

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 716

Short Title: Modify Mecklenburg Room Tax.

(Local)

Sponsors: Representative Lemmond.

Referred to: Finance.

March 30, 1995

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE MECKLENBURG ROOM OCCUPANCY TAX AND PROVIDE FOR ESTABLISHMENT OF A TRAVEL DEVELOPMENT AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws, reads as rewritten:

"PART IV. MECKLENBURG OCCUPANCY TAX AND PREPARED FOOD AND BEVERAGE TAX.

"Sec. 5. (a) Intent. It is the intent of this Part to provide Mecklenburg County and each municipality in Mecklenburg County the authority to levy a room occupancy tax and to provide Mecklenburg County and the City of Charlotte the authority to levy a prepared food and beverage tax.

(b) Definitions. The definitions in G.S. 105-164.3 apply to this Part insofar as they are not inconsistent with the provisions of this Part. In addition, the following definitions apply in this Part.

(1) Financing. Debt service, lease payments, or any other obligations or means of supporting capital costs, together with any related reserve requirements.

- 1 (2) Gross Occupancy Receipts. The gross receipts derived from the rental
2 of any room, lodging, or accommodation furnished by a hotel, motel,
3 inn, tourist camp, or similar place within a taxing entity that is subject to
4 a tax levied pursuant to Section 6 of this Part.
- 5 (3) Local ~~Administrative~~-Collection Authority. Mecklenburg County or the
6 City of Charlotte as the tax collector and ~~administrator~~-distributor of any
7 or all of the taxes levied pursuant to this Part.
- 8 (4) Net Proceeds. The gross proceeds less the deductions by the local
9 ~~administrative~~-collection authority pursuant to Section 9(a)(1) of this Part
10 to pay for the cost of ~~administering and collecting~~ and distributing the
11 taxes authorized by this Part.
- 12 (5) Prepared Food and Beverages. Any food or beverage which a retailer
13 has added value to or has altered its state (other than solely by cooling)
14 by preparing, combining, dividing, heating, or serving, in order to make
15 the food or beverage available for immediate human consumption.
- 16 (6) Retailer. The term includes caterers and all persons regarded by the
17 Secretary of Revenue as retailers under G.S. 105-164.3 as of the
18 effective date of this Part.
- 19 (7) Taxing Entity. A local sovereignty that levies a tax pursuant to this
20 Part.
- 21 (8) Taxable Establishment. Any hotel, motel, inn, tourist camp, or similar
22 place that is subject to a room occupancy tax levied pursuant to this Part
23 and any retailer that sells meals or prepared food or beverages and is
24 subject to a prepared food and beverage tax levied pursuant to this Part.

25 (c) Relationship to the Sales and Use Tax Statutes. The definitions in G.S. 105-
26 164.3 shall apply to this Part insofar as they are not inconsistent with the provisions of
27 this Part. All other provisions of Article 5 and Article 9 of Subchapter I, Chapter 105 of
28 the General Statutes, as the same relate to the North Carolina Sales and Use Tax Act,
29 shall be applicable to this Part and ~~administered~~-applied by the local ~~administrative~~
30 collection authority unless the provisions are inconsistent with the provisions of this Part.
31 It is the intention of this Part that the provisions of this Part and the provisions of the
32 North Carolina Sales and Use Tax Act, insofar as practicable, shall be harmonized. The
33 provisions with respect to remedies and penalties applicable to the North Carolina Sales
34 and Use Tax Act, as contained in Article 5 and Article 9, Subchapter I, Chapter 105 of
35 the General Statutes, shall be applicable in like manner to the taxes authorized to be
36 levied and collected under this Part, to the extent that the same are not inconsistent with
37 any provision of this Part.

38 "Sec. 6. (a) County Room Occupancy Tax. Mecklenburg County may, by
39 resolution of its Board of Commissioners, levy a room occupancy tax of up to six percent
40 (6%) of the gross receipts derived from the rental of any room, lodging, or
41 accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the
42 county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). If a
43 municipality has levied a room occupancy tax under Section 6(b) of this Part, then

1 Mecklenburg County may levy the tax at a rate that does not exceed six percent (6%)
2 when combined with the highest rate of tax then levied by any municipality. This tax is
3 in addition to any State or local sales tax. This tax does not apply to accommodations
4 furnished by nonprofit charitable, educational, benevolent, or religious organizations
5 when furnished in furtherance of their nonprofit purpose or to accommodations furnished
6 to the same person for ninety continuous days or more.

7 (b) City Room Occupancy Tax. Effective 120 days after the effective date of this Part,
8 if at any time Mecklenburg County has not levied a room occupancy tax, or has levied
9 the tax at a rate less than six percent (6%), then any municipality in Mecklenburg County
10 may, by ordinance of its town council, levy a room occupancy tax on the gross receipts
11 derived from the rental of any room, lodging, or accommodation furnished by a hotel,
12 motel, inn, tourist camp, or similar place within the municipality that is subject to sales
13 tax imposed by the State under G.S. 105-164.4(a)(3). The tax shall be at a rate that does
14 not exceed six percent (6%) when combined with the Mecklenburg County room
15 occupancy tax rate, if any. This tax is in addition to any State or local sales tax. This tax
16 does not apply to accommodations furnished by nonprofit charitable, educational,
17 benevolent, or religious organizations when furnished in furtherance of their nonprofit
18 purpose or to accommodations furnished to the same person for ninety continuous days
19 or more.

20 "Sec. 7. (a) County Prepared Food and Beverage Tax. Mecklenburg County
21 may, by resolution of its Board of Commissioners, levy a prepared food and beverage tax
22 of up to one percent (1%) of the sales price of meals and prepared food and beverages
23 sold at retail for consumption on or off the premises by any retailer within the county that
24 is subject to sales tax imposed by the State under G.S. 105-164.4(a)(1). If the City of
25 Charlotte has levied a prepared food and beverage tax under Section 7(b) of this Part,
26 then Mecklenburg County may levy the tax at a rate that does not exceed one percent
27 (1%) when combined with the rate of tax then levied by the City of Charlotte. This tax is
28 in addition to any State or local sales tax.

29 (b) Charlotte Prepared Food and Beverage Tax. Effective 120 days after the
30 effective date of this Part, if at any time Mecklenburg County has not levied or adopted a
31 resolution to levy a prepared food and beverage tax, or has levied or adopted a resolution
32 to levy the tax at a rate less than one percent (1%), then the City of Charlotte may, by
33 ordinance of its city council, levy a prepared food and beverage tax on the sales price of
34 meals and prepared food and beverages sold at retail for consumption on or off the
35 premises by any retailer within the city that is subject to sales tax imposed by the State
36 under G.S. 105-164.4(a)(1). The tax shall be at a rate that does not exceed one percent
37 (1%) when combined with the Mecklenburg County prepared food and beverage tax rate,
38 if any. This tax is in addition to any State or local sales tax.

39 (c) Exemptions. The prepared food and beverage tax does not apply to the
40 following sales of meals and prepared food and beverages:

- 41 (1) Meals and prepared food and beverages served to residents in boarding
42 houses and sold together on a periodic basis with rental of any sleeping
43 room or lodging.

- 1 (2) Retail sales exempt from taxation under G.S. 105-164.13 on the
2 effective date of this Part.
- 3 (3) Retail sales through or by means of vending machines.
- 4 (4) Meals and prepared food and beverages served by any taxable
5 establishment subject to the occupancy tax levied pursuant to this Part if
6 the charge for the meals or prepared food or beverages is included in a
7 single, nonitemized sales price together with the charge for rental of a
8 room, lodging, or accommodation furnished by the taxable
9 establishment.
- 10 (5) Meals and prepared food and beverages furnished without charge by an
11 employer to any employee.
- 12 (6) Retail sales by grocers or by grocery sections of supermarkets or other
13 diversified retail establishments other than sales of prepared food and
14 beverages in the delicatessen or similar department of the grocer or
15 grocery section.

16 (d) Refunds. The local ~~administrative-collection~~ authority shall refund to a
17 nonprofit or governmental entity the prepared food and beverage tax paid by the entity on
18 eligible purchases of prepared foods and beverages. A nonprofit or governmental entity's
19 purchase of prepared food and beverages is eligible for a refund under this subsection if
20 the entity is entitled to a refund under G.S. 105-164.14 of the sales and use tax paid on
21 the purchase. The time limitations, application requirements, penalties, and restrictions
22 provided in G.S. 105-164.14(b) and (d) shall apply to refunds to nonprofit entities; the
23 time limitations, application requirements, penalties, and restrictions provided in G.S.
24 105-164.14(c) and (d) shall apply to refunds to governmental entities. When an entity
25 applies for a refund of the prepared food and beverages tax paid by it on purchases, it
26 shall attach to its application a copy of the application submitted to the Department of
27 Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same
28 purchases. An applicant for a refund under this subsection shall provide any information
29 required by the local ~~administrative-collection~~ authority to substantiate the claim.

30 "Sec. 8. (a) Public Hearing. Before adopting or amending an ordinance or
31 resolution levying a tax authorized by this Part, the governing body of the taxing entity
32 shall hold a public hearing. The governing body of the taxing entity shall publish notice
33 of the hearing not less than 10 days nor more than 25 days before the date fixed for the
34 hearing.

35 (b) Effective Date of Levy. A tax levied under this Part shall become effective on
36 the date specified in the resolution or ordinance levying the tax. That date must be the
37 first day of a calendar month, however, and may not be earlier than the first day of the
38 second month after the date the resolution or ordinance is adopted. The levy of a
39 prepared food and beverage tax may not be effective before January 1, 1992.

40 (c) Repeal. A tax levied under this Part may be repealed by a resolution or
41 ordinance adopted by the governing body of the taxing entity. Repeal of a tax levied
42 under this Part shall become effective on the first day of a month and may not become
43 effective until the end of the fiscal year in which the repeal resolution or ordinance was

1 adopted. Repeal of a tax levied under this Part does not affect a liability for a tax that has
2 attached before the effective date of the repeal, nor does it affect a right to a refund of a
3 tax that accrued before the effective date of the repeal.

4 (d) Collection. Every operator of a taxable establishment shall, on and after the
5 effective date of the levy of a tax under this Part, collect the tax. The tax shall be stated
6 and charged separately from the rental charge or sales price, shall be shown separately on
7 the taxable establishment's sales records and shall be paid by the purchaser to the taxable
8 establishment as trustee for and on account of the taxing entity. The tax shall be added to
9 the rental charge or sales price and shall be passed on to and collected from the purchaser
10 instead of being borne by the taxable establishment.

11 For the convenience of each retailer and to facilitate the administration of this Part,
12 the local ~~administrative-collection~~ authority shall determine the amount to be added to the
13 sales price of all sales subject to the prepared food and beverage tax. The amounts shall
14 be set forth in a bracket system and distributed to each retailer responsible for collecting
15 the prepared food and beverage tax. The use of the bracket system does not relieve the
16 retailer from the duty and liability of collecting and remitting to the local ~~administrative~~
17 collection authority an amount equal to the prepared food and beverage tax levied by the
18 taxing entity.

19 (e) ~~Administration-Collection.~~ Mecklenburg County and the City of Charlotte shall
20 determine by agreement which of them will administer and collect and distribute each of
21 the taxes levied pursuant to this Part. In the event an agreement cannot be reached, then
22 any tax levied pursuant to this Part shall be administered and collected and distributed by
23 Mecklenburg County. The local administrative-collection authority may promulgate
24 additional rules and regulations necessary for the implementation of this Part.

25 The taxes levied pursuant to this Part are due and payable to the local ~~administrative~~
26 collection authority as agent for the taxing entity in monthly installments on or before the
27 15th day of the month following the month in which the tax accrues. Every taxable
28 establishment liable for the tax shall, on or before the 15th day of each month, prepare
29 and render a return to the local ~~administrative-collection~~ authority. The local ~~administrative~~
30 collection authority shall design, print, and furnish to all taxable establishments the
31 necessary forms for filing returns and instructions to ensure the full collection of the tax.

32 A return filed with the local ~~administrative-collection~~ authority under this section is not
33 a public record ~~as defined by G.S. 132-1 and may not be disclosed except as required by law.~~
34 in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

35 (f) Penalties. A person, firm, corporation, or association who fails or refuses to
36 file a return and pay the tax due under this Part shall pay a penalty of ten dollars (\$10.00)
37 for each day's omission up to a maximum of two thousand dollars (\$2,000) for each
38 return. In case of failure or refusal to file the return or pay the tax for a period of 30 days
39 after the time required for filing the return or paying the tax, there shall be an additional
40 tax, as a penalty, of five percent (5%) of the tax due, with an additional tax of five
41 percent (5%) for each additional month or fraction thereof until the tax is paid. The
42 governing body of the taxing entity may, for good cause shown, compromise or forgive
43 the additional tax penalties imposed by this subsection. The local collection authority

1 shall credit the tax penalties collected under this subsection to the Travel Development
2 Authority, for use in accordance with Section 9(a)(3a) of this act.

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

7 "Sec. 8.1. Travel Development Authority. – (a) Appointment and membership.
8 The Mecklenburg County Board of Commissioners shall adopt a resolution creating a
9 Travel Development Authority, which shall be a public authority under the Local
10 Government Budget and Fiscal Control Act. The Authority shall have 11 members
11 appointed by the board of commissioners as follows:

12 (1) One member who is experienced in promotion and development of
13 travel, tourism, conventions, and the food industry, nominated by the
14 Mayor of the City of Charlotte.

15 (2) Five members nominated by the Charlotte City Council, three of whom
16 represent the hotel industry, one of whom represents the restaurant
17 industry, and one of whom is experienced in promotion and
18 development of travel, tourism, conventions, and the food industry.

19 (3) One member who is experienced in promotion and development of
20 travel, tourism, conventions, and the food industry, nominated by the
21 chair of the board of commissioners.

22 (4) Four members selected by the board of commissioners, two of whom
23 represent the hotel industry and two of whom represent the restaurant
24 industry.

25 The board of commissioners and the nominating parties shall provide that the
26 members represent all geographic areas of the county and all sizes and types of
27 businesses. To this end, after the initial appointments, the Authority shall provide the
28 nominators a chart showing the demographic areas that subsequent nominees in each
29 category should represent.

30 The board of commissioners shall designate one member of the Authority as chair and
31 shall determine the compensation, if any, to be paid to members of the Authority. The
32 Authority shall meet at the call of the chair and shall adopt rules of procedure to govern
33 its meetings. The Finance Officer for Mecklenburg County shall be the ex officio finance
34 officer of the Authority.

35 (b) Terms of Office. The members appointed upon the nomination of the Mayor
36 of the City of Charlotte and the chair of the board of commissioners shall serve an initial
37 term of two years. The city council shall designate one of its five nominees to serve an
38 initial term of one year and one of its five nominees to serve an initial term of two years.
39 The board of commissioners shall designate two of its four appointees to serve an initial
40 term of one year and one of its four appointees to serve an initial term of two years. All
41 other members shall serve an initial term of three years. After the initial terms, each term
42 shall be for three years. A member shall not serve more than six consecutive years.

1 (c) Duties. The Authority shall expend occupancy tax revenues distributed under
2 this act to promote and develop travel, tourism, and conventions in the county and
3 sponsor tourist-related events and activities in the county. The Authority may contract
4 with any person, firm, corporation, or agency to assist it in carrying out its duties.

5 (d) Reports. The Authority shall issue an audited report at the close of the fiscal
6 year to the board of commissioners on its receipts and expenditures for the preceding year
7 in such detail as the board may require.

8 "Sec. 9. (a) Distribution and Use of Proceeds. The local ~~administrative-collection~~
9 authority, acting on its own behalf or as agent for each taxing entity, shall distribute the
10 proceeds of the taxes levied in this Part as provided in this subsection. The distribution
11 shall be made by the 20th day of each month following the month in which the tax is
12 collected.

13 (1) Deduction of ~~Administrative—Collection~~ Expense. The local
14 ~~administrative-collection~~ authority may deduct from the gross proceeds
15 of the taxes collected under this Part an amount not to exceed ~~three~~
16 ~~percent (3%)—one percent (1%)~~ of the amount collected to pay for the
17 direct cost it has incurred in ~~administering and collecting and distributing~~
18 the taxes authorized by this Part.

19 (2) Distribution to Charlotte for Convention Center Facilities. After
20 deducting the amount provided above, the local ~~administrative-collection~~
21 authority shall transfer an amount equal to ~~three percent (3%) of the gross~~
22 ~~occupancy receipts and fifty percent (50%) of the gross proceeds of the~~
23 occupancy tax plus the entire net proceeds of the prepared food and
24 beverage tax to the City of Charlotte. The ~~net~~ proceeds transferred to
25 the City of Charlotte pursuant to this subdivision shall be applied in
26 accordance with the following priorities. No application of any ~~net~~
27 proceeds to any class of the priorities set forth below in this subdivision
28 shall be made until, with respect to each preceding class of priorities,
29 either all payments for the current fiscal year have been provided for in
30 full or no such payments are required for the current fiscal year.

31 a. To provide for when due payments for the current fiscal year
32 with respect to any financing for new convention center facilities
33 or for the expansion of existing convention center facilities,
34 which may include off-street parking for use in conjunction with
35 the facilities.

36 b. To pay costs incurred in an aggregate amount ~~not greater than~~ of
37 at least one million five hundred thousand dollars (\$1,500,000) in
38 each fiscal year for marketing and promoting new or expanded
39 convention center facilities.

40 c. To pay other costs of acquiring, constructing, maintaining,
41 operating, marketing, and promoting new or expanded
42 convention center facilities.

1 (3) Distribution to Other Municipalities. After deducting the amounts
2 provided above, the local ~~administrative-collection~~ authority shall
3 determine the amount of the remaining occupancy tax net proceeds that
4 were collected from taxable establishments located in each municipality,
5 other than the City of Charlotte. The local ~~administrative-collection~~
6 authority shall then distribute to each municipality, other than the City
7 of Charlotte, an amount equal to one hundred twenty percent (120%) of
8 the amount of the remaining occupancy tax net proceeds collected in
9 that municipality. These funds may be expended only for acquiring,
10 constructing, financing, maintaining, operating, marketing, and
11 promoting convention centers, civic centers, performing arts centers,
12 coliseums, auditoriums, and museums, for off-street parking for use in
13 conjunction with these facilities, and for tourism and tourism-related
14 programs and activities including art and cultural programs, events, and
15 festivals. If a municipality receives more than fifty thousand dollars
16 (\$50,000) under this subdivision in a fiscal year, it must remit the
17 proceeds in subsequent fiscal years to a local travel development
18 authority that meets the following requirements:

- 19 a. It has the authority to determine how the tax proceeds will be
20 used, consistent with this subdivision.
21 b. At least three-fourths of its board members must have expertise
22 in the promotion and development of travel and tourism in the
23 area of the taxing jurisdiction, and more than one-half must be
24 affiliated with organizations, such as hotels and motels, that
25 collect the tax.

26 (3a) Distribution to Travel Development Authority. Of the occupancy tax
27 net proceeds remaining after deducting the amounts provided above, the
28 local collection authority shall distribute the following amounts to the
29 Travel Development Authority:

- 30 a. Sixty percent (60%) of the first one million dollars (\$1,000,000)
31 in each fiscal year.
32 b. Seventy percent (70%) of the second one million dollars
33 (\$1,000,000) in each fiscal year.
34 c. Eighty percent (80%) of the amount in excess of two million
35 dollars (\$2,000,000) in each fiscal year.

36 The Travel Development Authority shall use the funds distributed to it
37 under this subdivision only to promote travel, tourism, conventions, and
38 events that generate lodging occupancy.

39 (3b) Distribution for Conventions. Any remaining tax proceeds shall be
40 distributed seventy percent (70%) to the City of Charlotte and thirty
41 percent (30%) to Mecklenburg County to be used only to build, operate,
42 maintain, and market convention facilities and tourism-related facilities.

1 (4) ~~Distribution to Charlotte for Convention and Visitor Promotion. Of the~~
2 ~~occupancy tax net proceeds remaining after deducting the amounts~~
3 ~~provided in subsections (a)(1) and (a)(2) above, at least fifty percent~~
4 ~~(50%) of the first one million dollars (\$1,000,000) in each fiscal year, at~~
5 ~~least thirty-five percent (35%) of the second one million dollars~~
6 ~~(\$1,000,000) in each fiscal year, and at least twenty-five percent (25%)~~
7 ~~of the amount in excess of two million dollars (\$2,000,000) in each~~
8 ~~fiscal year shall be transferred by the local administrative authority to~~
9 ~~the City of Charlotte for activities and programs aiding and encouraging~~
10 ~~convention and visitor promotion. The City of Charlotte shall be acting~~
11 ~~as agent for each occupancy taxing entity.~~

12 (5) ~~Distribution of Remainder between Charlotte and Mecklenburg County.~~
13 ~~The amount of occupancy tax net proceeds remaining after deducting~~
14 ~~the amounts provided above shall be allocated by the local~~
15 ~~administrative authority between Mecklenburg County and the City of~~
16 ~~Charlotte using the following formula: the ratio of expenditures by each~~
17 ~~of Mecklenburg County and the City of Charlotte for acquiring,~~
18 ~~constructing, financing, maintaining, operating, marketing, and~~
19 ~~promoting convention centers, civic centers, performing arts centers,~~
20 ~~coliseums, auditoriums, and museums, for off-street parking for use in~~
21 ~~conjunction with these facilities, and for tourism and tourism-related~~
22 ~~programs and activities including art and cultural programs, events, and~~
23 ~~festivals to total expenditures by both Mecklenburg County and the City~~
24 ~~of Charlotte for such purposes. There shall be excluded from~~
25 ~~expenditures by the City of Charlotte for purposes of computing this~~
26 ~~ratio all expenditures for acquiring, constructing, financing,~~
27 ~~maintaining, operating, marketing, and promoting the new or expanded~~
28 ~~convention center facilities in the City of Charlotte for which net~~
29 ~~proceeds are allocated pursuant to subdivision (2) of this subsection.~~
30 ~~The ratio shall be computed annually on the basis of the prior fiscal~~
31 ~~year's expenditures. However, no amount shall be allocated to~~
32 ~~Mecklenburg County if it has not levied an occupancy tax and a~~
33 ~~prepared food and beverage tax for the current period. These funds may~~
34 ~~be expended only for acquiring, constructing, financing, maintaining,~~
35 ~~operating, marketing, and promoting convention centers, civic centers,~~
36 ~~performing arts centers, coliseums, auditoriums, museums, for off-street~~
37 ~~parking for use in conjunction with these facilities, and for tourism and~~
38 ~~tourism-related programs and activities including art and cultural~~
39 ~~programs, events, and festivals.~~

40 (b) ~~Authority to Contract. Mecklenburg County and County, each municipality~~
41 ~~located within Mecklenburg County County, and the Travel Development Authority may~~
42 ~~contract with any person, agency, association, or nonprofit corporation to undertake or~~
43 ~~carry out the activities and programs for which the proceeds may be expended. All~~

1 contracts entered into pursuant to this subsection shall require an annual financial audit of
2 any funds expended and a performance audit of contractual obligations. The Travel
3 Development Authority must assume the current contract with the Charlotte Convention
4 and Visitors Bureau and maintain all its current terms for a period of at least two full
5 years."

6 Sec. 2. This act becomes effective July 1, 1995.