

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2004-106
SENATE BILL 1181**

AN ACT TO MODIFY THE ADMINISTRATIVE PROVISIONS OF THE ALLEGHANY OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 162 of the 1991 Session Laws reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. ~~—~~ The Alleghany 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(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by (i) ~~a business that offers to rent fewer than five units,~~ (ii) a summer camp for minors, or (iii) by a nonprofit charitable, educational, or religious organization.

(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. The county may require a taxpayer to attach to the form a copy of the taxpayer's most recent sales tax report filed with the Secretary of Revenue.~~

(c) ~~Administration. — A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155.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 section. 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 fifteenth 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 fifteenth 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.~~

(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. – Except as otherwise provided in this act, Alleghany County shall, on a quarterly basis, remit one half of one hundred percent (100%) of the net proceeds of the occupancy tax to the Alleghany County Chamber of Commerce. The chamber of commerce shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Alleghany County and shall use the remainder for tourism-related expenditures. may spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions in Alleghany County through State, national, and international advertising and promotion. The chamber of commerce may use no more than one percent (1%) of the funds remitted to it under this subsection for administrative expenses. The chamber of commerce shall report quarterly and at the close of the fiscal year to the Alleghany 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.~~

~~The following definitions apply in this subsection:~~

- ~~(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 entity responsible for expending the net proceeds of the tax, 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.~~

~~The county shall retain the remaining net proceeds of the tax and use them only for tourist related purposes, which may include construction and maintenance of public facilities and buildings, police protection, and emergency services. 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.~~

~~(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 Alleghany 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. Alleghany Tourism Development Authority. – (a) Appointment and Membership. – When the annual net proceeds of the occupancy tax exceed one hundred**~~

thousand dollars (\$100,000), the Allegheny Board of Commissioners shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filing 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 three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to the members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Allegheny County shall be the ex officio finance officer of the Authority.

Sec. 1.2. Duties. – If the board of commissioners establishes a Tourism Development Authority as provided in Section 1.1 of this act, then the Authority shall expend the net proceeds of the tax levied under this Act for the purposes provided in this Act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

Sec. 1.3. Reports. – If the board of commissioners establishes a Tourism Development Authority as provided in Section 1.1 of this act, then the Authority shall report quarterly and at the close of the fiscal year to the Allegheny 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 reads as rewritten:

"§ 153A-155. Uniform provisions for room occupancy taxes.

(a) **Scope.** – This section applies only to counties the General Assembly has authorized to levy room occupancy taxes.

(b) **Levy.** – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax 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.

(c) **Collection.** – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The 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 taxing 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 taxing 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 a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax.

(d) **Administration.** – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax 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 taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

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

(f) Repeal or Reduction. – A room occupancy tax levied by a county may be repealed or reduced by a resolution adopted by the governing body of the county. Repeal or reduction of a room occupancy tax 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 resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Madison, Montgomery, Nash, New Hanover, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averagesboro in Harnett County."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2004.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives