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SESSION 2005

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HOUSE BILL 770  
Committee Substitute Favorable 6/6/06  
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Short Title: Clay County Occupancy Tax Changes.

(Local)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CLAY COUNTY ROOM OCCUPANCY AND  
TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 969 of the 1985 Session Laws, as amended by  
Chapter 195 of the 1987 Session Laws, reads as rewritten:

**"Section 1.** Occupancy Tax. (a) Authorization and Scope. = The board of  
commissioners of a county may ~~by resolution, after not less than 10 days' public notice  
and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three  
percent (3%) 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.~~ organizations when furnished in furtherance of their nonprofit purpose.

(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. ~~The county shall administer a tax levied under this act. A tax  
levied under this act is due and payable to the county finance officer in monthly  
installments on or before the 15th day of the month following the month in which the~~

1 tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or  
2 before the 15th day of each month, prepare and render a return on a form prescribed by  
3 the county. The return shall state the total gross receipts derived in the preceding month  
4 from rentals upon which the tax is levied.

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

7 (d) ~~Penalties.~~ A person, firm, corporation, or association who fails or refuses to file  
8 the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's  
9 omission. ~~In case of failure or refusal to file the return or pay the tax for a period of 30~~  
10 ~~days after the time required for filing the return or for paying the tax, there shall be an~~  
11 ~~additional tax, as a penalty, of five percent (5%) of the tax due for each additional~~  
12 ~~month or fraction thereof until the tax is paid.~~

13 ~~Any person who willfully attempts in any manner to evade a tax imposed under this~~  
14 ~~act or who willfully fails to pay the tax or make and file a return shall, in addition to all~~  
15 ~~other penalties provided by law, be guilty of a misdemeanor and shall be punishable by~~  
16 ~~a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six~~  
17 ~~months, or both. The board of commissioners may, for good cause shown, compromise~~  
18 ~~or forgive the penalties imposed by this subsection. A tax levied under this act shall be~~  
19 ~~levied, administered, collected, and repealed as provided in G.S. 153A-155. The~~  
20 ~~penalties provided in G.S. 153A-155 apply to a tax levied under this act.~~

21 (e) Distribution and Use of Tax Revenue. – Except as provided in Section 2 of this  
22 act for Durham County, a taxing county shall place the net proceeds of a tax levied  
23 under this act in a special Travel and Tourism Fund. Revenue in this Fund may be used  
24 only to promote travel and tourism in the county. As used in this subsection, "net  
25 proceeds" means gross proceeds less the cost to the county of administering and  
26 collecting the tax, as determined by the finance officer. County, the distributing authority  
27 shall distribute and use the net proceeds of the occupancy tax levied under this section  
28 in accordance with this subsection. The distributing authority shall be the taxing county,  
29 unless a Tourism Development Authority is required to be established under Section 1.1  
30 of this act. If a Tourism Development Authority is established, then the Tourism  
31 Development Authority shall be the distributing authority. The distributing authority  
32 shall use at least two-thirds of the funds remitted to it under this subsection to promote  
33 travel and tourism in the county and shall use the remainder for tourism-related  
34 expenditures.

35 The following definitions apply in this subsection:

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

41 (2) Promote travel and tourism. – To advertise or market an area or  
42 activity, publish and distribute pamphlets and other materials, conduct  
43 market research, or engage in similar promotional activities that attract

1                   tourists or business travelers to the area. The term includes  
2                   administrative expenses incurred in engaging in the listed activities.

3           (3)       Tourism-related expenditures. – Expenditures that, in the judgment of  
4                   the distributing authority, are designed to increase the use of lodging  
5                   facilities, meeting facilities, or convention facilities in a county or to  
6                   attract tourists or business travelers to the county. The term includes  
7                   tourism-related capital expenditures.

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

12           ~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by~~  
13           ~~the board of commissioners of the county. Repeal of a tax levied under this act shall~~  
14           ~~become effective on the first day of a month and may not become effective until the end~~  
15           ~~of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied~~  
16           ~~under this act does not affect a liability for a tax that attached before the effective date~~  
17           ~~of the repeal, nor does it affect a right to a refund of a tax that accrued before the~~  
18           ~~effective date of the repeal.~~

19           Sec. 1.1. County Tourism Development Authority. – (a) Appointment and  
20           Membership. – When the annual net proceeds of the occupancy tax levied under Section  
21           1 of this act exceed one hundred fifty thousand dollars (\$150,000), the county board of  
22           commissioners shall adopt a resolution creating a county Tourism Development  
23           Authority, which shall be a public authority under the Local Government Budget and  
24           Fiscal Control Act. The resolution shall provide for the membership of the Authority,  
25           including the members' terms of office, and for the filling of vacancies on the Authority.  
26           At least one-third of the members must be individuals who are affiliated with businesses  
27           that collect the tax in the county, and at least one-half of the members must be  
28           individuals who are currently active in the promotion of travel and tourism in the  
29           county. The board of commissioners shall designate one member of the Authority as  
30           chair and shall determine the compensation, if any, to be paid to members of the  
31           Authority.

32           The Authority shall meet at the call of the chair and shall adopt rules of procedure to  
33           govern its meetings. The finance officer for the county shall be the ex officio finance  
34           officer of the Authority.

35           (b) Duties. – If the board of commissioners establishes a Tourism Development  
36           Authority as provided in subsection (a) of this section, then the Authority shall expend  
37           the net proceeds of the tax levied under this act for the purposes provided in this act.  
38           The Authority shall promote travel, tourism, and conventions in the county, sponsor  
39           tourist-related events and activities in the county, and finance tourist-related capital  
40           projects in the county.

41           (c) Reports. – If the board of commissioners establishes a Tourism Development  
42           Authority as provided in subsection (a) of this section, then the Authority shall report  
43           quarterly and at the close of the fiscal year to the county board of commissioners on its

1 receipts and expenditures for the preceding quarter and for the year in such detail as the  
2 board may require.

3 **Sec. 2.** Use and Distribution of Tax Revenue in Durham County. Durham County  
4 shall retain fifty-seven and one-half percent (57-1/2%) of the revenue collected from a  
5 tax levied under this act and shall distribute the remaining forty-two and one-half  
6 percent (42-1/2%) of the revenue to the City of Durham. Funds retained by the county  
7 or distributed to the City of Durham may be used for any purpose authorized by law,  
8 except that at least twenty-five percent (25%) of the funds so retained or distributed  
9 must be used for promotion of travel and tourism.

10 **Sec. 3.** This act applies only to the following counties: Graham, Clay, Jackson,  
11 Durham, Macon, Polk, and Transylvania.

12 **Sec. 4.** This act is effective upon ratification."

13 **SECTION 2.** Section 3 of Chapter 118 of the 1987 Session Laws reads as  
14 rewritten:

15 "**Sec. 3.** This act applies only to the following counties: ~~Clay~~, Graham, Jackson, and  
16 Macon."

17 **SECTION 3.** This act applies only to Clay County.

18 **SECTION 4.** G.S. 153A-155(g) reads as rewritten:

19 "(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe,  
20 Cabarrus, Camden, Carteret, Clay, Craven, Cumberland, Currituck, Dare, Davie,  
21 Duplin, Durham, Franklin, Granville, Halifax, Madison, Montgomery, Nash, New  
22 Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan,  
23 Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga  
24 County District U, and to the Township of Averagesboro in Harnett County."

25 **SECTION 5.** This act is effective when it becomes law.