

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1747

Short Title: Beech Mtn./Banner Elk Occy Tax Changes.

(Local)

Sponsors: Representative Thompson.

Referred to: Rules, Calendar, and Operations of the House.

May 25, 2000

A BILL TO BE ENTITLED

1 AN ACT TO CHANGE THE PURPOSES FOR WHICH THE BANNER ELK
2 OCCUPANCY TAX MAY BE USED, TO AUTHORIZE THE TOWN OF BEECH
3 MOUNTAIN TO INCREASE ITS OCCUPANCY TAX, AND TO MAKE
4 CONFORMING CHANGES.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. Sections 1 through 6 of Chapter 318 of the 1989 Session Laws, as
8 amended by Chapter 428 of the 1993 Session Laws, read as rewritten:

9 "**Section 1.** Occupancy Tax. The Town Council of Banner Elk may ~~by resolution,~~
10 ~~after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~
11 levy a room occupancy and tourism development tax. ~~Collection of the tax and liability~~
12 ~~therefor shall begin and continue only on and after the first day of a calendar month set~~
13 ~~by the Town Council of Banner Elk in the resolution levying the tax, which in no case~~
14 ~~may be earlier than the first day of the second succeeding calendar month after the date of~~
15 ~~adoption of the resolution.~~

16 The occupancy and tourism development tax that may be levied under this act shall be
17 three percent (3%) of the gross receipts derived from the rental of any room, lodging, or
18 similar accommodation in the Town of Banner Elk that is subject to sales tax imposed by
19 the State under G.S. ~~105-164.4(3).~~ 105-164.4(a)(3). This tax is in addition to any State or
20 local sales tax. The tax shall not apply to any room, lodging, or accommodation supplied

1 to the same person for a period of 90 continuous days or more or to sleeping rooms or
2 lodging furnished by charitable, educational, or religious institutions or by nonprofit
3 organizations.

4 **Sec. 2.** Administration of Tax. (a) ~~A tax levied under this section shall be~~
5 ~~levied, administered, collected, and repealed as provided in G.S. 160A-215. The~~
6 ~~penalties provided in G.S. 160A-215 apply to a tax levied under this section. The Town of~~
7 ~~Banner Elk shall administer a tax levied under this act. A tax levied under this act is due and~~
8 ~~payable to the town in monthly installments on or before the 15th day of the month following the~~
9 ~~month in which the tax accrues. Every person, firm, corporation, and association liable for the~~
10 ~~tax shall, on or before the 15th day of each month prepare and render a return on a form~~
11 ~~prescribed by the town. The return shall state the total gross receipts derived in the preceding~~
12 ~~month from rentals upon which the tax is levied. A return filed with the county town under this~~
13 ~~act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required~~
14 ~~by law.~~

15 (b) ~~Any person, firm, corporation, or association who fails or refuses to file the~~
16 ~~return required by this act is subject to the civil and criminal penalties set by G.S. 105-~~
17 ~~236 for failure to pay or file a return for State sales and use taxes. The town council has~~
18 ~~the same authority to waive the penalties for a room occupancy tax that the Secretary of~~
19 ~~Revenue has to waive the penalties for State sales and use taxes.~~

20 (c) All persons, firms, corporations, and associations who rent either their own
21 dwelling or dwellings or rooms for other persons are required to submit to the town a list
22 of all rented properties. This list shall include the owner's name and current address and
23 the location of the rental property. The list shall be submitted semi-annually on or before
24 November 30 and May 30. Failure to file this listing shall subject the person, firm,
25 corporation, or association to a civil penalty of fifty dollars (\$50.00).

26 **Sec. 3.** Collection of Tax. (a) ~~Every operator of a business and every individual~~
27 ~~renting his or her own property subject to the tax levied pursuant to this act shall on and~~
28 ~~after the effective date of the levy of the tax, collect the three percent (3%) room~~
29 ~~occupancy tax. This tax shall be collected as part of the charge for furnishing any taxable~~
30 ~~accommodations. The tax shall be stated and charged separately from the sales records~~
31 ~~and shall be paid by the purchaser to the operator of the business as trustee for and on~~
32 ~~account of the Town of Banner Elk. It is the intent of this act that the room occupancy~~
33 ~~tax levied by the Town of Banner Elk shall be added to the sales price and that the tax~~
34 ~~shall be passed on to the purchaser instead of being borne by the operator of the business.~~
35 ~~The town shall design, print, and furnish to all appropriate businesses in the town the~~
36 ~~necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

37 (b) Collection of the tax shall be the responsibility of the Banner Elk Tax
38 Administrator. In his or her discretion, the tax administrator may proceed against an
39 operator whose occupancy tax is delinquent employing all remedies for collection of tax
40 as set out in G.S. 105-367, 105-368, 105-374, and 105-375. In employing the remedies
41 under those statutes, the tax levied under this act shall be treated as a property tax on
42 personal property. The Tax Administrator may audit occupancy tax reports as he or she
43 deems necessary utilizing information available to him or her in property tax matters.

1 ~~Sec. 4. Discount for Payment of Taxes When Due. Every operator who pays~~
2 ~~the occupancy tax imposed by this act may deduct from the amount of the tax for which~~
3 ~~he is liable and which he actually pays a discount equal to the discount the State allows~~
4 ~~the operator for collecting State sales and use taxes. Provided, however, the tax~~
5 ~~administrator may deny a taxpayer the benefit of this section for failure to pay the full tax~~
6 ~~when due as well as in cases of fraud, evasion, or failure to keep accurate and clear~~
7 ~~records as required. Provided, further, that in order to receive any discount allowed the~~
8 ~~taxpayer must deduct the discount at the time of making the monthly remittance of tax to~~
9 ~~the town.~~

10 **Sec. 5.** Disposition of Taxes Collected. The town council shall use at least
11 ~~two-thirds~~one-third of the room occupancy tax proceeds to promote travel and tourism
12 and shall use the remainder of the proceeds only for tourism-related expenditures. The
13 term 'promote travel and tourism' means to advertise or market an area or activity,
14 publish and distribute pamphlets and other materials, conduct market research, or engage
15 in or sponsor similar promotional activities that attract tourists or business travelers to the
16 area; the term includes administrative expenses incurred in engaging in the listed
17 activities. The term 'tourism-related expenditures' means expenditures that are designed
18 to increase the use of lodging ~~facilities~~facilities, recreational facilities, and business
19 establishments in the town or to attract tourists or business travelers to the ~~town~~town, and
20 expenditures incurred by the town in collecting the tax. The term includes expenditures
21 to construct, maintain, operate, or market a convention or meeting facility, a visitors'
22 center, ~~or a coliseum~~a coliseum, sidewalks, or public parking areas, and other
23 expenditures that, in the judgment of the town council, will facilitate and support tourism.

24 The town may retain its costs of collecting the tax, not to exceed seven percent (7%)
25 of the amount collected.

26 ~~Sec. 6. Repeal of Levy. The Banner Elk Town Council may by resolution~~
27 ~~repeal the levy of the room occupancy tax in Banner Elk, but no repeal of taxes levied~~
28 ~~under this act shall be effective until the end of the fiscal year in which the repeal~~
29 ~~resolution was adopted. No liability for a tax levied under this act that attached prior to~~
30 ~~the date on which a levy is repealed shall be discharged as a result of the repeal, and no~~
31 ~~right to a refund of a tax that accrued prior to the effective date on which a levy is~~
32 ~~repealed shall be denied as a result of the repeal."~~

33 Section 2. Sections 1 through 6 of Chapter 376 of the 1987 Session Laws read
34 as rewritten:

35 "**Section 1.** Occupancy Tax. The Town Council of Beech Mountain may ~~by~~
36 ~~resolution, after not less than 10 days' public notice and after a public hearing held~~
37 ~~pursuant thereto,~~ levy a room occupancy and tourism development tax. ~~Collection of the~~
38 ~~tax, and liability therefor shall begin and continue only on and after the first day of a~~
39 ~~calendar month set by the Town Council of Beech Mountain in the resolution levying the~~
40 ~~tax, which in no case may be earlier than the first day of the second succeeding calendar~~
41 ~~month after the date of adoption of the resolution.~~

42 The occupancy and tourism development tax that may be levied under this act shall be
43 three percent (3%) of the gross receipts derived from the rental of any room, lodging, or

1 similar accommodation in the Town of Beech Mountain that is subject to sales tax
2 imposed by the State under G.S. ~~105-164.4(3)~~. 105-164.4(a)(3). This tax is in addition to
3 any local sales tax. The tax shall not apply to any room, lodging, or accommodations
4 supplied to the same person for a period of 90 continuous days or more. The tax shall
5 also not apply to sleeping rooms or lodgings furnished by charitable, educational, or
6 religious institutions or non-profit organizations.

7 Sec. 1.1. Authorization of Additional Tax. In addition to the tax authorized by
8 subsection (a) of this section, the Town Council of Beech Mountain may levy an
9 additional room occupancy tax of up to one percent (1%) of the gross receipts derived
10 from the rental of accommodations taxable under Section 1 of this act. The levy,
11 collection, administration, and repeal of the tax authorized by this section shall be in
12 accordance with the provisions of this act. The Town of Beech Mountain may not levy a
13 tax under this section unless it also levies the tax authorized under Section 1 of this act.

14 Sec. 2. Administration of Tax. (a) A tax levied under this section shall be levied,
15 administered, collected, and repealed as provided in G.S. 160A-215. The penalties
16 provided in G.S. 160A-215 apply to a tax levied under this section. The Town of Beech
17 Mountain shall administer a tax levied under this act. A tax levied under this act is due and
18 payable to the Town in monthly installments on or before the 15th day of the month following
19 the month in which the tax accrues. Every person, firm, corporation, and association liable for
20 the tax shall, on or before the 15th day of each month, prepare and render a return on a form
21 prescribed by the Town. The return shall state the total gross receipts derived in the preceding
22 month from rentals upon which the tax is levied. A return filed with the Town under this act is
23 not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

24 (b) ~~Any person, firm, corporation, or association who fails or refuses to file the~~
25 ~~return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's~~
26 ~~omission.~~

27 ~~In case of failure or refusal to file the return or pay the tax for a period of 30 days or~~
28 ~~more after the time required for filing the return or for paying the tax, there shall be an~~
29 ~~additional tax, as a penalty, of five percent (5%) of the total tax due, for each additional~~
30 ~~month or fraction thereof until the occupancy tax is paid.~~

31 ~~Any person who willfully attempts in any manner to evade the occupancy tax levied~~
32 ~~under this act or to make a return and who willfully fails to pay the tax or make and file a~~
33 ~~return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor~~
34 ~~and shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by~~
35 ~~imprisonment not to exceed six months, or both. The Town Council may, for good cause~~
36 ~~shown, compromise or forgive the penalties imposed by this subsection.~~

37 (c) All persons, firms, corporations, and associations who rent either their own
38 dwelling or dwellings or rooms for other persons are required to submit to the Town a list
39 of all rental properties. This list shall include the owner's name, current address, and
40 location of rental property. The list shall be submitted semi-annually on or before
41 November 30 and May 30. Failure to file said listing shall subject the person, firm,
42 corporation or association to a civil penalty.

1 **Sec. 3.** Collection of Tax. (a) ~~Every operator of a business and every individual~~
2 ~~renting his or her own property subject to the tax levied pursuant to this act shall, on and~~
3 ~~after the effective date of the levy of the tax, collect the three percent (3%) room~~
4 ~~occupancy tax.~~

5 ~~This tax shall be collected as part of the charge for the furnishing of any taxable~~
6 ~~accommodations. The tax shall be stated and charged separately from the sales records,~~
7 ~~and shall be paid by the purchaser to the operator of the business as trustee for and on~~
8 ~~account of the Town of Beech Mountain. It is the intent of this act that the room~~
9 ~~occupancy tax levied by the Town of Beech Mountain shall be added to the sales price~~
10 ~~and that the tax shall be passed on to the purchaser instead of being borne by the operator~~
11 ~~of the business. The Town shall design, print, and furnish to all appropriate businesses in~~
12 ~~the Town, the necessary forms for filing returns and instructions to ensure the full~~
13 ~~collection of the tax.~~

14 (b) Collection of the tax shall be the responsibility of the Beech Mountain Tax
15 Administrator. In his/her discretion, the Tax Administrator may proceed against an
16 operator whose occupancy tax is delinquent, employing all remedies for collection of tax
17 as set out in G.S. 105-367, 105-368, 105-374, and 105-375. The Tax Administrator may
18 audit occupancy tax reports as he/she deems necessary, utilizing information available to
19 him/her in property tax matters.

20 **Sec. 4.** ~~Discount for Payment of Taxes When Due. Every operator who pays~~
21 ~~the occupancy tax imposed by this Article shall be entitled to deduct from the amount of~~
22 ~~the tax for which he is liable and which he actually pays a discount of three percent (3%).~~
23 ~~Provided, however, the Tax Administrator may deny a taxpayer the benefits of this~~
24 ~~section for failure to pay the full tax when due as well as in cases of fraud, evasion, or~~
25 ~~failure to keep accurate and clear records as herein required. Provided, further, that in~~
26 ~~order to receive the discount the taxpayer must deduct the three percent (3%) at the time~~
27 ~~of making his monthly remittance of tax to the Town.~~

28 **Sec. 5.** Disposition of Taxes Collected. The Town of Beech Mountain shall
29 retain from the gross proceeds of the tax collected an amount sufficient to pay its direct
30 costs for administrative and collection expenses. "Net proceeds" shall mean gross
31 proceeds less the direct costs for administrative and collection expenses not to exceed
32 three percent (3%) of the amount collected. The net proceeds shall be distributed to the
33 Town Council. The Town Council may expend the ~~funds distributed to it pursuant to this~~
34 ~~section~~ net proceeds of the tax levied in Section 1 of this act only to further the
35 development of travel, tourism, conventions, and convention facilities in the Town. The
36 Town Council may expend the net proceeds of the tax levied in Section 1.1 of this act
37 only for capital outlay for recreation facilities.

38 **Sec. 6.** ~~Repeal of Levy. The Beech Mountain Town Council may by~~
39 ~~resolution repeal the levy of the room occupancy tax in Beech Mountain, but no repeal of~~
40 ~~taxes levied under this part shall be effective until the end of the fiscal year in which the~~
41 ~~repeal resolution was adopted. No liability for any tax levied under this part that attached~~
42 ~~prior to the date on which a levy is repealed shall be discharged as a result of the repeal,~~

1 and no right to a refund of a tax that accrued prior to the effective date on which a levy is
2 repealed shall be denied as a result of the repeal.”

3 Section 3. G.S. 160A-215 reads as rewritten:

4 **"§ 160A-215. Uniform provisions for room occupancy taxes.**

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

8 (b) Levy. – A room occupancy tax may be levied only by resolution, after not less
9 than 10 days' public notice and after a public hearing held pursuant thereto. A room
10 occupancy tax shall become effective on the date specified in the resolution levying the
11 tax. That date must be the first day of a calendar month, however, and may not be earlier
12 than the first day of the second month after the date the resolution is adopted.

13 (c) Collection. – Every operator of a business subject to a room occupancy tax
14 shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall
15 be collected as part of the charge for furnishing a taxable accommodation. The tax shall
16 be stated and charged separately from the sales records and shall be paid by the purchaser
17 to the operator of the business as trustee for and on account of the taxing city. The tax
18 shall be added to the sales price and shall be passed on to the purchaser instead of being
19 borne by the operator of the business. The taxing city shall design, print, and furnish to
20 all appropriate businesses and persons in the city the necessary forms for filing returns
21 and instructions to ensure the full collection of the tax. An operator of a business who
22 collects a room occupancy tax may deduct from the amount remitted to the taxing city a
23 discount equal to the discount the State allows the operator for State sales and use tax.

24 (d) Administration. – The taxing city shall administer a room occupancy tax it
25 levies. A room occupancy tax is due and payable to the city finance officer in monthly
26 installments on or before the fifteenth day of the month following the month in which the
27 tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or
28 before the fifteenth day of each month, prepare and render a return on a form prescribed
29 by the taxing city. The return shall state the total gross receipts derived in the preceding
30 month from rentals upon which the tax is levied. A room occupancy tax return filed with
31 the city finance officer is not a public record and may not be disclosed except in
32 accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

33 (e) Penalties. – A person, firm, corporation, or association who fails or refuses to
34 file a room occupancy tax return or pay a room occupancy tax as required by law is
35 subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a
36 return for State sales and use taxes. The governing board of the taxing city has the same
37 authority to waive the penalties for a room occupancy tax that the Secretary of Revenue
38 has to waive the penalties for State sales and use taxes.

39 (f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed
40 or reduced by a resolution adopted by the governing body of the city. Repeal or
41 reduction of a room occupancy tax shall become effective on the first day of a month and
42 may not become effective until the end of the fiscal year in which the resolution was
43 adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax

1 that was attached before the effective date of the repeal or reduction, nor does it affect a
2 right to a refund of a tax that accrued before the effective date of the repeal or reduction.

3 (g) This section applies only to the Cities of Goldsboro, Greensboro, Lumberton,
4 Mount Airy, Shelby, and Statesville, to the Towns of ~~Mooreville~~ Banner Elk, Beech
5 Mountain, Mooresville, and St. Pauls, and to the municipalities in Brunswick County."

6 Section 4. Section 1 of this act becomes effective on the first day of the first
7 month after it becomes law and applies to taxes collected on or after that date. The
8 remainder of this act is effective when it becomes law.