

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 578

House Committee Substitute Favorable 7/10/97

House Committee Substitute #2 Favorable 7/16/97

Short Title: Mount Airy/Avery Occupancy Tax.

(Local)

Sponsors:

Referred to:

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 A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215.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

1 (c) Distribution and use of tax revenue. The City of Mount Airy shall, on a
2 quarterly basis, remit the net proceeds of the occupancy tax to the Mount Airy Tourism
3 Development Authority. The Authority shall use the funds remitted to it under this
4 subsection only to promote travel and tourism in the Mount Airy area. The following
5 definitions apply in this section:

6 (1) Net proceeds. – Gross proceeds less the cost to the city of administering
7 and collecting the tax, as determined by the finance officer, not to
8 exceed seven percent (7%) of the gross proceeds.

9 (2) Promote travel and tourism. – Advertise and market activities, develop
10 and distribute promotional materials, conduct market research, and
11 engage in other similar promotional activities that attract tourists or
12 business travelers to the area. The term also includes administration of
13 the Mount Airy Tourism Development Authority.

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

20 (1) Two individuals who are owners or operators of taxable tourist
21 accommodations in the city.

22 (2) Two residents of the city who have experience in the promotion of
23 travel and tourism.

24 (3) Two residents of the city who are members of the Mount Airy Chamber
25 of Commerce, selected by the Mount Airy Chamber of Commerce.

26 (4) One member of the board of commissioners.

27 (5) The city finance officer, who shall serve as an ex officio, nonvoting
28 member.

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

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

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

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

6 **"§ 160A-215. Uniform provisions for room occupancy taxes.**

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

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

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

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

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

41 (f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed
42 or reduced by a resolution adopted by the governing body of the city. Repeal or
43 reduction of a room occupancy tax shall become effective on the first day of a month and

1 may not become effective until the end of the fiscal year in which the resolution was
2 adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax
3 that was attached before the effective date of the repeal or reduction, nor does it affect a
4 right to a refund of a tax that accrued before the effective date of the repeal or reduction."

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

6 Section 4. Avery County Occupancy Tax. Section 1 of Chapter 472 of the
7 1993 Session Laws reads as rewritten:

8 "Section 1. Avery County Occupancy tax.

9 (a) Authorization and Scope.

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

20 (b) ~~Collection.~~ Administration.

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

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

36 (c) ~~Administration.~~

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

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

3 (d) Penalties.

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

9 (e) Distribution and Use of Tax Revenue.

10 Avery County ~~shall use at least~~ shall, on a quarterly basis, distribute two-thirds of the
11 net proceeds of the occupancy tax revenue to the Avery Tourism Development Authority
12 created pursuant to Section 1.1 of this act to be used only to promote travel and tourism
13 in Avery County and shall spend distribute the remainder on to the Avery County
14 Chamber of Commerce to be used only for tourism-related expenditures. The chamber of
15 commerce shall report quarterly and at the close of the fiscal year to the board of
16 commissioners on its receipts and expenditures for the preceding quarter and for the year
17 in such detail as the board may require.

18 The following definitions apply in this subsection:

- 19 (1) Net proceeds. – Gross proceeds less the cost to the county of
20 administering and collecting the tax, as determined by the finance
21 officer, not to exceed seven percent (7%) of the amount collected.
- 22 (2) Promote travel and tourism. – To advertise or market an area or activity,
23 publish and distribute pamphlets and other materials, conduct market
24 research, or engage in similar promotional activities that attract tourists
25 or business travelers to the area; the term includes administrative
26 expenses incurred in engaging in the listed activities.
- 27 (3) Tourism-related expenditures. — ~~Expenditures that are designed to~~
28 ~~increase the use of lodging facilities in a county or to attract tourists or~~
29 ~~business travelers to the county and expenditures incurred by the county~~
30 ~~in collecting the tax. The term includes expenditures to construct,~~
31 ~~maintain, operate, or market a convention center and other expenditures~~
32 ~~that, in the judgment of the board of commissioners, will facilitate and~~
33 ~~support tourism. Expenditures that, in the judgment of the entity making~~
34 the expenditures, are designed to increase the use of lodging facilities,
35 meeting facilities, and convention facilities in a county by attracting
36 tourists or business travelers to the county. The term includes tourism-
37 related capital expenditures.

38 (f) Effective Date of Levy.

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

43 (g) Repeal.

1 ~~A tax levied under this section may be repealed by a resolution adopted by the Avery~~
2 ~~County Board of Commissioners. Repeal of a tax levied under this section shall become~~
3 ~~effective on the first day of a month and may not become effective until the end of the~~
4 ~~fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this~~
5 ~~section does not affect a liability for a tax that was attached before the effective date of~~
6 ~~the repeal, nor does it affect a right to a refund of a tax that accrued before the effective~~
7 ~~date of the repeal."~~

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

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

15 (1) Four individuals selected by the Avery County Lodging Association.

16 (2) One individual selected by the Avery County Chamber of Commerce.

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

19 (4) One member of the public.

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

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

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

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

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

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

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