

GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION

CHAPTER 318  
HOUSE BILL 810

AN ACT TO AUTHORIZE THE TOWN OF BANNER ELK TO LEVY A ROOM  
OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy Tax. The Town Council of Banner Elk 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. Collection of the tax and liability therefor shall begin and continue only on and after the first day of a calendar month set by the Town Council of Banner Elk in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.

The occupancy and tourism development tax that may be levied under this act shall be three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation in the Town of Banner Elk that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. The tax shall not apply to any room, lodging, or accommodation supplied to the same person for a period of 90 continuous days or more or to sleeping rooms or lodging furnished by charitable, educational, or religious institutions or by nonprofit organizations.

Sec. 2. Administration of Tax. (a) The Town of Banner Elk shall administer a tax levied under this act. A tax levied under this act is due and payable to the town in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, and 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 town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed with the town 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.

(b) Any 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 or more 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 total tax due, for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade the occupancy tax levied 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 punished by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The town council may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

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

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

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

Sec. 4. Discount for Payment of Taxes When Due. Every operator who pays the occupancy tax imposed by this act may deduct from the amount of the tax for which he is liable and which he actually pays a discount of three percent (3%). Provided, however, the tax administrator may deny a taxpayer the benefit of this section for failure to pay the full tax when due as well as in cases of fraud, evasion, or failure to keep accurate and clear records as required. Provided, further, that in order to receive the discount the taxpayer must deduct the three percent (3%) at the time of making the monthly remittance of tax to the town.

Sec. 5. Disposition of Taxes Collected. For the purpose of this section, "net proceeds" means gross proceeds less the direct costs for administrative and collection expenses not to exceed three percent (3%) of the amount collected, which shall be retained by the town. The net proceeds shall be distributed to the town council. The town council may expend the funds distributed to it pursuant to this section only to further the development of travel, tourism, conventions, and convention facilities in the town.

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

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of June, 1989.