

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 177
HOUSE BILL 225

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)~~; G.S. 105-164.4(a)(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 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 Dare County. 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 Dare County Tax Collector shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

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

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

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

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

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

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

(f) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Dare County Board of Commissioners. Repeal of a tax levied under this act 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 repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

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

- (1) Net proceeds. Gross proceeds less the cost to the county of administering and collecting the tax.
- (2) Prepared food and beverages. Meals, food, and beverages which a retailer has added value to or whose state has been altered (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make them available for immediate consumption.

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

Sec. 4. Prepared Food and Beverage Tax.

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

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

- (1) Prepared food and beverages served to residents in boarding houses and sold together on a periodic basis with rental of a sleeping room or lodging.
- (2) Retail sales exempt from taxation under G.S. 105-164.13.
- (3) Retail sales through or by means of vending machines.
- (4) Prepared food and beverages served by a business subject to the occupancy tax levied pursuant to this act if the charge for the meals or prepared food or beverages is included in a single, nonitemized sales price together with the charge for rental of a room, lodging, or accommodation furnished by the business.
- (5) Prepared food and beverages furnished without charge by an employer to an employee.
- (6) Retail sales by grocers or by grocery sections of supermarkets or other diversified retail establishments other than sales of prepared food and beverages in the delicatessen or similar departments of the grocer or grocery section.

(c) Collection. Every retailer subject to the tax levied under this section 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 prepared food and beverages. The tax shall

be added and charged separately from the sales records, and shall be paid by the purchaser to the retailer as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the retailer. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

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

(d) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county 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 county. The return shall state the total gross receipts derived in the preceding month from sales upon which the tax is levied.

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

(e) Refunds. The county shall refund to a nonprofit or governmental entity the prepared food and beverage tax paid by the entity on eligible purchases of prepared food and beverages. A nonprofit or governmental entity's purchase of prepared food and beverages is eligible for a refund under this subsection if the entity is entitled to a refund under G.S. 105-164.14 of the sales and use tax paid on the purchase. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) shall apply to refunds to nonprofit entities; the time, limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and (d) shall apply to refunds to governmental entities. When an entity applies for a refund of the prepared food and beverages tax paid by it on purchases, it shall attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases. An applicant for a refund under this subsection shall provide any information required by the county to substantiate the claim.

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

(g) Effective Date of Levy. A tax levied under this section 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 before the later of (i) the first day of the second month after the date the resolution is adopted or (ii) January 1, 1992.

(h) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Dare County Board of Commissioners. The county may repeal the tax, however, only if it also repeals the tax levied under Section 3 of this act, effective on the

same date. Repeal of a tax levied under this section 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 repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

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

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

Sec. 6. Dare County Tourism Board.

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

- (1) One member shall be a member of the board of directors of the Outer Banks Chamber of Commerce selected from nominees submitted by the board of directors of the Chamber of Commerce. This member shall serve an initial term of one year.
- (2) One member shall be a member of the board of directors of the Dare County Restaurant Association selected from nominees submitted by the board of directors of the Dare County Restaurant Association. This member shall serve an initial term of two years.
- (3) One member shall be a member of the board of directors of the Dare County Hotel/Motel Association selected from nominees submitted by the board of directors of the Dare County Hotel/Motel Association. This member shall serve an initial term of one year.
- (4) One member shall be a member of the board of directors of the Dare County Board of Realtors selected from nominees submitted by the

board of directors of the Dare County Board of Realtors. This member shall serve an initial term of two years.

- (5) Five members shall be one member from each of the town boards of Southern Shores, Kitty Hawk, Kill Devil Hills, Nags Head, and Manteo, who shall serve initial terms respectively of one year, two years, one year, two years, and one year, and who shall be selected from nominees submitted by each of the respective town boards.
- (6) One member shall be a Dare County Commissioner. This member shall serve an initial term of two years.
- (7) Three members 'at large' shall be from anywhere within Dare County. One of these members must be a resident of Hatteras Island. Two of these members shall serve initial terms of one year, and one shall serve an initial term of two years.

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

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

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

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

- (1) Seventy-five percent (75%) shall be used for the cost of administration and to promote tourism. The tourism board's expenditures may include (i) advertising to promote less-than-peak-season events and programs, (ii) marketing research, (iii) a mail and telephone inquiry response program, and (iv) welcoming and hospitality functions.
- (2) Twenty-five percent (25%) shall be used for services or programs needed due to the impact of tourism on the county.

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

Sec. 2. Sec. 8. This act is effective upon ratification."

Sec. 2. Effective on the date the Dare County Board of Commissioners creates the Dare County Tourism Board as provided in this act, Chapter 201 of the 1965

Session Laws, as amended, is further amended by deleting the phrase "Dare County Tourist Bureau" and substituting the phrase "Dare County Tourism Board".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives