

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-291
HOUSE BILL 401**

AN ACT TO AUTHORIZE THE TOWN OF BOONE TO LEVY AN ADDITIONAL THREE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 170 of the 1987 Session Laws, as amended by S.L. 1998-35 and Section 21(o) of S.L. 2007-527, reads as rewritten:

"Section 1. Occupancy tax. (a) ~~Authorization and scope.~~ scope. – The Boone Town Council 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 corporate limits of the town 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 nonprofit charitable, educational, or religious ~~organizations.~~ organizations when furnished in furtherance of their nonprofit purpose.

(a1) Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Boone Town Council may levy a room occupancy and tourism development tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with this section. The Town of Boone may not levy a tax under this subsection unless it also levies a tax under subsection (a) of this section.

(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section. ~~Collection.~~ Every operator of a business subject to the tax levied under this section 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 town. 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 town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the town a discount of three percent (3%) of the amount collected.

(b1) Definitions. – The following definitions apply in this section:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.
- (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 town. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities in the town



or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

~~(e) Administration. The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the town finance officer in monthly installments on or before the 20th 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 20th 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 finance officer under this section 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 section 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 in addition to any other penalty, with an additional tax of five percent (5%) 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 section 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 town council may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

~~(e) Distribution and use of tax revenue. Use of Tax Revenue. – The Town of Boone shall, on a quarterly basis, remit sixty percent (60%) of the net proceeds of the occupancy tax levied under this section to the Boone Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism. The Authority shall use the remainder for tourism-related expenditures that are recommended by the Boone Town Council and approved by the Authority. may spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions for the Town of Boone. The Town of Boone may deposit the remainder of the net proceeds in its general funds to be used for any lawful purpose. As used in this subsection, "net proceeds" means gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer.~~

~~(f) Effective date of levy. A tax levied under this section 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 the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Boone Town Council. Repeal of a tax levied under this section 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 section 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. 2. Tourism Development Authority. (a) Appointment and membership. – When the town council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Boone Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control 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-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

~~The Authority shall be composed of nine voting members appointed by the Boone Town Council as follows:~~

- (1) ~~Three individuals who are owners or operators of taxable tourist accommodations in Boone, one of whom resides in Boone and two of whom reside in Watauga County.~~
- (2) ~~One resident of Watauga County who owns or operates a restaurant in Boone.~~
- (3) ~~Two residents of Boone who are members of the Boone Area Chamber of Commerce.~~
- (4) ~~One member of the Boone Town Council.~~
- (5) ~~Two residents of the Town of Boone.~~

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Boone shall be the ex officio finance officer of the Authority but shall not be a member of the authority.

~~The members of the Authority shall serve without compensation and shall serve for a term of three years, except that the town council shall designate three of the initial appointees to serve two year terms. Vacancies shall be filled in the same manner as original appointments and members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect from its membership a chair; the Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings.~~

(b) ~~Powers and duties.~~ Duties. – The Authority may contract with any person, legal entity, firm, or organization to advise it and assist it in carrying out its duty to promote travel, tourism, and conventions for the Town of Boone. 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 the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the town council on its receipts and expenditures for the preceding quarter and for the year in such detail as the Council may require.

Sec. 3. This act is effective upon ratification."

SECTION 2. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Benson, Blowing Rock, Boiling Springs, Boone, Burgaw, Carolina Beach, Carrboro, Dallas, Dobson, Elkin, Franklin, Jonesville, Kenly, Kure Beach, Leland, Mooresville, North Topsail Beach, Pilot Mountain, Selma, Smithfield, St. Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and Brunswick Counties."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives