

The House Committee on Ways and Means offers the following substitute to HB 378:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to revise the definition of dealer and rental motor vehicle concern; to require
3 the collection and remittance of taxes by certain persons that facilitate certain rentals of
4 motor vehicles; to define rental motor vehicle marketplace facilitators and rental motor
5 vehicle marketplace owners; to provide for related matters; to provide for an effective date
6 and applicability; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
10 amended in Code Section 48-8-2, relating to definitions for sales and use tax, by adding a
11 new subparagraph to paragraph (8) and by adding two new paragraphs to read as follows:

12 "(M.3) Acts as a rental motor vehicle marketplace facilitator to facilitate the rental of
13 a motor vehicle if such rental is taxable under this chapter, if the sales price of all such
14 rentals, combined across all its rental motor vehicle marketplace owners and the rental
15 motor vehicle marketplace facilitator itself, equals or exceeds \$100,000.00 in aggregate
16 in the previous or current calendar year;"

17 "(30.1) 'Rental motor vehicle marketplace facilitator' means a person that contracts with
18 the owner of a motor vehicle in exchange for any form of consideration to make available
19 or facilitate the rental of such motor vehicle that is taxable under this chapter on behalf
20 of such owner by directly or through any agreement or arrangement with another person:

21 (A) Providing a service that makes available or facilitates such rental in any manner,
22 including, but not limited to, promoting, marketing, advertising, taking orders or
23 reservations for, providing the physical or electronic infrastructure that brings
24 purchasers and owners of motor vehicles together for, or otherwise similarly assisting
25 the owner in making such rental, but excluding merely processing the payments for
26 such rental; and

27 (B) Collecting, charging, processing, or otherwise similarly facilitating payment for
 28 such rental on behalf of the rental motor vehicle marketplace owner.
 29 (30.2) 'Rental motor vehicle marketplace owner' means a person that conducts the rental
 30 of a motor vehicle through or facilitated by any physical or electronic marketplace or
 31 platform operated directly or indirectly by a rental motor vehicle marketplace facilitator,
 32 regardless of whether such rental motor vehicle marketplace owner is required to be
 33 registered with the department pursuant to Code Section 48-8-59."

34 SECTION 2.

35 Said chapter is further amended in Code Section 48-8-30, relating to imposition of tax, rates,
 36 and collection, by repealing and reserving subsection (c.2) of said Code section and by
 37 adding a new subsection to read as follows:

38 "(c.3)(1) A rental motor vehicle marketplace facilitator that meets the definition of a
 39 dealer provided in subparagraph (M.3) of paragraph (8) of Code Section 48-8-2 shall
 40 constitute the dealer and retailer for each rental of a motor vehicle taxable under this
 41 chapter at retail that it facilitates within or outside this state on behalf of a rental motor
 42 vehicle marketplace owner.

43 (2)(A) All taxes levied or imposed by this chapter on retail sales described in
 44 paragraph (1) of this subsection shall be paid by the purchaser to the rental motor
 45 vehicle marketplace facilitator that facilitates the rental on behalf of a rental motor
 46 vehicle marketplace owner.

47 (B) The rental motor vehicle marketplace facilitator shall remit such taxes to the
 48 commissioner as provided in this article and, when received by the commissioner, the
 49 taxes shall be credited against the taxes imposed on the retail sale.

50 (C) Each rental motor vehicle marketplace facilitator shall be liable for the full amount
 51 of taxes levied or imposed by this chapter on all retail sales described in paragraph (1)
 52 of this subsection or the amount of tax collected by such rental motor vehicle
 53 marketplace facilitator from all purchasers on all such rentals, whichever is greater.

54 (3) No rental that is not taxable to the purchaser at retail shall be taxable to the rental
 55 motor vehicle marketplace facilitator. Taxes collected and remitted by a rental motor
 56 vehicle marketplace facilitator pursuant to this subsection shall be subject to the credit
 57 otherwise granted by this article for like taxes previously paid in another state. This
 58 subsection shall not be construed to require a duplication in the payment of any tax.

59 (4) A rental motor vehicle marketplace owner shall not be obligated to collect and remit
 60 or be liable for the taxes levied or imposed by this chapter on any retail sale for which its
 61 rental motor vehicle marketplace facilitator is obligated and liable.

62 (5) The department may bring an action for a declaratory judgment in any superior court
 63 against any person that meets the definition of a dealer as provided in subparagraph (M.3)
 64 of paragraph (8) of Code Section 48-8-2, in order to establish that the collection
 65 obligation and liability established by this subsection is applicable and valid under state
 66 and federal law with respect to such a dealer. If such action presents a question for
 67 judicial determination related to the constitutionality of the imposition of taxes upon such
 68 a dealer, the court shall, upon motion, enjoin the state from enforcing the collection
 69 obligation against such a dealer. The superior court shall act on such declaratory
 70 judgment action and issue a final decision in an expeditious manner."

71 **SECTION 3.**

72 Said title is further amended by revising Code Section 48-13-91, relating to definitions
 73 relative to excise taxes on rental motor vehicles, as follows:

74 "48-13-91.

75 As used in this article, the term:

76 (1) 'Rental charge' means the total value received by a rental motor vehicle concern for
 77 the rental or lease for 31 or fewer consecutive days of a rental motor vehicle, including
 78 the total cash and nonmonetary consideration for the rental or lease, including, but not
 79 limited to, charges based on time or mileage and charges for insurance coverage or
 80 collision damage waiver but excluding all charges for motor fuel taxes or sales taxes.

81 (2) 'Rental motor vehicle' means a motor vehicle designed to carry ten or fewer
 82 passengers and used primarily for the transportation of persons that is rented or leased
 83 without a driver regardless of whether such vehicle is licensed in this state.

84 (3) 'Rental motor vehicle concern' means a:

85 (A) A person or legal entity which owns or leases five or more rental motor vehicles
 86 and which regularly rents or leases such vehicles to the public for value; or

87 (B) A rental motor vehicle marketplace facilitator that is a dealer pursuant to
 88 subparagraph (M.3) of paragraph (8) of Code Section 48-8-2 that facilitates the rental
 89 or lease of five or more rental motor vehicles to the public for value on behalf of
 90 persons or legal entities that are not rental motor vehicle concerns."

91 **SECTION 4.**

92 Said title is further amended in Code Section 48-13-93, relating to the levy and collection of
 93 excise taxes upon motor vehicle rental charges, expenditure of taxes, and purpose, by
 94 revising paragraph (1) of subsection (a) as follows:

95 "(a)(1) The governing authority of each municipality in this state may levy and collect
 96 an excise tax upon the rental charge collected by a rental motor vehicle concern on its

97 own behalf or as a rental motor vehicle marketplace facilitator on behalf of itself or
 98 another person when such charge constitutes a taxable event for purposes of sales and use
 99 tax under Article 1 of Chapter 8 of this title. Within the territorial limits of the special
 100 district located within the county, each county in this state may levy and collect an excise
 101 tax upon the rental charge collected by a rental motor vehicle concern on its own behalf
 102 or as a rental motor vehicle marketplace facilitator on behalf of itself or another person
 103 when such charge constitutes a taxable event for purposes of sales and use tax under
 104 Article 1 of Chapter 8 of this title. The tax levied pursuant to this article shall be levied
 105 or collected at the rate of 3 percent of the rental charges. The tax levied pursuant to this
 106 article shall be imposed only at the time when and place where a customer pays sales tax
 107 with respect to the rental charge. The customer who pays a rental charge that is subject
 108 to a tax levied as provided in this article shall be liable for the tax. The tax shall be paid
 109 by the customer to the rental motor vehicle concern. The tax shall be a debt of the
 110 customer to the rental motor vehicle concern until it is paid and shall be recoverable at
 111 law in the same manner as authorized for the recovery of other debts. The rental motor
 112 vehicle concern collecting the tax shall remit the tax to the governing authority imposing
 113 the tax, and the tax remitted shall be a credit against the tax imposed on the rental motor
 114 vehicle concern. Every rental motor vehicle concern subject to a tax levied as provided
 115 in this article shall be liable for the tax at the applicable rate on the charges actually
 116 collected or the amount of taxes collected from the customers, whichever is greater."

117 **SECTION 5.**

118 This Act shall become effective on July 1, 2019, and apply to all taxable leases or rentals
 119 occurring on or after July 1, 2019.

120 **SECTION 6.**

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