

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-16
HOUSE BILL 351**

**AN ACT TO MODIFY THE OCCUPANCY TAX FOR PASQUOTANK COUNTY
AND ELIZABETH CITY.**

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 175 of the 1987 Session Laws reads as rewritten:

"Section 1. Pasquotank occupancy tax. (a) Authorization and Scope. The Pasquotank County Board of Commissioners ~~may, by resolution, after not less than 10 days' public notice and after a hearing held pursuant thereto,~~ may levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental in Pasquotank County of any room, lodging, or similar accommodation subject to sales tax under G.S. ~~105-164.4(3).~~ 105-164.4(a)(3).

This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose. This tax is in addition to any State or local sales tax.

(a1) Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the Pasquotank County Board of Commissioners may levy a room occupancy and tourism development tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under that subsection. Pasquotank County may not levy a tax under this subsection unless it also levies a tax under subsection (a) of 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 levy 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 on the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of Pasquotank County. 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 Pasquotank County Finance Officer shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted by him to the county a discount of three percent (3%) of the amount collected as reimbursement for the expenses incurred in collecting the tax.~~

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section shall be levied, administered, collected, and repealed as

~~provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section. A tax levied under this section is due and payable to the county 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 county. The return shall state the total gross receipts derived in the preceding month from rentals and sales upon which the tax is levied. A return filed with the county 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 for each additional month or fraction thereof until the tax is paid.~~

~~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) and imprisonment not to exceed six months, or both. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

~~(e) Use and Distribution of Tax Revenue. First Three Cents (3¢). – The finance officer of Pasquotank County shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a) of this section to the Elizabeth City-Pasquotank County Tourism Development Authority. The Authority shall use the net proceeds of the occupancy tax levied under subsection (a) of this section as follows:~~

- ~~(1) Fifty percent (50%) to promote travel and tourism.~~
- ~~(2) Twenty-five percent (25%) for tourism-related expenditures that are recommended by the Elizabeth City City Council and are approved by the Authority.~~
- ~~(3) Twenty-five percent (25%) for tourism-related expenditures that are recommended by the Pasquotank County Board of Commissioners and are approved by the Authority. After the levy of a tax under this section and until the end of the eighth fiscal year after an occupancy tax was first levied under this act, whether pursuant to this section or Section 2 of this act, the county shall, on a quarterly basis, remit the net proceeds of the tax levied under this section to the City of Elizabeth City. The city may spend funds remitted to it under this subsection only to develop, promote, and advertise travel and tourism in Elizabeth City and Pasquotank County, to sponsor tourist-oriented events and activities, to operate and maintain museums and historic sites, or to construct and maintain public facilities.~~

~~After the levy of a tax under this section and beginning in the ninth fiscal year after an occupancy tax was first levied under this act, whether under this section or Section 2~~

~~of this act, the county shall, on a quarterly basis, remit to the City of Elizabeth City one half (1/2) of the net proceeds of the tax levied under this section collected on accommodations located in the corporate limits of the city. The remainder of the proceeds of the tax shall be retained by the county. The city and the county may spend the proceeds of the tax only to develop, promote, and advertise travel and tourism in Elizabeth City and Pasquotank County, to sponsor tourist-oriented events and activities, to operate and maintain museums and historic sites, or to construct and maintain public facilities.~~

~~The county, or a town or city that receives revenue under this subsection may contract with a nonprofit organization to undertake or carry out the activities and programs for which the revenue may be expended. All contracts entered into with nonprofit organizations shall require an annual financial audit of any funds expended and a performance audit of contractual obligations.~~

~~As used in this subsection, "net proceeds" means gross proceeds less the direct cost to the county of administering and collecting the tax, not to exceed three percent (3%) of the amount collected.~~

(e1) Use and Distribution of the Proceeds from the Additional Occupancy Tax. – The finance officer of Pasquotank County shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a1) of this section to the Elizabeth City-Pasquotank County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism and shall use the remainder for tourism-related expenditures.

~~(f) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Pasquotank County Board of Commissioners. 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.~~

"Sec. 1.1. Elizabeth City Area Convention and Visitors Bureau. (a) Establishment as a Tourism Development Authority. – Upon adoption of a resolution levying a room occupancy tax under this act by either the Pasquotank County Board of Commissioners or the Elizabeth City City Council, the Pasquotank Board of Commissioners shall adopt a resolution converting the Elizabeth City Area Convention and Visitors Bureau into a tourism development authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The county shall transfer to the Authority upon its creation all of the assets of the county's convention and visitors bureau. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the county.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Pasquotank County shall be the nonvoting ex officio finance officer of the Authority.

(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the governing body or bodies levying a tax under this act on its receipts and expenditures for the preceding quarter and for the year in such detail as the governing body or bodies may require.

~~"Sec. 2. Elizabeth City occupancy tax. (a) Authorization; Scope; Administration. – If the Pasquotank County Board of Commissioners has not levied the tax authorized by Section 1 of this act or has levied the tax at a rate of less than three percent (3%), the Elizabeth City City Council may, by ordinance, levy a room occupancy tax at a rate that does not exceed three percent (3%) when combined with the Pasquotank County occupancy tax rate, if any. This tax shall apply to the same accommodations that are taxable under Section 1 of this act. A tax levied under this subsection 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, act and shall be collected and administered in the same manner as the tax authorized by that section, unless this section specifies otherwise. In applying the provisions of Section 1 to a tax levied by the Elizabeth City City Council under this section, however, all references in Section 1 to Pasquotank County or an official of Pasquotank County shall be construed to mean the City of Elizabeth City and the city counterpart to the county official. Accordingly, the Elizabeth City Finance Officer shall collect an occupancy tax levied by the city.~~

(a1) Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the Elizabeth City 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) of this section only if Elizabeth City also levies the tax authorized under subsection (a) of this section or if Pasquotank County levies the tax authorized under subsection (a) of Section 1 of this act. 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 Pasquotank 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.

~~(b) Use and Distribution of Revenue. After the levy of a tax under this section and until the end of the eighth fiscal year after an occupancy tax was first levied under this act, whether pursuant to this section or Section 1 of this act, the city shall retain the proceeds of the tax levied under this section. After the levy of a tax under this section and beginning in the ninth fiscal year after an occupancy tax was first levied under this act, whether pursuant to this section or Section 1 of this act, the city shall, on a quarterly basis, remit to Pasquotank County one half (1/2) of the net proceeds of the tax levied~~

~~under this section collected on accommodations located in the corporate limits of the city. The remainder of the proceeds of the tax shall be retained by the city. The city and the county may spend the proceeds of the tax only to develop, promote, and advertise travel and tourism in Elizabeth City, to sponsor tourist-oriented events and activities, to operate and maintain museums and historic sites, or to construct and maintain public facilities.~~

~~As used in this subsection, "net proceeds" means gross proceeds less the cost to the city of administering and collecting the tax, not to exceed three percent (3%) of the amount collected. First Three Cents (3¢). – The finance officer of Elizabeth City shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a) of this section to the Elizabeth City-Pasquotank County Tourism Development Authority. The Authority shall use the net proceeds of the occupancy tax levied under subsection (a) of this section as follows:~~

- ~~(1) Fifty percent (50%) to promote travel and tourism.~~
- ~~(2) Twenty-five percent (25%) for tourism-related expenditures that are recommended by the Elizabeth City City Council and are approved by the Authority.~~
- ~~(3) Twenty-five percent (25%) for tourism-related expenditures that are recommended by the Pasquotank County Board of Commissioners and are approved by the Authority.~~

~~(b1) Use and Distribution of the Proceeds from the Additional Occupancy Tax. – The finance officer of Elizabeth City shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under subsection (a1) of this section to the Elizabeth City-Pasquotank County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism and shall use the remainder for tourism-related expenditures.~~

~~"**Sec. 2.1. Definitions.** – The following definitions apply in this act:~~

- ~~(1) Net proceeds. – Gross proceeds less the cost to the governing body 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 the county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.~~

~~"**Sec. 3.** Effect of county tax on previously levied city tax. If the City of Elizabeth City levies an occupancy tax under Section 2 of this act, and the Pasquotank County~~

Board of Commissioners subsequently adopts a resolution levying an occupancy tax in Pasquotank County under Section 1 of this act, the occupancy tax levied by the City of Elizabeth City shall be repealed as of the effective date of the county levy if the county levies an occupancy tax at the rate of ~~three percent (3%)~~, six percent (6%), and shall be reduced by the amount that the combined county and city occupancy tax rates exceed ~~three percent (3%)~~ six percent (6%) if the county rate is less than ~~three percent (3%)~~. six percent (6%).

"**Sec. 4.** This act is effective upon ratification."

SECTION 2. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Anson, Brunswick, Buncombe, Cabarrus, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averagesboro in Harnett County."

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

"(g) This section applies only to Beech Mountain District W, to the Cities of Elizabeth City, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

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

In the General Assembly read three times and ratified this the 26th day of April, 2005.

s/ Beverly E. Perdue
President of the Senate

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