

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 1215*
Committee Substitute Favorable 6/21/12
Senate Finance Committee Substitute Adopted 6/27/12

Short Title: Henderson County Occupancy Tax Changes.

(Local)

Sponsors:

Referred to:

May 31, 2012

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE HENDERSON COUNTY BOARD OF COMMISSIONERS
TO LEVY AN ADDITIONAL ONE PERCENT ROOM OCCUPANCY AND TOURISM
DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Sections 5 and 6 of Chapter 172 of the 1987 Session Laws, as amended by Chapter 55 of the 1991 Session Laws and by Section 21(p) of S.L. 2007-527, read as rewritten:

"Sec. 5. Occupancy Tax. (a) Authorization and Scope. = The Board of Commissioners of Henderson County may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy and tourism development tax of no less than three percent (3%) nor more than five percent (5%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3);~~ 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.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of Henderson County 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 subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Henderson County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(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 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 operator of the business. 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.~~

(c) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in



1 G.S. 153A-155 apply to a tax levied under this section. The county shall administer a tax levied
2 under this act. A tax levied under this act is due and payable to the county finance officer in
3 monthly installments on or before the 20th day of the month following the month in which the
4 tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before
5 the 20th day of each month, prepare and render a return on a form prescribed by the county.
6 The return shall state the total gross receipts derived in the preceding month from rentals upon
7 which the tax is levied.

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

10 (d) Penalties. A person, firm, corporation, or association who fails or refuses to file the
11 return required by this act shall pay an additional tax, as a penalty, of one percent (1%) of the
12 tax due for each day's omission up to 30 days, with a minimum penalty of twenty-five dollars
13 (\$25.00). In case of failure or refusal to file the return or pay the tax for a period of 30 days
14 after the time required for filing the return or for paying the tax, there shall be an additional tax,
15 as a penalty, of ten percent (10%) of the tax and penalty due in addition to any other penalty,
16 with an additional tax of ten percent (10%) for each additional month or fraction thereof until
17 the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive
18 the tax penalties imposed by this subsection.

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

24 (e) Use of Tax Revenue. – The county shall, on a quarterly basis, remit the net proceeds
25 of the room occupancy and tourism development tax levied under subsection (a) of this section
26 to the Henderson County Tourism Development Authority. The Authority shall use at least
27 two-thirds of the funds remitted to it under subsection (a) of this section to promote travel and
28 tourism in Henderson County and shall use the remainder for tourism-related expenditures.

29 The county shall, on a quarterly basis, remit the net proceeds collected from a tax levied
30 under subsection (a1) of this act to the Flat Rock Playhouse, State Theater of North Carolina, to
31 be used for the maintenance, operation, renovation, and promotion of the Flat Rock Playhouse,
32 State Theater of North Carolina, including the Mainstage and the Playhouse Downtown
33 locations.

34 (e1) Definitions. – The following definitions apply in this act:

35 (1) Net proceeds. – Gross proceeds less the cost to the county of administering
36 and collecting the tax, as determined by the finance officer, not to exceed
37 three percent (3%) of the first five hundred thousand dollars (\$500,000) of
38 gross proceeds collected each year and one percent (1%) of the remaining
39 gross receipts collected each year.

40 (2) Promote travel and tourism. – To advertise or market an area or activity,
41 publish and distribute pamphlets and other materials, conduct market
42 research, or engage in similar promotional activities that attract tourists or
43 business travelers to the area. The term includes administrative expenses
44 incurred in engaging in the listed activities.

45 (3) Tourism-related expenditures. – Expenditures that, in the judgment of the
46 entity responsible for expending the net proceeds of the tax, are designed to
47 increase the use of lodging facilities, meeting facilities, or convention
48 facilities in a county or to attract tourists or business travelers to the county.
49 The term includes tourism-related capital expenditures.

50 shall place the net proceeds collected from a tax levied under this act in a special Travel and
51 Tourism Fund. Revenue in this fund may be used only to promote travel and tourism in the

1 county. This fund will be administered by the Henderson Travel and Tourism Committee. As
2 used in this subsection, "net proceeds" means gross proceeds less five percent (5%) of the gross
3 proceeds which the county may retain to defray the cost of administering and collecting the tax.

4 The scope of promotion of travel and tourism in the county may include the following:

- 5 (1) Contracting with any person, firm, or agency to advise and assist in travel
6 and tourism promotion.
- 7 (2) Advertising via appropriate media.
- 8 (3) Assisting in the initial funding and possible annual subsidy of a fine arts
9 center or other similar facility which could logically be expected to promote
10 tourism in the county.
- 11 (4) Promoting special events which would bring tourists to the county.

12 (f) Effective Date of Levy. A tax levied under this act shall become effective on the
13 date specified in the resolution levying the tax. That date must be the first day of a calendar
14 month, however, and may not be earlier than the first day of the second month after the date the
15 resolution is adopted.

16 (g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the
17 board of commissioners of the county. Repeal of a tax levied under this act does not affect a
18 liability for a tax that attached before the effective date of the repeal, nor does it affect a right to
19 a refund of a tax that accrued before the effective date of the repeal.

20 "**Sec. 6.** Henderson Travel and Tourism Committee, Tourism Development Authority. (a)
21 Appointment and Membership. – When the board of commissioners adopts a resolution levying
22 a room occupancy tax under subsection (a1) of this Section 5 of this act, it shall also adopt a
23 resolution creating the Henderson Travel and Tourism Committee, Tourism Development
24 Authority, which shall be a public authority under the Local Government Budget and Fiscal
25 Control Act. The resolution adopted by the Board of Commissioners shall provide for the
26 membership of the Authority, including the members' terms of office, and for the filling of
27 vacancies on the Authority. However, no member shall serve on the Authority for more than
28 five consecutive years. The Committee shall consist of nine voting members as follows:

- 29 (1) Four-Three members who are registered to vote in Henderson County,
30 appointed by the Henderson County Board of
31 Commissioners;Commissioners.
- 32 (2) Four-Three members who are registered to vote in Henderson County,
33 appointed by the Hendersonville City Council; andCouncil.
- 34 (3) The President of the Greater Hendersonville Chamber of Commerce, or his
35 designee, to serve ex officio. One member who is registered to vote in
36 Henderson County, appointed by the Fletcher Town Council.
- 37 (4) One member who is registered to vote in Henderson County, appointed by
38 the Flat Rock Village Council.
- 39 (5) One member appointed by the Henderson County Board of Commissioners
40 upon a recommendation of the Henderson County Chamber of Commerce.

41 Of these members, at least one-third of the members shall be individuals who are affiliated
42 with businesses that collect the tax in the county, and at least one-half of the members shall be
43 individuals who are currently active in the promotion of travel and tourism in the county.

44 The board of commissioners shall designate one member of the Committee-Authority as
45 chair and shall determine the compensation, if any, to be paid to members of the
46 Committee-Authority. The Committee-Authority shall meet at the call of the chair and shall
47 adopt rules of procedure to govern its meetings. The finance officer for Henderson County shall
48 be the ex officio finance officer of the Committee-Authority. The Committee shall administer
49 the Travel and Tourism Fund as provided in Section 1(e) of this act.

50 (b) Duties. – The Authority shall expend the net proceeds of the tax levied under
51 subsections (a) and (a1) of Section 5 of this act for the purposes provided in Section 5 of this

1 act. The Authority shall promote travel, tourism, and conventions in the county, sponsor
2 tourist-related events and activities in the county, and finance tourist-related capital projects in
3 the county.

4 (c) Reports. – ~~The Committee~~ Authority shall report quarterly and at the close of the
5 fiscal year to the board of commissioners on its receipts and expenditures for the preceding
6 quarter and for the year in such detail as the board may require."

7 **SECTION 2.(a)** Subsection (e) of Section 5 of Chapter 172 of the 1987 Session
8 Laws, as amended by Chapter 55 of the 1991 Session Laws, by Section 21(p) of S.L. 2007-527,
9 and by Section 1(a) of this act, reads as rewritten:

10 "(e) Use of Tax Revenue. – The county shall, on a quarterly basis, remit the net proceeds
11 of the room occupancy and tourism development tax levied under ~~subsection (a) of this section~~
12 this act to the Henderson County Tourism Development Authority. The Authority shall use at
13 least two-thirds of the funds remitted to it ~~under subsection (a) of this section~~ to promote travel
14 and tourism in Henderson County and shall use the remainder for tourism-related expenditures.

15 ~~The county shall, on a quarterly basis, remit the net proceeds collected from a tax levied~~
16 ~~under subsection (a1) of this act to the Flat Rock Playhouse, State Theater of North Carolina, to~~
17 ~~be used for the maintenance, operation, renovation, and promotion of the Flat Rock Playhouse,~~
18 ~~State Theater of North Carolina, including the Mainstage and the Playhouse Downtown~~
19 ~~locations."~~

20 **SECTION 2.(b)** This section becomes effective July 1, 2015, and applies to room
21 occupancy taxes collected on or after that date.

22 **SECTION 3.** G.S. 153A-155(g) reads as rewritten:

23 "(g) Applicability. – Subsection (c) of this section applies to all counties and county
24 districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of
25 a local act, subsection (c) supersedes that provision. The remainder of this section applies only
26 to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell,
27 Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin,
28 Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Henderson, Jackson, Madison,
29 Martin, McDowell, Montgomery, Moore, Nash, New Hanover, New Hanover County District
30 U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham,
31 Rowan, Rutherford, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance,
32 Washington, and Wilson Counties, to Surry County District S, to Watauga County District U,
33 to Wilkes County District K, to Yadkin County District Y, and to the Township of Averagesboro
34 in Harnett County and the Ocracoke Township Taxing District."

35 **SECTION 4.** This act is effective when it becomes law.