

The Senate Committee on Finance offered the following substitute to HB 317:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated,
2 relating to excise tax on rooms, lodgings, and accommodations, so as to revise the definition
3 of "innkeeper" to include marketplace facilitators; to define the term "marketplace
4 innkeeper"; to expand the state levy of a nightly excise tax to include all rooms, lodgings, and
5 accommodations; to provide for exceptions; to provide for optional return of funds by a
6 destination marketing organization to certain municipalities levying certain excise taxes; to
7 provide for related matters; to provide for an effective date and applicability; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 3 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to
12 excise tax on rooms, lodgings, and accommodations, is amended in Code Section 48-13-50.2,
13 relating to definitions, by revising paragraph (2) and adding a new paragraph to read as
14 follows:

15 "(2) 'Innkeeper' means ~~any person who is subject to taxation under this article for the~~
16 ~~furnishing for value to the public any rooms, lodgings, or accommodations;~~

- 17 (A) Any person that furnishes for value to the public any room or rooms, lodgings, or
 18 accommodations in a county or municipality and that is licensed by, or required to pay
 19 business or occupation taxes to, such municipality or county for operating a hotel,
 20 motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which
 21 room or rooms, lodgings, or accommodations are regularly furnished for value; or
 22 (B) A dealer as defined in subparagraph (M.3) of paragraph (8) of Code Section 48-8-2
 23 that is required to collect and remit the tax imposed by Article 1 of Chapter 8 of this
 24 title for acting as a marketplace facilitator as such term is defined in paragraph (18.1)
 25 of Code Section 48-8-2 for facilitating the furnishing for value to the public any room
 26 or rooms, lodgings, or accommodations on behalf of another person.
 27 (2.1) 'Marketplace innkeeper' means an innkeeper as defined in subparagraph (B) of
 28 paragraph (2) of this Code section."

29 **SECTION 2.**

30 Said article is further amended by revising Code Section 48-13-50.3, relating to additional
 31 tax imposed by innkeepers, forms for reporting, use of funds from additional taxes, and
 32 provisions for termination, as follows:

33 "48-13-50.3.

34 (a) As used in this Code section, the term:

35 (1) 'Extended stay rental' means providing for value to the public a hotel or motel room
 36 for longer than 30 consecutive days to the same customer.

37 ~~(2) 'Innkeeper' means any person who is subject to taxation under this article for the~~
 38 ~~furnishing for value to the public a hotel or motel room.~~

39 ~~(3) 'Transportation purposes' means activities incident to providing and maintaining an~~
 40 ~~adequate system of public roads and bridges in this state and for grants to counties for~~
 41 ~~road construction and maintenance.~~

42 ~~(4)~~(3) 'Transit' means regular, continuing shared-ride or shared-use surface transportation
43 services that are made available by or funded by a public entity or quasi-public entity and
44 are open to the general public or open to a segment of the general public defined by age,
45 disability, or low income. Such term includes services or systems operated by or under
46 contract with the state, a state agency or authority, a local government, a community
47 improvement district, or any other similar entity of this state and all accompanying
48 infrastructure and services necessary to provide access to these modes of transportation.
49 Such term excludes charter or sightseeing services; school bus services; courtesy shuttle
50 and intrafacility or terminal services; limousine carriers; and ride share network services,
51 transportation referral services, and taxi services as such terms are defined in Chapter 1
52 of Title 40 and which are not paid for by a public entity.

53 ~~(5)~~(4) 'Transit projects' means and includes purposes to establish, enhance, operate, and
54 maintain, or improve access to transit, including the issuance of grants for the provision
55 of transit, the issuance of general obligation debt and other multiyear obligations to
56 finance such projects, the financing of operations and maintenance of such projects once
57 constructed, and the contracted purchase of transit from providers without direct capital
58 investment.

59 ~~(b) On or after July 1, 2015, each innkeeper in this state shall charge a \$5.00 per night fee~~
60 ~~to the customer, unless it is an extended stay rental, for each calendar day a hotel or motel~~
61 ~~room is rented or leased. The innkeeper shall collect the fee at the time the customer pays~~
62 ~~for the rental or lease of such hotel or motel room. The innkeeper collecting the fee shall~~
63 ~~remit the fee on a monthly basis to the department.~~

64 (b)(1) On and after July 1, 2021, an excise tax of \$5.00 per night shall be levied upon the
65 rental or lease of any room, lodging, or accommodation by an innkeeper.

66 (2) Taxes levied pursuant to this Code section shall be collected by the innkeeper from
67 the customer at the time the customer pays for its rental or lease of any room, lodging,

68 or accommodation. Any innkeeper collecting such taxes shall remit the amounts
69 collected to the department on a monthly basis.

70 (3) Extended stay rentals shall be exempt from the tax levied by this Code section.

71 (4) Lodging or accommodations that do not provide physical shelter shall be exempt
72 from the tax levied by this Code section.

73 (c) The commissioner shall promulgate and make available forms for the use of innkeepers
74 to assist in compliance with this Code section. The commissioner shall promulgate rules
75 and regulations as necessary to implement and administer the provisions of this Code
76 section.

77 (d) It is the intention of the General Assembly, subject to appropriations, that the fees
78 collected pursuant to subsection (b) of this Code section shall be made available and used
79 exclusively for transportation purposes in this state with up to 10 percent of the fees
80 collected to be appropriated for transit projects.

81 (e) If the amount collected under this Code section is ever not appropriated for a fiscal year
82 as provided by subsection (d) of this Code section, as determined jointly by the House
83 Budget and Research Office and the Senate Budget and Evaluation Office, then the amount
84 collected shall be reduced by 50 percent. Upon the conclusion of a second fiscal year in
85 which the amount collected is not so appropriated, this Code section shall stand repealed
86 and reserved, and such fees shall cease to be collected, on the date the appropriations Act
87 for such fiscal year becomes effective. Such budget offices shall certify any such lack of
88 appropriation to the Code Revision Commission for purposes of updating the Code in
89 accordance with this subsection."

90

SECTION 3.

91 Said article is further amended by adding a new Code section to read as follows:

92 "48-13-50.4.

93 (a) A marketplace innkeeper shall constitute the innkeeper with respect to the transactions
94 taxable pursuant to this article that it facilitates on behalf of another person. All taxes
95 levied or imposed by this article on transactions facilitated by a marketplace innkeeper
96 shall be paid by the purchaser to the marketplace innkeeper.

97 (b) The marketplace innkeeper shall remit all taxes in the manners provided in this article
98 and, when received by the taxing authority, such taxes shall be credited against the taxes
99 imposed by this article on the furnishing for value to the public any room or rooms,
100 lodgings, or accommodations.

101 (c) Each marketplace innkeeper shall be liable for the full amount of taxes levied or
102 imposed by this article on its transactions or the amount of tax collected by such
103 marketplace innkeeper from all purchasers on all such transactions, whichever is greater.

104 (d) A transaction that is not taxable to the purchaser shall not be taxable to the marketplace
105 innkeeper. Taxes collected and remitted by a marketplace innkeeper pursuant to this article
106 shall be subject to the credit otherwise granted by this article for like taxes previously paid
107 in another state.

108 (e) This Code section shall not be construed to require a duplication in the payment of any
109 tax.

110 (f) A person shall not be obligated to collect and remit or be liable for the taxes levied or
111 imposed by this article on any transaction for which its marketplace innkeeper is obligated
112 and liable.

113 (g) The taxing authority shall only audit the marketplace innkeeper for sales made by it on
114 behalf of another person except to the extent the marketplace innkeeper seeks relief through
115 subsection (h) of this Code section.

116 (h) A marketplace innkeeper is relieved of liability for failure to collect and remit the
117 correct amount of tax imposed by this article to the extent that the marketplace innkeeper
118 demonstrates to the satisfaction of the taxing authority that the error was due to insufficient

119 or incorrect information given to the marketplace innkeeper by the person on whose behalf
120 the sale was facilitated and the marketplace innkeeper made a reasonable effort to obtain
121 correct and sufficient information from such person; provided, however, that this
122 subsection shall not apply if the marketplace innkeeper and such person are related
123 members as defined in Code Section 48-7-28.3. If a marketplace innkeeper is relieved of
124 liability under this subsection, the person on whose behalf the sale was facilitated shall be
125 solely liable for the amount of uncollected tax.

126 (i) A person that is a franchisor as such term is defined by 16 C.F.R. 436.1 shall not be a
127 marketplace innkeeper with respect to any innkeeper as defined in subparagraph (A) of
128 paragraph (2) of Code Section 48-13-50.2 that is its franchisee, as such term is defined by
129 16 C.F.R. 436.1, and that would otherwise be a marketplace innkeeper of such franchisor,
130 provided that:

131 (1) In the prior calendar year, such franchisor and all of its franchisees combined made
132 annual gross sales in the United States of at least \$500 million in aggregate;

133 (2) Such franchisee maintains a valid certificate of registration as required by Code
134 Section 48-8-59; and

135 (3) Such franchisee and franchisor maintain a valid contract providing that the franchisee
136 will collect and remit all applicable taxes and fees that the franchisor would otherwise be
137 required to collect and remit as a marketplace innkeeper for such franchisee."

138 **SECTION 4.**

139 Said article is further amended in Code Section 48-13-51, relating to county and municipal
140 levies on public accommodations, by revising paragraph (1) of subsection (a), paragraphs (1),
141 (2), and (3) of subsection (b), and subsection (b.1), and by adding a new subsection to read
142 as follows:

143 "(a)(1)(A)(i) The governing authority of each municipality in this state may levy and
144 collect an excise tax upon the furnishing for value to the public of any room or rooms,

145 lodgings, or accommodations facilitated or furnished by an innkeeper ~~any person or~~
146 ~~legal entity licensed by, or required to pay business or occupation taxes to, the~~
147 ~~municipality for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin,~~
148 ~~campground, or any other place in which rooms, lodgings, or accommodations are~~
149 ~~regularly furnished for value.~~

150 (ii) Within the territorial limits of the special district located within the county, each
151 county in this state may levy and collect an excise tax upon the furnishing for value
152 to the public of any room or rooms, lodgings, or accommodations facilitated or
153 ~~furnished by any person or legal entity licensed by, or required to pay business or~~
154 ~~occupation taxes to, the county for operating within the special district a hotel, motel,~~
155 ~~inn, lodge, tourist camp, tourist cabin, campground, or any other place in which~~
156 ~~rooms, lodgings, or accommodations are regularly furnished for value~~ an innkeeper.

157 (iii) The provisions of this Code section shall control over the provisions of any local
158 ordinance or resolution to the contrary enacted pursuant to Code Section 48-13-53 and
159 in effect prior to July 1, 1998, or enacted pursuant to this article and in effect prior to
160 July 1, 2021. Any such ordinance shall not be deemed repealed by this Code section
161 but shall be administered in conformity with this Code section.

162 (B)(i) The excise tax shall be imposed on ~~any person or legal entity licensed by or~~
163 ~~required to pay a business or occupation tax to the governing authority imposing the~~
164 ~~tax for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground,~~
165 ~~or any other place in which rooms, lodgings, or accommodations are regularly~~
166 ~~furnished for value~~ the innkeeper and shall apply to the furnishing for value of any
167 room, lodging, or accommodation. Every person or entity subject to a tax levied as
168 provided in this Code section shall, except as provided in this Code section, be liable
169 for the tax at the applicable rate on the lodging charges actually collected or, if the
170 amount of taxes collected from the ~~hotel or motel~~ guest is in excess of the total

171 amount that should have been collected, the total amount actually collected must be
172 remitted.

173 (ii) Any tax levied as provided in this Code section is also imposed upon every
174 person or entity who is a ~~hotel or motel~~ guest and who receives a room, lodging, or
175 accommodation that is subject to the tax levied under this Code section. Every such
176 guest subject to the tax levied under this Code section shall pay the tax to the ~~person~~
177 ~~or entity~~ innkeeper providing or facilitating the room, lodging, or accommodation.
178 The tax shall be a debt of the person obtaining the room, lodging, or accommodation
179 to the ~~person or entity~~ innkeeper providing or facilitating such room, lodging, or
180 accommodation until it is paid and shall be recoverable at law by the ~~person or entity~~
181 innkeeper providing or facilitating such room, lodging, or accommodation in the same
182 manner as authorized for the recovery of other debts. The ~~person or entity~~ innkeeper
183 collecting the tax from the ~~hotel or motel~~ guest shall remit the tax to the governing
184 authority imposing the tax, and the tax remitted shall be a credit against the tax
185 imposed by division (i) of this subparagraph on the ~~person or entity~~ innkeeper
186 providing or facilitating the room, lodging, or accommodation.

187 (C) Reserved.

188 (D) Except as provided in paragraphs (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5),
189 (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), and (5.3) of this
190 subsection, no tax levied pursuant to this Code section shall be levied or collected at a
191 rate exceeding 3 percent of the charge to the public for the furnishings."

192 "(b)(1) Except as provided in paragraphs (2) and (3) of subsection (a) of this Code
193 section, any new excise taxes which are first levied pursuant to this Code section after
194 July 1, 2008, or any new excise tax which is first levied following the termination of a
195 previous levy pursuant to this Code section after July 1, 2008, shall be levied pursuant
196 to this subsection.

197 (2) The governing authority of each municipality in this state may levy an excise tax
198 pursuant to this subsection at a rate not to exceed 8 percent of the charge for the
199 furnishing for value to the public of any room or rooms, lodgings, or accommodations
200 furnished or facilitated by ~~any person or legal entity licensed by, or required to pay~~
201 ~~business or occupation taxes to, the municipality for operating a hotel, motel, inn, lodge,~~
202 ~~tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or~~
203 ~~accommodations are regularly or periodically furnished for value~~ an innkeeper.

204 (3) Within the territorial limits of the special district located within the county, each
205 county in this state may levy an excise tax pursuant to this subsection at a rate not to
206 exceed 8 percent of the charge for the furnishing for value to the public of any room or
207 rooms, lodgings, or accommodations furnished or facilitated by ~~any person or legal entity~~
208 ~~licensed by, or required to pay business or occupation taxes to, the county for operating~~
209 ~~within the special district a hotel, motel, inn, lodge, tourist camp, tourist cabin,~~
210 ~~campground, or any other place in which rooms, lodgings, or accommodations are~~
211 ~~regularly or periodically furnished for value~~ an innkeeper."

212 "(b.1) As an alternative to the provisions of subsection (b) of this Code section, any county
213 (within the territorial limits of the special district located within the county) and any
214 municipality which is levying a tax under this Code section at the rate of 6 percent under
215 paragraph (3.4) or (4) of subsection (a) of this Code section shall be authorized to levy a
216 tax under this Code section at the rate of 7 percent in the manner provided in this
217 subsection. Both the county and municipality shall adopt a resolution which shall specify
218 that an amount equal to the total amount of taxes collected under such levy at a rate of 6
219 percent shall continue to be expended as it was expended pursuant to either paragraph (3.4)
220 or (4) of subsection (a) of this Code section, as applicable, and such resolution shall specify
221 the manner of expenditure of funds for an amount equal to the total amount of taxes
222 collected under such levy that exceeds the amount that would be collected at the rate of 6
223 percent for any tourism, convention, or trade show purposes, tourism product development

224 purposes, or any combination thereof. Each resolution shall be required to be ratified by
225 a local Act of the General Assembly. Only when both such local Acts have become law,
226 the governing authority of the county and municipality shall be authorized to levy an excise
227 tax pursuant to this subsection at the rate of 7 percent of the charge for the furnishing for
228 value to the public of any room or rooms, lodgings, or accommodations furnished or
229 facilitated by any person or legal entity licensed by, or required to pay business or
230 ~~occupation taxes to, the municipality for operating a hotel, motel, inn, lodge, tourist camp,~~
231 ~~tourist cabin, campground, or any other place in which rooms, lodgings, or~~
232 ~~accommodations are regularly or periodically furnished for value~~ an innkeeper."
233 "(k) On and after July 1, 2021, the destination marketing organization of a municipality
234 that imposes the tax authorized by subsection (b) of this Code section may elect to return
235 any portion of the proceeds resulting from such tax to the municipality within which they
236 were levied, and such funds shall be used by the municipality for tourism product
237 development."

238

SECTION 5.

239 This Act shall become effective on July 1, 2021, and shall apply to each incidence of the
240 furnishing for value to the public any room or rooms, lodgings, or accommodations occurring
241 on or after July 1, 2021; provided, however, that the provisions of Section 2 of this Act shall
242 not be applicable to any rental or lease for value to the public of any room or rooms,
243 lodgings, or accommodations which are not hotel or motel rooms for which a reservation was
244 made and any payment or deposit was tendered prior to July 1, 2021.

245

SECTION 6.

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