

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1225

Short Title: Local Option Occupancy Tax.

(Public)

Sponsors: Representatives Mavretic; and Bowman.

Referred to: Finance.

May 10, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE COUNTIES AND CITIES TO LEVY LOCAL ROOM
3 OCCUPANCY AND TOURISM DEVELOPMENT TAXES.

4 The General Assembly of North Carolina enacts:

5 Section 1. Subchapter VIII of Chapter 105 of the General Statutes is
6 amended by adding a new Article to read:

7 **"ARTICLE 43.**

8 **"LOCAL OCCUPANCY TAXES.**

9 **"§ 105-506. Short title; purpose.**

10 This Article shall be known as the Local Occupancy Tax Act. This Article gives the
11 counties and cities of this State an opportunity to obtain an added source of revenue, in
12 light of the fact that persons occupying transient accommodations place special service
13 burdens on local governments.

14 **"§ 105-507. Definitions.**

15 The following definitions apply in this Article:

- 16 (1) City. Defined in G.S. 153A-1.
17 (2) City council. The governing body of a city.
18 (3) Net proceeds. Gross proceeds less taxes refunded, the cost to the State
19 of collecting and administering the tax in the taxing county or city, and
20 other deductions properly charged to the taxing county or city.
21 (4) Occupancy tax. A tax on the gross receipts derived from the rental of
22 transient accommodations other than a sales tax levied under Articles
23 5, 39, 40, 41, or 42 of this Chapter or under Chapter 1096 of the 1967
24 Session Laws.

1 (5) Secretary. The Secretary of Revenue.

2 **"§ 105-508. County occupancy tax.**

3 (a) Levy. The board of commissioners of a county may, by resolution, after not
4 less than 10 days' public notice and after a public hearing held pursuant thereto, levy an
5 occupancy tax of one percent (1%), two percent (2%), or three percent (3%) of the gross
6 receipts derived from the rental in that county of any room, lodging, or similar
7 accommodation subject to sales tax under G.S. 105-164.4(a)(3). This occupancy tax is
8 in addition to any State or local sales tax. Immediately after adopting a resolution to
9 levy a tax under this section, the board of commissioners shall send a certified copy of
10 the resolution, and certified copies of any city resolutions required by subsection (c), to
11 the Secretary. The Secretary shall then administer the tax in the county as authorized in
12 this Article.

13 (b) Effect on Local Occupancy Tax Acts. If a county levies an occupancy tax
14 under this section, that county may not levy an additional occupancy tax under a local
15 act. This section does not repeal any local act authorizing a county to levy an
16 occupancy tax. However, levy of an occupancy tax by a county under this section
17 automatically removes the county's authority to levy an occupancy tax under a local act.
18 Levy of a tax under this section does not abolish any board, commission, or agency
19 created pursuant to a local occupancy tax act, but the county may, by resolution, abolish
20 that board, commission, or agency and provide for the disposition of its assets and
21 liabilities. In addition, the county may appropriate funds raised from a levy under this
22 section to that board, commission, or agency for the purposes authorized by the local
23 act. Repeal of an occupancy tax levied under this section does not revive the county's
24 authority to levy an occupancy tax under a local act.

25 (c) Effective Date of Levy. Collection of the tax, and liability therefor, shall
26 begin and continue only on and after the first day of a calendar month set by the board
27 of commissioners in the resolution levying the tax. In a county in which there is no city
28 occupancy tax, the effective date of a tax levied under this section may not be earlier
29 than the first day of the second succeeding calendar month after the date the resolution
30 is adopted. In a county in which there is a city occupancy tax, the effective date of a tax
31 levied under this section may not be earlier than the first day of the fiscal year beginning
32 on or after the first day of the second succeeding calendar month after the resolution is
33 adopted, unless the city councils of all the cities that have levied city occupancy taxes
34 consent by resolution to an earlier effective date.

35 (d) Administration of Tax. Every operator of a business subject to the tax levied
36 under this Article shall, on and after the effective date of the levy of the tax, collect the
37 tax. This tax shall be collected as part of the charge for furnishing a taxable
38 accommodation. The tax shall be stated and charged separately from the sales records,
39 and shall be paid by the purchaser to the operator of the business as trustee for and on
40 account of the county in which the tax is imposed. The tax shall be added to the sales
41 price and shall be passed on to the purchaser instead of being borne by the operator of
42 the business. Collection and administration of the tax shall be as provided for in G.S.
43 105-469 and G.S. 105-474, except that the Secretary shall collect the tax and,
44 notwithstanding G.S. 105-164.16(b), all taxpayers shall file a return on a monthly basis.

1 Distribution of the tax shall be as provided in G.S. 105-472. The Secretary shall design,
2 print, and furnish to all appropriate businesses and persons in each taxing county the
3 necessary forms for filing returns and instructions to ensure the full collection of the tax.

4 (e) Repeal or Reduction in Rate. A tax levied under this section may be repealed
5 or reduced to a rate of two percent (2%) or one percent (1%) by a resolution adopted by
6 the board of commissioners of the taxing county. Repeal or reduction of a tax levied
7 under this section shall become effective on the first day of a month and may not
8 become effective until the end of the fiscal year in which the repeal or reduction
9 resolution was adopted. Immediately after adopting a resolution repealing the tax, the
10 board of commissioners shall send a certified copy of the resolution to the Secretary.

11 **§ 105-509. City occupancy tax.**

12 (a) Levy. If the board of commissioners of a county where a city is located has
13 not levied the occupancy tax authorized by G.S. 105-508 or has levied the tax at a rate
14 of one percent (1%) or two percent (2%), and if that county has not levied an occupancy
15 tax under a local act, the city council may, by ordinance, after not less than 10 days'
16 public notice and after a public hearing held pursuant thereto, levy an occupancy tax of
17 one percent (1%), two percent (2%), or three percent (3%), except that no levy under
18 this section may cause the combined city and county rate to exceed three percent (3%)
19 in any part of the city.

20 This occupancy tax is in addition to any State or local sales tax. Immediately after
21 adopting an ordinance to levy a tax under this section, the city council shall send a
22 certified copy of the ordinance to the Secretary. The Secretary shall then administer the
23 tax in the city as provided in this Article.

24 This tax shall apply to the same accommodations that are taxable under G.S. 105-
25 508 and shall be collected and administered in the same manner as the tax authorized by
26 that section, unless this section specifies otherwise. In applying the provisions of G.S.
27 105-508 to a tax levied by a city under this section, all references in G.S. 105-508 to a
28 county or an official of that county shall be construed to mean the city and the city
29 counterpart to the county official. The net proceeds of a tax levied under this section
30 shall be distributed to the city levying the tax.

31 (b) Effect on Local Occupancy Tax Acts. If a city levies an occupancy tax under
32 this section, that city may not levy an additional occupancy tax under a local act. This
33 section does not repeal any local act authorizing a city to levy an occupancy tax.
34 However, levy of an occupancy tax by a city under this section automatically removes
35 the city's authority to levy an occupancy tax under a local act. Levy of a tax under this
36 section does not abolish any board, commission, or agency created pursuant to a local
37 occupancy tax act, but the city may, by resolution, abolish that board, commission, or
38 agency and provide for the disposition of its assets and liabilities. In addition, the city
39 may appropriate funds raised from a levy under this section to that board, commission,
40 or agency for the purposes authorized by the local act. Repeal of an occupancy tax
41 under this section does not revive the city's authority to levy an occupancy tax under a
42 local act.

43 (c) City Located in Multiple Counties. If a city is located in more than one
44 county, the highest rate of occupancy tax levied by any of the counties in which the city

1 is located determines, for the entire city, whether the city may levy an occupancy tax or
2 the maximum rate at which it may levy. As an example, if City A is located in Counties
3 B, C, and D, and County B levies a two percent (2%) tax, County C levies a one percent
4 (1%) tax, and County D levies no tax, City A may levy an occupancy tax of no more
5 than one percent (1%) throughout the city.

6 (d) Repeal or Reduction in Rate. A tax levied under this section may be repealed
7 or reduced to a rate of two percent (2%) or one percent (1%) by a resolution adopted by
8 the city council of the taxing city. Repeal or reduction of a tax levied under this section
9 shall become effective on the first day of a month and may not become effective until
10 the end of the fiscal year in which the repeal or reduction resolution was adopted.
11 Immediately after adopting a resolution repealing the tax, the city council shall send a
12 certified copy of the resolution to the Secretary.

13 **"§ 105-510. Effect of county occupancy tax on city occupancy tax.**

14 (a) City and County Tax Under This Article. A city may not levy an occupancy
15 tax under this Article that would cause the county rate under this Article combined with
16 the city rate to exceed three percent (3%) in any part of the city. If a city levies an
17 occupancy tax under this Article, and the board of commissioners of a county where the
18 city is located subsequently adopts a resolution levying an occupancy tax in that county
19 under this Article, the city's authority to levy the occupancy tax is repealed as of the
20 effective date of the county levy if the county levies at the rate of three percent (3%),
21 and is limited to the difference between the county occupancy tax rate and three percent
22 (3%) if the county levies at the rate of two percent (2%) or one percent (1%).

23 (b) City Tax Under Local Act; County Tax Under This Article. A city may not
24 levy an occupancy tax under a local act if a county where any part of the city is located
25 levies, or formerly levied, a tax under this Article. If a city levies an occupancy tax
26 under a local act, and the board of commissioners of a county where the city is located
27 subsequently adopts a resolution levying an occupancy tax in that county under this
28 Article, the city's authority to levy the occupancy tax under the local act is repealed as
29 of the effective date of the county levy. Later repeal of the county occupancy tax does
30 not revive the city's authority to levy an occupancy tax under the local act.

31 (c) City Tax Under This Article; County Tax Under Local Act. A city may not
32 levy an occupancy tax under this Article if a county where any part of the city is located
33 levies an occupancy tax under a local act. If a city levies an occupancy tax under this
34 Article, and the board of commissioners of a county where the city is located
35 subsequently adopts a resolution levying an occupancy tax in that county under a local
36 act, the city's authority to levy the occupancy tax is repealed as of the effective date of
37 the county levy.

38 (d) City and County Tax Under Local Act. The effect of a county occupancy tax
39 levied under a local act upon a city occupancy tax levied under a local act is controlled
40 by the provisions of the relevant local acts.

41 **"§ 105-511. Use of tax proceeds.**

42 A city or county may use the proceeds of a tax levied under this Article only to
43 promote the development of travel and tourism in the city or county, which may include

44 (i) advertising and promotion of the city or county and of cultural, recreational,

1 and historical activities in the city or county, (ii) sponsoring tourist-oriented events and
2 activities in the city or county, and (iii) financing tourist-related capital projects in the
3 city or county.

4 **"§ 105-512. Savings clause.**

5 Repeal of an occupancy tax, or reduction of its rate, pursuant to this Article does not
6 affect a liability for a tax that attached before the effective date of the repeal or
7 reduction, nor does it affect a right to a refund of a tax that accrued before the effective
8 date of the repeal or reduction. Repeal of an occupancy tax levied under this Article
9 does not revive any local levy repealed due to the levy of a tax under this Article."

10 Sec. 2. This act is effective upon ratification, except that G.S. 105-509, as
11 enacted by this act, becomes effective November 1, 1991.