

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2009-157
HOUSE BILL 854

AN ACT TO MODIFY THE FORSYTH COUNTY ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Part VII of Chapter 908 of the 1983 Session Laws, as amended by Chapters 33 and 924 of the 1985 Session Laws, Chapter 870 of the 1989 Session Laws, and S.L. 1997-408, reads as rewritten:

"Part VII. Forsyth Occupancy Tax.

~~"Sec. 24. Levy of Tax. (a) The Board of Commissioners of Forsyth County 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 board of county 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. 25. Occupancy Tax. – Authorization and Scope. – The county room occupancy and tourism development tax that may be levied under this Part shall be The Board of Commissioners of Forsyth County may levy a room occupancy and tourism development tax of two percent (2%) 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 subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(3) 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 gross receipts derived by the following entities from accommodations furnished by them: any of the following:~~

- ~~(1) Religious organizations.religious organizations;~~
- ~~(2) Educational organizations.educational organizations;~~
- ~~(3) Any any-business that offers to rent fewer than five units.units; and~~
- ~~(4) Summer summer-camps.~~

~~"Sec. 26. Administration of Tax. (a) – A tax levied under this Part shall be levied, administered, collected, and repealed as provided in G.S. 153A-155.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. Any tax levied under this Part 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 Part 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 Part 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 punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment not to exceed six months, or both.

~~"Sec. 27. Collection of Tax. Every operator of a business subject to the tax levied by this Part shall, on and after the effective date of the levy of the tax, collect the two percent (2%) room occupancy 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 Forsyth County. The room occupancy tax levied pursuant to this Part shall be added to the sales price and shall be passed onto the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses in Forsyth County the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~"Sec. 28. Disposition-Distribution of Two Percent (2%) and One Percent (1%) Taxes. (a) Forsyth County shall shall, on a quarterly basis, remit the net proceeds of the occupancy taxes levied under Sections 24, 25, 25 and 30.1 of this Part on a quarterly basis as follows:~~

- ~~(1) Five percent (5%) of the net proceeds shall be divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata basis.~~
- ~~(2) The remaining net proceeds shall be remitted to the Forsyth County Tourism Development Authority.~~

~~'Net proceeds' has the meaning provided in Section 30.2(d) of this Part.~~

~~(b) Use. – A municipality may expend funds distributed to it pursuant to subsection (a) of this section only for economic development and cultural and recreational purposes. The Forsyth County Tourism Development Authority shall expend the funds distributed to it pursuant to subsection (a) of this section to further the development of travel, tourism, and conventions within Forsyth County. The Forsyth County Tourism Development Authority may not use more than ten percent (10%) of the funds distributed to it pursuant to subsection (a) for administrative expenses.~~

~~"Sec. 29. Appointment and Duties of Tourism Development Authority. (a) When the board of county commissioners adopts a resolution levying a room occupancy tax pursuant to this Part, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act and shall be composed of the following ~~thirteen~~nine members:~~

- ~~(1) A county commissioner appointed by the board of county commissioners, who shall serve as an ex officio member.~~
- ~~(2) A member of the Winston-Salem Board of Aldermen appointed by the board of aldermen, who shall serve as an ex officio member.~~
- ~~(3) Four owners or operators of hotels, motels, or other taxable tourist accommodations, two of which own or operate hotels, motels, or other accommodations with more than 100 rental units, one of whom shall be appointed by the Winston-Salem Board of Aldermen and one by the board of county commissioners; and two of which own or operate hotels, motels, or other accommodations with 100 or fewer rental units, one of whom shall be appointed by the Winston-Salem Board of Aldermen and one by the board of county commissioners.~~
- ~~(4) Three individuals involved in the tourist business who have demonstrated an interest in tourist development and do not own or operate hotels, motels, or other taxable tourist accommodations, appointed as follows: one by the Winston-Salem Board of Aldermen, one by the Winston-Salem Area Chamber of Commerce, and one by the board of county commissioners.~~
- ~~(5) Four individuals appointed by the Forsyth County Tourism Development Authority who do not own or operate hotels, motels, or other tourist accommodations taxable under this Part or tourist businesses, and who (i) are local citizens with a demonstrated interest in the tourist and visitor industry or (ii) have demonstrated relevant expertise in such fields as the transportation industry, visitor attractions, the convention center and coliseum, or marketing and advertising.~~

~~(a1) All members of the Authority shall serve without compensation. Vacancies in the Authority shall be filled by the appointing authority of the member creating the vacancy.~~

Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms, except the members appointed pursuant to subdivisions (a)(1) and (2), who shall serve at the pleasure of the appointing board, and the initial members, who shall serve the following terms:

- (1) Of the members appointed pursuant to subdivision (a)(3), one appointee of the board of aldermen and the board of commissioners shall serve a two-year term and one appointee of the board of aldermen and the board of commissioners shall serve a three-year term, as designated by the board of aldermen and board of county commissioners;
- (2) Of the three members appointed pursuant to subdivision (a)(4), the appointee of the Winston-Salem Board of Aldermen shall serve a one-year term, the appointee of the Winston-Salem Area Chamber of Commerce shall serve a two-year term, and the appointee of the board of county commissioners shall serve a three-year term.

~~Except for the ex officio members, members~~Members may serve no more than two consecutive terms. The members shall elect a chairman, who shall serve for a term of two years. The Authority shall meet at the call of the chairman and shall adopt rules of procedure to govern its meetings. The finance officer for Forsyth County shall be the ex officio finance officer of the Authority.

(b) The Tourism Development Authority may contract with any person, firm, or agency to advise and assist it in the promotion of travel, tourism, and conventions and may recommend to the board of county commissioners that county staff be employed for this advice and assistance. Any county staff employed under this Part shall be hired and supervised by the Tourism Development Authority, which shall pay the salaries and expenses of this staff.

(c) 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 expenditures for the preceding quarter and for the year in such detail as the board may require.

~~"Sec. 30. Repeal of Levy. (a) The board of county commissioners may by resolution repeal the levy of the room occupancy tax in Forsyth County, but no repeal of taxes levied under this Part shall be effective until the end of the fiscal year in which the repeal resolution was adopted.~~

~~(b) No liability for any tax levied under this Part that attached prior to the date on which a levy is repealed shall be 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 shall be denied as a result of the repeal.~~

~~"Sec. 30.1. Additional One Percent (1%) Tax. — In addition to the tax authorized by Sections 24 and Section 25 of this Part, the Forsyth County Board of Commissioners may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under those sections. that section. The levy, collection, administration, and repeal of the tax authorized by this section, and the use of tax revenue from a tax levied under this section, shall be in accordance with Sections 24 through 30 25 through 29 of this Part. Forsyth County may not levy a tax under this section unless it also levies a tax under Sections 24 and Section 25 of this Part.~~

~~"Sec. 30.2. Additional Three Percent (3%) Tax. (a) Levy. — In addition to the taxes authorized by Sections 24, 25, 25 and 30.1 of this Part, the Forsyth County Board of Commissioners may levy a room occupancy and tourism development tax of three percent (3%) of the gross receipts derived from the rental of accommodations taxable under those sections. The levy, collection, administration, and repeal of the tax authorized by this section shall be in accordance with Sections 25, 26, and 29 24 through 27 and 29 through 30 of this Part. Forsyth County may not levy a tax under this section unless it also levies taxes under Sections 24, 25, 25 and 30.1 of this Part.~~

~~(b) Distribution. — The net proceeds of the tax levied under this section shall be distributed as follows:~~

- (1) Five percent (5%) of the net proceeds shall be divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata basis.
- (2) After subtracting the amount provided in subdivision (1) of this subsection, one-third of the remaining net proceeds shall be remitted to the Forsyth County Tourism Development Authority.

- (3) After subtracting the amounts provided in subdivisions (1) and (2) of this subsection, ten percent (10%) of the remaining net proceeds shall be divided among those municipalities in Forsyth County, other than Winston-Salem, in which taxable establishments are located, in proportion to the amount of tax proceeds collected in each municipality.
- (4) After subtracting the amounts provided in subdivisions (1), (2), and (3) of this subsection, the remaining net proceeds shall be divided between Forsyth County and the City of Winston-Salem on a pro rata basis.

(c) Use. – A municipality that receives funds pursuant to subdivision (b)(3) of this section shall use at least two-thirds of all funds it receives pursuant to this Part to promote travel and tourism in the municipality and shall use the remainder for tourism-related expenditures. ~~The~~ A municipality may use no more than ten percent (10%) of the funds it receives pursuant to this Part for its administrative expenses, including salaries and benefits.

Forsyth County or a municipality that does not receive funds pursuant to subdivision (b)(3) of this section may expend funds distributed to it pursuant to subsection (b) only for economic development and cultural and recreational purposes. The Forsyth County Tourism Development Authority shall expend the funds distributed to it pursuant to subsection (b) in accordance with Section 28(b) of this Part.

(d) Definitions. – The following definitions apply in this ~~section~~ Part:

- (1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.
- (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 these activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the entity making the expenditure, are designed to increase the use of lodging and meeting and convention facilities in the area by attracting tourists or business travelers to the area; the term includes tourism-related capital expenditures."

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

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Forsyth, 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 23rd day of June, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives