

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2002-139
HOUSE BILL 1720**

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

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – If New Hanover County has created a Tourism Development Authority pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended, the Wilmington City Council may, by resolution, levy a local occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under 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 when furnished in furtherance of their nonprofit purpose.

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

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as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215.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

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

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

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

- (1) The county shall hold the funds in the convention center account, including interest or investment income, until one or more of the conditions provided in this subsection have been met. When any of the conditions provided in subdivision (2), (3), or (4) of this subsection has been met, the proceeds shall be used as provided in that subdivision.
- (2) If, at the end of three years after the first levy of a tax under this section, the City of Wilmington has not demonstrated to the satisfaction of a Tourism Development Authority created by the county pursuant to a local act of the General Assembly that all financing and development arrangements for a convention center have been completed, the county shall remit all funds in the convention center account to the Tourism Development Authority. Thereafter, all tax proceeds remitted to the convention center account shall be remitted quarterly to the Tourism Development Authority. The Authority shall use these funds only to promote travel and tourism. For the purpose of this subdivision, completion of financing and development arrangements includes, at a minimum, obtaining financing commitments for construction, entering into contracts for construction and management, and securing the necessary land for the project.
- (3) If, within three years after the first levy of a tax under this section, the City of Wilmington demonstrates to the satisfaction of a Tourism Development Authority created by the county pursuant to a local act of the General Assembly that all financing and development arrangements for a convention center have been completed, the county shall remit all funds in the convention center account to the City of Wilmington. Thereafter, except as provided in subdivision (4) of this subsection, all tax proceeds remitted to the convention center account shall be remitted quarterly to the City of Wilmington. The City of Wilmington may use the funds only for construction, financing, operation, promotion, and maintenance of the convention center. For the purpose of this subdivision, completion of financing and development arrangements includes, at a minimum, obtaining financing commitments for construction, entering into contracts for construction and management, and securing the necessary land for the project.
- (4) If the condition set out in subdivision (3) of this subsection has been met but within four years after the first levy of a tax under this section, the City of Wilmington fails to demonstrate to the satisfaction of the Tourism Development Authority that construction has begun on a convention center in Downtown Wilmington, then the city must return to the county any funds it received under this subsection that have not been spent or committed. The county shall use these funds and any tax proceeds remitted thereafter to the convention center account only to promote travel and tourism in the city. If the county has created a Tourism Development Authority pursuant to a local act of the General Assembly, the county must remit the funds and future tax proceeds to the Tourism Development Authority. The Authority shall use these funds only to promote travel and tourism in the city.

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

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

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

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

(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 city. 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 city shall design, print, and furnish to all appropriate businesses and persons in the city 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 city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) **Administration.** – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth 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 fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. 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 city 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 city 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 city may be repealed or reduced by a resolution adopted by the governing body of the city. 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 Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, ~~and~~ Washington, and

Wilmington, to the Towns of Beech Mountain, Carrboro, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, and Wilkesboro, and to the municipalities in Avery and Brunswick Counties."

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

In the General Assembly read three times and ratified this the 3rd day of October, 2002.

s/ Marc Basnight
President Pro Tempore of the Senate

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