

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 758\*

Short Title: Orange Omnibus Act.

(Local)

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Sponsors: Representatives Insko and Hackney.

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Referred to: Local and Regional Government, if favorable, Finance.

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April 2, 1997

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE ORANGE COUNTY TO LEVY AN EXCISE TAX ON  
2 INSTRUMENTS CONVEYING REAL PROPERTY IN ORANGE COUNTY AND  
3 AN ENTERTAINMENT TAX ON EVENTS IN LARGE FACILITIES IN ORANGE  
4 COUNTY, RELATING TO CLASSIFICATIONS UNDER THE ORANGE  
5 COUNTY CIVIL RIGHTS ORDINANCE, TO CLARIFY THE AUTHORITY OF  
6 ORANGE COUNTY TO REGULATE THE USE, STORAGE, DISPOSAL,  
7 LABELING, OR APPLICATION OF PESTICIDES, AND TO MAKE TECHNICAL  
8 CHANGES IN THE ORANGE COUNTY ROOM OCCUPANCY TAX.

9  
10 The General Assembly of North Carolina enacts:

11 Section 1. Excise Tax.

12 (a) Authorization. The Orange County Board of Commissioners may, by  
13 resolution, levy an excise tax on instruments conveying certain interests in real property  
14 in Orange County. The tax imposed may not exceed one dollar (\$1.00) on each one  
15 hundred dollars (\$100.00) or fraction thereof of the total consideration or value,  
16 whichever is greater, of the interest conveyed, including, in the case of a sale, the value of  
17 any lien or encumbrance remaining on the property at the time of sale. This tax is in  
18 addition to the tax levied by Article 8E of Chapter 105 of the General Statutes.

19 The value of a lease subject to this tax shall be computed on the basis of the  
20 present value of the fixed lease payments and, if the lease payments are based in whole or

1 in part on the lessee's receipts, the estimated amount of the lessee's receipts. Based upon  
2 the recommendation of the Orange County Finance Director, the Board of  
3 Commissioners shall, at least annually, set the discount rate to be used to determine the  
4 present value of lease payments. Such determination shall be conclusive.

5 (b) Scope. A tax levied under this section applies to all instruments conveying an  
6 interest in real property in Orange County except an instrument:

7 (1) Conveying an interest in real property from the United States, the State,  
8 or a political subdivision of the State.

9 (2) Recording a lease for a term of 10 years or less, unless:

10 a. The lease gives the lessee an option to renew the lease for a  
11 period that, when added to the term of the lease, exceeds 10  
12 years;

13 b. The lease is for substantially the same property and is between  
14 the same parties as a lease previously recorded, and the term of  
15 the new lease, when added to that of the previous lease, exceed  
16 10 years; or

17 c. The lease requires or permits the property to be transferred to the  
18 lessee for less than the fair market value of the property.

19 (3) Securing indebtedness.

20 (4) Recording a transfer in which no consideration is due the transferor by  
21 the transferee.

22 (5) Conveying an interest in real property located in more than one county  
23 if the greater part of the property, with respect to value, lies in a county  
24 other than Orange County.

25 In addition, this tax does not apply to conveyances of an interest in real property by  
26 operation of law, by will, by intestacy, by gift, by merger or consideration.

27 (c) Collection. A tax levied under this section is payable by the transferor of the  
28 interest to the Orange County Director of Revenue. The transferor in the case of a  
29 sheriff's deed is herein defined to be the debtor whose property is sold pursuant to judicial  
30 process. The sheriff is authorized to pay the tax on behalf of the debtor and to charge the  
31 tax levied under this section to the account of the debtor as a cost of sale.

32 This tax shall be paid at the office of the Director of Revenue before the  
33 instrument conveying the interest is recorded. The Director of Revenue may require any  
34 documentation, including an affidavit of value, the Director of Revenue considers  
35 necessary to establish the accuracy of the tax to be paid. The Director of Revenue shall  
36 stamp or otherwise mark each instrument subject to the tax to indicate that the tax has  
37 been paid. The Orange County Register of Deeds may not accept for recordation an  
38 instrument subject to a tax levied under this section unless the instrument bears the mark  
39 of the Director of Revenue indicating that the tax has been paid.

40 (d) Use and Distribution of Tax Revenue. Orange County may retain in its general  
41 fund three percent (3%) of the gross proceeds of the tax as costs of collection. The  
42 remaining proceeds of the tax shall be retained by the county and placed in a Capital  
43 Reserve Fund to be expended only for capital projects, including debt service for capital

1 projects. All interest earned from investment of the funds in the Capital Reserve Fund  
2 shall be held and expended only in accordance with the provisions of this subsection.

3 (e) Penalties. A person who knowingly fails or refuses to pay a tax levied  
4 under this section, who knowingly aids another to fail to pay a tax levied under this  
5 section, or who, to avoid paying part or all of the tax due under this section, knowingly  
6 misstates the total consideration for an interest conveyed is guilty of a Class 3  
7 misdemeanor and is punishable by imprisonment as provided by law and a fine of not  
8 less than one hundred dollars (\$100.00) nor more than the amount of tax that is due and  
9 payable.

10 (f) Taxes Recoverable by Action. If a transferor fails to pay a tax imposed by  
11 this section within 30 days after the Revenue Director's demand that the transferor pay  
12 the tax, the tax may be recovered by Orange County in an action brought in the General  
13 Court of Justice, Superior or District Court, of the county. In an action to recover a tax  
14 imposed under this section, costs of court shall include a fee to the county of twenty-five  
15 dollars (\$25.00) for the expense of collection.

16 (h) Effective Date and Application. A tax levied under this section shall  
17 become effective on the first day of a month, as designated in the resolution levying the  
18 tax, and may not become effective for at least 30 days after the adoption of the resolution.  
19 A tax levied under this section applies to instruments that are recorded on or after the  
20 effective date of the levy, except instruments executed on or after that date that convey an  
21 interest in real property pursuant to a written contract recorded before the effective date.

22 (i) Repeal. A tax levied by this section may be repealed by a resolution  
23 adopted by the Orange County Board of Commissioners. Repeal of a tax levied under  
24 this section shall become effective on the first day of a month and shall apply to  
25 instruments recorded on or after the effective date of the repeal. Repeal of a tax levied  
26 under this section does not affect a liability for the tax that attached before the effective  
27 date of the repeal.

## 28 Section 2. Admissions Tax.

29 (a) Authorization and Scope. Notwithstanding the provisions of G.S. 105-37.1(b),  
30 the Orange County Board of Commissioners may, by resolution, levy an entertainment  
31 tax on every admission ticket purchased for admission to an entertainment, an  
32 amusement, or an athletic or commercial event for which an admission is charged and  
33 which is presented in Orange County in a facility having a seating capacity greater than  
34 15,000. This tax does not apply, however, to athletic events sponsored by the North  
35 Carolina High School Athletic Association that involve participants at or below high  
36 school level. The tax shall be at a rate of not more than one dollar (\$1.00) per admission  
37 ticket purchased. This tax is in addition to any other State or local tax.

38 (b) Collection. Every person, firm, corporation, or organization selling admission  
39 tickets taxable under this section shall collect the tax. This tax shall be collected at the  
40 same time as the charge for furnishing a taxable admission ticket and shall be paid by the  
41 purchaser to the seller of the admission ticket as trustee for and on account of Orange  
42 County. The tax shall be stated and charged separately from the sales price. The tax

1 shall be added to the admission price and shall be passed on to the purchaser instead of  
2 being borne by the seller.

3 (c) Administration. Orange County shall administer a tax levied under this  
4 section. A tax levied and collected under this section is due and payable to the Orange  
5 County Director of Revenue on or before the 15th day of the month following the month  
6 in which the tax accrues. Every person, firm, or corporation liable for the tax shall, on or  
7 before the 15th day of each month, prepare and render a return on a form prescribed by  
8 Orange County. The return shall state the total number of admissions subject to the tax  
9 that were sold in the preceding month. A return filed with the Director of Revenue under  
10 this section is not a public record and may not be disclosed except in accordance with  
11 G.S. 153A-148.1 or G.S. 160A-208.1. Orange County may, by resolution, establish  
12 additional procedures for collection, reporting, remittance, and use of a tax levied under  
13 this section.

14 (d) Penalties. A person, firm, or corporation who fails or refuses to file the return  
15 required by this section shall pay a tax penalty of ten dollars (\$10.00) for each day's  
16 omission. In case of failure or refusal to file the return or pay the tax for a period of 30  
17 days after the time required for filing the return or for paying the tax, there shall be an  
18 additional tax penalty of five percent (5%) of the tax due, with an additional tax penalty  
19 of five percent (5%) for each additional month or fraction thereof until the tax is paid.  
20 The board of county commissioners may, for good cause shown, compromise or forgive  
21 the tax penalties imposed by this section.

22 Any person who willfully attempts in any manner to evade a tax imposed  
23 under this section or who willfully fails to pay the tax or make and file a return shall, in  
24 addition to all other penalties provided by law, be guilty of a misdemeanor.

25 (e) Use and Distribution of Tax Revenue. The Board of Commissioners of  
26 Orange County shall use the proceeds collected from this tax solely for capital projects.  
27 The proceeds shall be placed in a Capital Reserve Fund to be expended only for capital  
28 projects, including debt service for capital projects. All interest earned from investment  
29 of the funds in the Capital Reserve Fund shall be held and expended only in accordance  
30 with the provisions of this subsection.

31 (f) Effective Date of the Levy. A tax levied under this section shall become  
32 effective on the date specified in the resolution levying the tax. That date must be the  
33 first day of a calendar month, however, and may not be earlier than the first day of the  
34 second month after the date the resolution is adopted.

35 (g) Repeal. A tax levied under this section may be repealed by a resolution  
36 adopted by the Orange County Board of Commissioners. Repeal of a tax levied under  
37 this section shall become effective on the first day of a month and may not become  
38 effective until the end of the fiscal year in which the repeal resolution was adopted.  
39 Repeal of a tax levied under this section does not affect liability for a tax, its collection,  
40 or its payment to Orange County that was attached before the effective date of the repeal,  
41 nor does it affect a right to a refund of a tax that accrued before the effective date of the  
42 repeal.

1 Section 3. Section 6(a) of Chapter 246, Session Laws of 1991, as rewritten by  
2 Section 14 of Chapter 358 of the 1993 Session Laws reads as rewritten:

3 "(a) The Board of Commissioners of Orange County (hereafter 'Board of  
4 Commissioners') may adopt an ordinance (hereafter 'the Ordinance') to prohibit  
5 discrimination in employment, housing, and public accommodations on the basis of race,  
6 color, religion, gender, national origin, age, disability, marital status, familial status, ~~and~~  
7 ~~veteran status-~~status, heterosexuality, and homosexuality.

8 The Board of Commissioners may include in the Ordinance a prohibition of language  
9 or conduct or both directed at an individual or at a group of individuals because of that  
10 individual's or group of individuals' actual or perceived race, color, religion, gender,  
11 national origin, age, disability, marital status, familial status, ~~or~~-~~veteran status-~~status,  
12 heterosexuality, or homosexuality which communicates in a threatening manner words  
13 that incite imminent lawless action or which tend to incite an immediate breach of the  
14 peace."

15 Section 4. G.S. 153A-465(d) reads as rewritten:

16 "(d) No county, city, or other political subdivision of the State shall adopt or  
17 continue in effect any ordinance, rule, regulation, or resolution regulating the use, sale,  
18 distribution, storage, transportation, disposal, formulation, labeling, registration,  
19 manufacture, or application of pesticides in any area subject to regulation by the Board  
20 pursuant to this Article. Nothing in this section shall prohibit a county, city, or other  
21 political subdivision of the State from exercising its planning and zoning authority under  
22 Article 19 of Chapter 160A of the General Statutes or Article 18 of Chapter 153A of the  
23 General Statutes, or from exercising its fire prevention or inspection authority.  
24 Notwithstanding the first sentence of this subsection, a county may, in the exercise of its  
25 planning and zoning authority under Article 18 of Chapter 153A of the General Statutes,  
26 in a manner more stringent than any rule, regulation, or resolution adopted by the North  
27 Carolina Pesticide Board, regulate the use, storage, disposal, labeling, or application of  
28 pesticides."

29 Section 5. This section makes technical changes in the Orange County Room  
30 Occupancy Tax.

31 Section 6. This act is effective when it becomes law.