

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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**HOUSE BILL 279**  
**Committee Substitute Favorable 4/24/01**  
**Committee Substitute Reported Without Prejudice 5/30/01**

Short Title:   Modify Dare Transfer Tax.

(Local)

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Sponsors:

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Referred to:

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February 27, 2001

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE DARE COUNTY EXCISE TAX ON INSTRUMENTS  
CONVEYING REAL PROPERTY.

The General Assembly of North Carolina enacts:

**SECTION 1.** Section 2 of S.L. 1985-525 reads as rewritten:

"Sec. 2. Tax. (a) Authorization. – The Dare County Board of Commissioners may, by resolution, levy an excise tax on instruments conveying certain interests in real property in Dare County. The tax imposed may not exceed one dollar (\$1.00) on each one hundred dollars (\$100.00) or fraction thereof of the total consideration or value of the interest conveyed, including, in the case of a sale, the value of any lien or encumbrance remaining on the property at the time of sale.

(a1) Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Dare County Board of Commissioners may, by resolution, levy an additional excise tax on instruments taxable under subsection (a) of this section. The tax imposed may not exceed one dollar (\$1.00) on each one hundred dollars (\$100.00) or fraction thereof of the total consideration or value of the interest conveyed, including, in the case of a sale, the value of any lien or encumbrance remaining on the property at the time of sale. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Dare County Board of Commissioners may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(a2) Basis. – This tax is in addition to the tax levied by Article 8E of Chapter 105 of the General Statutes. The value of a lease subject to this tax shall be computed on the basis of the present value of the fixed lease payments and, if the lease payments are based in whole or in part on the lessee's receipts, the estimated amount of the lessee's receipts.

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

- 1           (1) Conveying an interest in real property from the United States, the  
2           State, or a political subdivision of the State;  
3           (2) Recording a lease for a term of 10 years or less, unless:  
4           a. The lease gives the lessee an option to renew the lease for a  
5           period that, when added to the term of the lease, exceeds the  
6           10-year limitation; or  
7           b. The lease is for substantially the same property and is between  
8           the same parties as a lease previously recorded, and the term of  
9           the new lease, when added to that of the previous lease,  
10          exceeds the 10-year limitation; or  
11          c. The lease requires or permits the property to be transferred to  
12          the lessee for less than the fair market value of the property;  
13          (3) Securing indebtedness; or  
14          (4) Recording a transfer in which no consideration was paid or is due the  
15          transferor by the transferee.

16          In addition, this tax does not apply to conveyances of an interest in real property by  
17          operation of law, by will, or by intestacy.

18          (c) Collection. – A tax levied under this section is payable by the transferor of  
19          the interest to the Dare County Tax Collector. This tax must be paid at the tax collector's  
20          office before the instrument conveying the interest is recorded. The tax collector shall  
21          stamp or otherwise mark each instrument subject to the tax to indicate that the tax has  
22          been paid. The Dare County Register of Deeds may not accept for recordation an  
23          instrument subject to a tax levied under this section unless the instrument bears the tax  
24          collector's mark indicating that the tax has been paid.

25          (d) Appeal. – A person who is liable for a tax levied under this section who  
26          disputes the amount of tax due shall pay the tax stated by the tax collector to be due, but  
27          may appeal the payment of the tax to the Land Transfer Tax Appeals Board by filing a  
28          written notice of appeal with the tax collector within 30 days after paying the tax. Upon  
29          receipt of a notice of appeal, the tax collector shall forward a copy of the notice of  
30          appeal to the chairman of the Land Transfer Tax Appeals Board. A notice of appeal  
31          shall state the reason for the appeal and the amount of tax the appellant contends is due.

32          The Land Transfer Tax Appeals Board is established to determine appeals of taxes  
33          imposed under this section. The Board shall consist of seven members, two of whom  
34          shall be appointed by the Dare County Board of Commissioners, one of whom shall be  
35          appointed by the governing body of Kill Devil Hills, one of whom shall be appointed by  
36          the governing body of Kitty Hawk, one of whom shall be appointed by the governing  
37          body of Manteo, one of whom shall be appointed by the governing body of Nags Head,  
38          and one of whom shall be appointed by the governing body of Southern Shores. The  
39          county commissioners shall designate a chairman of the Board from the membership of  
40          the Board. The expenses of the Board are an administrative expense and shall be paid  
41          from the proceeds of the tax.

42          Members of the Board shall serve staggered four-year terms, with the term of one of  
43          the members appointed by the board of commissioners and the terms of the members

1 appointed by the governing bodies of Nags Head and Southern Shores ending on June  
2 30 of one four-year period, and the terms of the remaining members ending on June 30  
3 of the four-year period ending the second year following the year in which the terms of  
4 the other three members ended. Members shall serve until their successors are  
5 appointed. A vacancy shall be filled by the appointing authority of the member who  
6 created the vacancy.

7 The Land Transfer Tax Appeals Board shall meet at the call of the chairman and  
8 shall meet as often as needed to hear appeals. All appeals to the Board shall be heard by  
9 the Board within 45 days of the date the tax collector receives a notice of appeal. The  
10 Board shall issue a written decision within 20 days after hearing an appeal and shall  
11 send a copy of the decision to the appellant and to the tax collector. If the decision states  
12 that an appellant paid more tax than was due, the tax collector shall immediately refund  
13 to the appellant the amount of the overpayment. The appellant and the tax collector may  
14 appeal the decision of the Board in an action brought in the superior court of the county.  
15 An appeal to the superior court shall be heard de novo.

16 (e) Use and Distribution of Tax Revenue.~~Original Tax.~~ – For the first 12 fiscal  
17 years in which a tax levied under subsection (a) of this section is in effect, all proceeds  
18 of the tax shall be retained by the county and shall be placed in a special Capital  
19 Reserve Fund in the general fund of the county. Revenue in this Fund may be used by  
20 the county only for capital expenditures for the following: courts, jails and detention  
21 facilities, emergency medical services, libraries, recreation, education, administration,  
22 water, sewage, health, and social services.

23 Beginning with the 13th fiscal year in which a tax levied under subsection (a) of this  
24 section is in effect, the county shall distribute one-third (1/3) of the net proceeds of the  
25 tax on a quarterly basis to the Towns of Nags Head, Kill Devil Hills, Kitty Hawk,  
26 Southern Shores, and Manteo in Dare County in proportion to the amount of ad valorem  
27 taxes levied by each town for the preceding fiscal year. Revenue distributed to a town  
28 may be used only for capital expenditures. The remaining two-thirds (2/3) of the net  
29 proceeds shall be retained by the county and placed in the special Capital Reserve Fund  
30 established under this subsection, to be used only for the purposes listed above. As used  
31 in this ~~subsection, section,~~ "net proceeds" means gross proceeds less the cost to the  
32 county of administering and collecting the tax.

33 (e1) Use and Distribution of Additional Tax. – Dare County may use the net  
34 proceeds of a tax levied under subsection (a1) of this section only for public school  
35 capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness  
36 incurred by the county for these purposes.

37 (f) Penalties. – A person who knowingly fails to pay a tax levied under this  
38 section, who knowingly aids another to fail to pay a tax levied under this section, or  
39 who, to avoid paying part or all of the tax due under this section, knowingly misstates  
40 the total consideration for an interest conveyed is guilty of a misdemeanor and is  
41 punishable by imprisonment for up to two years and a fine of not less than one hundred  
42 dollars (\$100.00) nor more than one thousand dollars (\$1,000).

1 (g) Taxes Recoverable by Action. – If a transferor fails to pay a tax imposed by  
2 this section within 30 days of the tax collector's demand that he pay the tax, the tax may  
3 be recovered by Dare County in an action brought in the superior court of the county. In  
4 an action to recover a tax imposed under this section, costs of court shall include a fee to  
5 the county of twenty-five dollars (\$25.00) for the expense of collection.

6 (h) Effective Date; Application. – ~~A tax levied~~ The levy or increase of a tax  
7 under this section shall become effective on the first day of a month, as designated in  
8 the resolution levying or increasing the tax, and may not become effective for at least 30  
9 days after the adoption of the resolution. ~~A tax levied~~ The levy or increase of a tax  
10 under this section applies to instruments that are executed on or after the effective date  
11 of the ~~levy,~~ levy or increase, except instruments executed on or after that date that  
12 convey an interest in real property pursuant to a recorded written contract made before  
13 the effective date.

14 (i) ~~Repeal.~~ Repeal or Reduction. – A tax levied by this section may be repealed  
15 or reduced by a resolution adopted by the Dare County Board of Commissioners.  
16 Repeal or reduction of a tax levied under this section shall become effective on the first  
17 day of a month and shall apply to instruments recorded on or after the effective date of  
18 the ~~repeal.~~ Repeal or reduction. Repeal or reduction of a tax levied under this  
19 section does not affect a liability for this tax that attached before the effective date of the  
20 ~~repeal.~~ repeal or reduction. "

21 **SECTION 2.** This act is effective when it becomes law.