

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-365
HOUSE BILL 834**

AN ACT TO AUTHORIZE THE CITIES OF WASHINGTON AND LEXINGTON TO
INCREASE THEIR ROOM OCCUPANCY TAX FOR TOURISM PROMOTION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 158 of the 1991 Session Laws reads as rewritten:

"Section 1. Occupancy Tax.

(a) ~~Authorization and scope. — The Washington City Council may by ordinance, after not less than 10 days public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations, by summer camps, or by businesses that offer to rent no more than five units.

(a1) Additional tax. — In addition to the tax authorized by subsection (a) of this section, the Washington City Council may levy a room occupancy and tourism development tax of three percent (3%) of the gross receipts derived from the rental of accommodations taxable under that subsection. The levy, collection, administration, use, and repeal of the tax authorized by this subsection shall be in accordance with this section. Washington City Council may not levy a tax under this subsection unless it also levies a tax under subsection (a) of this section.

~~(b) Administration. — A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this act. Collection. — Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. — The city shall administer a tax levied under this section. A tax levied under this section is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the city finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. — A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for~~

~~each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The city council may, for good cause shown, compromise the civil penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.~~

~~(e) Distribution and use of tax revenue.—The City of Washington shall, on a monthly basis, remit the net proceeds of the occupancy tax to the City of Washington Tourism Development Authority. The Authority may spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions in the City of Washington through advertising and promotion, to sponsor tourism-oriented events and activities in the City of Washington, and to finance tourist-related capital projects in the City of Washington. As used in this subsection, "net proceeds" means gross proceeds less the cost to the city of administering and collecting the tax, which may not exceed five percent (5%) of the gross proceeds. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the area and shall use the remainder for tourism-related expenditures.~~

~~The following definitions apply in this subsection:~~

- ~~(1) Net proceeds. — Gross proceeds less the cost to the City of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.~~
- ~~(2) Promote travel and tourism. — To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.~~
- ~~(3) Tourism-related expenditures. — Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.~~

~~(f) Effective date of levy.—A tax under this section shall become effective on the date specified in the ordinance levying the tax. That date must be the first day of a calendar month after the date the resolution is adopted.~~

~~(g) Repeal.—A tax levied under this section may be repealed by a resolution adopted by the Washington City Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."~~

SECTION 2. Section 1 of Chapter 602 of the 1993 Session Laws (Regular Session 1994) reads as rewritten:

"Section 1. Occupancy Tax.

(a) Authorization and Scope.

The Lexington City Council may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of not more than three percent (3%) of the gross receipts derived from the rental of any

room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations. As provided in Chapter 453 of the 1993 Session Laws, if Davidson County is authorized to levy a room occupancy tax, the combined room occupancy tax rates for Davidson County and any city or town located in that county may not exceed six percent (6%).

(a1) Authorization of Additional Tax.

In addition to the tax authorized by subsection (a) of this section, the Lexington City Council may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The total rate of tax levied under subsections (a) and (a1) of this section, when combined with the rate of any room occupancy tax that may be levied by Davidson County, may not exceed six percent (6%). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The City of Lexington may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration.

A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(b) Collection.

~~Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

(c) Administration.

~~The city shall administer a tax levied under this section. A tax levied under this section is due and payable to the city finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the city finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

(d) Penalties.

~~A person, firm, corporation, or association who fails or refuses to file the return required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Lexington City Council has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.~~

(e) Use of Tax Revenue.

At least two-thirds of the proceeds of a tax levied under this section shall be used only to promote travel and tourism in the city and any remaining proceeds shall be used only for tourism-related expenditures.

The term 'promote travel and tourism' means to advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, host and conduct tours for travel industry representatives and travel writers, or engage in

similar promotional activities that attract tourists or business travelers to the city; the term includes administrative expenses of the Lexington Tourism Development Authority incurred in engaging in the listed activities.

The term 'tourism-related expenditures' means expenditures that in the judgment of the Lexington Tourism Authority are designed to increase the use of ~~lodging~~ lodging, meeting, and convention facilities in the city ~~or attract~~ by attracting tourists or business travelers to the city ~~and the amount retained by the city for its costs in administering and collecting the tax; the term includes expenditures for the construction or maintenance of a visitors' center, a convention facility, a museum, or an historic attraction but does not include other capital expenditures.~~ city.

(f) ~~Lexington Tourism Development Authority.~~

The Lexington City Council shall, by resolution, establish the Lexington Tourism Development Authority and ~~appoint members to the Authority.~~ shall require that at least three-fourths of the members of the Authority must be currently active in the promotion of travel and tourism in the city and that at least one-third of the members of the Authority must be affiliated with organizations, such as hotels and motels, that collect the tax. A resolution establishing the Authority shall state the number and qualifications of the members of the Authority, their terms of office, and their duties.

(g) ~~Distribution to Tourism Authority.~~

The City of Lexington shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Lexington Tourism Development Authority. As used in this subsection, 'net proceeds' means gross proceeds less ~~five percent (5%) of the gross proceeds or the cost to the city of administering and~~ the city's actual cost of collecting the tax, whichever is greater. not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) collected each year plus one percent (1%) of the remainder collected each year. The Lexington Tourism Development Authority shall spend revenue remitted to it under this section in accordance with the restrictions set in subsection (e) of this section. The Lexington Tourism Development Authority shall report at the close of the fiscal year to the city council on its receipts and expenditures for the preceding year in such detail as the council may require.

(h) ~~Effective Date of Levy.~~

~~A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

(i) ~~Repeal.~~

~~A tax levied under this section may be repealed by a resolution adopted by the Lexington City Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."~~

SECTION 3. G.S. 160A-215 reads as rewritten:

"§ 160A-215. Uniform provisions for room occupancy taxes.

(a) Scope. – This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall

be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to the Cities of Goldsboro, Greensboro, Lexington, Lumberton, Mount Airy, Shelby, ~~and~~ Statesville, and Washington, to the Towns of Banner Elk, Mooresville, and St. Pauls, and to the municipalities in Brunswick County."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of August, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives