

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 1057
Committee Substitute Favorable 6/7/22
PROPOSED SENATE COMMITTEE SUBSTITUTE H1057-PCS10663-SVxf-40

Short Title: Mitchell/Hickory-Conover/Buncombe OT Changes.

(Local)

Sponsors:

Referred to:

May 26, 2022

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE ADMINISTRATIVE CHANGES TO THE MITCHELL COUNTY
3 OCCUPANCY TAX; TO EXTEND THE TIME PERIOD FOR WHICH THE CITIES OF
4 HICKORY AND CONOVER MAY USE TWO-THIRDS OF THEIR OCCUPANCY TAX
5 PROCEEDS FOR CONVENTION CENTER EXPENDITURES; AND TO MODIFY THE
6 USES OF THE BUNCOMBE COUNTY OCCUPANCY TAX.

7 The General Assembly of North Carolina enacts:

8
9 **MITCHELL COUNTY OCCUPANCY TAX CHANGES**

10 **SECTION 1.1.** Chapter 141 of the 1987 Session Laws, as amended by Section 21(m)
11 of S.L. 2007-527, reads as rewritten:

12 "Section 1. Occupancy tax. (a) Authorization and scope. The Mitchell County Board of
13 Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public~~
14 ~~hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross
15 receipts derived from the rental of ~~any room, lodging, or similar~~ an accommodation furnished by
16 a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the
17 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
18 sales tax. ~~This tax does not apply to accommodations furnished by nonprofit charitable,~~
19 ~~educational, or religious organizations.~~

20 (b) ~~Collection.~~ Every operator of a business subject to the tax levied under this section
21 shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be
22 collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated
23 and charged separately from the sales records, and shall be paid by the purchaser to the operator
24 of the business as trustee for and on account of the county. The tax shall be added to the sales
25 price and shall be passed on to the purchaser instead of being borne by the operator of the
26 business. The county shall design, print, and furnish to all appropriate businesses and persons in
27 the county the necessary forms for filing returns and instructions to ensure the full collection of
28 the tax. An operator of a business who collects the occupancy tax levied under this section may
29 deduct from the amount remitted to the county a discount of three percent (3%) of the amount
30 collected.

31 (c) Administration. ~~The county shall administer a tax levied under this section. A tax~~
32 ~~levied under this section is due and payable to the county finance officer in monthly installments~~
33 ~~on or before the 20th day of the month following the month in which the tax accrues. Every~~
34 ~~person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each~~



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1 month, prepare and render a return on a form prescribed by the county. The return shall state the
2 total gross receipts derived in the preceding month from rentals upon which the tax is levied.

3 ~~A return filed with the county finance officer under this section is not a public record as~~
4 ~~defined by G.S. 132-1 and may not be disclosed except as required by law. – A tax levied under~~
5 ~~this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155.~~
6 ~~The penalties provided in G.S. 153A-155 apply to a tax levied under this section.~~

7 (d) ~~Penalties. A person, firm, corporation, or association who fails or refuses to file the~~
8 ~~return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission.~~
9 ~~In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time~~
10 ~~required for filing the return or for paying the tax, there shall be an additional tax, as a penalty,~~
11 ~~of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five~~
12 ~~percent (5%) for each additional month or fraction thereof until the tax is paid.~~

13 ~~Any person who willfully attempts in any manner to evade a tax imposed under this section~~
14 ~~or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties~~
15 ~~provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one~~
16 ~~thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The Board of~~
17 ~~Commissioners may, for good cause shown, compromise or forgive the penalties imposed by this~~
18 ~~subsection.~~

19 (e) ~~Distribution and use of tax revenue. – Mitchell County shall, on a quarterly~~
20 ~~basis, remit the net proceeds of the occupancy tax to the Mitchell County Chamber of Commerce.~~
21 ~~The Chamber of Commerce may spend funds remitted to it under this subsection only to promote~~
22 ~~travel and tourism in Mitchell County, to sponsor tourist-oriented events and activities in~~
23 ~~Mitchell County, and to finance tourist-related capital projects in Mitchell County. As used in~~
24 ~~this subsection, "net proceeds" means gross proceeds less the cost to the county of administering~~
25 ~~and collecting the tax, as determined by the finance officer. Tourism Development Authority. The~~
26 ~~Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote~~
27 ~~travel and tourism in Mitchell County and shall use the remainder for tourism-related~~
28 ~~expenditures.~~

29 The following definitions apply in this subsection:

- 30 (1) Net proceeds. – Gross proceeds less the cost to the county of administering
31 and collecting the tax, as determined by the finance officer, not to exceed three
32 percent (3%) of the first five hundred thousand dollars (\$500,000) of gross
33 proceeds collected each year and one percent (1%) of the remaining gross
34 proceeds collected each year.
- 35 (2) Promote travel and tourism. – To advertise or market an area or activity,
36 publish and distribute pamphlets and other materials, conduct market research,
37 or engage in similar promotional activities that attract tourists or business
38 travelers to the area; the term includes administrative expenses incurred in
39 engaging in the listed activities.
- 40 (3) Tourism-related expenditures. – Expenditures that, in the judgment of the
41 Mitchell County Tourism Development Authority, are designed to increase
42 the use of lodging facilities, meeting facilities, or convention facilities in the
43 county or to attract tourists or business travelers to the county. The term
44 includes tourism-related capital expenditures.

45 (f) ~~Effective date of levy. A tax levied under this section shall become effective on the~~
46 ~~date specified in the resolution levying the tax. That date must be the first day of a calendar~~
47 ~~month, however, and may not be earlier than the first day of the second month after the date the~~
48 ~~resolution is adopted.~~

49 (g) ~~Repeal. A tax levied under this section may be repealed by a resolution adopted by~~
50 ~~the Mitchell County Board of Commissioners. Repeal of a tax levied under this section shall~~
51 ~~become effective on the first day of a month and may not become effective until the end of the~~

1 fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section
2 does not affect a liability for a tax that was attached before the effective date of the repeal, nor
3 does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

4 "**Sec. 2.** Tourism Development Authority. (a) Appointment and membership. When the
5 board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall
6 also adopt a resolution creating a county Tourism Development Authority, which shall be a
7 public authority under the Local Government Budget and Fiscal Control Act. The resolution shall
8 provide for the membership of the Authority, including the members' terms of office, and for the
9 filling of vacancies on the Authority. At least one-third of the members shall be individuals who
10 are affiliated with businesses that collect the tax in the county, and at least one-half of the
11 members shall be individuals who are currently active in the promotion of travel and tourism in
12 the county. The board of commissioners shall designate one member of the Authority as chair
13 and shall determine the compensation, if any, to be paid to members of the Authority.

14 The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern
15 its meetings. The finance officer of Mitchell County shall be the ex officio finance officer of the
16 Authority.

17 (b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act
18 for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism,
19 and conventions in Mitchell County, sponsor tourist-related events and activities in the county,
20 and finance tourist-related capital projects in the county.

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

24 "**Sec. 3.** This act is effective upon ratification."

25 **SECTION 1.2.** G.S. 153A-155(g) reads as rewritten:

26 "(g) Applicability. – Subsection (c) of this section applies to all counties and county
27 districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of
28 a local act, subsection (c) supersedes that provision. The remainder of this section applies only
29 to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell,
30 Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin,
31 Durham, Edgecombe, Forsyth, Franklin, Graham, Granville, Halifax, Haywood, Henderson,
32 Jackson, Madison, Martin, McDowell, Mitchell, Montgomery, Moore, Nash, New Hanover,
33 Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham,
34 Rowan, Rutherford, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance,
35 Washington, Wayne, and Wilson Counties, to Harnett County District H, New Hanover County
36 District U, Surry County District S, Watauga County District U, Wilkes County District K,
37 Yadkin County District Y, and the Township of Averasboro in Harnett County and the Ocracoke
38 Township Taxing District."

40 HICKORY-CONOVER OCCUPANCY TAX CHANGES

41 **SECTION 2.1.** Section 1(d) of S.L. 2009-169, as amended by Section 4.1 of Part 4
42 of S.L. 2017-202, reads as rewritten:

43 "**SECTION 1.(d)** Distribution and Use of Tax Revenue. – The City of Hickory shall, on a
44 quarterly basis, remit the net proceeds of the occupancy tax to the Hickory-Conover Tourism
45 Development Authority. The funds remitted under this subsection must be used as follows:

- 46 (1) Through December 31, ~~2029~~, 2039. – Prior to and through December 31,
47 ~~2029~~, 2039, the Authority may use two-thirds of the funds remitted to it under
48 this subsection for improving, leasing, constructing, financing, operating, or
49 acquiring facilities and properties as needed to provide for a convention center
50 facility, including parking facilities for the convention center. The remainder
51 of the funds must be used to promote travel and tourism. Debt issued to

1 finance these improvements or facilities and that is secured by occupancy tax
 2 proceeds remitted under this subdivision must mature on or before December
 3 31, ~~2029-2039~~.

- 4 (2) After December 31, ~~2029-2039~~. – After December 31, ~~2029-2039~~, the
 5 Authority must use at least two-thirds of the funds remitted to it under this
 6 subsection to promote travel and tourism in the area and must use the
 7 remainder for tourism-related expenditures."

8 **SECTION 2.2.** Section 3(d) of S.L. 2009-169, as amended by Section 4.1 of Part 4
 9 of S.L. 2017-202, reads as rewritten:

10 "**SECTION 3.(d)** Distribution and Use of Tax Revenue. – The City of Conover shall, on a
 11 quarterly basis, remit the net proceeds of the occupancy tax to the Hickory-Conover Tourism
 12 Development Authority. The funds remitted under this subsection must be used as follows:

- 13 (1) Through December 31, ~~2029-2039~~. – Prior to and through December 31,
 14 ~~2029-2039~~, the Authority may use two-thirds of the funds remitted to it under
 15 this subsection for improving, leasing, constructing, financing, operating, or
 16 acquiring facilities and properties as needed to provide for a convention center
 17 facility, including parking facilities for the convention center. The remainder
 18 of the funds must be used to promote travel and tourism. Debt issued to
 19 finance these improvements or facilities and that is secured by occupancy tax
 20 proceeds remitted under this subdivision must mature on or before December
 21 31, ~~2029-2039~~.
- 22 (2) After December 31, ~~2029-2039~~. – After December 31, ~~2029-2039~~, the
 23 Authority must use at least two-thirds of the funds remitted to it under this
 24 subsection to promote travel and tourism in the area and must use the
 25 remainder for tourism-related expenditures."

26 **BUNCOMBE COUNTY OCCUPANCY TAX CHANGES**

27 **SECTION 3.1.(a)** Sections 21 and 22 of Part 6 of Chapter 908 of the 1983 Session
 28 Laws, as amended by Section 1 of Chapter 942 of the 1985 Session Laws, Section 1 of S.L.
 29 2001-162, Section 60(a) of S.L. 2013-414, and Section 8 of S.L. 2015-128, read as rewritten:

30 "Sec. 21. Disposition of Taxes Collected. – (a) Buncombe County shall remit the net proceeds
 31 of the occupancy tax to the county Tourism Development Authority in Buncombe County. "Net
 32 proceeds" means gross proceeds less the cost to the county of administering and collecting the
 33 tax. ~~The Authority may not use more than ten percent (10%) of the funds distributed to it pursuant~~
 34 ~~to this subsection for administrative expenses of the Authority tax, not to exceed five percent~~
 35 ~~(5%) of the gross proceeds collected each year.~~

36 (b) The Authority may expend any funds ~~distributed~~ remitted to it pursuant to subsection
 37 (a) of this section only as follows:

- 38 (1) ~~Three-fourths~~ Two-thirds of the funds ~~may~~ shall be used only (i) to further the
 39 development of travel, tourism, meetings and conventions events in the county
 40 through ~~State, national, and international advertising-marketing, advertising,~~
 41 sales, and promotion-promotion and (ii) for the administrative expenses of the
 42 Authority, not to exceed twenty percent (20%) of the net proceeds for the
 43 applicable fiscal year of the Authority. For purposes of this provision,
 44 administrative expenses shall include expenses of the Authority for salaries,
 45 benefits, operations, and facilities.
- 46 (2) ~~The Authority shall create a~~ The remainder shall be split evenly between the
 47 following funds created by the Authority, with no portion of the remainder
 48 being used for operational expenses:
- 49 a. The Tourism Product Development Fund and, in order to further
 50 economic development in the county, shall credit the remainder of the
 51

1 funds to the ~~Tourism Product Development Fund~~. The purpose of the
2 ~~fund shall be Fund~~. The Authority shall use monies in the Fund to
3 provide financial assistance for major tourism projects in order to
4 ~~significantly~~ increase patronage of lodging facilities ~~in~~ in, and further
5 economic development in, Buncombe County.

6 b. The Legacy Investment From Tourism Fund. The Authority shall use
7 monies in the Fund to provide financial assistance for tourism-related
8 projects that are designed to (i) increase patronage of lodging facilities,
9 meeting facilities, and convention facilities by attracting tourists,
10 business travelers, or both and (ii) benefit the community at large in
11 Buncombe County.

12 (c) The Authority shall administer and spend the funds in the Tourism Product
13 Development Fund as follows:

14 (1) The Authority shall create a Product Development Committee to review and
15 evaluate proposals from applicants for tourism capital ~~projects and to projects,~~
16 including capital maintenance. No proceeds may be used for operational
17 expenses. The Product Development Committee shall make recommendations
18 to the Authority regarding use and disposition of funds derived from the
19 Tourism Product Development Fund. A for-profit entity is not eligible to
20 receive funds or loans from the Tourism Product Development Fund. Only
21 upon recommendation of the Product Development Committee, and upon a
22 vote of three-fourths of the current voting members of the Authority to expend
23 such funds, the Authority may award funds to qualified projects in the form
24 of outright grants of money and may guarantee loans and participate in
25 pledges of debt service for these projects. ~~projects; provided, however, that no~~
26 ~~loan guarantee may exceed the amount committed from the Fund for the~~
27 ~~project.~~ Projects must be located in Buncombe County unless the
28 Commissioners of Buncombe County give specific approval to projects
29 outside the county. Applicants must provide a feasibility study satisfactory to
30 the Product Development Committee demonstrating the project's economic
31 value to the area and the number of estimated new room nights ~~at the project~~
32 will generate.

33 (2) To be a qualified project, a project must be expected to ~~significantly~~ increase
34 patronage of lodging facilities in Buncombe County.

35 (3) The Authority is not required to exhaust all of the funds generated each year
36 and may accumulate money in order to create a revolving fund to further the
37 purposes of this section. The Authority may not ~~commit~~ commit, for purposes
38 of debt ~~service~~ service, a portion of the net funds in excess of thirty-three
39 percent (33%) of the average net funds received ~~in any one year over a rolling~~
40 ~~three-year average~~ for a period of time in excess of ~~10 years.~~ 15 years for any
41 ~~The Authority may not commit for purposes of debt service in excess of ten percent (10%)~~
42 ~~of net funds received in any one year for any single project.~~ one project. The Authority shall not be the sole funding source for any debt
43 service.

44 (4) The Product Development Committee need not be comprised solely of
45 members of the Authority. A majority of the members of the Product
46 Development Committee must be persons who are owners or operators of
47 hotels, motels, or ~~other taxable tourist accommodations.~~ bed and breakfasts.

49 (d) The Authority shall administer and spend the funds in the Legacy Investment From
50 Tourism Fund as follows:

- 1 (1) The Authority shall create a Legacy Investment From Tourism Committee to
2 review and evaluate proposals from applicants for tourism-related capital
3 projects, including capital maintenance, and project administration, design,
4 restoration, maintenance, and rehabilitation as well as enhancement of natural
5 resources and expansion of necessary infrastructure. The Legacy Investment
6 From Tourism Committee shall make recommendations to the Authority
7 regarding use and disposition of funds derived from the Legacy Investment
8 From Tourism Fund. A for-profit entity is not eligible to receive funds or loans
9 from the Legacy Investment From Tourism Fund. The Legacy Investment
10 From Tourism Fund cannot be used for operational expenses. Only upon
11 recommendation of the Legacy Investment From Tourism Committee, and
12 upon a vote of three-fourths of the current voting members of the Authority to
13 expend such funds, the Authority may award funds to qualified projects in the
14 form of outright grants of money and may guarantee loans and participate in
15 pledges of debt service for these projects; provided, however, that no loan
16 guarantee may exceed the amount committed from the Fund for the project.
17 Projects must be located in Buncombe County unless the Commissioners of
18 Buncombe County give specific approval to projects outside the county.
19 Applicants must provide information as to how the project balances visitor
20 and resident needs as part of the application process for a Legacy Investment
21 From Tourism Fund project.
- 22 (2) To be a qualified project, a project must be expected to (i) increase patronage
23 of lodging facilities, meeting facilities, and convention facilities by attracting
24 tourists, business travelers, or both and (ii) benefit the community at large in
25 Buncombe County.
- 26 (3) The Authority is not required to exhaust all of the funds generated each year
27 and may accumulate money in order to create a revolving fund to further the
28 purposes of this section. The Authority may not commit for purposes of debt
29 service a portion of the net funds in excess of thirty-three percent (33%) of the
30 average net funds received over a rolling three-year average for a period of
31 time in excess of 15 years for any one project. The Authority shall not be the
32 sole funding source for any debt service.
- 33 (4) The Legacy Investment From Tourism Committee need not be comprised
34 solely of members of the Authority. A majority of the members of the Legacy
35 Investment From Tourism Committee must be persons who are owners or
36 operators of hotels, motels, or bed and breakfasts.

37 "Sec. 22. Appointment, Duties of Tourism Development Authority. – (a) When the board of
38 county commissioners adopts a resolution levying a room occupancy tax pursuant to this Part, it
39 shall also adopt a resolution creating a county Tourism Development Authority, which shall be
40 a public authority under the Local Government Budget and Fiscal Control Act and shall be
41 composed of the following 11 members:

- 42 (1) A county commissioner appointed by the ~~board of county commissioners,~~
43 Buncombe County Board of Commissioners, who shall serve as an ex officio,
44 nonvoting member;
- 45 (2) A member of the Asheville City Council appointed by the ~~board of county~~
46 ~~commissioners,~~ Asheville City Council, who shall serve as an ex officio,
47 nonvoting member;
- 48 (3) Six owners or operators of hotels, motels, bed and breakfasts, or vacation
49 rental management companies, four of which own or operate hotels, motels,
50 ~~bed and breakfasts, or vacation rental management companies,~~ or bed and
51 breakfasts, with more than 100 rental units, two of whom shall be appointed

1 by the Asheville City Council and two by the ~~board of county commissioners;~~
 2 Buncombe County Board of Commissioners; and ~~two one~~ of which ~~own or~~
 3 ~~operate~~ owns or operates hotels, motels, bed and breakfasts, or vacation rental
 4 management companies, with 100 or fewer rental units, ~~one of whom who~~
 5 shall be appointed by the Asheville City ~~Council~~ Council; and one of which
 6 owns or operates hotels, motels, or bed and breakfasts with 100 or fewer rental
 7 units, who shall be appointed by the board of county
 8 commissioners; Buncombe County Board of Commissioners.

- 9 (4) Three individuals actively involved in the tourist business who have
 10 participated in tourism ~~promotion and do not own or operate hotels, motels,~~
 11 ~~or other taxable tourist accommodations, promotion,~~ appointed as follows:
 12 ~~one by the Asheville City Council, one by the Asheville Area Chamber of~~
 13 ~~Commerce, and one by the board of county commissioners.~~ one vacation rental
 14 owner or vacation rental management company owner appointed by the
 15 Buncombe County Board of Commissioners; one executive from a ticketed
 16 tourist attraction appointed by the Asheville Area Chamber of Commerce; and
 17 one restaurant owner, owner of a brewery, distillery, or winery open for tours
 18 or tastings, or executive director of a ticketed arts organization appointed by
 19 the Asheville City Council.

20 All members of the Authority shall serve without compensation. Vacancies in the Authority shall
 21 be filled by the appointing authority of the member creating the vacancy. Members appointed to
 22 fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to
 23 fill. Members shall serve three-year terms, ~~except the initial members who shall serve the~~
 24 ~~following terms:~~

- 25 (1) ~~members appointed pursuant to subdivisions (1) and (2) above shall serve~~
 26 ~~one year terms;~~
 27 (2) ~~of the members appointed pursuant to subdivision (3) above, one appointee of~~
 28 ~~the city council and the board of commissioners shall serve a two year term~~
 29 ~~and one appointee of the city council and the board of commissioners shall~~
 30 ~~serve a three year term, as designated by the city council and board of county~~
 31 ~~commissioners;~~
 32 (3) ~~of the three members appointed pursuant to subdivision (4) above, the~~
 33 ~~appointee of the Asheville City Council shall serve a one year term, the~~
 34 ~~appointee of the Asheville Area Chamber of Commerce shall serve a two year~~
 35 ~~term, and the appointee of the board of county commissioners shall serve a~~
 36 ~~three year term.~~

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

41 ...

42 (d) The following definitions apply in this section:

- 43 (1) Vacation rental management company. – A corporate entity having at least
 44 five rental units that are available for rent in Buncombe County for more than
 45 sixty percent (60%) of the days in the calendar year.
 46 (2) Vacation rental management company owner. – The owner of a corporate
 47 entity having at least five rental units that are available for rent in Buncombe
 48 County for more than sixty percent (60%) of the days in the calendar year.
 49 (3) Vacation rental owner. – The owner of at least one vacation rental unit in
 50 Buncombe County, registered in compliance with all local and State laws, that

1 is available for rent for more than sixty percent (60%) of the days in the
2 calendar year."

3 **SECTION 3.1.(b)** Subsection (a) of this section becomes effective July 1, 2022, and
4 applies to occupancy tax proceeds collected by the county and remitted to the Buncombe Tourism
5 Development Authority on or after that date. Current members of the Authority at the time of the
6 effective date of this act shall serve out their remaining terms prior to the appointments
7 contemplated herein. The remainder of this act is effective when it becomes law.

8
9 **EFFECTIVE DATE**

10 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
11 law.