

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1989**

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**HOUSE BILL 839**  
**Committee Substitute Favorable 6/5/89**

Short Title: Garner Occupancy Tax.

(Local)

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Sponsors:

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Referred to:

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March 23, 1989

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF GARNER TO LEVY AN OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. (a) Authorization; Scope. If the Wake County Board of Commissioners has not levied the tax authorized by Section 1 of Chapter 850 of the 1986 Session Laws or has levied the tax at a rate of less than three percent (3%), the Town of Garner Board of Aldermen may, by ordinance, levy a room occupancy tax at a rate that does not exceed three percent (3%) when combined with the Wake County occupancy tax rate, if any. This tax shall apply to the gross receipts derived from the rental in the Town of Garner of any room, lodging, or similar accommodation subject to sales tax under G.S. 105-164.4(3). This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose. This tax is in addition to any State or local sales tax.

(b) Collection. Every operator of 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 on 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 county the necessary forms for filing

1 returns and instructions to ensure the full collection of the tax. An operator of a  
2 business who collects the occupancy tax levied under this section may deduct from the  
3 amount remitted by him to the county a discount of one percent (1%) of the amount  
4 collected as reimbursement for the expenses incurred in collecting the tax.

5 (c) Administration. The town shall administer a tax levied under this section. A  
6 tax levied under this section is due and payable to the town tax collector in monthly  
7 installments on or before the 15th day of the month following the month in which the  
8 tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or  
9 before the 15th day of each month, prepare and render a return on a form prescribed by  
10 the county. The return shall state the total gross receipts derived in the preceding month  
11 from rentals and sales upon which the tax is levied.

12 (d) Penalties. A person, firm, corporation, or association who fails or refuses to  
13 file the return required by this section shall pay a penalty of ten dollars (\$10.00) for  
14 each day's omission. In case of failure or refusal to file the return or pay the tax for a  
15 period of 30 days after the time required for filing the return or for paying the tax, there  
16 shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to  
17 any other penalty, with an additional tax of five percent (5%) for each additional month  
18 or fraction thereof until the tax is paid. Any person who willfully attempts in any  
19 manner to evade a tax imposed under this section or who willfully fails to pay the tax or  
20 make and file a return shall, in addition to all other penalties provided by law, be guilty  
21 of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars  
22 (\$1,000) and imprisonment not to exceed six months.

23 (e) Use and Distribution of Tax Revenue. The Town of Garner shall  
24 distribute the net proceeds of the occupancy tax as follows:

- 25 (1) The first fifty percent (50%) of net proceeds from the tax in each fiscal  
26 year up to a maximum of one hundred thousand dollars (\$100,000)  
27 shall be transferred by the town to the Garner Convention and Visitor  
28 Bureau established pursuant to this act for use by the Bureau for  
29 activities and programs aiding and encouraging convention and visitor  
30 promotion;
- 31 (2) The remaining net proceeds shall be retained by the town and may be  
32 used only to fund visitor-related programs and activities, including  
33 cultural programs, events, or festivals, and convention and visitor  
34 programs and activities of the Garner Convention and Visitor Bureau.

35 The town may contract with a nonprofit organization to undertake or carry  
36 out the activities and programs for which the revenue may be expended. All contracts  
37 entered into with nonprofit organizations shall require an annual financial audit of any  
38 funds expended and a performance audit of contractual obligations. As used in this  
39 subsection, "net proceeds" means gross proceeds less the direct cost to the town of  
40 administering and collecting the tax, not to exceed three percent (3%) of the amount  
41 collected.

42 (f) Bureau Established. When the Town of Garner Board of Aldermen  
43 adopts an ordinance levying an occupancy tax, it shall also adopt an ordinance  
44 establishing the Garner Convention and Visitor Bureau. The Bureau shall be governed

1 by a Board of Directors consisting of five members appointed by the Garner Board of  
2 Aldermen as follows:

- 3 (1) At least one owner or operator of hotels, motels, or other taxable  
4 accommodations;
- 5 (2) At least one person directly involved in a tourist- or convention-related  
6 business who does not own or operate a hotel, motel, or other taxable  
7 accommodation;
- 8 (3) At least one resident of Garner who is not directly involved in a tourist  
9 or convention-related business and who does not own or operate a  
10 hotel, motel, or other taxable accommodation; and
- 11 (4) At least one individual who is a member of the Garner Chamber of  
12 Commerce, selected by the Chairman of the Board of Directors of the  
13 Garner Chamber of Commerce.

14 Members shall be appointed by the Board of Aldermen and serve according  
15 to the ordinances and regulations of the town concerning service on the board of  
16 directors.

17 (g) Powers and Duties of Bureau. The Garner Convention and Visitor  
18 Bureau may contract with any person, firm, or agency to advise and assist it in the  
19 promotion of travel, tourism, and conventions. The Bureau shall prepare an annual  
20 budget based on anticipated revenues and shall submit the budget to the Garner Town  
21 Manager for processing and approval through the regular budget procedure of the town.  
22 The Bureau shall make quarterly reports to the town detailing its revenues,  
23 expenditures, and activities. The town may audit the Bureau's financial records upon  
24 reasonable notice to the Bureau. At the end of each fiscal year, any funds of the Bureau  
25 not expended, and not obligated or reserved as approved by the Board of Aldermen,  
26 shall be remitted to the Town of Garner for use in accordance with subdivision (e)(2).

27 (h) Repeal. A tax levied under this section may be repealed by a resolution  
28 adopted by the Town of Garner Board of Aldermen. Repeal of a tax levied under this  
29 section shall become effective on the first day of a month and may not become effective  
30 until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a  
31 tax levied under this section does not affect a liability for a tax that attached before the  
32 effective date of the repeal, nor does it affect a right to a refund of a tax that accrued  
33 before the effective date of the repeal.

34 Sec. 2. Effect of County Tax on Previously Levied Town Tax. If the Town  
35 of Garner levies an occupancy tax under Section 1 of this act, and the Wake County  
36 Board of Commissioners subsequently adopts a resolution levying an occupancy tax in  
37 Wake County, the occupancy tax levied by the town shall be repealed as of the effective  
38 date of the county levy if the county levies an occupancy tax at the rate of three percent  
39 (3%), and shall otherwise be reduced by the amount that the combined county and town  
40 occupancy tax rates exceed three percent (3%).

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