

House Bill 317 (AS PASSED HOUSE AND SENATE)

By: Representatives Stephens of the 164th, Frye of the 118th, Smith of the 133rd, Rich of the 97th, Dollar of the 45th, and others

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 related matters; to provide for an
6 effective date and applicability; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

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

15 (A) Any person that furnishes for value to the public any room or rooms, lodgings, or
16 accommodations in a county or municipality and that is licensed by, or required to pay

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

27 **SECTION 2.**

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

31 "48-13-50.3.

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

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

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

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

40 ~~(4)~~(3) 'Transit' means regular, continuing shared-ride or shared-use surface transportation
 41 services that are made available by or funded by a public entity or quasi-public entity and
 42 are open to the general public or open to a segment of the general public defined by age,

43 disability, or low income. Such term includes services or systems operated by or under
44 contract with the state, a state agency or authority, a local government, a community
45 improvement district, or any other similar entity of this state and all accompanying
46 infrastructure and services necessary to provide access to these modes of transportation.
47 Such term excludes charter or sightseeing services; school bus services; courtesy shuttle
48 and intrafacility or terminal services; limousine carriers; and ride share network services,
49 transportation referral services, and taxi services as such terms are defined in Chapter 1
50 of Title 40 and which are not paid for by a public entity.

51 ~~(5)~~(4) 'Transit projects' means and includes purposes to establish, enhance, operate, and
52 maintain, or improve access to transit, including the issuance of grants for the provision
53 of transit, the issuance of general obligation debt and other multiyear obligations to
54 finance such projects, the financing of operations and maintenance of such projects once
55 constructed, and the contracted purchase of transit from providers without direct capital
56 investment.

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

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

64 (2) Taxes levied pursuant to this Code section shall be collected by the innkeeper from
65 the customer at the time the customer pays for its rental or lease of any room, lodging,
66 or accommodation. Any innkeeper collecting such taxes shall remit the amounts
67 collected to the department on a monthly basis.

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

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

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

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

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

88 **SECTION 3.**

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

90 "48-13-50.4.

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

- 95 (b) The marketplace innkeeper shall remit all taxes in the manners provided in this article
96 and, when received by the taxing authority, such taxes shall be credited against the taxes
97 imposed by this article on the furnishing for value to the public any room or rooms,
98 lodgings, or accommodations.
- 99 (c) Each marketplace innkeeper shall be liable for the full amount of taxes levied or
100 imposed by this article on its transactions or the amount of tax collected by such
101 marketplace innkeeper from all purchasers on all such transactions, whichever is greater.
- 102 (d) A transaction that is not taxable to the purchaser shall not be taxable to the marketplace
103 innkeeper. Taxes collected and remitted by a marketplace innkeeper pursuant to this article
104 shall be subject to the credit otherwise granted by this article for like taxes previously paid
105 in another state.
- 106 (e) This Code section shall not be construed to require a duplication in the payment of any
107 tax.
- 108 (f) A person shall not be obligated to collect and remit or be liable for the taxes levied or
109 imposed by this article on any transaction for which its marketplace innkeeper is obligated
110 and liable.
- 111 (g) The taxing authority shall only audit the marketplace innkeeper for sales made by it on
112 behalf of another person except to the extent the marketplace innkeeper seeks relief through
113 subsection (h) of this Code section.
- 114 (h) A marketplace innkeeper is relieved of liability for failure to collect and remit the
115 correct amount of tax imposed by this article to the extent that the marketplace innkeeper
116 demonstrates to the satisfaction of the taxing authority that the error was due to insufficient
117 or incorrect information given to the marketplace innkeeper by the person on whose behalf
118 the sale was facilitated and the marketplace innkeeper made a reasonable effort to obtain
119 correct and sufficient information from such person; provided, however, that this
120 subsection shall not apply if the marketplace innkeeper and such person are related
121 members as defined in Code Section 48-7-28.3. If a marketplace innkeeper is relieved of

122 liability under this subsection, the person on whose behalf the sale was facilitated shall be
 123 solely liable for the amount of uncollected tax.

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

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

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

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

136 **SECTION 4.**

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

140 "(a)(1)(A)(i) The governing authority of each municipality in this state may levy and
 141 collect an excise tax upon the furnishing for value to the public of any room or rooms,
 142 lodgings, or accommodations facilitated or furnished by an innkeeper ~~any person or~~
 143 legal entity licensed by, or required to pay business or occupation taxes to, the
 144 municipality for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin,
 145 campground, or any other place in which rooms, lodgings, or accommodations are
 146 regularly furnished for value.

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

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

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

170 (ii) Any tax levied as provided in this Code section is also imposed upon every
171 person or entity who is a hotel or motel guest and who receives a room, lodging, or
172 accommodation that is subject to the tax levied under this Code section. Every such
173 guest subject to the tax levied under this Code section shall pay the tax to the person

174 ~~or entity innkeeper~~ providing or facilitating the room, lodging, or accommodation.
175 The tax shall be a debt of the person obtaining the room, lodging, or accommodation
176 to the ~~person or entity innkeeper~~ providing or facilitating such room, lodging, or
177 accommodation until it is paid and shall be recoverable at law by the ~~person or entity~~
178 innkeeper providing or facilitating such room, lodging, or accommodation in the same
179 manner as authorized for the recovery of other debts. The ~~person or entity innkeeper~~
180 collecting the tax from the ~~hotel or motel~~ guest shall remit the tax to the governing
181 authority imposing the tax, and the tax remitted shall be a credit against the tax
182 imposed by division (i) of this subparagraph on the ~~person or entity innkeeper~~
183 providing or facilitating the room, lodging, or accommodation.

184 (C) Reserved.

185 (D) Except as provided in paragraphs (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5),
186 (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
187 subsection, no tax levied pursuant to this Code section shall be levied or collected at a
188 rate exceeding 3 percent of the charge to the public for the furnishings."

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

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

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

209 "(b.1) As an alternative to the provisions of subsection (b) of this Code section, any county
210 (within the territorial limits of the special district located within the county) and any
211 municipality which is levying a tax under this Code section at the rate of 6 percent under
212 paragraph (3.4) or (4) of subsection (a) of this Code section shall be authorized to levy a
213 tax under this Code section at the rate of 7 percent in the manner provided in this
214 subsection. Both the county and municipality shall adopt a resolution which shall specify
215 that an amount equal to the total amount of taxes collected under such levy at a rate of 6
216 percent shall continue to be expended as it was expended pursuant to either paragraph (3.4)
217 or (4) of subsection (a) of this Code section, as applicable, and such resolution shall specify
218 the manner of expenditure of funds for an amount equal to the total amount of taxes
219 collected under such levy that exceeds the amount that would be collected at the rate of 6
220 percent for any tourism, convention, or trade show purposes, tourism product development
221 purposes, or any combination thereof. Each resolution shall be required to be ratified by
222 a local Act of the General Assembly. Only when both such local Acts have become law,
223 the governing authority of the county and municipality shall be authorized to levy an excise
224 tax pursuant to this subsection at the rate of 7 percent of the charge for the furnishing for
225 value to the public of any room or rooms, lodgings, or accommodations furnished or
226 facilitated by ~~any person or legal entity licensed by, or required to pay business or~~
227 ~~occupation taxes to, the municipality for operating a hotel, motel, inn, lodge, tourist camp,~~

228 ~~tourist cabin, campground, or any other place in which rooms, lodgings, or~~
229 ~~accommodations are regularly or periodically furnished for value an innkeeper."~~

230

SECTION 5.

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

237

SECTION 6.

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