

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 632*

Short Title: Orange Omnibus Act.

(Local)

Sponsors: Senators Kinnaird and Lee.

Referred to: Rules and Operations of the Senate.

April 1, 1997

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE ORANGE COUNTY TO LEVY AN EXCISE TAX ON
2 INSTRUMENTS CONVEYING REAL PROPERTY IN ORANGE COUNTY AND
3 AN ENTERTAINMENT TAX ON EVENTS IN LARGE FACILITIES IN ORANGE
4 COUNTY, RELATING TO CLASSIFICATIONS UNDER THE ORANGE
5 COUNTY CIVIL RIGHTS ORDINANCE, TO CLARIFY THE AUTHORITY OF
6 ORANGE COUNTY TO REGULATE THE USE, STORAGE, DISPOSAL,
7 LABELING, OR APPLICATION OF PESTICIDES, AND TO MAKE TECHNICAL
8 CHANGES IN THE ORANGE COUNTY ROOM OCCUPANCY TAX.

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10 The General Assembly of North Carolina enacts:

11 Section 1. Excise Tax.

12 (a) Authorization. The Orange County Board of Commissioners may, by
13 resolution, levy an excise tax on instruments conveying certain interests in real property
14 in Orange County. The tax imposed may not exceed one dollar (\$1.00) on each one
15 hundred dollars (\$100.00) or fraction thereof of the total consideration or value,
16 whichever is greater, of the interest conveyed, including, in the case of a sale, the value of
17 any lien or encumbrance remaining on the property at the time of sale. This tax is in
18 addition to the tax levied by Article 8E of Chapter 105 of the General Statutes.

19 The value of a lease subject to this tax shall be computed on the basis of the
20 present value of the fixed lease payments and, if the lease payments are based in whole or

1 in part on the lessee's receipts, the estimated amount of the lessee's receipts. Based upon
2 the recommendation of the Orange County Finance Director, the Board of
3 Commissioners shall, at least annually, set the discount rate to be used to determine the
4 present value of lease payments. Such determination shall be conclusive.

5 (b) Scope. A tax levied under this section applies to all instruments conveying an
6 interest in real property in Orange County except an instrument:

7 (1) Conveying an interest in real property from the United States, the State,
8 or a political subdivision of the State.

9 (2) Recording a lease for a term of 10 years or less, unless:

10 a. The lease gives the lessee an option to renew the lease for a
11 period that, when added to the term of the lease, exceeds 10
12 years;

13 b. The lease is for substantially the same property and is between
14 the same parties as a lease previously recorded, and the term of
15 the new lease, when added to that of the previous lease, exceed
16 10 years; or

17 c. The lease requires or permits the property to be transferred to the
18 lessee for less than the fair market value of the property.

19 (3) Securing indebtedness.

20 (4) Recording a transfer in which no consideration is due the transferor by
21 the transferee.

22 (5) Conveying an interest in real property located in more than one county
23 if the greater part of the property, with respect to value, lies in a county
24 other than Orange County.

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

27 (c) Collection. A tax levied under this section is payable by the transferor of the
28 interest to the Orange County Director of Revenue. The transferor in the case of a
29 sheriff's deed is herein defined to be the debtor whose property is sold pursuant to judicial
30 process. The sheriff is authorized to pay the tax on behalf of the debtor and to charge the
31 tax levied under this section to the account of the debtor as a cost of sale.

32 This tax shall be paid at the office of the Director of Revenue before the
33 instrument conveying the interest is recorded. The Director of Revenue may require any
34 documentation, including an affidavit of value, the Director of Revenue considers
35 necessary to establish the accuracy of the tax to be paid. The Director of Revenue shall
36 stamp or otherwise mark each instrument subject to the tax to indicate that the tax has
37 been paid. The Orange County Register of Deeds may not accept for recordation an
38 instrument subject to a tax levied under this section unless the instrument bears the mark
39 of the Director of Revenue indicating that the tax has been paid.

40 (d) Use and Distribution of Tax Revenue. Orange County may retain in its general
41 fund three percent (3%) of the gross proceeds of the tax as costs of collection. The
42 remaining proceeds of the tax shall be retained by the county and placed in a Capital
43 Reserve Fund to be expended only for capital projects, including debt service for capital

1 projects. All interest earned from investment of the funds in the Capital Reserve Fund
2 shall be held and expended only in accordance with the provisions of this subsection.

3 (e) Penalties. A person who knowingly fails or refuses to pay a tax levied
4 under this section, who knowingly aids another to fail to pay a tax levied under this
5 section, or who, to avoid paying part or all of the tax due under this section, knowingly
6 misstates the total consideration for an interest conveyed is guilty of a Class 3
7 misdemeanor and is punishable by imprisonment as provided by law and a fine of not
8 less than one hundred dollars (\$100.00) nor more than the amount of tax that is due and
9 payable.

10 (f) Taxes Recoverable by Action. If a transferor fails to pay a tax imposed by
11 this section within 30 days after the Revenue Director's demand that the transferor pay
12 the tax, the tax may be recovered by Orange County in an action brought in the General
13 Court of Justice, Superior or District Court, of the county. In an action to recover a tax
14 imposed under this section, costs of court shall include a fee to the county of twenty-five
15 dollars (\$25.00) for the expense of collection.

16 (h) Effective Date and Application. A tax levied under this section shall
17 become effective on the first day of a month, as designated in the resolution levying the
18 tax, and may not become effective for at least 30 days after the adoption of the resolution.
19 A tax levied under this section applies to instruments that are recorded on or after the
20 effective date of the levy, except instruments executed on or after that date that convey an
21 interest in real property pursuant to a written contract recorded before the effective date.

22 (i) Repeal. A tax levied by this section may be repealed by a resolution
23 adopted by the Orange County Board of Commissioners. Repeal of a tax levied under
24 this section shall become effective on the first day of a month and shall apply to
25 instruments recorded on or after the effective date of the repeal. Repeal of a tax levied
26 under this section does not affect a liability for the tax that attached before the effective
27 date of the repeal.

28 Section 2. Admissions Tax.

29 (a) Authorization and Scope. Notwithstanding the provisions of G.S. 105-37.1(b),
30 the Orange County Board of Commissioners may, by resolution, levy an entertainment
31 tax on every admission ticket purchased for admission to an entertainment, an
32 amusement, or an athletic or commercial event for which an admission is charged and
33 which is presented in Orange County in a facility having a seating capacity greater than
34 15,000. This tax does not apply, however, to athletic events sponsored by the North
35 Carolina High School Athletic Association that involve participants at or below high
36 school level. The tax shall be at a rate of not more than one dollar (\$1.00) per admission
37 ticket purchased. This tax is in addition to any other State or local tax.

38 (b) Collection. Every person, firm, corporation, or organization selling admission
39 tickets taxable under this section shall collect the tax. This tax shall be collected at the
40 same time as the charge for furnishing a taxable admission ticket and shall be paid by the
41 purchaser to the seller of the admission ticket as trustee for and on account of Orange
42 County. The tax shall be stated and charged separately from the sales price. The tax

1 shall be added to the admission price and shall be passed on to the purchaser instead of
2 being borne by the seller.

3 (c) Administration. Orange County shall administer a tax levied under this
4 section. A tax levied and collected under this section is due and payable to the Orange
5 County Director of Revenue on or before the 15th day of the month following the month
6 in which the tax accrues. Every person, firm, or corporation liable for the tax shall, on or
7 before the 15th day of each month, prepare and render a return on a form prescribed by
8 Orange County. The return shall state the total number of admissions subject to the tax
9 that were sold in the preceding month. A return filed with the Director of Revenue under
10 this section is not a public record and may not be disclosed except in accordance with
11 G.S. 153A-148.1 or G.S. 160A-208.1. Orange County may, by resolution, establish
12 additional procedures for collection, reporting, remittance, and use of a tax levied under
13 this section.

14 (d) Penalties. A person, firm, or corporation who fails or refuses to file the return
15 required by this section shall pay a tax penalty of ten dollars (\$10.00) for each day's
16 omission. In case of failure or refusal to file the return or pay the tax for a period of 30
17 days after the time required for filing the return or for paying the tax, there shall be an
18 additional tax penalty of five percent (5%) of the tax due, with an additional tax penalty
19 of five percent (5%) for each additional month or fraction thereof until the tax is paid.
20 The board of county commissioners may, for good cause shown, compromise or forgive
21 the tax penalties imposed by this section.

22 Any person who willfully attempts in any manner to evade a tax imposed
23 under this section or who willfully fails to pay the tax or make and file a return shall, in
24 addition to all other penalties provided by law, be guilty of a misdemeanor.

25 (e) Use and Distribution of Tax Revenue. The Board of Commissioners of
26 Orange County shall use the proceeds collected from this tax solely for capital projects.
27 The proceeds shall be placed in a Capital Reserve Fund to be expended only for capital
28 projects, including debt service for capital projects. All interest earned from investment
29 of the funds in the Capital Reserve Fund shall be held and expended only in accordance
30 with the provisions of this subsection.

31 (f) Effective Date of the Levy. A tax levied under this section shall become
32 effective on the date specified in the resolution levying the tax. That date must be the
33 first day of a calendar month, however, and may not be earlier than the first day of the
34 second month after the date the resolution is adopted.

35 (g) Repeal. A tax levied under this section may be repealed by a resolution
36 adopted by the Orange County Board of Commissioners. Repeal of a tax levied under
37 this section shall become effective on the first day of a month and may not become
38 effective until the end of the fiscal year in which the repeal resolution was adopted.
39 Repeal of a tax levied under this section does not affect liability for a tax, its collection,
40 or its payment to Orange County that was attached before the effective date of the repeal,
41 nor does it affect a right to a refund of a tax that accrued before the effective date of the
42 repeal.

1 Section 3. Section 6(a) of Chapter 246, Session Laws of 1991, as rewritten by
2 Section 14 of Chapter 358 of the 1993 Session Laws reads as rewritten:

3 "(a) The Board of Commissioners of Orange County (hereafter 'Board of
4 Commissioners') may adopt an ordinance (hereafter 'the Ordinance') to prohibit
5 discrimination in employment, housing, and public accommodations on the basis of race,
6 color, religion, gender, national origin, age, disability, marital status, familial status, ~~and~~
7 ~~veteran status-~~status, heterosexuality, and homosexuality.

8 The Board of Commissioners may include in the Ordinance a prohibition of language
9 or conduct or both directed at an individual or at a group of individuals because of that
10 individual's or group of individuals' actual or perceived race, color, religion, gender,
11 national origin, age, disability, marital status, familial status, ~~or~~-~~veteran status-~~status,
12 heterosexuality, or homosexuality which communicates in a threatening manner words
13 that incite imminent lawless action or which tend to incite an immediate breach of the
14 peace."

15 Section 4. G.S. 153A-465(d) reads as rewritten:

16 "(d) No county, city, or other political subdivision of the State shall adopt or
17 continue in effect any ordinance, rule, regulation, or resolution regulating the use, sale,
18 distribution, storage, transportation, disposal, formulation, labeling, registration,
19 manufacture, or application of pesticides in any area subject to regulation by the Board
20 pursuant to this Article. Nothing in this section shall prohibit a county, city, or other
21 political subdivision of the State from exercising its planning and zoning authority under
22 Article 19 of Chapter 160A of the General Statutes or Article 18 of Chapter 153A of the
23 General Statutes, or from exercising its fire prevention or inspection authority.
24 Notwithstanding the first sentence of this subsection, a county may, in the exercise of its
25 planning and zoning authority under Article 18 of Chapter 153A of the General Statutes,
26 in a manner more stringent than any rule, regulation, or resolution adopted by the North
27 Carolina Pesticide Board, regulate the use, storage, disposal, labeling, or application of
28 pesticides."

29 Section 5. This section makes technical changes in the Orange County Room
30 Occupancy Tax.

31 Section 6. This act is effective when it becomes law.