

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 1215\*  
Committee Substitute Favorable 6/21/12  
Senate Finance Committee Substitute Adopted 6/27/12  
Proposed Conference Committee Substitute H1215-PCCS11396-SV-2

Short Title: Henderson County Occupancy Tax Changes.

(Local)

Sponsors:

Referred to:

May 31, 2012

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE HENDERSON COUNTY BOARD OF COMMISSIONERS  
TO LEVY AN ADDITIONAL ONE PERCENT ROOM OCCUPANCY AND TOURISM  
DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Section 5 of Chapter 172 of the 1987 Session Laws, as amended by Chapter 55 of the 1991 Session Laws and by Section 21(p) of S.L. 2007-527, reads as rewritten:

"**Sec. 5.** Occupancy Tax. (a) Authorization and Scope. ~~— The Board of Commissioners of Henderson 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 of~~ no less than three percent (3%) nor more than five percent (5%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3)~~, 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 nonprofit charitable, educational, or religious organizations.

(a1) Authorization of Additional Tax. — In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of Henderson County 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 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 section. Henderson County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) ~~Collection. Every operator of a business subject to the tax levied under this act 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~~



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1 in the county the necessary forms for filing returns and instructions to ensure the full collection  
2 of the tax.

3 (c) Administration. – A tax levied under this section shall be levied, administered,  
4 collected, and repealed as provided in G.S. 153A-155. The penalties provided in  
5 G.S. 153A-155 apply to a tax levied under this section. ~~The county shall administer a tax levied~~  
6 ~~under this act. A tax levied under this act is due and payable to the county finance officer in~~  
7 ~~monthly installments on or before the 20th day of the month following the month in which the~~  
8 ~~tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before~~  
9 ~~the 20th day of each month, prepare and render a return on a form prescribed by the county.~~  
10 ~~The return shall state the total gross receipts derived in the preceding month from rentals upon~~  
11 ~~which the tax is levied.~~

12 A return filed with the county finance officer under this act is not a public record as defined  
13 by G.S. 132-1 and may not be disclosed except as required by law.

14 (d) Penalties. A person, firm, corporation, or association who fails or refuses to file the  
15 return required by this act shall pay an additional tax, as a penalty, of one percent (1%) of the  
16 tax due for each day's omission up to 30 days, with a minimum penalty of twenty five dollars  
17 (\$25.00). In case of failure or refusal to file the return or pay the tax for a period of 30 days  
18 after the time required for filing the return or for paying the tax, there shall be an additional tax,  
19 as a penalty, of ten percent (10%) of the tax and penalty due in addition to any other penalty,  
20 with an additional tax of ten percent (10%) for each additional month or fraction thereof until  
21 the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive  
22 the tax penalties imposed by this subsection.

23 Any person who willfully attempts in any manner to evade a tax or penalty imposed under  
24 this act or who willfully fails to pay the tax or penalty or make and file a return shall, in  
25 addition to all other penalties provided by law, be guilty of a misdemeanor and shall be  
26 punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed  
27 six months, or both.

28 (e) Use of Tax Revenue. – The county shall, on a quarterly basis, remit the net proceeds  
29 of the room occupancy and tourism development tax levied under this act to the Henderson  
30 County Tourism Development Authority. The Authority shall use the net proceeds as follows:

31 (1) First five percent (5%). – At least two-thirds of the net proceeds of the room  
32 occupancy tax levied under subsection (a) of this section shall be used to  
33 promote travel and tourism in Henderson County and the remainder shall be  
34 used for tourism-related expenditures.

35 (2) Additional one percent (1%). – The net proceeds of the additional one  
36 percent room occupancy tax levied under subsection (a1) of this section shall  
37 be used for the maintenance, operation, renovation, and promotion of The  
38 Vagabond School of the Drama, Inc., including the Mainstage and the  
39 Playhouse Downtown locations.

40 (e1) Definitions. – The following definitions apply in this act:

41 (1) Net proceeds. – Gross proceeds less the cost to the county of administering  
42 and collecting the tax, as determined by the finance officer, not to exceed  
43 three percent (3%) of the first five hundred thousand dollars (\$500,000) of  
44 gross proceeds collected each year and one percent (1%) of the remaining  
45 gross receipts collected each year.

46 (2) Promote travel and tourism. – To advertise or market an area or activity,  
47 publish and distribute pamphlets and other materials, conduct market  
48 research, or engage in similar promotional activities that attract tourists or  
49 business travelers to the area. The term includes administrative expenses  
50 incurred in engaging in the listed activities.

1           (3) Tourism-related expenditures. – Expenditures that, in the judgment of the  
2           entity responsible for expending the net proceeds of the tax, are designed to  
3           increase the use of lodging facilities, meeting facilities, or convention  
4           facilities in a county or to attract tourists or business travelers to the county.  
5           The term includes tourism-related capital expenditures.

6 ~~shall place the net proceeds collected from a tax levied under this act in a special Travel and~~  
7 ~~Tourism Fund. Revenue in this fund may be used only to promote travel and tourism in the~~  
8 ~~county. This fund will be administered by the Henderson Travel and Tourism Committee. As~~  
9 ~~used in this subsection, "net proceeds" means gross proceeds less five percent (5%) of the gross~~  
10 ~~proceeds which the county may retain to defray the cost of administering and collecting the tax.~~

11           The scope of promotion of travel and tourism in the county may include the following:

- 12           (1) ~~Contracting with any person, firm, or agency to advise and assist in travel~~  
13           ~~and tourism promotion.~~  
14           (2) ~~Advertising via appropriate media.~~  
15           (3) ~~Assisting in the initial funding and possible annual subsidy of a fine arts~~  
16           ~~center or other similar facility which could logically be expected to promote~~  
17           ~~tourism in the county.~~  
18           (4) ~~Promoting special events which would bring tourists to the county.~~

19           (f) ~~Effective Date of Levy. A tax levied under this act shall become effective on the~~  
20 ~~date specified in the resolution levying the tax. That date must be the first day of a calendar~~  
21 ~~month, however, and may not be earlier than the first day of the second month after the date the~~  
22 ~~resolution is adopted.~~

23           (g) ~~Repeal. A tax levied under this act may be repealed by a resolution adopted by the~~  
24 ~~board of commissioners of the county. Repeal of a tax levied under this act does not affect a~~  
25 ~~liability for a tax that attached before the effective date of the repeal, nor does it affect a right to~~  
26 ~~a refund of a tax that accrued before the effective date of the repeal."~~

27           **SECTION 2.(a)** Section 6 of Chapter 172 of the 1987 Session Laws, as amended  
28 by Chapter 55 of the 1991 Session Laws and by Section 21(p) of S.L. 2007-527, reads as  
29 rewritten:

30           "**Sec. 6.** ~~Henderson Travel and Tourism Committee.~~ Tourism Development Authority. (a)  
31 Appointment and Membership. – When the board of commissioners adopts a resolution levying  
32 a room occupancy tax under this act, it shall also adopt a resolution creating the Henderson  
33 Travel and Tourism Committee, Tourism Development Authority, which shall be a public  
34 authority under the Local Government Budget and Fiscal Control Act. The resolution adopted  
35 by the Board of Commissioners shall provide for the membership of the Authority, including  
36 the members' terms of office, and for the filling of vacancies on the Authority. However, no  
37 member shall serve on the Authority for more than five consecutive years. The Committee shall  
38 consist of nine voting members as follows:

- 39           (1) ~~Four~~ Three members who are registered to vote in Henderson County,  
40 appointed by the Henderson County Board of  
41 ~~Commissioners;~~ Commissioners.  
42           (2) ~~Four~~ Three members who are registered to vote in Henderson County,  
43 appointed by the Hendersonville City ~~Council;~~ and Council.  
44           (3) ~~The President of the Greater Hendersonville Chamber of Commerce, or his~~  
45 ~~designee, to serve ex officio.~~ One member who is registered to vote in  
46 Henderson County, appointed by the Fletcher Town Council.  
47           (4) One member who is registered to vote in Henderson County, appointed by  
48 the Flat Rock Village Council.  
49           (5) One member appointed by the Henderson County Board of Commissioners  
50 upon a recommendation of the Henderson County Chamber of Commerce.

1 Of these members, at least one-third of the members shall be individuals who are affiliated  
2 with businesses that collect the tax in the county, and at least one-half of the members shall be  
3 individuals who are currently active in the promotion of travel and tourism in the county.

4 The board of commissioners shall designate one member of the ~~Committee Authority~~ as  
5 chair and shall determine the compensation, if any, to be paid to members of the  
6 ~~Committee Authority~~. The ~~Committee Authority~~ shall meet at the call of the chair and shall  
7 adopt rules of procedure to govern its meetings. The finance officer for Henderson County shall  
8 be the ex officio finance officer of the ~~Committee Authority~~. ~~The Committee shall administer~~  
9 ~~the Travel and Tourism Fund as provided in Section 1(e) of this act.~~

10 (b) Duties. – The Authority shall expend the net proceeds of the tax levied under  
11 subsections (a) and (a1) of Section 5 of this act for the purposes provided in Section 5 of this  
12 act. The Authority shall promote travel, tourism, and conventions in the county, sponsor  
13 tourist-related events and activities in the county, and finance tourist-related capital projects in  
14 the county.

15 (c) Reports. – The ~~Committee Authority~~ shall report quarterly and at the close of the  
16 fiscal year to the board of commissioners on its receipts and expenditures for the preceding  
17 quarter and for the year in such detail as the board may require. The Vagabond School of the  
18 Drama, Inc., shall separately identify in its financial statements expenditures of funds that it  
19 receives pursuant to this act. The Vagabond School of the Drama, Inc., shall report annually by  
20 October 1 to the Authority expenditures of the funds received during the Authority's fiscal year  
21 pursuant to this act in such detail as required by the Authority or the Authority's Finance  
22 Officer."

23 **SECTION 2.(b)** This section is effective when it becomes law, and the board of  
24 county commissioners shall adopt a resolution establishing the Henderson Tourism  
25 Development Authority and make the changes to the membership as required by this section on  
26 or before September 1, 2012.

27 **SECTION 3.(a)** Subsection (e) of Section 5 of Chapter 172 of the 1987 Session  
28 Laws, as amended by Chapter 55 of the 1991 Session Laws, by Section 21(p) of S.L. 2007-527,  
29 and by Section 1(a) of this act, reads as rewritten:

30 "(e) Use of Tax Revenue. – The county shall, on a quarterly basis, remit the net proceeds  
31 of the room occupancy and tourism development tax levied under this act to the Henderson  
32 County Tourism Development Authority. The Authority shall use at least two-thirds of the  
33 funds remitted to it to promote travel and tourism in Henderson County and shall use the  
34 remainder for tourism-related expenditures. ~~The Authority shall use the net proceeds as~~  
35 ~~follows:~~

- 36 (1) ~~First five percent (5%).— At least two-thirds of the net proceeds of the room~~  
37 ~~occupancy tax levied under subsection (a) of this section shall be used to~~  
38 ~~promote travel and tourism in Henderson County and the remainder shall be~~  
39 ~~used for tourism-related expenditures.~~  
40 (2) ~~Additional one percent (1%).— The net proceeds of the additional one~~  
41 ~~percent room occupancy tax levied under subsection (a1) of this section shall~~  
42 ~~be used for the maintenance, operation, renovation, and promotion of The~~  
43 ~~Vagabond School of the Drama, Inc., including the Mainstage and the~~  
44 ~~Playhouse Downtown locations."~~

45 **SECTION 3.(b)** This section becomes effective July 1, 2014, and applies to room  
46 occupancy taxes collected on or after that date.

47 **SECTION 4.** G.S. 153A-155(g) reads as rewritten:

48 "(g) Applicability. – Subsection (c) of this section applies to all counties and county  
49 districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of  
50 a local act, subsection (c) supersedes that provision. The remainder of this section applies only  
51 to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell,

1 Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin,  
2 Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Henderson, Jackson, Madison,  
3 Martin, McDowell, Montgomery, Moore, Nash, New Hanover, New Hanover County District  
4 U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham,  
5 Rowan, Rutherford, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance,  
6 Washington, and Wilson Counties, to Surry County District S, to Watauga County District U,  
7 to Wilkes County District K, to Yadkin County District Y, and to the Township of Averagesboro  
8 in Harnett County and the Ocracoke Township Taxing District."

9           **SECTION 5.** Except as otherwise provided, this act is effective when it becomes  
10 law.