

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2008-33
HOUSE BILL 2783

AN ACT TO AUTHORIZE CHEROKEE COUNTY TO LEVY AN ADDITIONAL
THREE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT
TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 1055 of the 1983 Session Laws reads as rewritten:

"Section 1. Levy of Tax. Occupancy Tax. –

(a) Authorization and scope. – The Cherokee 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 and tourism development tax.

(b) ~~Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the Cherokee County Board of Commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

"Sec. 2. Occupancy Tax.

(a) ~~The county room occupancy and tourism development tax that may be levied under this act shall be a percentage tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar place within the county now that is subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(3). 105-164.4(a)(3). During the first year in which a tax levied under this act is in effect, the tax shall be three percent (3%) of the gross receipts derived from the rental of taxable accommodations in the county. Thereafter, the rate of tax shall continue to be three percent (3%) unless the Cherokee County Board of Commissioners, by resolution, adopts a rate of less than three percent (3%). A change in the occupancy tax rate adopted by the board of commissioners becomes effective the first day of the second succeeding calendar month following the date of adoption of the resolution. The Cherokee County Board of Commissioners may not change the occupancy tax rate more than once a year.~~

(b) ~~The occupancy tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations.~~

(b) Authorization of additional tax. – In addition to the tax authorized by subsection (a) of this section, the Cherokee 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 shall be in accordance with the provisions of this act. Cherokee County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

"Sec. 3. Administration of Tax. – A tax levied under this act shall be levied, collected, administered, 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.

~~(a) Any tax levied under this act is due and payable to the county 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.~~

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

~~(c) 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 the penalty prescribed in subsection (b), with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid.~~

~~(d) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this act or to make a return and 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.~~

~~"Sec. 4. Collection of Tax. Every operator of a business subject to the tax levied pursuant to this act shall collect the tax on and after the effective date of the levy of the tax.~~

~~This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. 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 Cherokee County. The room occupancy tax levied under this act 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 in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

"Sec. 5. Disposition of Taxes Collected. Distribution and use of tax revenue. – Cherokee County shall, on a quarterly basis, remit the net proceeds of all revenues received from the room occupancy tax to the Cherokee County Tourism Development Authority appointed pursuant to this act. The Authority shall use at least two-thirds of the funds remitted to it under this act to promote travel and tourism in Cherokee County and shall use the remainder for tourism-related expenditures. "Net

~~proceeds" means gross proceeds less the cost to the county of administering and collecting the tax. The Authority may expend these funds only to further the development of travel, tourism, and conventions in the county through advertising and promotion.~~

The following definitions apply in this section:

- (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.

~~"Sec. 6. Appointment, Duties of Cherokee County Tourism Development Authority. –~~

~~(a) Appointment and membership. – When the Cherokee County Board of Commissioners adopts a resolution levying a room occupancy tax, tax under this act, it shall also adopt a resolution creating a County Tourism Development Authority composed of the director of the Cherokee County Chamber of Commerce and the following four members appointed by the Cherokee County Board of Commissioners:~~

- ~~(1) an owner of a hotel, motel, or other accommodations subject to the tax levied by this act;~~
- ~~(2) a member of the board of county commissioners;~~
- ~~(3) a town commissioner or the mayor of the Town of Murphy; and~~
- ~~(4) a town alderman or the mayor of the Town of Andrews.~~

~~The director of the Cherokee County Chamber of Commerce shall serve as an ex officio member of the Authority. The members appointed by the board of county commissioners shall serve three year terms, except the initial appointees. Of the initial appointees, the board of commissioners shall designate one to serve a one year term, two a two year term, and one a three year term. Vacancies created by an appointed member shall be filled by the board of commissioners. Members appointed to fill vacancies shall serve the remainder of the unexpired term for which they are appointed to fill. 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 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. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to 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 Cherokee County shall be the ex officio finance officer of the Authority.

~~(b) Duties. – 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. The members of the Tourism Development Authority shall elect from its membership a chairman. The Authority shall meet at the call of the chairman and shall adopt rules of procedure to govern its meetings. The finance officer of Cherokee County shall serve ex officio as accountant for the Authority.~~

~~(c) Reports. – The Tourism Development Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and disbursements for the preceding quarter and for the year in such detail as the board may require.~~

~~"Sec. 7. Repeal of Levy.~~

~~(a) The board of county commissioners may by resolution repeal the levy of the room occupancy tax in Cherokee County, but no repeal of taxes levied under this act is effective until the end of the fiscal year in which the repeal resolution was adopted.~~

~~(b) No liability for any tax levied under this act that attached prior to the date on which a levy is repealed is discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed may be denied as a result of the repeal.~~

~~"Sec. 8. This act is effective upon ratification."~~

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

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

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

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

In the General Assembly read three times and ratified this the 30th day of June, 2008.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives