

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 839

Committee Substitute Favorable 6/5/89

Local Government & Regional Affairs Senate Committee Substitute Adopted 6/21/89

Short Title: Garner Occupancy Tax.

(Local)

Sponsors:

Referred to:

March 23, 1989

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF GARNER TO LEVY AN OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. (a) Authorization; Scope. If the Wake County Board of Commissioners has not levied the tax authorized by Section 1 of Chapter 850 of the 1986 Session Laws or has levied the tax at a rate of less than three percent (3%), the Town of Garner Board of Aldermen may, by ordinance, levy a room occupancy tax at a rate that does not exceed three percent (3%) when combined with the Wake County occupancy tax rate, if any. Before adopting an ordinance to levy a room occupancy tax, the Town of Garner Board of Aldermen must hold a public hearing on the proposed tax and must give at least 10 days' public notice of the hearing. This tax shall apply to the gross receipts derived from the rental in the Town of Garner of any room, lodging, or similar accommodation subject to sales tax under G.S. 105-164.4(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.

(b) Collection. Every operator of business subject to the tax levied under this act 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 the town. The tax shall

1 be added to the sales price and shall be passed on to the purchaser instead of being
2 borne by the operator of the business. The town shall design, print, and furnish to all
3 appropriate businesses and persons in the town the necessary forms for filing returns
4 and instructions to ensure the full collection of the tax. An operator of a business who
5 collects the occupancy tax levied under this act may deduct from the amount remitted
6 by him to the town a discount of one percent (1%) of the amount collected as
7 reimbursement for the expenses incurred in collecting the tax.

8 (c) Administration. The town shall administer a tax levied under this act. A tax
9 levied under this act is due and payable to the town tax collector in monthly installments
10 on or before the 15th day of the month following the month in which the tax accrues.
11 Every person, firm, corporation, or association liable for the tax shall, on or before the
12 15th day of each month, prepare and render a return on a form prescribed by the town.
13 The return shall state the total gross receipts derived in the preceding month from
14 rentals and sales upon which the tax is levied. A return filed with the tax collector
15 under this act is not a public record as defined by G.S. 132-1 and may not be disclosed
16 except as required by law.

17 (d) Penalties. A person, firm, corporation, or association who fails or refuses to
18 file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each
19 day's omission. In case of failure or refusal to file the return or pay the tax for a period
20 of 30 days after the time required for filing the return or for paying the tax, there shall
21 be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any
22 other penalty, with an additional tax of five percent (5%) for each additional month or
23 fraction thereof until the tax is paid.

24 Any person who willfully attempts in any manner to evade a tax imposed
25 under this act or who willfully fails to pay the tax or make and file a return shall, in
26 addition to all other penalties provided by law, be guilty of a misdemeanor and shall be
27 punishable by a fine not to exceed one thousand dollars (\$1,000) and imprisonment not
28 to exceed six months, or both. The Town of Garner Board of Aldermen may, for good
29 cause shown, compromise or forgive the penalties imposed by this subsection.

30 (e) Use and Distribution of Tax Revenue. The Town of Garner shall
31 distribute the net proceeds of the occupancy tax as follows:

- 32 (1) The first fifty percent (50%) of net proceeds from the tax in each fiscal
33 year up to a maximum of one hundred thousand dollars (\$100,000)
34 shall be transferred by the town to the Garner Convention and Visitor
35 Bureau established pursuant to this act for use by the Bureau for
36 activities and programs aiding and encouraging convention and visitor
37 promotion;
- 38 (2) The remaining net proceeds shall be retained by the town and may be
39 used only to fund visitor-related programs and activities, including
40 cultural programs, events, or festivals, and convention and visitor
41 programs and activities of the Garner Convention and Visitor Bureau.

42 The town may contract with a nonprofit organization to undertake or carry
43 out the activities and programs for which the revenue may be expended. All contracts
44 entered into with nonprofit organizations shall require an annual financial audit of any

1 funds expended and a performance audit of contractual obligations. As used in this
2 subsection, "net proceeds" means gross proceeds less the direct cost to the town of
3 administering and collecting the tax, not to exceed three percent (3%) of the amount
4 collected.

5 (f) Bureau Established. When the Town of Garner Board of Aldermen
6 adopts an ordinance levying an occupancy tax, it shall also adopt an ordinance
7 establishing the Garner Convention and Visitor Bureau. The Bureau shall be governed
8 by a Board of Directors consisting of five members appointed by the Garner Board of
9 Aldermen as follows:

- 10 (1) At least one owner or operator of hotels, motels, or other taxable
11 accommodations;
- 12 (2) At least one person directly involved in a tourist- or convention-related
13 business who does not own or operate a hotel, motel, or other taxable
14 accommodation;
- 15 (3) At least one resident of Garner who is not directly involved in a tourist
16 or convention-related business and who does not own or operate a
17 hotel, motel, or other taxable accommodation; and
- 18 (4) At least one individual who is a member of the Garner Chamber of
19 Commerce, selected by the Chairman of the Board of Directors of the
20 Garner Chamber of Commerce.

21 Members shall be appointed by the Board of Aldermen and serve according
22 to the ordinances and regulations of the town concerning service on the board of
23 directors.

24 (g) Powers and Duties of Bureau. The Garner Convention and Visitor
25 Bureau may contract with any person, firm, or agency to advise and assist it in the
26 promotion of travel, tourism, and conventions. The Bureau shall prepare an annual
27 budget based on anticipated revenues and shall submit the budget to the Garner Town
28 Manager for processing and approval through the regular budget procedure of the town.
29 The Bureau shall make quarterly reports to the town detailing its revenues,
30 expenditures, and activities. The town may audit the Bureau's financial records upon
31 reasonable notice to the Bureau. At the end of each fiscal year, any funds of the Bureau
32 not expended, and not obligated or reserved as approved by the Board of Aldermen,
33 shall be remitted to the Town of Garner for use in accordance with subdivision (e)(2).

34 (h) Effective date of levy. A tax levied under this act shall become effective
35 on the date specified in the resolution levying the tax. That date must be the first day of
36 a calendar month, however, and may not be earlier than the first day of the second
37 month after the date the resolution is adopted.

38 (i) Repeal. A tax levied under this act may be repealed by a resolution
39 adopted by the Town of Garner Board of Aldermen. Repeal of a tax levied under this
40 act shall become effective on the first day of a month and may not become effective
41 until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a
42 tax levied under this act does not affect a liability for a tax that attached before the
43 effective date of the repeal, nor does it affect a right to a refund of a tax that accrued
44 before the effective date of the repeal.

1 Sec. 2. Effect of County Tax on Previously Levied Town Tax. If the Town
2 of Garner levies an occupancy tax under Section 1 of this act, and the Wake County
3 Board of Commissioners subsequently adopts a resolution levying an occupancy tax in
4 Wake County, the occupancy tax levied by the town shall be repealed as of the effective
5 date of the county levy if the county levies an occupancy tax at the rate of three percent
6 (3%), and shall otherwise be reduced by the amount that the combined county and town
7 occupancy tax rates exceed three percent (3%).

8 Sec. 3. This act is effective upon ratification.