

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 786

Short Title: Eastern Land Transfer Tax.

(Local)

Sponsors: Representatives R. Thompson; and James.

Referred to: Government.

March 22, 1989

A BILL TO BE ENTITLED

**AN ACT TO AUTHORIZE PASQUOTANK, PERQUIMANS, AND WASHINGTON
COUNTIES TO LEVY AN EXCISE TAX ON INSTRUMENTS CONVEYING
REAL PROPERTY.**

The General Assembly of North Carolina enacts:

Section 1. Tax. (a) Authorization. The board of commissioners of a county may, by resolution, after five days' public notice and a referendum as provided in Section 2 of this act, levy an excise tax on instruments conveying certain interests in real property in the county, including instruments that convey an interest in a mobile home that, at the time of the conveyance, is taxed as real property. The tax imposed may not exceed one dollar (\$1.00) on each one hundred dollars (\$100.00) or fraction thereof of the consideration or value of the interest conveyed, including, in the case of a sale, the value of any lien or encumbrance remaining on the property at the time of sale. This tax is in addition to the tax levied by Article 8E of Chapter 105 of the General Statutes.

(b) Scope. A tax levied under this act applies to all instruments conveying an interest in real property in the county except an instrument:

- (1) Conveying an interest in real property from the United States, the State, or a political subdivision of the State;
- (2) Securing indebtedness;
- (3) Recording a transfer in which no consideration was paid or is due the transferor by the transferee;

1 (4) Conveying an interest in real property as the result of foreclosure or in
2 lieu of foreclosure to the holder of the security interest being
3 foreclosed; or

4 (5) Conveying an interest in real property transferred by a person who,
5 within the last two years, held a mortgage on the property and received
6 the property in a conveyance exempt from tax under this act pursuant
7 to subdivision (4) above.

8 In addition, this tax does not apply to conveyances of an interest in real
9 property by operation of law, by will, by intestacy, by merger, or by consolidation.

10 (c) Collection. A tax levied under this act shall be administered by the county
11 tax collector, whose duty is to determine the amount of tax due and to see that the
12 correct amount is shown on the face of the instrument to be presented for recording.
13 The tax must be paid by the transferor at the register of deeds' office before the
14 instrument conveying the interest is recorded. The county register of deeds shall stamp
15 or otherwise mark each instrument for which he or she collects the tax to indicate that
16 the tax has been paid. The county register of deeds may not accept for recordation an
17 instrument subject to a tax levied under this act unless the tax due is paid to the register
18 of deeds when the instrument is offered for recordation.

19 (d) Appeal. A person who is liable for a tax levied under this act who disputes
20 the amount of tax due shall pay the tax stated by the tax collector to be due, but may
21 appeal the payment of the tax to the Land Transfer Tax Appeals Board by filing a
22 written notice of appeal with the tax collector within 30 days after paying the tax. Upon
23 receipt of a notice of appeal, the tax collector shall forward a copy of the notice of
24 appeal to the chairman of the Land Transfer Tax Appeals Board. A notice of appeal
25 shall state the reason for the appeal and the amount of tax the appellant contends is due.

26 The Land Transfer Tax Appeals Board is established to determine appeals of
27 taxes imposed under this act. The Board shall consist of seven members appointed by
28 the board of commissioners of the county. The county commissioners shall designate
29 one member of the Land Transfer Tax Appeals Board to serve as chairman. The
30 expenses of the Board are an administrative expense and shall be paid from the proceeds
31 of the tax.

32 Members of the Board shall serve staggered four-year terms, with the term of
33 three of the members, as designated by the board of commissioners, ending on June 30
34 of one four-year period, and the terms of the remaining members ending on June 30 of
35 the four-year period ending the second year following the year in which the terms of the
36 other three members ended. Members shall serve until their successors are appointed.
37 A vacancy shall be filled by the board of commissioners.

38 The Land Transfer Tax Appeals Board shall meet at the call of the chairman
39 and shall meet as often as needed to hear appeals. All appeals to the Board shall be
40 heard by the Board within 45 days of the date the tax collector receives a notice of
41 appeal. The Board shall issue a written decision within 20 days after hearing an appeal
42 and shall send a copy of the decision to the appellant and to the tax collector. If the
43 decision states that an appellant paid more tax than was due, the tax collector shall
44 immediately refund to the appellant the amount of the overpayment. The appellant and

1 the tax collector may appeal the decision of the Board in an action brought in the district
2 court of the county. An appeal to the district court shall be heard **de novo**.

3 (e) Use and Distribution of Tax Revenue. All proceeds of the tax shall be
4 retained by the county and shall be placed in a special Capital Reserve Fund in the
5 general fund of the county. Revenue in this Fund may be used by the county for capital
6 expenditures, including, but not limited to, retirement of indebtedness incurred in the
7 past or in the future for capital expenditures.

8 (f) Penalties. A person who knowingly fails to pay a tax levied under this
9 act, who knowingly aids another to fail to pay a tax levied under this act, or who, to
10 avoid paying part or all of the tax due under this act, knowingly misstates the total
11 consideration for an interest conveyed is guilty of a misdemeanor and is punishable by
12 imprisonment for up to two years and a fine of not less than one hundred dollars
13 (\$100.00) nor more than one thousand dollars (\$1,000). The board of commissioners
14 may, for good cause shown, compromise or forgive the penalties imposed by this
15 section.

16 (g) Taxes Recoverable by Action. If a transferor fails to pay a tax imposed
17 by this act within 30 days of the register of deeds' demand that he pay the tax, the tax
18 may be recovered by the county in an action brought in the district court of the county.
19 In an action to recover a tax imposed under this act, costs of court shall include a fee to
20 the county of twenty-five dollars (\$25.00) for the expense of collection. The court may
21 award attorney's fees to the county.

22 (h) Effective Date; Application. A tax levied under this act shall become
23 effective on the first day of a month, as designated in the resolution levying the tax, and
24 may not become effective for at least 30 days after the adoption of the resolution. A tax
25 levied under this act applies to instruments that are recorded on or after the effective
26 date of the levy, except instruments recorded on or after that date that convey an interest
27 in real property pursuant to a written contract made before the effective date.

28 (i) Repeal. A tax levied under this act may be repealed by a resolution
29 adopted by the county board of commissioners. Repeal of a tax levied under this act
30 shall become effective on the first day of a month, as designated in the resolution
31 repealing the tax, and shall apply to instruments recorded on or after the effective date
32 of the repeal. Repeal of a tax levied under this act does not affect the rights or liabilities
33 of the county, a taxpayer, or other person arising before the repeal; nor does it affect the
34 right to any refund or credit of a tax that would otherwise have been available before the
35 repeal.

36 Sec. 2. Referendum. (a) Section 1 of this act shall become effective in a
37 county only if approved by a majority of the qualified voters of that county. The voters
38 shall vote on the question in a referendum, to be held only if the county board of
39 commissioners directs the county board of elections to conduct the referendum. The
40 referendum shall be held on a date to be jointly agreed upon by the two boards and shall
41 be conducted in accordance with the procedures of G.S. 163-287.

42 (b) The question on the ballot shall be:

43 "[] FOR authorizing the county to levy an excise tax on instruments
44 conveying certain interests in real property and mobile homes in the

1 county at, a rate of up to one percent (1%) of the value of the interest
2 conveyed.

3 [] AGAINST authorizing the county to levy an excise tax on instruments
4 conveying certain interests in real property and mobile homes in the
5 county, at a rate of up to one percent (1%) of the value of the interest
6 conveyed."

7 (c) If a majority of those voting in the referendum in the county vote in favor of
8 authorizing the county to levy the tax, then Section 1 of this act shall become effective
9 in that county. If less than a majority of those voting in the referendum in the county
10 vote in favor of authorizing the county to levy the tax, then Section 1 of this act shall
11 not become effective in that county.

12 Sec. 3. This act applies to Pasquotank County, Perquimans County, and
13 Washington County only.

14 Sec. 4. This act is effective upon ratification.