

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 9

Short Title: Modify Avery County Occy. Taxes.

(Local)

Sponsors: Representative Buchanan.

Referred to: Finance.

January 29, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR UNIFORM MUNICIPAL OCCUPANCY TAXES IN
AVERY COUNTY.

The General Assembly of North Carolina enacts:

REPEAL AVERY COUNTY OCCUPANCY TAX

SECTION 1. Chapter 472 of the 1993 Session Laws, as amended by
Sections 4 and 5 of S.L. 1997-410, is repealed.

UNIFORM ADMINISTRATIVE PROVISIONS

SECTION 2. G.S. 160A-215 reads as rewritten:

"§ 160A-215. Uniform provisions for room occupancy taxes.

(a) Scope. – This section applies only to municipalities the General Assembly
has authorized to levy room occupancy taxes. For the purpose of this section, the term
"city" means a municipality.

(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 city.
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 city shall design, print, and
furnish to all appropriate businesses and persons in the city 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

1 the taxing city a discount equal to the discount the State allows the operator for State
2 sales and use tax.

3 (d) Administration. – The taxing city shall administer a room occupancy tax it
4 levies. A room occupancy tax is due and payable to the city finance officer in monthly
5 installments on or before the fifteenth day of the month following the month in which
6 the tax accrues. Every person, firm, corporation, or association liable for the tax shall,
7 on or before the fifteenth day of each month, prepare and render a return on a form
8 prescribed by the taxing city. The return shall state the total gross receipts derived in the
9 preceding month from rentals upon which the tax is levied. A room occupancy tax
10 return filed with the city finance officer is not a public record and may not be disclosed
11 except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

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

18 (f) Repeal or Reduction. – A room occupancy tax levied by a city may be
19 repealed or reduced by a resolution adopted by the governing body of the city. Repeal or
20 reduction of a room occupancy tax shall become effective on the first day of a month
21 and may not become effective until the end of the fiscal year in which the resolution
22 was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for
23 a tax that was attached before the effective date of the repeal or reduction, nor does it
24 affect a right to a refund of a tax that accrued before the effective date of the repeal or
25 reduction.

26 (g) This section applies only to the Cities of Goldsboro, Greensboro, Lumberton,
27 Mount Airy, Shelby, and Statesville, to the Towns of ~~Banner Elk, Mooresville,~~
28 Mooresville and St. Pauls, and to the municipalities in Avery and Brunswick
29 County~~Counties~~."

30 BEECH MOUNTAIN ADMINISTRATIVE PROVISIONS

31 **SECTION 3.** Chapter 376 of the 1987 Session Laws reads as rewritten:

32 "AN ACT TO AUTHORIZE THE TOWN OF BEECH MOUNTAIN TO LEVY A
33 ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

34 Section 1. Occupancy Tax. The Town Council of Beech Mountain may ~~by~~
35 ~~resolution, after not less than 10 days' public notice and after a public hearing held~~
36 ~~pursuant thereto,~~ levy a room occupancy and tourism development tax. ~~Collection of the~~
37 ~~tax, and liability therefor shall begin and continue only on and after the first day of a~~
38 ~~calendar month set by the Town Council of Beech Mountain in the resolution levying~~
39 ~~the tax, which in no case may be earlier than the first day of the second succeeding~~
40 ~~calendar month after the date of adoption of the resolution.~~

41 The occupancy and tourism development tax that may be levied under this act shall
42 be three percent (3%) of the gross receipts derived from the rental of any room, lodging,
43 or similar accommodation in the Town of Beech Mountain that is subject to sales tax
44 imposed by the State under ~~G.S. 105-164.4(3).~~105-164.4(a)(3). This tax is in addition to

1 any local sales tax. The tax shall ~~does not~~ apply to any room, lodging, or
2 accommodations supplied to the same person for a period of 90 continuous days or
3 more. The tax shall also not apply to sleeping rooms or lodgings furnished by charitable,
4 educational, or religious institutions or ~~non-profit~~ nonprofit organizations.

5 Sec. 2. Administration of Tax. (a) A tax levied under this section shall be levied,
6 administered, collected, and repealed as provided in G.S. 160A-215. The penalties
7 provided in G.S. 160A-215 apply to a tax levied under this section. ~~The Town of Beech~~
8 ~~Mountain shall administer a tax levied under this act. A tax levied under this act is due~~
9 ~~and payable to the Town in monthly installments on or before the 15th day of the month~~
10 ~~following the month in which the tax accrues. Every person, firm, corporation, and~~
11 ~~association liable for the tax shall, on or before the 15th day of each month, prepare and~~
12 ~~render a return on a form prescribed by the Town. The return shall state the total gross~~
13 ~~receipts derived in the preceding month from rentals upon which the tax is levied. A~~
14 ~~return filed with the Town under this act is not a public record as defined by G.S. 132-1~~
15 ~~and may not be disclosed except as required by law.~~

16 (b) ~~Any person, firm, corporation, or association who fails or refuses to file the~~
17 ~~return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's~~
18 ~~omission.~~

19 ~~In case of failure or refusal to file the return or pay the tax for a period of 30 days or~~
20 ~~more after the time required for filing the return or for paying the tax, there shall be an~~
21 ~~additional tax, as a penalty, of five percent (5%) of the total tax due, for each additional~~
22 ~~month or fraction thereof until the occupancy tax is paid.~~

23 ~~Any person who willfully attempts in any manner to evade the occupancy tax levied~~
24 ~~under this act or to make a return and who willfully fails to pay the tax or make and file~~
25 ~~a return shall, in addition to all other penalties provided by law, be guilty of a~~
26 ~~misdemeanor and shall be punished by a fine not to exceed one thousand dollars~~
27 ~~(\$1,000) or by imprisonment not to exceed six months, or both. The Town Council may,~~
28 ~~for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

29 (c) ~~All persons, firms, corporations, and associations who rent either their own~~
30 ~~dwelling or dwellings or rooms for other persons are required to submit to the Town~~
31 ~~town a list of all rental properties. This list shall include the owner's name, current~~
32 ~~address, and location of rental property. The list shall be submitted semi-annually on or~~
33 ~~before November 30 and May 30.~~

34 ~~Failure to file said this listing shall subject the person, firm, corporation or~~
35 ~~association to a civil penalty.~~

36 ~~Sec. 3. Collection of Tax. (a) Every operator of a business and every individual~~
37 ~~renting his or her own property subject to the tax levied pursuant to this act shall, on and~~
38 ~~after the effective date of the levy of the tax, collect the three percent (3%) room~~
39 ~~occupancy tax.~~

40 ~~This tax shall be collected as part of the charge for the furnishing of any taxable~~
41 ~~accommodations. The tax shall be stated and charged separately from the sales records,~~
42 ~~and shall be paid by the purchaser to the operator of the business as trustee for and on~~
43 ~~account of the Town of Beech Mountain. It is the intent of this act that the room~~
44 ~~occupancy tax levied by the Town of Beech Mountain shall be added to the sales price~~

1 and that the tax shall be passed on to the purchaser instead of being borne by the
2 operator of the business. The Town shall design, print, and furnish to all appropriate
3 businesses in the Town, the necessary forms for filing returns and instructions to ensure
4 the full collection of the tax.

5 (b) Collection of the tax shall be the responsibility of the Beech Mountain Tax
6 Administrator. In his/her discretion, the Tax Administrator may proceed against an
7 operator whose occupancy tax is delinquent, employing all remedies for collection of
8 tax as set out in G.S. 105-367, 105-368, 105-374, and 105-375. The Tax Administrator
9 may audit occupancy tax reports as he/she deems necessary, utilizing information
10 available to him/her in property tax matters.

11 Sec. 4. Discount for Payment of Taxes When Due. Every operator who pays the
12 occupancy tax imposed by this Article shall be entitled to deduct from the amount of the
13 tax for which he is liable and which he actually pays a discount of three percent (3%).
14 Provided, however, the Tax Administrator may deny a taxpayer the benefits of this
15 section for failure to pay the full tax when due as well as in cases of fraud, evasion, or
16 failure to keep accurate and clear records as herein required. Provided, further, that in
17 order to receive the discount the taxpayer must deduct the three percent (3%) at the time
18 of making his monthly remittance of tax to the Town.

19 Sec. 5. Disposition of Taxes Collected. The Town of Beech Mountain shall retain
20 from the gross proceeds of the tax collected an amount sufficient to pay its direct costs
21 for administrative and collection expenses. "Net proceeds" shall mean gross proceeds
22 less the direct costs for administrative and collection expenses not to exceed three
23 percent (3%) of the amount collected. The net proceeds shall be distributed to the Town
24 Council. The Town Council may expend the funds distributed to it pursuant to this
25 section only to further the development of travel, tourism, conventions, and convention
26 facilities in the ~~Town~~town.

27 Sec. 6. Repeal of Levy. ~~The Beech Mountain Town Council may by resolution~~
28 ~~repeal the levy of the room occupancy tax in Beech Mountain, but no repeal of taxes~~
29 ~~levied under this part shall be effective until the end of the fiscal year in which the~~
30 ~~repeal resolution was adopted. No liability for any tax levied under this part that~~
31 ~~attached prior to the date on which a levy is repealed shall be discharged as a result of~~
32 ~~the repeal, and no right to a refund of a tax that accrued prior to the effective date on~~
33 ~~which a levy is repealed shall be denied as a result of the repeal.~~

34 Sec. 7. This act is effective upon ratification."

35 **AUTHORIZE OTHER AVERY TOWNS TO LEVY**

36 **SECTION 4.(a)** Authorization and Scope. – This section applies only to
37 cities in Avery County that are not otherwise authorized to levy a room occupancy tax.
38 The governing body of a city may levy a room occupancy tax of up to three percent
39 (3%) of the gross receipts derived from the rental of any room, lodging, or
40 accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within
41 the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3).
42 This tax is in addition to any State or local sales tax. This tax does not apply to
43 accommodations furnished by nonprofit charitable, educational, or religious
44 organizations when furnished in furtherance of their nonprofit purpose.

1 **SECTION 4.(b)** Administration. – A tax levied under this section must be
2 levied, administered, collected, and repealed as provided in G.S. 160A-215. The
3 penalties provided in G.S. 160A-215 apply to a tax levied under this section.

4 **SECTION 4.(c)** Distribution and Use of Tax Revenue. – The taxing city
5 must use at least two-thirds of the net proceeds of a tax levied under this section to
6 promote travel and tourism in the taxing city and must use the remainder for tourism-
7 related expenditures.

8 **SECTION 4.(d)** Definitions. – The following definitions apply in this
9 section:

- 10 (1) City. – Defined in G.S. 153A-1.
11 (2) Net proceeds. – Gross proceeds less the cost to the city of
12 administering and collecting the tax, as determined by the finance
13 officer, not to exceed three percent (3%) of the first five hundred
14 thousand dollars (\$500,000) of gross proceeds collected each year and
15 one percent (1%) of the remaining gross receipts collected each year.
16 (3) Promote travel and tourism. – To advertise or market an area or
17 activity, publish and distribute pamphlets and other materials, conduct
18 market research, or engage in similar promotional activities that attract
19 tourists or business travelers to the area; the term includes
20 administrative expenses incurred in engaging in the listed activities.
21 (4) Tourism-related expenditures. – Expenditures that, in the judgment of
22 the governing body of the city, are designed to increase the use of
23 lodging facilities, meeting facilities, or convention facilities in a city or
24 to attract tourists or business travelers to the city. The term includes
25 tourism-related capital expenditures.

26 **EFFECTIVE DATE**

27 **SECTION 5.** This act is effective when it becomes law.