

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 670
HOUSE BILL 215

AN ACT TO AUTHORIZE CURRITUCK COUNTY TO LEVY AN EXCISE TAX
ON INSTRUMENTS CONVEYING REAL PROPERTY IN CURRITUCK
COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Tax. (a) Authorization. The Currituck County Board of Commissioners may, by resolution, levy an excise tax on instruments conveying certain interests in real property in Currituck County, including instruments that convey an interest in a mobile home that, at the time of the conveyance, is taxed as real property. The tax imposed may not exceed one dollar (\$1.00) on each one hundred dollars (\$100.00) or fraction thereof of the consideration or value of the interest conveyed, including, in the case of a sale, the value of any lien or encumbrance remaining on the property at the time of sale. This tax is in addition to the tax levied by Article 8E of Chapter 105 of the General Statutes. The value of a lease subject to this tax shall be computed on the basis of the present value of the fixed lease payments and, if the lease payments are based in whole or in part on the lessee's receipts, the estimated amount of the lessee's receipts.

(b) Scope. A tax levied under this act applies to all instruments conveying an interest in real property in Currituck County except an instrument:

- (1) Conveying an interest in real property from the United States, the State, or a political subdivision of the State;
- (2) Recording a lease for a term of 10 years or less, unless:
 - a. The lease gives the lessee an option to renew the lease for a period that, when added to the term of the lease, exceeds the 10-year limitation; or
 - b. The lease is for substantially the same property and is between the same parties as a lease previously recorded, and the term of the new lease, when added to that of the previous lease, exceeds the 10-year limitation; or
 - c. The lease requires or permits the property to be transferred to the lessee for less than the fair market value of the property;
- (3) Securing indebtedness; or
- (4) Recording a transfer in which no consideration was paid or is due the transferor by the transferee.

In addition, this tax does not apply to conveyances of an interest in real property by operation of law, by will, by intestacy, or by merger or consolidation.

(c) Collection. A tax levied under this act is payable by the transferor of the interest to the Currituck County Tax Collector. This tax must be paid at the tax collector's office before the instrument conveying the interest is recorded. The tax collector shall stamp or otherwise mark each instrument subject to the tax to indicate that the tax has been paid. The Currituck County Register of Deeds may not accept for recordation an instrument subject to a tax levied under this act unless the instrument bears the tax collector's mark indicating that the tax has been paid.

(d) Appeal. A person who is liable for a tax levied under this act who disputes the amount of tax due shall pay the tax stated by the tax collector to be due, but may appeal the payment of the tax to the Land Transfer Tax Appeals Board by filing a written notice of appeal with the tax collector within 30 days after paying the tax. Upon receipt of a notice of appeal, the tax collector shall forward a copy of the notice of appeal to the chairman of the Land Transfer Tax Appeals Board. A notice of appeal shall state the reason for the appeal and the amount of tax the appellant contends is due.

The Land Transfer Tax Appeals Board is established to determine appeals of taxes imposed under this act. The Board shall consist of seven members appointed by the Currituck County Board of Commissioners. The county commissioners shall designate one member of the Land Transfer Tax Appeals Board to serve as chairman. The expenses of the Board are an administrative expense and shall be paid from the proceeds of the tax.

Members of the Board shall serve staggered four-year terms, with the term of three of the members, as designated by the board of commissioners, ending on June 30 of one four-year period, and the terms of the remaining members ending on June 30 of the four-year period ending the second year following the year in which the terms of the other three members ended. Members shall serve until their successors are appointed. A vacancy shall be filled by the board of commissioners.

The Land Transfer Tax Appeals Board shall meet at the call of the chairman and shall meet as often as needed to hear appeals. All appeals to the Board shall be heard by the Board within 45 days of the date the tax collector receives a notice of appeal. The Board shall issue a written decision within 20 days after hearing an appeal and shall send a copy of the decision to the appellant and to the tax collector. If the decision states that an appellant paid more tax than was due, the tax collector shall immediately refund to the appellant the amount of the overpayment. The appellant and the tax collector may appeal the decision of the Board in an action brought in the district court of the county. An appeal to the district court shall be heard de novo.

(e) Use of tax revenue. The proceeds of a tax levied under this act shall be placed in a special Capital Reserve Fund in the general fund of Currituck County. Revenue in this Fund may be used by the county only for capital expenditures for solid waste disposal and county-operated buildings and related equipment or to retire any indebtedness incurred by the county for these purposes.

(f) Penalties. A person who knowingly fails to pay a tax levied under this act, who knowingly aids another to fail to pay a tax levied under this act, or who, to avoid paying part or all of the tax due under this act, knowingly misstates the total consideration for an interest conveyed is guilty of a misdemeanor and is punishable by

imprisonment for up to two years and a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000).

(g) Taxes recoverable by action. If a transferor fails to pay a tax imposed by this act within 30 days of the tax collector's demand that he pay the tax, the tax may be recovered by Currituck County in an action brought in the district court of the county. In an action to recover a tax imposed under this act, costs of court shall include a fee to the county of twenty-five dollars (\$25.00) for the expense of collection. The court may award attorney's fees to the county.

(h) Effective date; application. A tax levied under this act shall become effective on the first day of a month, as designated in the resolution levying the tax, and may not become effective for at least 20 days after the adoption of the resolution. A tax levied under this act applies to instruments that are executed on or after the effective date of the levy, except instruments executed on or after that date that convey an interest in real property pursuant to a recorded written contract made before the effective date.

(i) Repeal. A tax levied by this act may be repealed by a resolution adopted by the Currituck County Board of Commissioners. Repeal or reduction of a tax levied under this act may not become effective, however, for at least 10 years after the effective date of the levy of the tax and may only become effective on the first day of a month. Repeal of a tax levied under this act shall apply to instruments recorded on or after the effective date of the repeal. Repeal of a tax levied under this act does not affect a liability for the repealed tax that attached before the effective date of the repeal.

(j) Expiration. A tax levied under this act shall expire 10 years from the date it first went into effect, if it has not been repealed before that date. Once a tax levied under this act is repealed or has expired, no other tax may be levied under this act.

Sec. 2. Notwithstanding subsection (d) of Section 1 of this act, the initial terms of three of the members appointed to the Land Transfer Tax Appeals Board, as designated by the county commissioners, shall end on June 30 of the second year after their term begins.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 10th day of July, 1985.