

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 1215*
Committee Substitute Favorable 6/21/12

Short Title: Henderson County Occupancy Tax Changes.

(Local)

Sponsors:

Referred to:

May 31, 2012

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE HENDERSON COUNTY BOARD OF COMMISSIONERS
TO LEVY AN ADDITIONAL ONE PERCENT ROOM OCCUPANCY AND TOURISM
DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Sections 5 and 6 of Chapter 172 of the 1987 Session Laws, as amended by Chapter 55 of the 1991 Session Laws and by Section 21(p) of S.L. 2007-527, read as rewritten:

"**Sec. 5.** Occupancy Tax. (a) Authorization and Scope. = The Board of Commissioners of Henderson County may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy and tourism development tax of no less than three percent (3%) nor more than five percent (5%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3).~~ G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of Henderson County may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Henderson County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

~~(b) Collection. Every operator of a 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 from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the 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 county 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.~~

(c) Administration. – 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. The county shall administer a tax levied



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1 under this act. A tax levied under this act is due and payable to the county finance officer in
2 monthly installments on or before the 20th day of the month following the month in which the
3 tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before
4 the 20th day of each month, prepare and render a return on a form prescribed by the county.
5 The return shall state the total gross receipts derived in the preceding month from rentals upon
6 which the tax is levied.

7 A return filed with the county finance officer under this act is not a public record as defined
8 by G.S. 132-1 and may not be disclosed except as required by law.

9 (d) Penalties. A person, firm, corporation, or association who fails or refuses to file the
10 return required by this act shall pay an additional tax, as a penalty, of one percent (1%) of the
11 tax due for each day's omission up to 30 days, with a minimum penalty of twenty five dollars
12 (\$25.00). In case of failure or refusal to file the return or pay the tax for a period of 30 days
13 after the time required for filing the return or for paying the tax, there shall be an additional tax,
14 as a penalty, of ten percent (10%) of the tax and penalty due in addition to any other penalty,
15 with an additional tax of ten percent (10%) for each additional month or fraction thereof until
16 the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive
17 the tax penalties imposed by this subsection.

18 Any person who willfully attempts in any manner to evade a tax or penalty imposed under
19 this act or who willfully fails to pay the tax or penalty or make and file a return shall, in
20 addition to all other penalties provided by law, be guilty of a misdemeanor and shall be
21 punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed
22 six months, or both.

23 (e) Use of Tax Revenue. – The county shall, on a quarterly basis, remit the net proceeds
24 of the room occupancy and tourism development tax levied under this act to the Henderson
25 County Tourism Development Authority. The Authority shall use at least two-thirds of the
26 funds remitted to it under this subsection to promote travel and tourism in Henderson County
27 and shall use the remainder for tourism-related expenditures.

28 (e1) Definitions. – The following definitions apply in this section:

29 (1) Net proceeds. – Gross proceeds less the cost to the county of administering
30 and collecting the tax, as determined by the finance officer, not to exceed
31 three percent (3%) of the first five hundred thousand dollars (\$500,000) of
32 gross proceeds collected each year and one percent (1%) of the remaining
33 gross receipts collected each year.

34 (2) Promote travel and tourism. – To advertise or market an area or activity,
35 publish and distribute pamphlets and other materials, conduct market
36 research, or engage in similar promotional activities that attract tourists or
37 business travelers to the area. The term includes administrative expenses
38 incurred in engaging in the listed activities.

39 (3) Tourism-related expenditures. – Expenditures that, in the judgment of the
40 entity responsible for expending the net proceeds of the tax, are designed to
41 increase the use of lodging facilities, meeting facilities, or convention
42 facilities in a county or to attract tourists or business travelers to the county.
43 The term includes tourism-related capital expenditures.

44 ~~shall place the net proceeds collected from a tax levied under this act in a special Travel and~~
45 ~~Tourism Fund. Revenue in this fund may be used only to promote travel and tourism in the~~
46 ~~county. This fund will be administered by the Henderson Travel and Tourism Committee. As~~
47 ~~used in this subsection, "net proceeds" means gross proceeds less five percent (5%) of the gross~~
48 ~~proceeds which the county may retain to defray the cost of administering and collecting the tax.~~

49 The scope of promotion of travel and tourism in the county may include the following:

50 (1) ~~Contracting with any person, firm, or agency to advise and assist in travel~~
51 ~~and tourism promotion.~~

1 (2) Advertising via appropriate media.
2 (3) ~~Assisting in the initial funding and possible annual subsidy of a fine arts~~
3 ~~center or other similar facility which could logically be expected to promote~~
4 ~~tourism in the county.~~

5 (4) Promoting special events which would bring tourists to the county.

6 (f) ~~Effective Date of Levy. A tax levied under this act shall become effective on the~~
7 ~~date specified in the resolution levying the tax. That date must be the first day of a calendar~~
8 ~~month, however, and may not be earlier than the first day of the second month after the date the~~
9 ~~resolution is adopted.~~

10 (g) ~~Repeal. A tax levied under this act may be repealed by a resolution adopted by the~~
11 ~~board of commissioners of the county. Repeal of a tax levied under this act does not affect a~~
12 ~~liability for a tax that attached before the effective date of the repeal, nor does it affect a right to~~
13 ~~a refund of a tax that accrued before the effective date of the repeal.~~

14 "Sec. 6. ~~Henderson Travel and Tourism Committee.~~Tourism Development Authority. (a)
15 Appointment and Membership. – When the board of commissioners adopts a resolution levying
16 a room occupancy tax under subsection (a1) of this Section 5 of this act, it shall also adopt a
17 resolution creating the Henderson Travel and Tourism Committee, Tourism Development
18 Authority, which shall be a public authority under the Local Government Budget and Fiscal
19 Control Act. The resolution adopted by the Board of Commissioners shall provide for the
20 membership of the Authority, including the members' terms of office, and for the filling of
21 vacancies on the Authority. The Committee shall consist of nine voting members as follows:

22 (1) ~~Four~~Three members who are registered to vote in Henderson County,
23 appointed by the Henderson County Board of
24 ~~Commissioners;~~Commissioners.

25 (2) ~~Four~~Three members who are registered to vote in Henderson County,
26 appointed by the Hendersonville City ~~Council;~~ Council.

27 (3) ~~The President of the Greater Hendersonville Chamber of Commerce, or his~~
28 ~~designee, to serve ex officio.~~One member who is registered to vote in
29 Henderson County, appointed by the Fletcher Town Council.

30 (4) One member who is registered to vote in Henderson County, appointed by
31 the Flat Rock Village Council.

32 (5) One member appointed by the Henderson County Board of Commissioners
33 upon a recommendation of the Greater Hendersonville Chamber of
34 Commerce.

35 Of these members, at least one-third of the members shall be individuals who are affiliated
36 with businesses that collect the tax in the county, and at least one-half of the members shall be
37 individuals who are currently active in the promotion of travel and tourism in the county.

38 The board of commissioners shall designate one member of the ~~Committee~~Authority as
39 chair and shall determine the compensation, if any, to be paid to members of the
40 ~~Committee.~~Authority. The CommitteeAuthority shall meet at the call of the chair and shall
41 adopt rules of procedure to govern its meetings. The finance officer for Henderson County shall
42 be the ex officio finance officer of the ~~Committee.~~Authority. The Committee shall administer
43 ~~the Travel and Tourism Fund as provided in Section 1(e) of this act.~~

44 (b) Duties. – The Authority shall expend the net proceeds of the tax levied under
45 subsections (a) and (a1) of Section 5 of this act for the purposes provided in Section 5 of this
46 act. The Authority shall promote travel, tourism, and conventions in the county, sponsor
47 tourist-related events and activities in the county, and finance tourist-related capital projects in
48 the county.

49 (c) Reports. – The CommitteeAuthority shall report quarterly and at the close of the
50 fiscal year to the board of commissioners on its receipts and expenditures for the preceding
51 quarter and for the year in such detail as the board may require."

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

2 "(g) Applicability. – Subsection (c) of this section applies to all counties and county
3 districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of
4 a local act, subsection (c) supersedes that provision. The remainder of this section applies only
5 to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell,
6 Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin,
7 Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Henderson, Jackson, Madison,
8 Martin, McDowell, Montgomery, Moore, Nash, New Hanover, New Hanover County District
9 U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham,
10 Rowan, Rutherford, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance,
11 Washington, and Wilson Counties, to Surry County District S, to Watauga County District U,
12 to Wilkes County District K, to Yadkin County District Y, and to the Township of Averagesboro
13 in Harnett County and the Ocracoke Township Taxing District."

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