

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-162
HOUSE BILL 105**

AN ACT TO AUTHORIZE BUNCOMBE COUNTY TO LEVY AN ADDITIONAL ONE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, TO MODIFY THE PURPOSES FOR WHICH THE ROOM TAX MAY BE USED, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Part VI of Chapter 908 of the 1983 Session Laws, as amended by Section 1 of Chapter 942 of the 1985 Session Laws, reads as rewritten:

"PART VI. BUNCOMBE OCCUPANCY TAX.

~~"Sec. 17. Levy of Tax. Authorization and Scope. (a) The Board of Commissioners of Buncombe 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.~~

~~(b) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the board of county commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

~~"Sec. 18. Occupancy Tax. The county room occupancy and tourism development tax that may be levied under this Part shall be tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar place within the county now subject to the three percent (3%) accommodations within the county that are subject to sales tax imposed by the State under G.S. 105-164.4(3). 105-164.4(a)(3). This tax is in addition to any local sales tax. This tax does not apply to gross receipts derived by the following entities from accommodations furnished by them:~~

- ~~(1) religious organizations;~~
- ~~(2) educational organization; organizations;~~
- ~~(3) any business that offers to rent fewer than five units; and~~
- ~~(4) summer camps.~~

~~"Sec. 19. Administration of Tax. A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155.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 act.~~

~~(a) Any tax levied under this Part is due and payable to the county in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this Part shall pay a penalty of ten dollars (\$10.00) for each day's omission.~~

~~(c) In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, in addition to the~~

penalty prescribed in subsection (b), with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid.

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

~~"Sec. 20. Collection of Tax. Every operator of a business subject to the tax levied by this Part shall, on and after the effective date of the levy of the tax, collect the two percent (2%) room occupancy tax. This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. 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 Buncombe County. The room occupancy tax levied pursuant to this Part 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 in Buncombe County the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~"Sec. 21. Disposition of Taxes Collected. (a) Buncombe County shall remit the net proceeds of the occupancy tax to the county Tourism Development Authority in Buncombe County. "Net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax. The Authority may not use more than ten percent (10%) of the funds distributed to it pursuant to this subsection for administrative expenses of the Authority.~~

~~(b) The Authority may expend any funds distributed to it pursuant to subsection (a) of this section only as follows:~~

~~(1) Three-fourths of the funds may be used only to further the development of travel, tourism, and conventions in the county through State, national, and international advertising and promotion.~~

~~(2) The Authority shall create a Tourism Product Development Fund and, in order to further economic development in the county, shall credit the remainder of the funds to the Tourism Product Development Fund. The purpose of the fund shall be to provide financial assistance for major tourism projects in order to significantly increase patronage of lodging facilities in Buncombe County.~~

~~(c) The Authority shall administer and spend the funds in the Tourism Product Development Fund as follows:~~

~~(1) The Authority shall create a Product Development Committee to review and evaluate proposals from applicants for tourism capital projects and to make recommendations to the Authority regarding use and disposition of funds derived from the Tourism Product Development Fund. Only upon recommendation of the Product Development Committee, the Authority may award funds to qualified projects in the form of outright grants of money and may guarantee loans and participate in pledges of debt service for these projects. Projects must be located in Buncombe County unless the Commissioners of Buncombe County give specific approval to projects outside the county. Applicants must provide a feasibility study satisfactory to the Product Development Committee demonstrating the project's economic value to the area and the number of estimated new room nights it will generate.~~

~~(2) To be a qualified project, a project must be expected to significantly increase patronage of lodging facilities in Buncombe County.~~

~~(3) The Authority is not required to exhaust all of the funds generated each year and may accumulate money in order to create a revolving fund to further the purposes of this section. The Authority may not~~

commit for purposes of debt service in excess of thirty-three percent (33%) of net funds received in any one year for a period of time in excess of 10 years. The Authority may not commit for purposes of debt service in excess of ten percent (10%) of net funds received in any one year for any single project.

- (4) The Product Development Committee need not be comprised solely of members of the Authority. A majority of the members of the Product Development Committee must be persons who are owners or operators of hotels, motels, or other taxable tourist accommodations.

~~only to further the development of travel, tourism, and conventions in the county through State, national, and international advertising and promotion. The Authority may not use more than ten percent (10%) of the funds distributed to it pursuant to subsection (a) for administrative expenses of the Authority.~~

"Sec. 22. Appointment, Duties of Tourism Development Authority. (a) When the board of county commissioners adopts a resolution levying a room occupancy tax pursuant to this Part, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act and shall be composed of the following nine members:

- (1) a county commissioner appointed by the board of county commissioners, who shall serve as an ex officio, nonvoting member;
- (2) a member of the Asheville City Council appointed by the board of county commissioners, who shall serve as an ex officio, nonvoting member;
- (3) four owners or operators of hotels, motels, or other taxable tourist accommodations, two of which own or operate hotels, motels, or other accommodations with more than 100 rental units, one of whom shall be appointed by the Asheville City Council and one by the board of county commissioners; and two of which own or operate hotels, motels, or other accommodations with 100 or fewer rental units, one of whom shall be appointed by the Asheville City Council and one by the board of county commissioners;
- (4) three individuals involved in the tourist business who have demonstrated an interest in tourist development and do not own or operate hotels, motels, or other taxable tourist accommodations, appointed as follows: one by the Asheville City Council, one by the Asheville Area Chamber of Commerce, and one by the board of county commissioners.

All members of the Authority shall serve without compensation. Vacancies in the Authority shall be filled by the appointing authority of the member creating the vacancy. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms, except the initial members who shall serve the following terms:

- (1) members appointed pursuant to subdivisions (1) and (2) above shall serve one-year terms;
- (2) of the members appointed pursuant to subdivision (3) above, one appointee of the city council and the board of commissioners shall serve a two-year term and one appointee of the city council and the board of commissioners shall serve a three-year term, as designated by the city council and board of county commissioners;
- (3) of the three members appointed pursuant to subdivision (4) above, the appointee of the Asheville City Council shall serve a one-year term, the appointee of the Asheville Area Chamber of Commerce shall serve a two-year term, and the appointee of the board of county commissioners shall serve a three-year term.

Members may serve no more than two consecutive terms. The members shall elect a ~~chairman, chair,~~ who shall serve for a term of two years. The Authority shall meet at the call of the ~~chairman chair~~ and shall adopt rules of procedure to govern its meetings. The finance officer for Buncombe County shall be the ex officio finance officer of the Authority.

(b) The Tourism Development Authority may contract with any person, firm, or agency to advise and assist it in the promotion of travel, tourism, and conventions and may recommend to the board of county commissioners that county staff be employed for this advice and assistance. Any county staff employed under this Part shall be hired and supervised by the Tourism Development Authority, which shall pay the salaries and expenses of this staff.

(c) The Tourism Development Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

~~"Sec. 23. Repeal of Levy. (a) The board of county commissioners may by resolution repeal the levy of the room occupancy tax in Buncombe County, but no repeal of taxes levied under this Part shall be effective until the end of the fiscal year in which the repeal resolution was adopted.~~

~~(b) No liability for any tax levied under this Part that attached prior to the date on which a levy is repealed shall be discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed shall be denied as a result of the repeal.~~

~~"Sec. 23.1. First Additional Tax. In addition to the tax authorized by Sections 17 and 18 Section 17 of this Part, the Buncombe County Board of Commissioners may levy an additional room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under those sections. that section. The levy, collection, administration, and repeal of the tax authorized by this section, and the use of tax revenue from a tax levied under this section, shall be in accordance with Sections 17 through 23 of this Part. Buncombe County may not levy a tax under this section unless it also levies a tax under Sections 17 and 18 Section 17 of this Part.~~

~~"Sec. 23.2. Second Additional Tax. In addition to the tax authorized by Sections 17 and 23.1 of this Part, the Buncombe County Board of Commissioners may levy an additional room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under those sections. The levy, collection, administration, and repeal of the tax authorized by this section, and the use of tax revenue from a tax levied under this section, shall be in accordance with Sections 17 through 23 of this Part. Buncombe County may not levy a tax under this section unless it also levies the taxes under Sections 17 and 23.1 of this Part."~~

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

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

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

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

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The 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 taxing 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 taxing 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. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

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

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

(g) This section applies only to Avery, Brunswick, Buncombe, Craven, Currituck, Davie, Granville, Madison, Nash, Person, Randolph, Scotland, and Transylvania Counties."

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

In the General Assembly read three times and ratified this the 4th day of June, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives