

GENERAL ASSEMBLY OF NORTH CAROLINA  
1991 SESSION

CHAPTER 594  
HOUSE BILL 703

AN ACT TO AUTHORIZE WAKE COUNTY TO LEVY A ROOM OCCUPANCY  
TAX AND A PREPARED FOOD AND BEVERAGE TAX.

The General Assembly of North Carolina enacts:

Section 1. Intent. This act authorizes Wake County to levy a room occupancy tax and a prepared food and beverage tax.

Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply to this act to the extent they are not inconsistent with the provisions of this act. The following definitions also apply in this act:

- (1) Financing. Debt service, lease payments, or any other obligations or means of supporting capital costs, together with any related reserve requirements.
- (2) Net proceeds. The gross proceeds of the taxes levied pursuant to this act less the cost to the county of administering and collecting the taxes as provided in Sections 10 and 11 of this act.
- (3) Prepared food and beverage. Any food or beverage to which a retailer has added value or has altered its state (other than by cooling alone) by preparing, combining, dividing, heating, or serving, in order to make the food or beverage available for immediate human consumption.
- (4) Retailer. A caterer or a retailer as defined in G.S. 105-164.3 as in effect on the effective date of this act.
- (5) Taxable establishment. A hotel, motel, inn, tourist camp, or similar place that is subject to a room occupancy tax levied pursuant to this act and a retailer that sells prepared food or beverages and is subject to the prepared food and beverage tax levied pursuant to this act.

Sec. 3. Sales and Use Tax Statutes. The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this act to the extent they are not inconsistent with the provisions of this act.

Sec. 4. Occupancy Tax. The Wake County Board of Commissioners may, by resolution, levy a room occupancy tax of up to six percent (6%) 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 county that is subject to the State sales tax imposed under G.S. 105-164.4(a)(3). This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose or to accommodations furnished to the same person for at least 90 consecutive days. Before

levying the tax authorized in this section, the board of commissioners must hold a public hearing on the tax. Notice of the public hearing shall be advertised at least 10 days, but not more than 25 days, before the scheduled date of the hearing.

Before a tax may be enacted pursuant to this section, Wake County and the City of Raleigh must enter into an interlocal agreement pursuant to Article 20 of Chapter 160A of the General Statutes. The agreement shall contain, at the minimum, the type and general location of all capital projects to be funded in any way by the proceeds of the tax levied under this section. The agreement shall also contain a preliminary schedule for the completion of any projects to be so funded. If the city and the county are unable to approve and execute the required agreement within three years after the effective date of this act, this section is repealed.

Sec. 5. Prepared Food and Beverage Tax. The Wake County Board of Commissioners may, by resolution, levy a prepared food and beverage tax of up to one percent (1%) of the sales price of prepared food and beverages sold at retail for consumption on or off the premises by any retailer within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(1). Before levying the tax authorized in this section, the board of commissioners must hold a public hearing on the tax. Notice of the public hearing shall be advertised at least 10 days, but not more than 25 days, before the scheduled date of the hearing.

Before a tax may be enacted pursuant to this section, Wake County and the City of Raleigh must enter into an interlocal agreement pursuant to Article 20 of Chapter 160A of the General Statutes. The agreement shall contain, at the minimum, the type and general location of all capital projects to be funded in any way by the proceeds of the tax levied under this section. The agreement shall also contain a preliminary schedule for the completion of any projects to be so funded. If the city and the county are unable to approve and execute the required agreement within three years after the effective date of this act, this section is repealed.

Sec. 6. 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 any sleeping room or lodging.
- (2) Retail sales exempt from taxation under G.S. 105-614.13 on the effective date of this act.
- (3) Retail sales through or by means of vending machines.
- (4) Prepared food and beverages served by any taxable establishment subject to the occupancy tax levied pursuant to this act if the charge for the 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 taxable establishment.
- (5) Prepared food and beverages furnished without charge by an employer to any 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 department of the grocer or grocery section.

Sec. 7. Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution or ordinance levying the tax. The levy of the prepared food and beverage tax may not become effective before January 1, 1993.

Sec. 8. Collection. Every operator of a taxable establishment shall, on and after the effective date of the levy of a tax under this act, collect the tax. The tax shall be stated and charged separately from the rental charge or sales price, shall be shown separately on the taxable establishment's sales records, and shall be paid by the purchaser to the taxable establishment as trustee for and on account of the county. The tax shall be added to the rental charge or sales price and shall be passed on to and collected from the purchaser instead of being borne by the taxable establishment.

For the convenience of each retailer and to facilitate the administration of this act, the county shall determine the amount to be added to the sales price of all 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 and liability of collecting and remitting to the local administrative authority an amount equal to the prepared food and beverage tax levied by the county.

Sec. 9. Administration. The county shall administer and collect the taxes levied pursuant to this act. Wake County may contract with the City of Raleigh to perform these functions.

The taxes levied pursuant to this act are due and payable to the county in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every taxable establishment liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return to the county. The county shall design, print, and furnish on request to all taxable establishments the necessary forms for filing returns and instructions to ensure the full collection of the tax.

Returns filed with the county pursuant to this act are not public records as defined by G.S. 132-1 and may not be disclosed except as required by law.

Sec. 10. Distribution and Use of Proceeds of Occupancy Tax. (a) Initial Deductions. It is anticipated for allocation purposes that the annual net proceeds realized from the levy of the tax authorized by Section 4 of this act will be at least three million eight hundred fifteen thousand dollars (\$3,815,000). The county shall distribute the first three million eight hundred fifteen thousand dollars (\$3,815,000) of the net proceeds of the tax levied under Section 4 of this act as provided in this section; the county shall distribute any proceeds in excess of this amount as provided in Section 12 of this act.

The county may deduct from the gross proceeds of the taxes collected pursuant to Section 4 of this act an amount not to exceed three percent (3%) of the gross proceeds to pay for the direct cost of administering and collecting the taxes. For the first two years the tax levied under Section 4 of this act is in effect, before making the distributions provided in subsection (b), the county shall deduct from the net proceeds of the tax the sum of one hundred thousand dollars (\$100,000) in each fiscal year and

shall remit this sum to Wake Technical Community College. After the first two years the tax levied under Section 4 of this act is in effect, before making the distributions provided in subsection (b), the Board of Commissioners of Wake County may, in its discretion, deduct from the net proceeds of the tax the sum of one hundred thousand dollars (\$100,000) in each fiscal year and remit this sum to Wake Technical Community College. Wake Technical Community College must use funds remitted to it under this subsection only to support its ongoing program of training individuals in hotel and motel management and in food service. Funds received by Wake Technical Community College under this subsection that have not been expended for this purpose at the end of each fiscal year shall revert to Wake County for distribution in the following fiscal year pursuant to this section and Section 12 of this act.

(b) Monthly Distributions; Use. The county shall make the distributions provided in this subsection by the twentieth day of the month following the month in which the tax is collected.

(1) Distribution to Raleigh. After deducting the amounts provided in subsection (a), the county shall transfer to the City of Raleigh an amount equal to forty-five and twenty-five one hundredths percent (45.25%) of the remaining net proceeds of each monthly collection. The net proceeds received by Raleigh shall be applied in accordance with the following priorities.

a. The city may use the first six hundred eighty thousand dollars (\$680,000) of the net proceeds of the taxes levied under this act to fund the acquisition, construction, financing, debt servicing, maintenance, or operation of convention centers, civic centers, performing arts centers, coliseums, auditoriums, and museums; to provide off-street parking facilities for use in conjunction with such facilities; and to fund visitor-related programs and activities, including cultural programs, events or festivals, and convention and visitor programs and activities of the Greater Raleigh Convention and Visitor Bureau.

b. The city shall use any additional net tax proceeds received only for (i) the acquisition, construction, renovation, financing, debt service, maintenance, and operation of expansions and additions to the Raleigh Civic Center Complex or similar facilities, and (ii) the construction of sports, cultural, and arts facilities, including a coliseum to be built in conjunction with North Carolina State University at Raleigh, a performing arts theater, a visual arts program, and a children's museum. Any funds not spent in a fiscal year may be held in one or more reserve accounts by the city for future use in the range of activities allowed by this subsection. The city may make expenditures pursuant to this subdivision b. only after the city and county have agreed on the amount and purpose of the expenditure. The

county's approval of an expenditure must be evidenced by a resolution adopted by the board of commissioners.

- (2) Distribution to Cary. After deducting the amount provided in subsection (a), the county shall transfer to the Town of Cary an amount equal to five percent (5%) of the remaining net proceeds of the tax levied under Section 4 of this act. The Town of Cary shall expend these proceeds for public relations and promotional activities for the town and for visitor-related programs and activities, including cultural programs, events, festivals, and other visitor-related programs.
- (3) Distribution to Wake County. After deducting the amount provided in subsection (a), the county shall retain an amount equal to thirty-four and seventy-five one hundredths percent (34.75%) of the remaining net proceeds of the tax levied under Section 4 of this act. Wake County may expend these proceeds only for the Raleigh Civic Center Complex or similar facilities or for construction of sports, cultural, and arts facilities, including a coliseum to be built in conjunction with North Carolina State University at Raleigh, a performing arts theater, a visual arts program, and a children's museum. Any funds not spent in a fiscal year may be held in reserve accounts by the county for future use in the range of activities allowed by this subsection. The county may make expenditures pursuant to this subdivision only after the city and county have agreed on the amount and purpose of the expenditure. The city's approval of an expenditure must be evidenced by a resolution adopted by the city council.
- (4) Distribution to Greater Raleigh Convention and Visitor Bureau. After deducting the amounts provided in subsection (a), the county shall remit fifteen percent (15%) of the remaining net proceeds to the Greater Raleigh Convention and Visitor Bureau. The Greater Raleigh Convention and Visitor Bureau may expend these funds pursuant to the provisions of Section 15 of this act.

In the event that the amount distributed to the Greater Raleigh Convention and Visitor Bureau under this act is less than one million dollars (\$1,000,000) in a fiscal year, the city and the county shall each pay to the Greater Raleigh Convention and Visitor Bureau a sum, derived from its expected portion of the proceeds of the taxes authorized in this act, equal to one-half of the difference between one million dollars (\$1,000,000) and the amount received by the Bureau, so that the total revenue received by the Bureau equals at least one million dollars (\$1,000,000) in each fiscal year.

Sec. 11. Distribution of Prepared Food and Beverage Tax. It is anticipated for allocation purposes that the annual net proceeds realized from the levy of the tax authorized by Section 5 of this act will be at least four million five hundred thousand dollars (\$4,500,000). The county shall distribute the first four million five hundred thousand dollars (\$4,500,000) of the net proceeds of the taxes levied under Section 5 of

this act as provided in this section; the county shall distribute any proceeds in excess of this amount as provided in Section 13 of this act.

The county may deduct from the gross proceeds of the taxes collected pursuant to Section 5 of this act an amount not to exceed three percent (3%) of the gross proceeds to pay for the direct cost of administering and collecting the taxes. The county shall make the distributions provided in this section by the twentieth day of the month following the month in which the tax is collected.

- (1) Distribution to Raleigh. After deducting the amount provided above, the county shall transfer to the City of Raleigh an amount equal to forty-seven and seventy-five one hundredths percent (47.75%) of the net proceeds of each monthly collection. The net proceeds received by Raleigh shall be applied in accordance with the following priorities.
  - a. The city may use the first six hundred eighty thousand dollars (\$680,000) of the net proceeds of the taxes levied under this act to fund the acquisition, construction, financing, debt servicing, renovation, maintenance, or operation of convention centers, civic centers, performing arts centers, coliseums, auditoriums, and museums; to provide off-street parking facilities for use in conjunction with such facilities; and to fund visitor-related programs and activities, including cultural programs, events or festivals, and convention and visitor programs and activities of the Convention and Visitor Bureau.
  - b. The city shall use any additional net tax proceeds received only for (i) the acquisition, construction, renovation, financing, debt service, maintenance, and operation of expansions and additions to the Raleigh Civic Center Complex, and (ii) the construction of sports, cultural, and arts facilities, including a coliseum to be built in conjunction with North Carolina State University at Raleigh, a performing arts theater, a visual arts program, and a children's museum. Any funds not spent in a fiscal year may be held in one or more reserve accounts by the city for future use in the range of activities allowed by this subsection. The city may make expenditures pursuant to this section only after the city and county have agreed on the amount and purpose of the expenditure. The county's approval of an expenditure must be evidenced by a resolution adopted by the board of commissioners.
- (2) Distribution to Wake County. The county shall retain an amount equal to thirty-seven and twenty-five one hundredths percent (37.25%) of the net proceeds of the tax levied under Section 5 of this act. Wake County may expend these proceeds only for the planning, acquisition, renovation, or construction of the Raleigh Civic Center Complex or similar facilities or for construction of sports, cultural, and arts facilities, including a coliseum to be built in conjunction with North

Carolina State University at Raleigh, a performing arts theater, a visual arts program, and a children's museum. Any funds not spent in a fiscal year may be held in reserve accounts by the county for future use in the range of activities allowed by this subsection. The county may make expenditures pursuant to this subdivision only after the city and county have agreed on the amount and purpose of the expenditure. The city's approval of an expenditure must be evidenced by a resolution adopted by the city council.

- (3) Distribution to Greater Raleigh Convention and Visitor Bureau. The county shall remit fifteen percent (15%) of the net proceeds of the tax levied under Section 5 of this act to the Greater Raleigh Convention and Visitor Bureau. The Greater Raleigh Convention and Visitor Bureau may expend these funds pursuant to the provisions of Section 15 of this act.

Sec. 12. Future Revenue Allocations of the Occupancy Tax. In the event that the annual net proceeds of the tax levied under Section 4 of this act exceed three million eight hundred fifteen thousand dollars (\$3,815,000) in a fiscal year, the additional proceeds will be distributed as follows:

- (1) Any net proceeds in excess of three million eight hundred fifteen thousand dollars (\$3,815,000) but less than four million one dollars (\$4,000,001) shall be allocated on the following basis:
  - a. Ninety-five percent (95%) to the City of Raleigh for the purposes set out in Section 10 herein.
  - b. Five percent (5%) to the Town of Cary for the purposes set out in Section 10 of this act.
- (2) Any net proceeds above four million dollars (\$4,000,000) and up to four million five hundred thousand dollars (\$4,500,000) shall be distributed monthly on the following basis:
  - a. Twenty-five percent (25%) to the Raleigh Regional Convention and Visitor Bureau.
  - b. Five percent (5%) to the Town of Cary, at least one-half of which shall be used only for capital projects authorized under Section 10 or 11 of this act and the remainder of which shall be used for the purposes authorized in Section 10(b)(2) of this act.
  - c. Forty-seven and five-tenths percent (47.5%) to the City of Raleigh to be used for the purposes set out in Section 10 of this act.
  - d. Twenty-two and five-tenths percent (22.5%) to Wake County for any use related to any of the purposes for which any local government is authorized by this act to expend tax proceeds.
- (3) Any net proceeds above four million five hundred thousand dollars (\$4,500,000) shall be distributed monthly on the following basis:
  - a. Twenty-five percent (25%) to the Raleigh Regional Convention and Visitor Bureau.

- b. Five percent (5%) to the Town of Cary, at least one-half of which shall be used only for capital projects authorized under Section 10 or 11 of this act and the remainder of which shall be used for the purposes authorized in Section 10(b)(2) of this act.
- c. Thirty-five percent (35%) to the City of Raleigh for any lawful purpose authorized by this act.
- d. Thirty-five percent (35%) to Wake County for any lawful purpose authorized by this act.

Sec. 13. Future Revenue Allocations of the Prepared Food and Beverage Tax. In the event that the annual net proceeds of the tax levied under Section 5 of this act exceed four million five hundred thousand dollars (\$4,500,000) in a tax year, the additional proceeds will be allocated according to the following schedule:

- (1) Any additional net proceeds up to six million five hundred thousand dollars (\$6,500,000) shall be divided between the City of Raleigh and Wake County. The city shall receive seventy-five percent (75%) of the additional net proceeds for use in activities allowed under Section 10 of this act while the county will receive twenty-five percent (25%) of the net proceeds for use in any lawful activity authorized by this act.
- (2) Any net proceeds in excess of six million five hundred thousand dollars (\$6,500,000) shall be divided between the City of Raleigh and Wake County. The city shall receive sixty percent (60%) of the additional net proceeds for use in any lawful purpose authorized by this act while the county shall receive the remaining forty percent (40%) of the additional net proceeds for use in any lawful purpose authorized by this act.

Sec. 14. Restrictions on Certain Capital Projects. This section expires the earlier of (i) three years after the effective date of the first tax levied under this act or (ii) three and one-half years after the date this act is ratified. Notwithstanding any other provision of this act, the proceeds of the taxes levied under this act may not be expended for the cost of any capital project other than (i) a coliseum to be built in conjunction with North Carolina State University at Raleigh, (ii) a civic center complex, (iii) a visual or performing arts center, or (iv) a children's museum, and off-street parking associated with these four projects. As used in this section, the term "cost" includes the cost of construction of a capital facility; planning, engineering, as well as architectural and consulting services, and any other expenses and charges relating to a new capital project.

Sec. 15. Greater Raleigh Convention and Visitor Bureau.

- (1) When the board of county commissioners adopts a resolution levying the tax, the City of Raleigh shall take immediate action to adopt an ordinance establishing the Greater Raleigh Convention and Visitor Bureau. The Bureau shall be governed by a Board of Directors consisting of 12 members. This Bureau shall be the continuation of the existing Raleigh Convention and Visitor Bureau established pursuant to Chapter 850 of the Session Laws of 1985. At least three of

the county's appointees shall reside in Raleigh and at least one of the county's appointees shall reside in Cary. The appointments shall be made as follows:

- a. Five owners or operators of hotels, motels, or other taxable establishments, three of whom shall be elected by the Raleigh City Council and two of whom shall be elected by the Board of Commissioners of Wake County from a list of at least 10 nominees furnished by the Raleigh Hotel and Motel Association. The list of nominees shall include the names of at least three restaurant owners or operators.
- b. Two representatives of tourist or convention related businesses, one appointed by the Raleigh City Council and one by the Wake County Board of Commissioners.
- c. One member nominated by the Greater Raleigh Chamber of Commerce and appointed by the Wake County Board of Commissioners.
- d. Four at-large members, two appointed by the City of Raleigh and two appointed by Wake County.

Members shall serve according to the ordinances and regulations of the city concerning service on city boards and commissions, except that members appointed by Wake County shall serve according to the ordinances and regulations of Wake County concerning service on county boards and commissions.

- (2) Powers and Duties of Bureau. The Greater Raleigh Convention and Visitor Bureau may contract with any person, firm, or agency to advise and assist it in the promotion of travel, tourism, and conventions. The Bureau shall prepare an annual budget based on anticipated revenues and shall submit the budget to the Raleigh City Manager and Wake County Manager for processing and approval through the regular budget procedures of the city and the county. The Bureau shall make quarterly reports to the Raleigh City Council and the Wake County Board of Commissioners detailing its revenues, expenditures, and activities. The city or the county may audit the Bureau's financial records upon reasonable notice to the Bureau. At the end of each fiscal year, any funds of the Bureau not expended, or obligated or reserved as approved by the Raleigh City Council and the Wake County Board of Commissioners, shall be remitted equally to the City of Raleigh and Wake County for use in accordance with Section 10 of this act.

Sec. 16. Penalties. A person, firm, corporation, or association who fails or refuses to file a return and pay the tax due under this Part shall pay a penalty of ten dollars (\$10.00) for each day's omission up to a maximum of two thousand dollars (\$2,000) for each return. 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 paying the tax, there

shall be an additional tax, as a penalty, of five percent (5%) of the tax due, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The Wake County Board of Commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this section.

Sec. 17. Authority to Contract. Wake County and each municipality located in Wake County may contract with any person, agency, association, or nonprofit corporation to undertake or carry out the activities and programs for which the proceeds may be expended. All contracts entered into pursuant to this subsection shall require an annual financial audit of any funds expended and a performance audit of contractual obligations.

Sec. 18. Effect on existing taxes. The levy of a tax pursuant to this act repeals the authority of the county or a unit of local government in Wake County to enact an occupancy tax under any other local act.

Sec. 19. Repeal. The taxes levied pursuant to this authority may be repealed by the county by enacting an ordinance of repeal. No such repeal shall be effective until at least 180 days after the passage of the repeal ordinance. Repeal of a tax levied under this act 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. 20. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

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James C. Gardner  
President of the Senate

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Daniel Blue, Jr.  
Speaker of the House of Representatives