

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 393
HOUSE BILL 786

AN ACT TO AUTHORIZE PASQUOTANK, PERQUIMANS, AND WASHINGTON
COUNTIES TO LEVY AN EXCISE TAX ON INSTRUMENTS CONVEYING
REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Tax. (a) Authorization. The board of commissioners of a county may, by resolution, after five days' public notice and a referendum as provided in Section 2 of this act, levy an excise tax on instruments conveying certain interests in real property in the 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.

(b) Scope. A tax levied under this act applies to all instruments conveying an interest in real property in the 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) Securing indebtedness;
- (3) Recording a transfer in which no consideration was paid or is due the transferor by the transferee;
- (4) Conveying an interest in real property as the result of foreclosure or in lieu of foreclosure to the holder of the security interest being foreclosed; or
- (5) Conveying an interest in real property transferred by a person who, within the last two years, held a mortgage on the property and received the property in a conveyance exempt from tax under this act pursuant to subdivision (4) above.

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

(c) Collection. A tax levied under this act shall be administered by the county tax collector, whose duty is to determine the amount of tax due and to see that the correct amount is shown on the face of the instrument to be presented for recording. The tax must be paid by the transferor at the register of deeds' office before the instrument conveying the interest is recorded. The county register of deeds shall stamp

or otherwise mark each instrument for which he or she collects the tax to indicate that the tax has been paid. The county register of deeds may not accept for recordation an instrument subject to a tax levied under this act unless the tax due is paid to the register of deeds when the instrument is offered for recordation.

(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 board of commissioners of the county. 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 and Distribution of Tax Revenue. All proceeds of the tax shall be retained by the county and shall be placed in a special Capital Reserve Fund in the general fund of the county. Revenue in this Fund may be used by the county for public school capital expenditures, including, but not limited to, retirement of indebtedness incurred in the past or in the future for public school capital expenditures.

(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 register of deeds' demand that he pay the tax, the tax may be recovered by the 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 30 days after the adoption of the resolution. A tax levied under this act applies to instruments that are recorded on or after the effective date of the levy, except instruments recorded on or after that date that convey an interest in real property pursuant to a written contract made before the effective date.

(i) Repeal. A tax levied under this act may be repealed by a resolution adopted by the county board of commissioners. Repeal of a tax levied under this act shall become effective on the first day of a month, as designated in the resolution repealing the tax, and 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 the rights or liabilities of the county, a taxpayer, or other person arising before the repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available before the repeal.

Sec. 2. Referendum. (a) Section 1 of this act shall become effective in a county only if approved by a majority of the qualified voters of that county. The voters shall vote on the question in a referendum, to be held only if the county board of commissioners directs the county board of elections to conduct the referendum. The referendum shall be held on a date to be jointly agreed upon by the two boards and shall be conducted in accordance with the procedures of G.S. 163-287.

(b) The question on the ballot shall be:

FOR authorizing the county to levy an excise tax on instruments conveying certain interests in real property and mobile homes in the county, at a rate of up to one percent (1%) of the value of the interest conveyed.

AGAINST authorizing the county to levy an excise tax on instruments conveying certain interests in real property and mobile homes in the county, at a rate of up to one percent (1%) of the value of the interest conveyed."

(c) If a majority of those voting in the referendum in the county vote in favor of authorizing the county to levy the tax, then Section 1 of this act shall become effective in that county. If less than a majority of those voting in the referendum in the county vote in favor of authorizing the county to levy the tax, then Section 1 of this act shall not become effective in that county.

Sec. 3. This act applies to Pasquotank County, Perquimans County, and Washington County only.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1989.