

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 225

Short Title: Dare Room Tax/Meals Tax.

(Public)

Sponsors: Representatives Thompson and James.

Referred to: Finance.

March 7, 1991

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE DARE COUNTY TO INCREASE ITS OCCUPANCY TAX, LEVY A RESTAURANT TAX, AND CREATE A TOURISM BOARD TO PROMOTE TOURISM IN DARE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 449 of the 1985 Session Laws, as amended by Chapter 826 of the 1985 Session Laws, reads as rewritten:

"AN ACT TO AUTHORIZE DARE COUNTY TO LEVY AN OCCUPANCY TAX, TAX AND A PREPARED FOOD AND BEVERAGE TAX."

The General Assembly of North Carolina enacts:

Section 1. Occupancy Tax.

(a) Authorization and Scope. The Dare County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of the following in Dare County:

(1) Any room, lodging, or similar accommodation subject to sales tax under G.S. 105-164.4(3); and

(2) A campsite.

This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose. This tax is in addition to any State or local sales tax.

(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax

1 shall be stated and charged separately from the sales records, and shall be paid by the
2 purchaser to the operator of the business as trustee for and on account of Dare County.
3 The tax shall be added to the sales price and shall be passed on to the purchaser instead
4 of being borne by the operator of the business. The Dare County Tax Collector shall
5 design, print, and furnish to all appropriate businesses and persons in the county the
6 necessary forms for filing returns and instructions to ensure the full collection of the tax.

7 An operator of a business who collects the occupancy tax levied under this act may
8 deduct from the amount remitted by him to the county a discount of three percent (3%)
9 of the amount collected.

10 (c) Administration. The county shall administer a tax levied under this act. A
11 tax levied under this act is due and payable to the county tax collector in monthly
12 installments on or before the 15th day of the month following the month in which the
13 tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or
14 before the 15th day of each month, prepare and render a return on a form prescribed by
15 the county. The return shall state the total gross receipts derived in the preceding month
16 from rentals and sales upon which the tax is levied. A return filed with the Dare County
17 Tax Collector under this act is not a public record as defined by G.S. 132-1 and may not
18 be disclosed except as required by law.

19 ~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to~~
20 ~~file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each~~
21 ~~day's omission. In case of failure or refusal to file the return or pay the tax for a period~~
22 ~~of 30 days after the time required for filing the return or for paying the tax, there shall~~
23 ~~be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any~~
24 ~~other penalty, with an additional tax of five percent (5%) for each additional month or~~
25 ~~fraction thereof until the tax is paid.~~

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

31 (e) Use and Distribution of Tax Revenue. Dare County shall distribute two-
32 thirds of the net proceeds of the tax, on a monthly basis, to the Towns of Kill Devil
33 Hills, Kitty Hawk, Manteo, Nags Head, and Southern Shores in proportion to the
34 amount of ad valorem taxes levied by each town for the preceding fiscal year. The
35 county shall retain the remaining one-third of the net proceeds. Revenue distributed to a
36 town or retained by the county under this subsection may be used only for tourist-
37 related purposes, including construction and maintenance of public facilities and
38 buildings, garbage, refuse, and solid waste collection and disposal, police protection,
39 and emergency services.

40 ~~As used in this subsection, 'net proceeds' means gross proceeds less the cost to the~~
41 ~~county of administering and collecting the tax.~~

42 (f) Repeal. A tax levied under this act may be repealed by a resolution adopted
43 by the Dare County Board of Commissioners. Repeal of a tax levied under this act shall
44 become effective on the first day of a month and may not become effective until the end

1 of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied
2 under this act does not affect a liability for a tax that attached before the effective date
3 of the repeal, nor does it affect a right to a refund of a tax that accrued before the
4 effective date of the repeal.

5 Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply in this act. In
6 addition, the following definitions apply in this act.

7 (1) Net proceeds. Gross proceeds less that cost to the county of
8 administering and collecting the tax.

9 (2) Prepared food and beverages. Meals, food, and beverages which a
10 retailer has added value to or whose state has been altered (other than
11 solely by cooling) by preparing, combining, dividing, heating, or
12 serving, in order to make them available for immediate consumption.

13 Sec. 3. Additional Occupancy Tax. In addition to the tax authorized by
14 Section 1 of this act, the Dare County Board of Commissioners may levy a room
15 occupancy and tourism development tax of one percent (1%) of the gross receipts
16 derived from the rental of accommodations taxable under that section. The county may
17 not levy a tax under this section unless it also levies the tax under Section 1 of this act.
18 The county may levy a tax under this section only if it also levies a tax under Section 4
19 of this act to become effective on the same date. A tax levied under this section may
20 not become effective before the later of (i) the first day of the second month after the
21 resolution levying the tax is adopted or (ii) October 1, 1992. The levy, collection,
22 administration, and repeal of the tax authorized by this section shall be in accordance
23 with Section 1 of this act, except that the county may repeal a tax levied under this
24 section only if it also repeals the tax levied under Section 4 of this act effective on the
25 same date. The county shall distribute the net proceeds of the tax as provided in Section
26 7 of this act.

27 Sec. 4. Prepared Food and Beverage Tax.

28 (a) Authorization. The Dare County Board of Commissioners may, by
29 resolution, after not less than 10 days' public notice and a public hearing held pursuant
30 thereto, levy a prepared food and beverage tax of up to one percent (1%) of the sales
31 price of prepared food and beverages sold within the county at retail for consumption on
32 or off the premises by a retailer subject to sales tax under G.S. 105-164.4(a)(1). The
33 county may levy a tax under this section only if it also levies a tax under Section 3 of
34 this act to become effective on the same date. This tax is in addition to State and local
35 sales tax.

36 (b) Exemptions. The prepared food and beverage tax does not apply to the
37 following sales of prepared food and beverages:

38 (1) Prepared food and beverages served to residents in boarding houses
39 and sold together on a periodic basis with rental of a sleeping room or
40 lodging.

41 (2) Retail sales exempt from taxation under G.S. 105-164.13.

42 (3) Retail sales through or by means of vending machines.

43 (4) Prepared food and beverages served by a business subject to the
44 occupancy tax levied pursuant to this act if the charge for the meals or

1 prepared food or beverages is included in a single, nonitemized sales
2 price together with the charge for rental of a room, lodging, or
3 accommodation furnished by the business.

4 (5) Prepared food and beverages furnished without charge by an employer
5 to an employee.

6 (6) Retail sales by grocers or by grocery sections of supermarkets or other
7 diversified retail establishments other than sales of prepared food and
8 beverages in the delicatessen or similar departments of the grocer or
9 grocery section.

10 (c) Collection. Every retailer subject to the tax levied under this section shall, on
11 and after the effective date of the levy of the tax, collect the tax. This tax shall be
12 collected as part of the charge for furnishing prepared food and beverages. The tax shall
13 be added and charged separately from the sales records, and shall be paid by the
14 purchaser to the retailer as trustee for and on account of the county. The tax shall be
15 added to the sales price and shall be passed on to the purchaser instead of being borne
16 by the retailer. The county shall design, print, and furnish to all appropriate businesses
17 and persons in the county the necessary forms for filing returns and instructions to
18 ensure the full collection of the tax. An operator of a business who collects the tax
19 levied under this section may deduct from the amount remitted to the county a discount
20 of three percent (3%) of the amount collected.

21 For the convenience of retailers the county shall determine the amount to be added
22 to the sales price of sales subject to the prepared food and beverage tax. The amounts
23 shall be set forth in a bracket system and distributed to each retailer responsible for
24 collecting the prepared food and beverage tax. The use of the bracket system does not
25 relieve the retailer from the duty of collecting and remitting an amount equal to the
26 prepared food and beverage tax.

27 (d) Administration. The county shall administer a tax levied under this section.
28 A tax levied under this section is due and payable to the county finance officer in
29 monthly installments on or before the fifteenth day of the month following the month in
30 which the tax accrues. Every person, firm, corporation, or association liable for the tax
31 shall, on or before the fifteenth day of each month, prepare and render a return on a
32 form prescribed by the county. The return shall state the total gross receipts derived in
33 the preceding month from sales upon which the tax is levied.

34 A return filed with the county finance officer under this section is not a public record
35 as defined by G.S. 132-1 and may not be disclosed except as required by law.

36 (e) Refunds. The county shall refund to a nonprofit or governmental entity the
37 prepared food and beverage tax paid by the entity on eligible purchases of prepared
38 foods and beverages. A nonprofit or governmental entity's purchase of prepared food
39 and beverages is eligible for a refund under this subsection if the entity is entitled to a
40 refund under G.S. 105-164.14 of the sales and use tax paid on the purchase. The time
41 limitations, application requirements, penalties, and restrictions provided in G.S. 105-
42 164.14(b) and (d) shall apply to refunds to nonprofit entities; the time, limitations,
43 application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and
44 (d) shall apply to refunds to governmental entities. When an entity applies for a refund

1 of the prepared food and beverages tax paid by it on purchases, it shall attach to its
2 application a copy of the application submitted to the Department of Revenue under
3 G.S. 105-164.14 for a refund of the sales and use tax on the same purchases. An
4 applicant for a refund under this subsection shall provide any information required by
5 the county to substantiate the claim.

6 (f) Use of Proceeds. The county shall distribute the net proceeds of the tax as
7 provided in Section 7 of this act.

8 (g) Effective Date of Levy. A tax levied under this section shall become
9 effective on the date specified in the resolution levying the tax. That date must be the
10 first day of a calendar month, however, and may not be before the later of (i) the first
11 day of the second month after the date the resolution is adopted or (ii) October 1, 1992.

12 (h) Repeal. A tax levied under this section may be repealed by a resolution
13 adopted by the Dare County Board of Commissioners. The county may repeal the tax,
14 however, only if it also repeals the tax levied under Section 3 of this act, effective on the
15 same date. Repeal of a tax levied under this section shall become effective on the first
16 day of a month and may not become effective until the end of the fiscal year in which
17 the repeal resolution was adopted. Repeal of a tax levied under this section does not
18 affect a liability for a tax that was attached before the effective date of the repeal, nor
19 does it affect a right to a refund of a tax that accrued before the effective date of the
20 repeal.

21 Sec. 5. Penalties. A person, firm, corporation, or association who fails or
22 refuses to file a return required by this act shall pay a penalty of ten dollars (\$10.00) for
23 each day's omission. In case of failure or refusal to file the return or pay the tax for a
24 period of 30 days after the time required for filing the return or for paying the tax, there
25 shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to
26 any other penalty, with an additional tax of five percent (5%) for each additional month
27 or fraction thereof until the tax is paid. The board of commissioners may, for good
28 cause shown, compromise or forgive the additional tax penalties imposed by this
29 section.

30 A person who willfully attempts in any manner to evade a tax imposed under this act
31 or who willfully fails to pay the tax or make and file a return shall, in addition to all
32 other penalties provided by law, be guilty of a misdemeanor and shall be punishable by
33 a fine not to exceed one thousand dollars (\$1,000) and imprisonment not to exceed six
34 months.

35 Sec. 6. Dare County Tourism Board.

36 (a) Appointment and Membership. When the Dare County Board of
37 Commissioners adopts a resolution levying a tax under Section 3 and Section 4 of this
38 act, it shall also adopt a resolution creating a tourism board to be known as the Dare
39 County Tourism Board, which shall be a public authority under the Local Government
40 Budget and Fiscal Control Act. The tourism board shall consist of 13 members
41 appointed by the board of commissioners as provided below. Members of the tourism
42 board must be residents of Dare County. Members shall serve two-year terms except as
43 provided below. No member may serve more than two successive two-year terms.

- 1 (1) One member shall be a member of the board of directors of the Outer
2 Banks Chamber of Commerce selected from nominees submitted by
3 the board of directors of the Chamber of Commerce. This member
4 shall serve an initial term of one year.
- 5 (2) One member shall be a member of the board of directors of the Dare
6 County Restaurant Association selected from nominees submitted by
7 the board of directors of the Dare County Restaurant Association.
8 This member shall serve an initial term of two years.
- 9 (3) One member shall be a member of the board of directors of the Dare
10 County Hotel/Motel Association selected from nominees submitted by
11 the board of directors of the Dare County Hotel/Motel Association.
12 This member shall serve an initial term of one year.
- 13 (4) One member shall be a member of the board of directors of the Dare
14 County Board of Realtors selected from nominees submitted by the
15 board of directors of the Dare County Board of Realtors. This member
16 shall serve an initial term of two years.
- 17 (5) Five members shall be one member from each of the town boards of
18 Southern Shores, Kitty Hawk, Kill Devil Hills, Nags Head, and
19 Manteo, who shall serve initial terms respectively of one year, two
20 years, one year, two years, and one year, and who shall be selected
21 from nominees submitted by each of the respective town boards.
- 22 (6) One member shall be a Dare County Commissioner. This member
23 shall serve an initial term of two years.
- 24 (7) Three members 'at large' shall be from anywhere within Dare County.
25 One of these members must be a resident of Hatteras Island. Two of
26 these members shall serve initial terms of one year, and one shall serve
27 an initial term of two years.

28 The board of commissioners may remove a member of the tourism board only for good
29 cause. Members shall serve the full term for which appointed regardless whether the
30 member is no longer a member of the appropriate board designated above. The Dare
31 County Board of Commissioners shall determine the compensation to be paid to
32 members of the tourism board.

33 (b) Duties. The tourism board shall elect a Chair and other officers from among
34 its members to serve one-year terms. The tourism board shall meet at least quarterly at
35 the call of the Chair and shall adopt rules of procedure to govern its meetings.

36 The tourism board shall promote year-round travel and tourism in Dare County as
37 provided in Section 7 of this act and perform other duties required by law.

38 Sec. 7. Use of Proceeds of Additional Occupancy Tax and Prepared Food
39 and Beverage Tax. Dare County shall remit the net proceeds of the taxes levied under
40 Sections 3 and 4 of this act on a monthly basis to the Dare County Tourism Board. The
41 tourism board may deduct the cost of its annual audit from the proceeds remitted to it.
42 The tourism board shall use the remainder of the proceeds as follows:

- 43 (1) Seventy-five percent (75%) shall be used for the cost of administration
44 and to promote tourism. The tourism board's expenditures may include

1 (i) advertising to promote less-than-peak-season events and programs,
2 (ii) marketing research, (iii) a mail and telephone inquiry response
3 program, and (iv) welcoming and hospitality functions.

4 (2) Twenty-five percent (25%) shall be used for services or programs
5 needed due to the impact of tourism on the county.

6 The tourism board may expend funds only for public purposes. The tourism board
7 shall report quarterly and at the close of the fiscal year to the board of commissioners on
8 its receipts and expenditures for the preceding quarter and for the year in such detail as
9 the board may require. The tourism board may not use the proceeds distributed to it to
10 purchase real property or for the purposes set out in subdivision (2) above without
11 prior approval by the Dare County Board of Commissioners.

12 ~~See 2- Sec. 8.~~ This act is effective upon ratification."

13 Sec. 2. G.S. 105-164.14(c) reads as rewritten:

14 "(c) Upon receipt of timely applications for refund, the Secretary of Revenue shall
15 make refunds annually to all governmental entities, as hereinafter defined, of sales and
16 use tax paid under this Article, except under G.S. 105-164.4(4a) and G.S. 105-
17 164.4(4c), by said governmental entities on direct purchases of tangible personal
18 property. Sales and use tax liability indirectly incurred by such governmental entities on
19 building materials, supplies, fixtures and equipment which shall become a part of or
20 annexed to any building or structure being erected, altered or repaired which is owned
21 or leased by such governmental entities shall be construed as sales or use tax liability
22 incurred on direct purchases by such governmental entities, and such entities may obtain
23 refunds of such taxes indirectly paid. The refund provisions contained in this subsection
24 shall not apply to any governmental entities not specifically named herein. In order to
25 receive the refund herein provided for, governmental entities shall file a written request
26 for said refund within six months of the close of the fiscal year of the governmental
27 entities seeking said refund, and such request for refund shall be substantiated by such
28 records, receipts and information as the Secretary may require. No refunds shall be
29 made on applications not filed within the time allowed by this section and in such
30 manner as the Secretary may otherwise require. The term 'governmental entities,' for the
31 purposes of this subsection, shall mean all counties, incorporated cities and towns, water
32 and sewer authorities created and existing under the provisions of Chapter 162A of the
33 General Statutes, lake authorities created by a board of county commissioners pursuant
34 to an act of the General Assembly, sanitary districts, regional councils of governments
35 created pursuant to G.S. 160A-470, area mental health, mental retardation, and
36 substance abuse authorities (other than single-county area authorities) established
37 pursuant to Article 4 of Chapter 122C of the General Statutes, district health
38 departments, regional planning and economic development commissions created
39 pursuant to G.S. 158-14, regional sports authorities created pursuant to G.S. 160A-479,
40 regional economic development commissions created pursuant to G.S. 158-8, regional
41 planning commissions created pursuant to G.S. 153A-391, metropolitan sewerage
42 districts and metropolitan water districts in this State, the North Carolina Low-Level
43 Radioactive Waste Management Authority created pursuant to Chapter 104G of the
44 General Statutes, the North Carolina Hazardous Waste Management Commission

1 created pursuant to Chapter 130B of the General Statutes, the Dare County Tourism
2 Board created under authority of an act of the General Assembly, and the Rockingham
3 County Airport Authority."

4 Sec. 3. G.S. 105-278.1 reads as rewritten:

5 "**§ 105-278.1. Exemption of real and personal property owned by units of**
6 **government.**

7 (a) Real and personal property owned by the United States and, by virtue of
8 federal law, not subject to State and local taxes shall be exempted from taxation.

9 (b) Real and personal property belonging to the State, counties, and
10 municipalities is exempt from taxation.

11 (c) For purposes of this section:

12 (1) A specified unit of government (federal, State, or local) includes its
13 departments, institutions, and agencies.

14 (2) By way of illustration but not by way of limitation, the following
15 boards, commissions, authorities, and institutions are units of State
16 government:

17 a. The State Marketing Authority established by G.S. 106-529.

18 b. The Board of Governors of the University of North Carolina
19 incorporated under the provisions of G.S. 116-3 and known as
20 'The University of North Carolina.'

21 c. The North Carolina Museum of Art made an agency of the State
22 under G.S. 140-1.

23 (3) By way of illustration but not by way of limitation, the following
24 boards, commissions, authorities, and institutions are units of local
25 government of this State:

26 a. An airport authority, board, or commission created as a separate
27 and independent body corporate and politic by an act of the
28 General Assembly.

29 b. An airport authority, board, or commission created as a separate
30 and independent body corporate and politic by one or more
31 counties or municipalities or combinations thereof under the
32 authority of an act of the General Assembly.

33 c. A hospital authority created under G.S. 131-93.

34 d. A housing authority created under G.S. 157-4 or G.S. 157-4.1.

35 e. A municipal parking authority created under G.S. 160-477.

36 f. A veterans' recreation authority created under G.S. 165-26.

37 g. A public authority created under authority of an act of the
38 General Assembly by a county to promote tourism in the
39 county."

40 Sec. 4. Effective on the date the Dare County Board of Commissioners
41 creates the Dare County Tourism Board as provided in this act, Chapter 201 of the 1965
42 Session Laws, as amended, is further amended by deleting the phrase "Dare County
43 Tourist Bureau" and substituting the phrase "Dare County Tourism Board".

44 Sec. 5. This act is effective upon ratification.