

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 351

Short Title: Modify Pasquotank/Eliz. City Occupancy Tax.

(Local)

Sponsors: Representative Owens.

Referred to: Finance.

February 23, 2005

A BILL TO BE ENTITLED

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~~

1 county the necessary forms for filing returns and instructions to ensure the full
2 collection of the tax.

3 An operator of a business who collects the occupancy tax levied under this section
4 may deduct from the amount remitted by him to the county a discount of three percent
5 (3%) of the amount collected as reimbursement for the expenses incurred in collecting
6 the tax.

7 (c) Administration. The county shall administer a tax levied under this section. A
8 tax levied under this section shall be levied, administered, collected, and repealed as
9 provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax
10 levied under this section. A tax levied under this section is due and payable to the
11 county finance officer in monthly installments on or before the 15th day of the month
12 following the month in which the tax accrues. Every person, firm, corporation, or
13 association liable for the tax shall, on or before the 15th day of each month, prepare and
14 render a return on a form prescribed by the county. The return shall state the total gross
15 receipts derived in the preceding month from rentals and sales upon which the tax is
16 levied. A return filed with the county finance officer under this section is not a public
17 record as defined by G.S. 132-1 and may not be disclosed except as required by law.

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

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

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

- 35 (1) Fifty percent (50%) to promote travel and tourism.
- 36 (2) Twenty-five percent (25%) for tourism-related expenditures
37 that are recommended by the Elizabeth City City Council and
38 are approved by the Authority.
- 39 (3) Twenty-five percent (25%) for tourism-related expenditures
40 that are recommended by the Pasquotank County Board of
41 Commissioners and are approved by the Authority. After the
42 levy of a tax under this section and until the end of the eighth
43 fiscal year after an occupancy tax was first levied under this act,
44 whether pursuant to this section or Section 2 of this act, the

1 county shall, on a quarterly basis, remit the net proceeds of the
2 tax levied under this section to the City of Elizabeth City. The
3 city may spend funds remitted to it under this subsection only to
4 develop, promote, and advertise travel and tourism in Elizabeth
5 City and Pasquotank County, to sponsor tourist-oriented events
6 and activities, to operate and maintain museums and historic
7 sites, or to construct and maintain public facilities.

8 After the levy of a tax under this section and beginning in the ninth fiscal year after
9 an occupancy tax was first levied under this act, whether under this section or Section 2
10 of this act, the county shall, on a quarterly basis, remit to the City of Elizabeth City
11 one-half (1/2) of the net proceeds of the tax levied under this section collected on
12 accommodations located in the corporate limits of the city. The remainder of the
13 proceeds of the tax shall be retained by the county. The city and the county may spend
14 the proceeds of the tax only to develop, promote, and advertise travel and tourism in
15 Elizabeth City and Pasquotank County, to sponsor tourist-oriented events and activities,
16 to operate and maintain museums and historic sites, or to construct and maintain public
17 facilities.

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

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

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

32 (f) Repeal. A tax levied under this section may be repealed by a resolution
33 adopted by the Pasquotank County Board of Commissioners. Repeal of a tax levied
34 under this section shall become effective on the first day of a month and may not
35 become effective until the end of the fiscal year in which the repeal resolution was
36 adopted. Repeal of a tax levied under this section does not affect a liability for a tax that
37 attached before the effective date of the repeal, nor does it affect a right to a refund of a
38 tax that accrued before the effective date of the repeal.

39 "Sec. 1.1. Elizabeth City Area Convention and Visitors Bureau. (a) Establishment as
40 a Tourism Development Authority. – Upon adoption of a resolution levying a room
41 occupancy tax under this act by either the Pasquotank County Board of Commissioners
42 or the Elizabeth City City Council, the Pasquotank Board of Commissioners shall adopt
43 a resolution converting the Elizabeth City Area Convention and Visitors Bureau into a
44 tourism development authority, which shall be a public authority under the Local

1 Government Budget and Fiscal Control Act. The county shall transfer to the Authority
2 upon its creation all of the assets of the county's convention and visitors bureau. The
3 resolution shall provide for the membership of the Authority, including the members'
4 terms of office, and for the filling of vacancies on the Authority. At least one-third of
5 the members must be individuals who are affiliated with businesses that collect the tax
6 in the county, and at least three-fourths of the members must be individuals who are
7 currently active in the promotion of travel and tourism in the county.

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

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

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

19 "Sec. 2. Elizabeth City occupancy tax. (a) Authorization; Scope; Administration. –
20 If the Pasquotank County Board of Commissioners has not levied the tax authorized by
21 Section 1 of this act or has levied the tax at a rate of less than three percent (3%), the
22 Elizabeth City City Council may, by ordinance, levy a room occupancy tax at a rate that
23 does not exceed three percent (3%) when combined with the Pasquotank County
24 occupancy tax rate, if any. This tax shall apply to the same accommodations that are
25 taxable under Section 1 of this act. A tax levied under this subsection shall be levied,
26 administered, collected, and repealed as provided in G.S. 160A-215. The penalties
27 provided in G.S. 160A-215 apply to a tax levied under this section.~~act and shall be~~
28 ~~collected and administered in the same manner as the tax authorized by that section,~~
29 ~~unless this section specifies otherwise. In applying the provisions of Section 1 to a tax~~
30 ~~levied by the Elizabeth City City Council under this section, however, all references in~~
31 ~~Section 1 to Pasquotank County or an official of Pasquotank County shall be construed~~
32 ~~to mean the City of Elizabeth City and the city counterpart to the county official.~~
33 ~~Accordingly, the Elizabeth City Finance Officer shall collect an occupancy tax levied~~
34 ~~by the city.~~

35 (a1) Additional Occupancy Tax. – In addition to the tax authorized by subsection
36 (a) of this section, the Elizabeth City City Council may levy an additional room
37 occupancy tax of up to three percent (3%) of the gross receipts derived from the rental
38 of accommodations taxable under subsection (a) only if Elizabeth City also levies the
39 tax authorized under subsection (a) of this section or if Pasquotank County levies the tax
40 authorized under subsection (a) of Section 1 of this act. The total rate of tax levied
41 under subsections (a) and (a1) of this section, when combined with the rate of any room
42 occupancy tax that may be levied by Pasquotank County, may not exceed six percent
43 (6%). The levy, collection, administration, and repeal of the tax authorized by this
44 subsection shall be in accordance with the provisions of this section.

1 (b) Use and Distribution of Revenue. After the levy of a tax under this section
2 and until the end of the eighth fiscal year after an occupancy tax was first levied under
3 this act, whether pursuant to this section or Section 1 of this act, the city shall retain the
4 proceeds of the tax levied under this section. After the levy of a tax under this section
5 and beginning in the ninth fiscal year after an occupancy tax was first levied under this
6 act, whether pursuant to this section or Section 1 of this act, the city shall, on a quarterly
7 basis, remit to Pasquotank County one half (1/2) of the net proceeds of the tax levied
8 under this section collected on accommodations located in the corporate limits of the
9 city. The remainder of the proceeds of the tax shall be retained by the city. The city and
10 the county may spend the proceeds of the tax only to develop, promote, and advertise
11 travel and tourism in Elizabeth City, to sponsor tourist-oriented events and activities, to
12 operate and maintain museums and historic sites, or to construct and maintain public
13 facilities.

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

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

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

34 "Sec. 2.1. Definitions. – The following definitions apply in this act.

- 35 (1) Net proceeds. – Gross proceeds less the cost to the governing body of
36 administering and collecting the tax, as determined by the finance
37 officer, not to exceed three percent (3%) of the first five hundred
38 thousand dollars (\$500,000) of gross proceeds collected each year and
39 one percent (1%) of the remaining gross receipts collected each year.
- 40 (2) Promote travel and tourism. – To advertise or market an area or
41 activity, publish and distribute pamphlets and other materials, conduct
42 market research, or engage in similar promotional activities that attract
43 tourists or business travelers to the area. The term includes
44 administrative expenses incurred in engaging in the listed activities.

1 (3) Tourism-related expenditures. – Expenditures that, in the judgment of
2 the Tourism Development Authority, are designed to increase the use
3 of lodging facilities, meeting facilities, or convention facilities in the
4 county or to attract tourists or business travelers to the county. The
5 term includes tourism-related capital expenditures.

6 "Sec. 3. Effect of county tax on previously levied city tax. If the City of Elizabeth
7 City levies an occupancy tax under Section 2 of this act, and the Pasquotank County
8 Board of Commissioners subsequently adopts a resolution levying an occupancy tax in
9 Pasquotank County under Section 1 of this act, the occupancy tax levied by the City of
10 Elizabeth City shall be repealed as of the effective date of the county levy if the county
11 levies an occupancy tax at the rate of ~~three percent (3%),~~ six percent (6%), and shall be
12 reduced by the amount that the combined county and city occupancy tax rates exceed
13 ~~three percent (3%)~~ six percent (6%) if the county rate is less than ~~three percent (3%),~~ six
14 percent (6%).

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

16 **SECTION 2.** G.S. 153A-155 reads as rewritten:

17 **"§ 153A-155. Uniform provisions for room occupancy taxes.**

18 (a) Scope. – This section applies only to counties the General Assembly has
19 authorized to levy room occupancy taxes.

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

25 (c) Collection. – Every operator of a business subject to a room occupancy tax
26 shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall
27 be collected as part of the charge for furnishing a taxable accommodation. The tax shall
28 be stated and charged separately from the sales records and shall be paid by the
29 purchaser to the operator of the business as trustee for and on account of the taxing
30 county. The tax shall be added to the sales price and shall be passed on to the purchaser
31 instead of being borne by the operator of the business. The taxing county shall design,
32 print, and furnish to all appropriate businesses and persons in the county the necessary
33 forms for filing returns and instructions to ensure the full collection of the tax. An
34 operator of a business who collects a room occupancy tax may deduct from the amount
35 remitted to the taxing county a discount equal to the discount the State allows the
36 operator for State sales and use tax.

37 (d) Administration. – The taxing county shall administer a room occupancy tax it
38 levies. A room occupancy tax is due and payable to the county finance officer in
39 monthly installments on or before the 15th day of the month following the month in
40 which the tax accrues. Every person, firm, corporation, or association liable for the tax
41 shall, on or before the 15th day of each month, prepare and render a return on a form
42 prescribed by the taxing county. The return shall state the total gross receipts derived in
43 the preceding month from rentals upon which the tax is levied. A room occupancy tax

1 return filed with the county finance officer is not a public record and may not be
2 disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

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

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

17 (f1) Use. – The proceeds of a room occupancy tax shall not be used for
18 development or construction of a hotel or another transient lodging facility.

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

24 **SECTION 3.** This act is effective when it becomes law.