

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2002-94
SENATE BILL 1195**

**AN ACT TO AUTHORIZE THE TOWNS IN AVERY COUNTY TO LEVY AN
ADDITIONAL 3% OCCUPANCY TAX.**

The General Assembly of North Carolina enacts:

SECTION 1. Section 16.2 of Chapter 439 of the 2001 Session Laws is amended by adding a new subsection to read:

"SECTION 16.2. Authorization and Scope. – (a) This section applies only to cities in Avery County that are not otherwise authorized to levy a room occupancy tax. The governing body of a city may levy a room occupancy tax of up to 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.

(a1) Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the governing body of a city may levy a room occupancy and tourism development tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection, and the use of tax revenue from a tax levied under this subsection, shall be in accordance with this section. The governing body of a city may not levy a tax under this subsection unless it also levies a tax under subsection (a) of this section."

SECTION 2. Section 1 of Chapter 376 of the 1987 Session Laws, as amended by Part XV of Chapter 439 of the 2001 Session Laws and Part V of Chapter 434 of the 2001 Session Laws, reads as rewritten:

"Section 1. Occupancy Tax. – (a) Authorization and Scope. – The Town Council of Beech Mountain may levy a room occupancy and tourism development tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation in the Town of Beech Mountain 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 or room occupancy tax. The tax does not apply to sleeping rooms or lodgings furnished by charitable, educational, or religious institutions or nonprofit organizations.

(a1) Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the Town Council of Beech Mountain may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under that subsection. The town may not levy a tax under this subsection unless it also levies the tax under subsection (a) of this section. The Town of Beech Mountain may not levy a tax under this subsection if a room occupancy tax is levied in Beech Mountain District W under Part VII of Chapter 434 of the 2001 Session Laws."

SECTION 2.1. Section 2 of Chapter 376 of the 1987 Session Laws, as amended by Part XV of Chapter 439 of the 2001 Session Laws and Part V of Chapter 434 of the 2001 Session Laws, reads as rewritten:

"**Sec. 2.** Administration of Tax. – (a) A tax levied under this ~~section-act~~ 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 act."

SECTION 3. Section 1 of Chapter 318 of the 1989 Session Laws, as amended by Chapter 428 of the 1993 Session Laws and Chapter 103 of the 2000 Session Laws, read as rewritten:

"**Section 1.** Occupancy Tax. – (a) Authorization and Scope. – The Town Council of Banner Elk may levy a room occupancy and tourism development tax. The occupancy and tourism development tax that may be levied under this ~~act-subsection~~ shall be three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation in the Town of Banner Elk 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. The tax shall not apply to any room, lodging, or accommodation supplied to the same person for a period of 90 continuous days or more or to sleeping rooms or lodging furnished by charitable, educational, or religious institutions or by nonprofit organizations.

(a1) Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the Town Council of Banner Elk may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under that subsection. The town may not levy a tax under this subsection unless it also levies the tax under subsection (a) of this section."

SECTION 4. G.S. 160A-215 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~~, W and Seven Devils District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, and Washington, to the Towns of Beech Mountain, Carrboro, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, and Wilkesboro, and to the municipalities in Avery and Brunswick Counties."

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of August, 2002.

s/ Marc Basnight
President Pro Tempore of the Senate

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