

# Accommodations Tax 101

*Presented By:*

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# Accommodations Tax 101

## Article 3

Title 48, Chapter 13

O.C.G.A. 48-13-50 ... 48-13-56

*Excise Tax on Rooms Lodging and  
Accommodations*

*Enacted in 1978*

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## O.C.G.A. 48-13-51(a)

- ❑ Currently 25 different tax authorizations under various conditions – (see Handout 1)
- ❑ **Update** – House Bills 302 and 1168 increased this from 23 on (*later in presentation*)
- ❑ Allowable tax rates vary from 3% *or less\** to 8%
- ❑ Each authorization has unique set of expenditure requirements for *restricted portion* of revenue

(\*only the basic 3% authorization and the new authorization created by HB1168 authorize a tax greater than or less than the rate specified)

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## Must a Bed and Breakfast Collect the Tax?

**48-13-51(a) (1) (A)**

Local governments may levy and collect an excise tax upon the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the municipality for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value.

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## Exemptions - *continued*

48-13-51(h)(4)

Does not apply to charges imposed for any continuous occupancy after the first **thirty** **days** of continuous occupancy

Does apply for each of the first thirty days even if the continuous occupancy exceeds thirty days

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## Exemptions - *continued*

48-13-51(h)(1)

Does not apply to any persons who certify that they are staying in such room, lodging, or accommodation as a result of the destruction of their home or residence by fire or other casualty

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## Exemptions - *continued*

48-13-51(h)(3)

- Does not apply to Georgia state or local government officials or employees when traveling on official business

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## Inn Keepers' Records and Books

48-13-53.4

Each innkeeper is required to file a return and pay taxes under this article must keep:

- Suitable records of the charges taxable under this article; and
- Other books of account which are necessary to determine the amount of tax due.

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## Auditing of Innkeepers' Records

48-13-53.4

- All books, invoices, and other records must be open to examination at all reasonable hours by the governing authority imposing a tax under this article.

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Generally the *restricted portion* of tax revenue must be used for:

- Promoting, attracting, stimulating, and developing conventions and tourism
- However, allowable uses vary

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O.C.G.A. 48-13-51(a)(1) thru (a)(2)

Basic 3% tax

- ❑ Used by 17% of Governments
- ❑ *Restricted portion* must be used for the promotion of tourism, conventions, and trade shows
- ❑ How much is *restricted*?

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## O.C.G.A. 48-13-51(a)(1) thru (a)(2)

- ❑ Must expend a percentage of total taxes collected which is not less than the percentage of such tax collections expended for promoting tourism, conventions, and trade shows in immediately preceding fiscal year

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## O.C.G.A. 48-13-51(a)(1) thru (a)(2)

- ❑ If in preceding year any portion of tax was expended for such purpose through grant or contract with the state, a department of the state, state authority, or private sector nonprofit, then:
- ❑ Each fiscal year thereafter, at least the same percentage must be expended for such purpose through a contract(s) with one or more such entities

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## O.C.G.A. 48-13-51(a)(1) thru (a)(2)

- Expenditure requirements of this paragraph (basic 3% Tax) shall cease to apply to a government which levies a tax at a rate in excess of 3 percent, as allowed under any other authorizations

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- ❑ The expenditure requirements for the other authorizations vary greatly
- ❑ Generally - must spend an amount equal to the amount by which the total taxes collected exceed the taxes which would be collected at a rate of 3 percent
  - 5% tax -- 40% of revenue restricted
  - 6% tax -- 50% of revenue restricted
  - 7% tax -- 57.145% of revenue restricted
  - 8% tax -- 62.5% of revenue restricted

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***Restricted Portion*** not always restricted for promotion of tourism, conventions and trade shows

## ***Example:***

Under O.C.G.A.48-13-51(a)(2.1) the restricted portion must be expended for the ***purpose of general recreation***

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**Promotion of tourism,  
conventions and trade shows**

**What exactly does this mean?**

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O.C.G.A.48-13-50.2(4)

- “Promoting tourism, conventions, and trade shows” is defined as:
  - Planning, conducting, or participating in programs of information and publicity designed to attract or advertise tourism, conventions, or trade shows

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- ❑ Most authorizations require all or part of the restricted funds to be expended through a contract or contracts with the state, a department of state government, a state authority, or a private sector nonprofit organization or as provided in 5% authorization provided by 48-13-51(a)(3) a Convention Visitors Bureau Authority created by a local act of the General Assembly for a municipality (not for a county?)

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48-13-50.2(3)

## **A Private sector nonprofit defined:**

- ❑ A chamber of commerce, convention and visitors bureau, regional travel association, or any other private group organized for similar purposes which is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986

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## Private Sector Nonprofit

### *Exception to the Rule*

- A county or municipality which has prior to April 1, 1990, contracted for a required expenditure under this Code section with a private group which is exempt from federal income tax under provisions of Section 501(c) of the Internal Revenue Code other than Section 501(c)(6) may continue to contract for required expenditures with such a private group

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## State Authority - Defined

48-13-50.2(5)

- ❑ An authority created by state law which serves a state-wide function including, but not limited to, the Geo. L. Smith II Georgia World Congress Center Authority
- ❑ Shall not mean an authority created for support of a local government or a local purpose or function
- ❑ Shall not include authorities such as area planning and development commissions and any organizational entities they may create, regional development centers and any organizational entities they may create, or local water and sewer authorities.

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## Budgeting

O.C.G.A. 48-13-51(a)(9)(A)

- ❑ Local governments must adopt budget plan specifying how restricted funds will be expended
- ❑ Contractor (CVBs, Chambers, etc.) budgets must be incorporated into local government's tax budget plan

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## Budgeting -- *Continued*

O.C.G.A. 48-13-51(a)(9)(A)

- ❑ When contracting with other entities, must require them to provide expenditure budget
- ❑ Cost Allocation Plan might be necessary *(see Handout 2)*

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## DCA - Reporting

O.C.G.A. 48-13-56

- ❑ Each city and county as a condition of continuing authorization to impose the tax, must file annual report with the DCA
- ❑ The form numbers correspond to the specific authorizing Paragraphs

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## **DCA – Reporting** -- *Continued*

O.C.G.A. 48-13-56

- ❑ Report must specify the rate of taxation and amounts collected and expended pursuant to this article
- ❑ To assist with both the budgeting and reporting requirements, the UCOA provides a Special Revenue Fund to account for H/M tax expenditures (**Fund 275 "Hotel/Motel Tax Fund"**)

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## **DCA – Reporting** -- *Continued*

(House Bill 1415 – Effective in 2004)

- ❑ DCA Hotel/Motel Tax Report must include a Project/Contractor Information Schedule **(see Handout 3)**
- ❑ Must identify both the projects and the contracting entity involved in each hotel-motel tax expenditure
- ❑ *More to come on House Bill 1415*

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## DCA – Reporting -- *Continued* DCA Administrative Rule

- Must file with DCA a copy of most current hotel/motel tax ordinance
- Ordinance should cite authorizing paragraph
- Ordinance should contain all provisions necessary for proper administration of tax (both on local level and state compliance)  
(see Handout 4)

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## Local Government Audit Reporting Requirements

48-13-51(a)(9)(B)(i)

- A compliance determination must be made by the auditor each fiscal year and be **prominently reflected in the audited financial statements**

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## Auditors' Compliance determination must disclose:

- ❑ The amount of tax receipts, and expenditures as a percentage of tax receipts
- ❑ If the audit identifies noncompliance with the expenditure requirements, **noncompliance finding** must be included in audited financial statements

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## Contracting Entity Audit Verification

O.C.G.A. 48-13-51(9)(B)(I)(ii)

- ❑ A government contractually expending funds must require the **contracting party to provide audit verification** that they expended the funds in compliance with the law

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## Performance Review Board

(House Bill 1415 –Effective in 2004)

- ❑ Established Performance Review Board to hear complaints filed with DCA -- Eleven members **(see Hand-out 5)**
- ❑ DCA required to investigate bona fide complaints and present preliminary reports to Review Board

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## Performance Review Board

*-- Continued --*

- Review Board meets between Sept 1 and Dec 1 to review preliminary reports and to hear from interested parties
- Review Board may make changes to the preliminary reports

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## Performance Review Board

*-- Continued --*

- Final reports (approved by Board) submitted to Commissioner of DCA
- Final reports, which include any corrective action requirements, are transmitted to local governments

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## Performance Review Board

*-- Continued --*

- ❑ Local governments are required to implement a corrective action plan
- ❑ Must notify DCA Commissioner within 90 days of specific corrective actions planned/implemented

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## Performance Review Board

*-- Continued --*

- ❑ Local governments' responsibility to work with CVBs, Chambers, or other contractors as might be necessary to ensure appropriate corrective action
- ❑ Best compliance resolutions would be to correct the noncompliance within 90 days

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## Performance Review Board

*-- Continued --*

- ❑ Full implementation of corrective action plan within 90 days might not be possible
- ❑ A resolution declaring the specific corrective actions, approved by governing body is next best solution

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## Legislative Update - House Bill 302

- ❑ **Effective May 14, 2008**
- ❑ Creates new authorizing paragraph O.C.G.A.48-13-51(3.8)(A)
- ❑ Available only to a county or municipality with international horse park which was used in Olympic Games
- ❑ Eight percent tax rate

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## Legislative Update - House Bill 1168

- ❑ Created new authorizing code section 48-13-51(b) *and some global changes to H/M Tax law*
- ❑ Tax rate up to 8%
- ❑ **Governments are not required to switch** from their current authorizing paragraph and related restrictions to this new authorizing code section

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## Legislative Update - House Bill 1168

- ❑ Governments choosing to switch authorizations, or governments imposing a tax for the first time can use the new authorizing section

**OR**

- ❑ 3% authorization provided by 48-13-51(a)(2) or 5% authorization provided by 48-13-51(a)(3)

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## Legislative Update - House Bill 1168

A tax levy authorization pursuant to the new section 48-13-51(b) is conditioned upon:

- ❑ A local government resolution specifying the tax rate, indentifying the projects or tourism product development purposes, and the allocation of proceeds
- ❑ Subsequent to such resolution, a local Act by the General Assembly.

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## Legislative Update - House Bill 1168

- At least half of the revenue in excess of what would have been collected at a 5 % tax rate must be expended as indicated in next slide *(some exceptions will be discussed later)*

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## Legislative Update - House Bill 1168

- ❑ At least 50% of the excess must be expended for promoting tourism, conventions, and trade shows by the destination marketing organization *(definition to follow)* designated by the local government
- ❑ Any amount of excess not expended for promoting tourism, conventions and trade shows must be expended on Tourism Development Projects *(definition to follow)*

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## Legislative Update - House Bill 1168

### **Destination Marketing Organization means:** 48-13-50.2(1)

- A private sector nonprofit organization or other private entity which is exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code of 1986 that is supported by the tax under this article, government budget allocations, private membership, or any combination thereof and the primary responsibilities of which are to encourage travelers to visit their destinations, encourage meetings and expositions in the area, and provide visitor assistance and support as needed

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## Legislative Update - House Bill 1168

### Tourism product development means:

48-13-50.2(6)

- The creation or expansion of **physical attractions** which are available and open to the public and which improve destination appeal to visitors, support visitors' experience, and are used by visitors. Such expenditures may include capital costs and operating expenses (see handout 6)

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## Legislative Update - House Bill 1168

### Exceptions to Expenditure Requirements

48-13-51(e)(2)

- Governments may continue to expend the proceeds of the tax through a contract or contracts with the same entity or entities other than a destination marketing organization if, prior to each fiscal year in which the tax is imposed, the county or municipality adopts a budget plan specifying how the proceeds of such tax are to be expended. And:

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## Legislative Update - House Bill 1168

### Exceptions to Expenditure Requirements – *Continued* 48-13-51(e)(2)

- ❑ Prior to the adoption of such budget plan, such county or municipality obtains from such entity a budget plan for expenditures to be made by such entity or entities. The budget plan of such entity or entities shall be made a part of the county or municipal budget plan
- ❑ **Same budgeting/contracting requirements if contracting with destination marketing organization**

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## Legislative Update - House Bill 1168 Article-wide Changes

- Any requirement that a tax under this article be expended in the fiscal year in which it is collected shall be satisfied so long as fiscal year expenditures conform with the budget plan required in either paragraph 48-13-51(a)(9) or 48-13-51(e) of this Code section

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## Legislative Update - House Bill 1168

### Article – wide Changes

- ❑ The tax authorized by this article shall not apply to charges made for continuous use of any rooms, lodgings, or accommodations after the first 30 days of continuous occupancy (HB 1168 increased this from 10 days to 30 days)

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## Sound Administration

- ❑ Monitor Monthly Submission of Returns
- ❑ Track trends
- ❑ List reasons for revenue changes
- ❑ Track and plan auditing of revenue sources
- ❑ Equitable treatment of all tax payers through compliance

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## Monitoring Compliance

- ❑ Anticipate Revenue Based on Past Trends and New Hotels
- ❑ Budgeting/Planning for Future
- ❑ Provide a Regular Process for Reviewing the Revenue Source

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## GMA's Revenue Recovery Service

- Review existing ordinances to ensure it is up to date with current law. Provide suggested improvements for city attorney review.
- Two Phase Process
  - Analysis and Compliance – review past 36 months of returns to determine if any hotels are not paying correctly
  - Field Audits – only hotels that are suspected for noncompliance are subject to an on-site review.
- Written report including letters to notify hotels of any underpayments, assistance with any appeals or questions by hotel staff. Information on each hotel (# of rooms, etc.), 36 month payment history and graphic representation of revenue per hotel
- Information can be used by city for their own on-going compliance

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## **GMA's Revenue Recovery Service**

### **Contact Information:**

**Lou Comer**

**678-686-6260**

**lcomer@gmanet.com**

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DCA's Website Address

<http://www.dca.state.ga.us/>

Or go directly to the Office of Research's mainpage for more information about hotel/motel tax

<http://www.dca.state.ga.us/development/research/index.asp>

Under "Programs" click on either "Local Government Surveys" or "Hotel/Motel Tax Complaints"

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## Need Help?

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