

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**HOUSE BILL 1720
Committee Substitute Favorable 9/19/02**

Short Title: Wilmington Occupancy Tax.

(Local)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE CITY OF WILMINGTON TO LEVY A ROOM
2 OCCUPANCY AND TOURISM DEVELOPMENT TAX.
3

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Occupancy tax. – (a) Authorization and Scope. – If New
6 Hanover County has created a Tourism Development Authority pursuant to Part VIII of
7 Chapter 908 of the 1983 Session Laws, as amended, the Wilmington City Council may,
8 by resolution, levy a local occupancy tax of three percent (3%) of the gross receipts
9 derived from the rental of any room, lodging, or accommodation furnished by a hotel,
10 motel, inn, tourist camp, or similar place within the city that is subject to sales tax
11 imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or
12 local sales tax. This tax does not apply to accommodations furnished by nonprofit
13 charitable, educational, or religious organizations when furnished in furtherance of their
14 nonprofit purpose.

15 Before adopting a resolution levying a tax under this section, the Wilmington
16 City Council must hold a public hearing on the question. The City Council must give at
17 least 15 days' public notice of the hearing, including details on the proposed uses of the
18 tax proceeds. After adopting the resolution, the City Council must immediately forward
19 a copy of the resolution to the New Hanover County Board of Commissioners and the
20 county manager. A tax levied under this subsection shall become effective no earlier
21 than February 1, 2003.

22 **SECTION 1.(b)** Administration. – New Hanover County shall collect and
23 administer a tax levied under this section. Except as otherwise provided in this section, a
24 tax levied under this section shall be levied, administered, collected, and repealed as
25 provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax
26 levied under this section.

27 **SECTION 1.(c)** Definitions. – The following definitions apply in this
28 section:

- 1 (1) Downtown Wilmington. – The area consisting of the Central Business
2 District, the National Register Historic District, and the area extending
3 to the Holmes Bridge and the Cape Fear River in the city of
4 Wilmington, North Carolina.
- 5 (2) Net proceeds. – Gross proceeds less the cost to the county of
6 administering and collecting the tax, as determined by the finance
7 officer, not to exceed three percent (3%) of the first five hundred
8 thousand dollars (\$500,000) of gross proceeds collected each year and
9 one percent (1%) of the remaining gross receipts collected each year.
- 10 (3) Promote travel and tourism. – To advertise or market an area or
11 activity, publish and distribute pamphlets and other materials, conduct
12 market research, or engage in similar promotional activities that attract
13 tourists or business travelers to the area; the term includes
14 administrative expenses incurred in engaging in the listed activities.
- 15 (4) Tourism Development Authority or Authority. – The Authority created
16 by New Hanover County pursuant to Part VIII of Chapter 908 of the
17 1983 Session Laws, as amended.

18 **SECTION 1.(d)** Use of Tax Revenue. – If a tax is levied under this section,
19 New Hanover County shall create a convention center account. The county shall remit
20 the net proceeds of a tax levied under this section quarterly to the convention center
21 account. Funds in the account, including interest or investment income on the account,
22 may be used only as provided in this subsection:

- 23 (1) The county shall hold the funds in the convention center account,
24 including interest or investment income, until one or more of the
25 conditions provided in this subsection have been met. When any of the
26 conditions provided in subdivision (2), (3), or (4) of this subsection
27 has been met, the proceeds shall be used as provided in that
28 subdivision.
- 29 (2) If, at the end of three years after the first levy of a tax under this
30 section, the City of Wilmington has not demonstrated to the
31 satisfaction of a Tourism Development Authority created by the
32 county pursuant to a local act of the General Assembly that all
33 financing and development arrangements for a convention center have
34 been completed, the county shall remit all funds in the convention
35 center account to the Tourism Development Authority. Thereafter, all
36 tax proceeds remitted to the convention center account shall be
37 remitted quarterly to the Tourism Development Authority. The
38 Authority shall use these funds only to promote travel and tourism. For
39 the purpose of this subdivision, completion of financing and
40 development arrangements includes, at a minimum, obtaining
41 financing commitments for construction, entering into contracts for
42 construction and management, and securing the necessary land for the
43 project.

1 (3) If, within three years after the first levy of a tax under this section, the
2 City of Wilmington demonstrates to the satisfaction of a Tourism
3 Development Authority created by the county pursuant to a local act of
4 the General Assembly that all financing and development
5 arrangements for a convention center have been completed, the county
6 shall remit all funds in the convention center account to the City of
7 Wilmington. Thereafter, except as provided in subdivision (4) of this
8 subsection, all tax proceeds remitted to the convention center account
9 shall be remitted quarterly to the City of Wilmington. The City of
10 Wilmington may use the funds only for construction, financing,
11 operation, promotion, and maintenance of the convention center. For
12 the purpose of this subdivision, completion of financing and
13 development arrangements includes, at a minimum, obtaining
14 financing commitments for construction, entering into contracts for
15 construction and management, and securing the necessary land for the
16 project.

17 (4) If the condition set out in subdivision (3) of this subsection has been
18 met but within four years after the first levy of a tax under this section,
19 the City of Wilmington fails to demonstrate to the satisfaction of the
20 Tourism Development Authority that construction has begun on a
21 convention center in Downtown Wilmington, then the city must return
22 to the county any funds it received under this subsection that have not
23 been spent or committed. The county shall use these funds and any tax
24 proceeds remitted thereafter to the convention center account only to
25 promote travel and tourism in the city. If the county has created a
26 Tourism Development Authority pursuant to a local act of the General
27 Assembly, the county must remit the funds and future tax proceeds to
28 the Tourism Development Authority. The Authority shall use these
29 funds only to promote travel and tourism in the city.

30 **SECTION 1.(e) Reports.** – Each entity responsible for administering and
31 spending the proceeds of a tax levied under this section must each annually publish a
32 detailed, audited report on its receipts and expenditures of the occupancy tax proceeds
33 during the preceding year. The text of the report must be included in the minutes of the
34 entity's governing body and placed on a public web site, and must be made available in
35 hard copy upon request.

36 **SECTION 2.** City administrative provisions. – G.S. 160A-215, as amended
37 by S.L. 2002-95, reads as rewritten:

38 "**§ 160A-215. Uniform provisions for room occupancy taxes.**

39 (a) **Scope.** – This section applies only to municipalities the General Assembly
40 has authorized to levy room occupancy taxes. For the purpose of this section, the term
41 "city" means a municipality.

42 (b) **Levy.** – A room occupancy tax may be levied only by resolution, after not
43 less than 10 days' public notice and after a public hearing held pursuant thereto. A room
44 occupancy tax shall become effective on the date specified in the resolution levying the

1 tax. That date must be the first day of a calendar month, however, and may not be
2 earlier than the first day of the second month after the date the resolution is adopted.

3 (c) Collection. – Every operator of a business subject to a room occupancy tax
4 shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall
5 be collected as part of the charge for furnishing a taxable accommodation. The tax shall
6 be stated and charged separately from the sales records and shall be paid by the
7 purchaser to the operator of the business as trustee for and on account of the taxing city.
8 The tax shall be added to the sales price and shall be passed on to the purchaser instead
9 of being borne by the operator of the business. The taxing city shall design, print, and
10 furnish to all appropriate businesses and persons in the city the necessary forms for
11 filing returns and instructions to ensure the full collection of the tax. An operator of a
12 business who collects a room occupancy tax may deduct from the amount remitted to
13 the taxing city a discount equal to the discount the State allows the operator for State
14 sales and use tax.

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

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

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

38 (g) This section applies only to Beech Mountain District W, to the Cities of
39 Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton,
40 Lumberton, Monroe, Mount Airy, Shelby, Statesville, ~~and~~ Washington, and
41 Wilmington, to the Towns of Beech Mountain, Carrboro, Jonesville, Mooresville, North
42 Topsail Beach, Selma, Smithfield, St. Pauls, and Wilkesboro, and to the municipalities
43 in Avery and Brunswick Counties."

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