trust, or any other entity that
34 is seeking to undertake a tourism attraction project pursuant to Code Section 48-8-275
35 and is approved, pursuant to subsection (b) of Code Section 48-8-274, by the Governor
36 and by the governing authority of the city where the tourism attraction project is to be
37 located if within a city and by the governing authority of the county where the tourism
38 attraction project is to be located.39 (3) 'Approved costs' means:40 (A) For new tourism attractions:41 (i) Obligations incurred for labor and to vendors, contractors, subcontractors,
42 builders, suppliers, deliverymen, and materialmen in connection with the acquisition,
43 construction, equipping, and installation of a new tourism attraction project;44 (ii) The costs of acquiring real property or rights in real property and any costs
45 incidental thereto;46 (iii) All costs for construction materials and equipment installed at the new tourism
47 attraction project;48 (iv) The cost of contract bonds and of insurance of all kinds that may be required or
49 necessary during the course of the acquisition, construction, equipping, and
50 installation of a new tourism attraction project which is not paid by the vendor,
51 supplier, deliveryman, or contractor or otherwise provided;52 (v) All costs of architectural and engineering services, including but not limited to
53 estimates, plans and specifications, preliminary investigations, and supervision of
54 construction and installation, as well as for the performance of all the duties required
55 by or consequent to the acquisition, construction, equipping, and installation of a new
56 tourism attraction project;57 (vi) All costs required to be paid under the terms of any contract for the acquisition,
58 construction, equipping, and installation of a new tourism attraction project;

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

63 (viii) All other costs comparable with those described in this subparagraph; or
 64 (B) For existing tourism attractions, any approved costs otherwise specified in
 65 subparagraph (A) of this paragraph; provided, however, that such costs are limited to
 66 the expansion only of an existing tourism attraction and not the renovation of an
 67 existing tourism attraction.

68 (4) 'Incremental sales and use tax' means those state and local sales and use taxes
 69 generated by the tourism attraction project above the amount of such sales and use taxes
 70 generated by the previous use of the property on which such project is located except as
 71 otherwise provided in Code Section 48-8-278.

72 (5) 'Tourism attraction' means a cultural or historical site; a recreation or entertainment
 73 facility; a convention hotel and conference center; an automobile race track with other
 74 tourism amenities; a golf course facility with other tourism amenities; marinas and water
 75 parks with lodging and restaurant facilities designed to attract tourists to the State of
 76 Georgia; or a Georgia crafts and products center. A tourism attraction shall not include
 77 the following:

78 (A) Facilities that are primarily devoted to the retail sale of goods, shopping centers,
 79 restaurants, or movie theaters; or

80 (B) Recreational facilities that do not serve as likely destinations where individuals
 81 who are not residents of this state would remain overnight in commercial lodging at the
 82 tourism attraction.

83 (6) 'Tourism attraction project' or 'project' means the real estate acquisition, including the
 84 acquisition of real estate by a leasehold interest with a minimum term of 30 years,
 85 construction, and equipping of a tourism attraction; the construction and installation of
 86 improvements to facilities necessary or desirable for the acquisition, construction, and
 87 installation of a tourism attraction, including but not limited to surveys; installation of
 88 utilities, which may include water, sewer, sewage treatment, gas, electricity,
 89 communications, and similar facilities; and off-site construction of utility extensions if
 90 paid for by the approved company. Such term shall not include the renovation of an
 91 existing tourism attraction.

92 48-8-272.

93 The General Assembly finds and declares that the general welfare and material well-being
 94 of the citizens of this state depend in large measure upon the development of tourism in the

95 state; that it is in the best interest of this state to induce the creation of tourism attractions
 96 or expansion of existing tourism attractions within this state in order to advance the public
 97 purposes of relieving unemployment by preserving and creating jobs that would not exist
 98 if not for the sales and use tax refund offered by the State of Georgia to approved
 99 companies and preserving and creating sources of tax revenues for the support of public
 100 services provided by the state; that the purposes to be accomplished under the provisions
 101 of this article are proper governmental and public purposes for which public moneys may
 102 be expended; and that the inducement of the creation of tourism attraction projects is of
 103 paramount importance to the economy of the state, mandating that the provisions of this
 104 article are to be liberally construed and applied in order to advance public purposes.

105 48-8-273.

106 (a) In the sole discretion of the Governor, in consideration of the execution of the
 107 agreement, each approved company shall be granted a sales and use tax refund from the
 108 incremental sales and use tax on the sales generated by the approved company and arising
 109 at the tourism attraction.

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

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

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

116 (2) The date the tourism attraction opens for business and begins to collect sales and use
 117 taxes.

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

122 (e) The total sales and use tax refund allowed to the approved company over the term of
 123 the agreement shall be equal to the lesser of the total amount of the incremental sales and
 124 use tax liability of the approved company or 25 percent of the approved costs for the
 125 tourism attraction project. The incremental sales and use tax refund shall accrue over the
 126 term of the agreement in an annual amount equal to the lesser of the incremental sales and
 127 use tax liability of the approved company for that year or 2.5 percent of the approved costs.

128 (f) On or before March 31 of each year during the term of the agreement, an approved
 129 company shall file with the Department of Revenue a claim for the incremental sales and

130 use tax refund collected by the approved company and remitted to the Department of
 131 Revenue during the preceding calendar year pursuant to subsection (e) of this Code section.

132 (g) The Department of Revenue, in consultation with the Department of Community
 133 Affairs and other appropriate state agencies, shall promulgate administrative regulations
 134 and require the filing of a refund form designed by the Department of Revenue to reflect
 135 the intent of this article.

136 (h) No sales and use tax refund shall be granted to an approved project which is during a
 137 tax year simultaneously receiving any other state tax incentive.

138 (i) Any sales and use tax refund shall be first applied to any outstanding tax obligation of
 139 the approved company which is due and payable to the state.

140 48-8-274.

141 (a) The commissioner of community affairs, in consultation with the Governor and other
 142 appropriate state agencies, shall establish standards for the filing of an application for
 143 tourism attraction projects by the promulgation of administrative regulations.

144 (b) An application for a tourism attraction project filed with the Department of Community
 145 Affairs shall include, but not be limited to:

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

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

149 (3) Capital and other anticipated expenditures for the tourism attraction project and the
 150 anticipated sources of funding for such project;

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

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

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

155 (c) Following the filing of the application, the Department of Community Affairs shall
 156 submit the application to an independent consultant who shall perform an in depth analysis
 157 of the proposed project. All costs associated with such analysis shall be paid for by the
 158 approved company.

159 (d) The Governor may, in the Governor's sole discretion, grant approval to the tourism
 160 attraction project if the project shall:

161 (1) Have approved costs in excess of \$1 million and such project is to be a tourism
 162 attraction;

163 (2) Have a significant and positive economic impact on the state considering, among
 164 other factors, the extent to which the tourism attraction project will compete directly with
 165 tourism attractions in this state and the amount by which increased state local tax

166 revenues from the tourism attraction project will exceed the refund to be given to the
167 approved company;

168 (3) Produce sufficient revenues and public demand to be operating and open to the public
169 for a minimum of 100 days per year, including the first year of operation;

170 (4) Not adversely affect existing employment in the state;

171 (5) For each year following the third year of operation, attract a minimum of 25 percent
172 of its visitors from nonresidents of this state; and

173 (6) Meet such other criteria as deemed appropriate by the Governor.

174 48-8-275.

175 Following approval by the Governor, the Department of Community Affairs shall enter into
176 an agreement with any approved company which may also include as a partner any local
177 development authority, and the terms and provisions of each agreement shall include, but
178 not be limited to:

179 (1) The projected amount of approved costs, provided that any increase in approved costs
180 incurred by the approved company and agreed to by the Department of Community
181 Affairs shall apply retroactively for purposes of calculating the carry forward for unused
182 sales and use tax refunds as set forth in subsection (e) of Code Section 48-8-273 for tax
183 years commencing on or after July 1, 2011;

184 (2) A date certain by which the approved company shall have completed the tourism
185 attraction project and begun operations. Upon request from any approved company that
186 has received final approval, the Department of Community Affairs shall grant an
187 extension or change, which in no event shall exceed 18 months from the date of final
188 approval, to the completion date as specified in the agreement with an approved
189 company; and

190 (3) A statement specifying the term of the agreement in accordance with subsection (c)
191 of Code Section 48-8-273.

192 48-8-276.

193 In the event an approved company fails to abide by the terms of the agreement, then such
194 agreement shall be void and all sales and use tax proceeds which were refunded shall
195 become immediately due and payable back to the state and to the governing authority of
196 any county or municipality whose approval was required under paragraph (2) of Code
197 Section 48-8-271.

198 48-8-277.

199 An approved company may, in the discretion of the Governor, transfer its rights, duties,
200 and obligations under the agreement to a successor company if the successor company
201 meets the qualifications of an approved company and, upon such approval by the Governor,
202 such successor approved company shall be authorized to receive the sales and use tax
203 refunds for the remaining duration of the agreement if it abides by the terms of the
204 agreement.

205 48-8-278.

206 This article shall not apply to the sales tax for educational purposes levied pursuant to Part
207 2 of Article 3 of this chapter and Article VIII, Section VI, Paragraph IV of the
208 Constitution."

209 **SECTION 3.**

210 In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared
211 or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other
212 sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full
213 force and effect as if the section, subsection, sentence, clause, or phrase so declared or
214 adjudged invalid or unconstitutional were not originally a part hereof. The General
215 Assembly declares that it would have passed the remaining parts of this Act if it had known
216 that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

217 **SECTION 4.**

218 This Act shall become effective on July 1, 2011.

219 **SECTION 5.**

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