

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-315
SENATE BILL 18**

AN ACT TO AUTHORIZE MCDOWELL COUNTY TO LEVY AN ADDITIONAL
TWO PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX
AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 892 of the 1985 Session Laws reads as rewritten:

"Section 1. Occupancy Tax. – (a) Authorization and Scope. – The McDowell County Board of Commissioners 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), 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 ~~educational organizations, religious organizations, or summer camps,~~ nonprofit charitable, educational, or religious organizations when furnished in furtherance of the nonprofit purpose.

(a1) Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the McDowell County Board of Commissioners may levy an additional room occupancy tax of two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. McDowell 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 act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this act. 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 tax accrues. Every person, firm, corporation, or 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 county. 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 county finance officer 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.~~

~~(d) Penalties. A 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 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 tax due for each additional month or fraction thereof until the tax is paid.~~

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

~~(e) Distribution and Use of Tax Revenue. – McDowell County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the McDowell Tourism Development Authority. The Authority may spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions in the county through state, national, and international advertising and promotion. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in McDowell County and shall use the remainder for tourism-related expenditures.~~

The following definitions apply in this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures. Tourism-related capital expenditures may include expenditures to purchase, renovate, maintain, or operate heritage tourism sites, such as the McDowell House, the Carson House, Fort Davidson, or Heritage Trails.

~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than January 1, 1987, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the McDowell County Board of Commissioners. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that 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. 2. Tourism Development Authority. (a) Appointment and Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act and shall be composed of the following nine members: Act. The resolution shall provide for the membership of the Authority, including the members'

terms of office, and for the filling of vacancies on the Authority. At least one-half of the members shall be individuals who are affiliated with businesses that collect the tax in the county, and at least one-third of the members shall be individuals who are currently active in the promotion of travel and tourism in the county. The Authority must be comprised of the following seven voting members and two nonvoting, ex officio members:

- (1) The Executive Director of the McDowell Chamber of Commerce, who shall serve as an ex officio, nonvoting ~~member;~~ member.
- (2) A county commissioner appointed by the McDowell County Board of Commissioners, who shall serve as an ex officio, nonvoting ~~member;~~ member.
- (3) Four owners or operators of hotels, motels, or other taxable accommodations, of whom shall be appointed by the McDowell County Board of Commissioners, and two of whom shall be appointed by the McDowell Chamber of Commerce. Two of these appointees shall own or operate hotels, motels, or other accommodations with more than 50 rental units, and two shall own or operate hotels, motels, or other accommodations with 50 or fewer rental ~~units;~~ units.
- (4) Three individuals ~~involved in tourist businesses who have demonstrated an interest in tourism development and do not own or operate hotels, motels, or other taxable accommodations, who are~~ currently active in the promotion of travel and tourism in the county, appointed as follows: two by the McDowell Chamber of Commerce and one by the McDowell County Board of Commissioners.

All members of the Authority shall serve without compensation. Vacancies in the Authority shall be filled by the appointing authority of the member creating the vacancy. Members appointed to fill vacancies shall serve for the remainder of the unexpired term which they are appointed to fill. ~~Except as provided in subsection (b) for initial members, members~~ Members shall serve three-year terms. ~~Members may serve no more than two consecutive terms.~~ The members shall elect a chairman from the membership of the Authority, who shall serve for a term of two years. The Authority shall meet at the call of the chairman and shall adopt rules of procedure to govern its meetings. The Finance Officer for McDowell County shall be the ex officio finance officer of the Authority.

~~(b) Terms of Initial Members. The following initial members shall serve terms for other than three years:~~

- ~~(1) The appointed county commissioner and the member appointed by the board of commissioners under subdivision (a)(4) of this section, who shall serve one year terms; and~~
- ~~(2) One of the members appointed under subdivision (a)(3) of this section by the Chamber, one of the members appointed under subdivision (a)(4) by the Chamber, and one of the members appointed under subdivision (a)(3) by the board of commissioners, as designated by the appointing body, who shall serve two year terms.~~

(c) Duties. — The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in McDowell County, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county. In performing its duties, the Authority may contract with any person, firm, or agency to advise and assist it and may recommend to the board of county commissioners that county staff be employed for this advice and assistance. Any county staff employed upon a recommendation made by the Authority shall be hired and supervised by the Authority, which shall pay the salaries and expenses of this staff.

(d) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

~~"Sec. 3. Review of Levy. Three years from the effective date of a tax levied under this act, the McDowell County Board of Commissioners shall conduct a thorough review of the tax and the function of the Tourism and Development Authority established under this act to determine the effectiveness of the levy and of the Authority.~~

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

SECTION 2. G.S. 153A-155(g) reads as rewritten:

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

SECTION 3. This act is effective when it becomes law. The McDowell County Board of Commissioners has 30 days from the date the act becomes effective to ensure that the membership of the Authority is in compliance with this act.

In the General Assembly read three times and ratified this the 30th day of July, 2007.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives