

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-265
HOUSE BILL 78**

AN ACT TO AUTHORIZE BURKE COUNTY TO LEVY AN ADDITIONAL THREE PERCENT OCCUPANCY TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 422 of the 1989 Session Laws, as amended by Chapter 143 of the 1995 Session Laws, reads as rewritten:

"Section 1. Occupancy tax. ~~—(a) Authorization and scope.~~ Scope. — The Burke County Board of Commissioners 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 accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county 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) Authorization of Additional Occupancy Tax. — In addition to the tax authorized by subsection (a) of this section, the Burke County Board of Commissioners may levy an additional room occupancy 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 must be in accordance with this act. Burke County may not levy a tax under this subsection unless it also levies a tax under subsection (a) of this section.

~~(b) 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 county. 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 county shall design, print, and furnish to all appropriate businesses and persons in the county 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 county a discount of three percent (3%) of the amount collected.

(c) Administration. — A tax levied under this act must be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this act. ~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th 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 15th day of each month, prepare and render a return on a form prescribed by the county. 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 county 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.~~

~~(c1) Definitions. – The following definitions apply in this act:~~

- ~~(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.~~
- ~~(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 area. The term includes administrative expenses incurred in engaging in the listed activities.~~
- ~~(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.~~

~~(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. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~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.~~

~~(e) Distribution and Use of tax revenue. Tax Revenue. – Burke County shall use must, on a quarterly basis, remit the net proceeds of the occupancy tax only to promote economic development and travel and tourism in Burke County. The county may allocate the net proceeds one half for economic development and one half for travel and tourism or in any other ratio the board of commissioners considers appropriate. As used in this subsection, 'net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer. levied under this act to the Burke County Tourism Development Authority. The Authority must use the proceeds as follows:~~

- ~~(1) First three percent (3%). – At least two-thirds must be used to promote travel and tourism in Burke County, and the remainder must be used for tourism-related expenditures in Burke County.~~
- ~~(2) Remainder. – The Authority must segregate the remaining net proceeds into three separate accounts as set out in this subdivision. The Authority must use at least two-thirds of the funds in each account to promote travel and tourism in each of the named areas and must use the remainder for tourism-related expenditures in each of the named areas. The amounts and accounts are as follows:~~
 - ~~a. Forty-five percent (45%) must be remitted to the Morganton Account.~~
 - ~~b. Thirty percent (30%) must be remitted to the Burke County Account.~~

c. Twenty-five percent (25%) must be remitted to the Valdese Account.

~~(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 Burke County Board of Commissioners. 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. 1.1. Burke County Tourism Development Authority. – (a) Appointment and Membership. – When the Burke County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it must also adopt a resolution creating a county Tourism Development Authority that is a public authority under the Local Government Budget and Fiscal Control Act. The resolution must 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 county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. Of the total membership, at least one member must represent the Town of Morganton, and at least one member must represent the Town of Valdese. The board of commissioners must designate one member of the Authority as chair and must determine the compensation, if any, to be paid to members of the Authority.

The Authority meets at the call of the chair and must adopt rules of procedure to govern its meetings. The Finance Officer for Burke County is the ex officio finance officer of the Authority.

(b) Duties. – The Authority must expend the net proceeds of the tax remitted to it under this act for the purposes provided in this act. The Authority must promote travel, tourism, and conventions, sponsor tourism-related events and activities, and finance tourism-related capital projects in the county and in the named towns in this act.

(c) Reports. – The Authority must report quarterly and at the close of the fiscal year to the Burke County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

"Sec. 2. This act is effective upon ratification."

SECTION 2. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Martin, Montgomery, Nash, New Hanover, New Hanover County District U, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averagesboro in Harnett County."

SECTION 3. This act is effective when it becomes law. The Burke County Board of Commissioners has 30 days from the date the act becomes effective to ensure that the membership of the Authority is in compliance with this act.

In the General Assembly read three times and ratified this the 26th day of July, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives