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REVENUE AND TAXATION

Increase in Hotel and Motel Excise Tax to Finance Industrial Bonds: Georgia Dome

CODE SECTIONS: O.C.G.A. §§ 48-13-50 to -53 (amended)
BILL NUMBER: HB 1
ACT NUMBER: 4
SUMMARY: The Act amends Chapter 13 of Title 48 of the Official Code of Georgia Annotated by increasing the rate of tax that may be levied by certain counties and municipalities on motel and hotel rooms, lodgings and accommodations, and by authorizing those counties to expend the funds collected to promote tourism and construct a convention facility.
EFFECTIVE DATE: February 3, 1989

HB 1

The Act¹ amends legislation regarding the existing business and occupation taxes levied by Georgia counties and municipalities² by permitting counties and municipalities needing to raise revenue for limited purposes to increase their present hotel-motel tax rate from six percent to seven percent.³ Particularly, the City of Atlanta and Fulton County are now authorized to set aside the additional one percent tax collected prior to July 1, 1990 to fund bonds, notes, or other obligation instruments for a multipurpose domed stadium facility.⁴ Municipalities and counties, other than the City of Atlanta and Fulton County, which decide to raise their hotel-motel taxes as permitted by HB 1 are required

1. O.C.G.A. §§ 48-13-50 to -53 (Supp. 1989).

2. The Act amends O.C.G.A. § 48-13-50 by inserting Code section 48-13-50.1. Pursuant to the state constitution, this section creates 159 special districts: one existing within the geographic boundaries of each county in the State. O.C.G.A. § 48-13-50.1 (Supp. 1989). The Georgia Constitution provides that special districts may be created to enable local governments to furnish services within the district. This provision allows governments to levy and collect fees, assessments, and taxes to help pay for the costs of providing such government services. GA. CONST. art. IX, § 2, ¶ 6.

3. O.C.G.A. § 48-13-51(a)(4) (Supp. 1989). *See also* Memorandum from Georgia Department of Audits to Representative Terry Coleman (Jan. 11, 1989) (available in Georgia State University College of Law Library).

4. May, *Dome Package Heads to House for Major Debate, With OK Expected*, Atlanta J., Jan. 25, 1989, at A12, col. 1.

to use the proceeds to "promot[e] tourism, conventions, and trade shows"⁵

The Atlanta and Fulton County proposed multipurpose domed stadium facility is to be built as an expansion of the convention facilities of the Georgia World Congress Center.⁶ The stadium will house the Atlanta Falcons professional football team and provide additional space for convention activities.⁷ While the Georgia World Congress Center already receives a portion of the hotel-motel tax from the City of Atlanta and Fulton County,⁸ those governing bodies will have the final say on the stadium since they must impose the tax allowed by HB 1.⁹ On or after July 1, 1990, 39.3% of the 7% tax (or 2.75% of room charges) would be dedicated to funding the domed stadium and other tourism-related projects.¹⁰

The Act also provides for the termination of the seven percent excise tax not later than December 31, 2017.¹¹ Should any outstanding obligation remain on the dome, however, Atlanta and Fulton County may maintain the higher tax for the benefit of the obligation holder.¹² Once the tax terminates, the authorities are required to return their hotel-motel tax rate to either three percent¹³ or five percent¹⁴ and may not continue to

5. O.C.G.A. § 48-13-51(a)(3) (Supp. 1989). This Code section remains unchanged except that the county or municipality that raises its hotel-motel tax must use the proceeds from the increased tax for a local government-owned facility. *Id.*

6. May, *Minority Plan for Ga. Dome: A New Snag?*, Atlanta J. & Const., Jan. 28, 1989, at C3, col. 1.

7. *Id.*

8. Newton, *City, County Panels Ready Their Demands for Dome Project*, Atlanta J. & Const., Feb. 4, 1989, at C2, col. 2.

9. O.C.G.A. § 48-13-51(a)(2-3) (Supp. 1989). See also Saporta, *Major Dome Land Purchase Finalized by State and CSX*, Atlanta J., Mar. 16, 1989, at C1, col. 4. The cost of the land was \$15.1 million. Additionally, CSX Corp. (a railroad and transportation company) will retain "approximately five acres for a multi-use private development on the southern edge of the domed stadium project." *Id.* at C1, col. 5. The State Properties Commission has either purchased or optioned 91% of the land needed for the dome, but still needs to acquire parcels from Metropolitan Atlanta Rapid Transit Authority (MARTA), the City of Atlanta, Georgia Power Co., and Atlanta Gas Light Co. *Id.* at C5, col. 1.

10. O.C.G.A. § 48-13-51(a)(5) (Supp. 1989). Any tax adopted under this section at the rate of six percent expires upon the levy of a tax at the rate of seven percent, but in any event prior to July 1, 1990. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. O.C.G.A. § 48-13-51(a)(1) (Supp. 1989). The Code section reads in part:

[N]o tax levied pursuant to this Code section shall be levied or collected at a rate exceeding 3 percent of the charge to the public for the furnishings, nor shall the aggregate amount of taxes levied upon the fees or charges for any rooms, lodgings, or accommodations exceed 8 percent of the charge to the public for the furnishings.

Id. This section applies to those special districts within the county. O.C.G.A. § 48-13-50.1 (Supp. 1989).

assess taxes at the seven percent rate.¹⁵

Primary opposition to the passage of HB 1 came from representatives and senators who charged that HB 1 and the proposed dome would not be a financial success.¹⁶ Rural lawmakers were encouraged to support HB 1 as an economic benefit to the entire state, not just the City of Atlanta and metropolitan counties.¹⁷ The attempt to gain rural support prompted legislators to delete any reference to county and municipal populations in the Act.¹⁸ As introduced, the bill would have amended O.C.G.A. § 48-13-51(a)(4) to permit only those municipalities and counties which the 1980 decennial census showed to have population of more than 300,000 to levy a six percent tax.¹⁹ The House Ways and Means Committee offered a substitute which did not limit the allowable tax to any particular population.²⁰

Additional opposition came from the State Attorney General who voiced personal, not legal, objections to the state subsidizing a private entity.²¹ The Attorney General explained that Fulton County and the City of Atlanta would "bear all the costs and economic risks of the project" ²² He further described the dome project as "state aid to the wealthy."²³

The bill was proposed by the Senate Banking and Finance Committee and amended by the full Senate to provide for an open-air baseball

15. O.C.G.A. § 48-13-51(a)(3) (Supp. 1989). This section states in part:

Notwithstanding the provisions of paragraph (1) of this subsection, a county [within the territorial limits of the special district located within the county] or municipality may levy a tax under this Code section at a rate of 5 percent, and the aggregate amount of all taxes may be up to 10 percent.

Id.

16. May, *House-Approved Dome Proposal Goes to Senate*, Atlanta J., Jan. 26, 1989, at A13, col. 3. *But see* Representative McKinney's statement that the "dome would have the same economic benefits to the city as Hartsfield International Airport, the MARTA transit system and the Georgia World Congress Center." *Id.*

17. *Id.* at A13, col. 1. *See also* May, *Bowers, House Subcommittee Oppose Harris's Dome Deal*, Atlanta Const., Jan. 15, 1989, at A12, col. 3. The House Ways and Means Subcommittee, which is dominated by rural lawmakers, complained that "their constituents saw little gain in a domed stadium for the football team." *Id.*

18. HB 1 (HCS), 1989 Ga. Gen. Assem.

19. HB 1, as introduced, 1989 Ga. Gen. Assem.

20. HB 1 (HCS), 1989 Ga. Gen. Assem.

21. Letter from Michael J. Bowers, Attorney General, to Governor Joe Frank Harris (Jan. 13, 1989) (available in Georgia State University College of Law Library). The letter was written in Mr. Bowers' capacity as a member of the Georgia State Financing and Investment Commission. *Id.*

22. *Id.* As Mr. Bowers saw the project, the governments would be paying the Atlanta Falcons \$6,000,000 initially, and \$6,000,000 for each year of the lease. *Id.*

23. May, *Bowers, House Subcommittee Oppose Harris's Dome Deal*, Atlanta Const., Jan. 15, 1989, at A12, col. 2. "It is not proper for the state of Georgia to be subsidizing a business, particularly one in which the participants [players] make incomes in the six figures We're not only subsidizing, [sic] them we're paying them to play in it." *Id.*

stadium.²⁴ The amendment received little recognition in the House, however, and was not included in the final version of HB 1.²⁵

The Senate presented a second amendment calling for minority participation plans to be developed for any contracts for the dome.²⁶ Originally, the amendment required that any plan developed would be "at a level consistent with the minority participation requirements . . . of any county or municipality levying" such a tax.²⁷ This provision was edited from the Senate's final amendment.²⁸

Senate passage of the minority participation amendment caused considerable debate in both houses.²⁹ The State Attorney General issued an opinion that mandatory minority participation programs might be in question following the U.S. Supreme Court's ruling in *City of Richmond v. Croson*.³⁰ Subsequent to the issuance of the Attorney General's

24. HB 1 (HCSSCA), 1989 Ga. Gen. Assem.

25. May, *House-Approved Dome Proposal Goes to Senate*, Atlanta J., Jan. 26, 1989, at A1, col. 5. "Even the amendment to offer solace to the Braves, who have been threatening to move to the Atlanta suburbs, was only briefly discussed." *Id.* at A13, col. 1.

26. HB 1 (HCSSCA), 1989 Ga. Gen. Assem. This amendment read:

Any such contract shall be required to contain provisions requiring the development of a minority participation plan for the participation of minority businesses in the design, development, construction, maintenance, and operation of such multipurpose domed stadium facility.

Id. The proposed amendment passed the Senate by 45 to 2. Final Composite Status Sheet, Mar. 15, 1989.

27. HB 1 (SFA), as introduced, 1989 Ga. Gen. Assem. This amendment received the endorsement of Senate Majority Leader Thomas F. Allgood and Senator J. Nathan Deal, Chairman, Senate Judiciary Committee. May, *Minority Plan for Ga. Dome: A New Snag?*, Atlanta J. & Const., Jan. 28, 1989, at C1, col. 1.

28. HB 1 (SFA), as introduced, 1989 Ga. Gen. Assem. This amendment read:

Any such contract shall be required to contain provisions requiring the development of a minority participation plan for the participation of minority businesses in the design, development, construction, maintenance, and operation of such multipurpose domed stadium facility *at a level consistent with the minority participation requirements applicable to the governing authority of any county or municipality levying a tax pursuant to this paragraph.*

Id. (emphasis added).

29. May, *Minority Plan for Ga. Dome: A New Snag?*, Atlanta J. & Const., Jan. 28, 1989, at C1, col. 1.

30. Newton, *City, County Panels Ready Their Demands For Dome Project*, Atlanta J. & Const., Feb. 4, 1989, at C2, col. 3. In *City of Richmond v. Croson*, 109 S. Ct. 706 (1989), the Court overturned Richmond, Virginia's mandatory 30% set-aside for minority businesses. The Court held that Richmond's minority business utilization plan was not justified by a compelling government interest because the city could not show it had previously discriminated in awarding city contracts. *Id.* at 723-24. Additionally, Richmond's fixed percent set-aside was not "narrowly tailored" to remedy any effects of prior discrimination. *Id.* at 728-29.

The Georgia Supreme Court followed the *City of Richmond* decision by striking down Atlanta's Minority and Female Business Enterprises (MFBE) Ordinance. American Sub-

opinion, the House rejected the Senate amendment³¹ and the Senate acquiesced.³² While the legislature did not include any mention of minority participation goals in HB 1, local and state officials believe that such goals could be part of the contract between the World Congress Center and local governments.³³

The implementation of HB 1 depended on the local governments to supply the necessary funding. Both Atlanta and Fulton County have approved the additional hotel-motel tax.³⁴ The World Congress Center will receive a portion of the hotel-motel tax proceeds from both the Atlanta and Fulton County governments.³⁵

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contractors Ass'n, Ga. Chapter, Inc. v. City of Atlanta, 259 Ga. 14, 376 S.E.2d 662 (1989). The 1982 Ordinance provided favored treatment for minority and female-owned businesses when awarding city contracts. *Id.* at 20, 376 S.E.2d at 666. ASA, an association of largely non-minority and nonfemale contractors, sought declaratory and injunctive relief against the affirmative action program. *Id.* at 14, 376 S.E.2d at 662. The Georgia court found that "like the Richmond plan, the MFBE denies certain citizens the opportunity to compete for a fixed percentage of public contracts based solely on their race." *Id.* at 17, 376 S.E.2d at 664. The court reiterated that strict scrutiny is to be applied to any classification based on race regardless of whether the classification is benign or remedial. A strict scrutiny analysis examines:

- 1) whether the legislation is within the power of the enacting authority [city, county, state],
- (2) whether there is convincing evidence of prior discrimination, and
- (3) whether the affirmative action program is sufficiently tailored to address the effects of past discrimination.

Id.

31. Final Composite Status Sheet, Mar. 15, 1989.

32. *Id.*

33. Newton, *City, County Panels Ready Their Demands for Dome Project*, Atlanta J. & Const., Feb. 4, 1989, at C1, col. 1. An informal poll of Atlanta City Council and Fulton County Commission members conducted by the newspaper found that most council members (14 out of 18) said they would push for minority participation in the contract. Some council members said "they would oppose the project . . . if it didn't include a firm commitment to participation goals." *Id.* at cols. 1-2. Five of seven county commissioners said they will push for participation, but "they seemed less concerned about the Legislature's rejection of requirements." *Id.* at cols. 2-3.

34. Saporta and Copeland, *Minority Hiring, Housing Fund Still Obstacles to Dome Pact*, Atlanta J. & Const., Mar. 1, 1989, at A16, cols. 2-3.

35. Newton, *City, County Panels Ready Their Demands for Dome Project*, Atlanta J. & Const., Feb. 4, 1989, at C2, col. 2-3.