

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1997**

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**SENATE BILL 578**  
**House Committee Substitute Favorable 7/10/97**

Short Title: Mount Airy/Avery Occupancy Tax.

(Local)

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Sponsors:

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Referred to:

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April 1, 1997

**A BILL TO BE ENTITLED**

**AN ACT TO AUTHORIZE THE CITY OF MOUNT AIRY TO LEVY A ROOM  
OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MODIFY THE  
DISTRIBUTION OF THE AVERY COUNTY OCCUPANCY TAX.**

The General Assembly of North Carolina enacts:

Section 1. Mount Airy Occupancy Tax. (a) Authorization and scope. The Mount Airy Board of Commissioners may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under 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 or by nonprofit summer camps when the accommodations are furnished in furtherance of their nonprofit purpose.

(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 A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215.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.

(c) Distribution and use of tax revenue. The City of Mount Airy shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Mount Airy Tourism

1 Development Authority. The Authority shall use the funds remitted to it under this  
2 subsection only to promote travel and tourism in the Mount Airy area. The following  
3 definitions apply in this section:

- 4 (1) Net proceeds. – Gross proceeds less the cost to the city of administering  
5 and collecting the tax, as determined by the finance officer, not to  
6 exceed seven percent (7%) of the gross proceeds.
- 7 (2) Promote travel and tourism. – Advertise and market activities, develop  
8 and distribute promotional materials, conduct market research, and  
9 engage in other similar promotional activities that attract tourists or  
10 business travelers to the area. The term also includes administration of  
11 the Mount Airy Tourism Development Authority.

12 Section 2. Mount Airy Tourism Development Authority. (a) Appointment and  
13 membership. When the board of commissioners adopts a resolution levying a room  
14 occupancy tax under this act, it shall also adopt a resolution creating a Mount Airy  
15 Tourism Development Authority, which shall be a public authority under the Local  
16 Government Budget and Fiscal Control Act. The board of commissioners shall appoint  
17 the following eight members to the Authority:

- 18 (1) Two individuals who are owners or operators of taxable tourist  
19 accommodations in the city.
- 20 (2) Two residents of the city who have experience in the promotion of  
21 travel and tourism.
- 22 (3) Two residents of the city who are members of the Mount Airy Chamber  
23 of Commerce, selected by the Mount Airy Chamber of Commerce.
- 24 (4) One member of the board of commissioners.
- 25 (5) The city finance officer, who shall serve as an ex officio, nonvoting  
26 member.

27 Members of the Authority shall serve without compensation and shall serve for  
28 a term of three years. Vacancies shall be filled in the same manner as the original  
29 appointment. Members appointed to fill vacancies shall serve for the remainder of the  
30 unexpired term. An individual may serve as a member for no more than two consecutive  
31 terms. The members shall elect a chair from among the membership, who shall serve for  
32 three years. The Authority shall meet at the call of the chair and shall adopt rules of  
33 procedure to govern its meetings.

34 (b) Duties. The Authority shall expend the net proceeds of the tax levied under  
35 this act for the purposes provided in Section 1 of this act. The Authority shall promote  
36 travel and tourism in the Mount Airy area. In performing its duties, the Authority may  
37 contract with any person, firm, or agency to advise and assist it and may recommend to  
38 the board of commissioners that city staff be employed for this advice and assistance.  
39 Any city staff employed upon a recommendation of the Authority shall be hired and  
40 supervised by the Authority, which shall pay the salaries and expenses of this staff.

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

1 Section 3. Municipal Administrative Provisions. (a) Article 9 of Chapter 160A  
2 of the General Statutes is amended by adding a new section to read:

3 **"§ 160A-215. Uniform provisions for room occupancy taxes.**

4 (a) Scope. – This section applies only to municipalities the General Assembly has  
5 authorized to levy room occupancy taxes. For the purpose of this section, the term 'city'  
6 means a municipality.

7 (b) Levy. – A room occupancy tax may be levied only by resolution after not less  
8 than 10 days' public notice and after a public hearing held pursuant thereto. A room  
9 occupancy tax shall become effective on the date specified in the resolution levying the  
10 tax. That date must be the first day of a calendar month, however, and may not be earlier  
11 than the first day of the second month after the date the resolution is adopted.

12 (c) Collection. – Every operator of a business subject to a room occupancy tax  
13 shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall  
14 be collected as part of the charge for furnishing a taxable accommodation. The tax shall  
15 be stated and charged separately from the sales records and shall be paid by the purchaser  
16 to the operator of the business as trustee for and on account of the taxing city. The tax  
17 shall be added to the sales price and shall be passed on to the purchaser instead of being  
18 borne by the operator of the business. The taxing city shall design, print, and furnish to  
19 all appropriate businesses and persons in the city the necessary forms for filing returns  
20 and instructions to ensure the full collection of the tax. An operator of a business who  
21 collects a room occupancy tax may deduct from the amount remitted to the taxing city a  
22 discount equal to the discount the State allows the operator for State sales and use tax.

23 (d) Administration. – The taxing city shall administer a room occupancy tax it  
24 levies. A room occupancy tax is due and payable to the city finance officer in monthly  
25 installments on or before the 15th day of the month following the month in which the tax  
26 accrues. Every person, firm, corporation, or association liable for the tax shall, on or  
27 before the 15th day of each month, prepare and render a return on a form prescribed by  
28 the taxing city. The return shall state the total gross receipts derived in the preceding  
29 month from rentals upon which the tax is levied. A room occupancy tax return filed with  
30 the city finance officer is not a public record and may not be disclosed except in  
31 accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

32 (e) Penalties. – A person, firm, corporation, or association who fails or refuses to  
33 file a room occupancy tax return or pay a room occupancy tax as required by law is  
34 subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a  
35 return for State sales and use taxes. The governing board of the taxing city has the same  
36 authority to waive the penalties for a room occupancy tax that the Secretary of Revenue  
37 has to waive the penalties for State sales and use taxes.

38 (f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed  
39 or reduced by a resolution adopted by the governing body of the city. Repeal or  
40 reduction of a room occupancy tax shall become effective on the first day of a month and  
41 may not become effective until the end of the fiscal year in which the resolution was  
42 adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax

1 that was attached before the effective date of the repeal or reduction, nor does it affect a  
2 right to a refund of a tax that accrued before the effective date of the repeal or reduction."

3 (b) This section applies only to the City of Mount Airy.

4 Section 4. Avery County Occupancy Tax. Section 1 of Chapter 472 of the  
5 1993 Session Laws reads as rewritten:

6 "Section 1. Avery County Occupancy tax.

7 (a) Authorization and Scope.

8 The Avery County Board of Commissioners may ~~by resolution, after not less than 10~~  
9 ~~days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax  
10 of up to three percent (3%) of the gross receipts derived from the rental of any room,  
11 lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place  
12 within the county that is subject to sales tax imposed by the State under G.S. 105-  
13 164.4(a)(3) and is not subject to a room occupancy tax levied by a municipality. This tax  
14 is in addition to any State or local sales tax. This tax does not apply to accommodations  
15 furnished by nonprofit charitable, educational, or religious organizations. The occupancy  
16 tax rate payable on accommodations furnished within Avery County may not exceed six  
17 percent (6%).

18 (b) ~~Collection.~~ Administration.

19 A tax levied under this section shall be levied, administered, collected, and repealed  
20 as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax  
21 levied under this section.

22 ~~Every operator of a business subject to the tax levied under this section shall, on and~~  
23 ~~after the effective date of the levy of the tax, collect the tax. This tax shall be collected as~~  
24 ~~part of the charge for furnishing a taxable accommodation. The tax shall be stated and~~  
25 ~~charged separately from the sales records, and shall be paid by the purchaser to the~~  
26 ~~operator of the business as trustee for and on account of the county. The tax shall be~~  
27 ~~added to the sales price and shall be passed on to the purchaser instead of being borne by~~  
28 ~~the operator of the business. The county shall design, print, and furnish to all appropriate~~  
29 ~~businesses and persons in the county the necessary forms for filing returns and~~  
30 ~~instructions to ensure the full collection of the tax. An operator of a business who~~  
31 ~~collects the occupancy tax levied under this section may deduct from the amount remitted~~  
32 ~~to the county a discount equal to the discount the State allows the operator for collecting~~  
33 ~~State sales and use taxes.~~

34 (c) ~~Administration.~~

35 ~~The county shall administer a tax levied under this section. A tax levied under this~~  
36 ~~section is due and payable to the county finance officer in monthly installments on or~~  
37 ~~before the 15th day of the month following the month in which the tax accrues. Every~~  
38 ~~person, firm, corporation, or association liable for the tax shall, on or before the 15th day~~  
39 ~~of each month, prepare and render a return on a form prescribed by the county. The~~  
40 ~~return shall state the total gross receipts derived in the preceding month from rentals upon~~  
41 ~~which the tax is levied.~~

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

1 (d) Penalties.

2 A person, firm, corporation, or association who fails or refuses to file the return  
3 required by this section is subject to the civil and criminal penalties set by G.S. 105-236  
4 for failure to pay or file a return for State sales and use taxes. The board of  
5 commissioners has the same authority to waive the penalties for a room occupancy tax  
6 that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

7 (e) Distribution and Use of Tax Revenue.

8 Avery County ~~shall use at least~~ shall, on a quarterly basis, distribute two-thirds of the  
9 net proceeds of the occupancy tax revenue to the Avery Tourism Development Authority  
10 created pursuant to Section 1.1 of this act to be used only to promote travel and tourism  
11 in Avery County and shall spend-distribute the remainder on-to the Banner Elk/Avery  
12 County Chamber of Commerce to be used only for tourism-related expenditures. The  
13 following definitions apply in this subsection:

14 (1) Net proceeds. – Gross proceeds less the cost to the county of  
15 administering and collecting the tax, as determined by the finance  
16 officer, not to exceed seven percent (7%) of the amount collected.

17 (2) Promote travel and tourism. – To advertise or market an area or activity,  
18 publish and distribute pamphlets and other materials, conduct market  
19 research, or engage in similar promotional activities that attract tourists  
20 or business travelers to the area; the term includes administrative  
21 expenses incurred in engaging in the listed activities.

22 (3) Tourism-related expenditures. — ~~Expenditures that are designed to~~  
23 ~~increase the use of lodging facilities in a county or to attract tourists or~~  
24 ~~business travelers to the county and expenditures incurred by the county~~  
25 ~~in collecting the tax. The term includes expenditures to construct,~~  
26 ~~maintain, operate, or market a convention center and other expenditures~~  
27 ~~that, in the judgment of the board of commissioners, will facilitate and~~  
28 ~~support tourism.~~ Expenditures that, in the judgment of the entity making  
29 the expenditures, are designed to increase the use of lodging facilities,  
30 meeting facilities, and convention facilities in a county by attracting  
31 tourists or business travelers to the county. The term includes tourism-  
32 related capital expenditures.

33 (f) Effective Date of Levy.

34 A tax levied under this section shall become effective on the date specified in the  
35 resolution levying the tax. ~~That date must be the first day of a calendar month, however,~~  
36 ~~and may not be earlier than the first day of the second month after the date the resolution~~  
37 ~~is adopted.~~

38 (g) Repeal.

39 A tax levied under this section may be repealed by a resolution adopted by the Avery  
40 County Board of Commissioners. ~~Repeal of a tax levied under this section shall become~~  
41 ~~effective on the first day of a month and may not become effective until the end of the~~  
42 ~~fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this~~  
43 ~~section does not affect a liability for a tax that was attached before the effective date of~~

1 the repeal, nor does it affect a right to a refund of a tax that accrued before the effective  
2 date of the repeal."

3 Section 5. Avery Tourism Development Authority. Chapter 472 of the 1993  
4 Session Laws is amended by adding a new section to read:

5 "Sec. 1.1. Avery Tourism Development Authority. (a) Appointment and  
6 membership. The board of commissioners of Avery County shall adopt a resolution  
7 creating a county Tourism Development Authority, which shall be a public authority  
8 under the Local Government Budget and Fiscal Control Act. The Authority shall have  
9 seven voting members appointed by the board of commissioners as follows:

10 (1) Three individuals selected by the Avery County Lodging Association.

11 (2) Two individuals selected by the Banner Elk/Avery County Chamber of  
12 Commerce.

13 (3) One member of the Avery County Board of Commissioners, to serve ex  
14 officio.

15 (4) One member of the public.

16 The resolution shall provide for four-year terms of office for the members other than the  
17 county commissioner, except that the initial terms of three members shall be set at three  
18 years to provide for staggered terms. The resolution shall also provide for the filling of  
19 vacancies on the Authority. The board of commissioners shall designate one member of  
20 the Authority as chair and shall determine the compensation, if any, to be paid to  
21 members of the Authority.

22 The Authority shall meet at the call of the chair and shall adopt rules of procedure to  
23 govern its meetings. The Finance Officer for Avery County shall be the ex officio  
24 finance officer of the Authority and shall serve as an ex officio, nonvoting member of the  
25 Authority.

26 (b) Duties. The Authority shall expend the net proceeds of the tax levied under  
27 this act for the purposes provided in Section 1 of this act. The Authority shall promote  
28 travel and tourism in the county.

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

32 Section 6. County Administrative Provisions. Section 3(b) of S.L. 1997-102,  
33 as amended by Section 2 of S.L. 1997-255, reads as rewritten:

34 "(b) This section applies only to ~~Madison~~ Avery, Madison, and Nash Counties."

35 Section 7. Sections 4, 5, and 6 of this act become effective August 1, 1997,  
36 and apply to taxes paid on or after that date. The remainder of this act is effective when it  
37 becomes law.