

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 874
HOUSE BILL 2075

AN ACT TO AUTHORIZE THE TOWN OF CARY TO LEVY AN OCCUPANCY
TAX.

The General Assembly of North Carolina enacts:

Section 1. (a) Authorization; Scope. If the Wake County Board of Commissioners has not levied the tax authorized by Section 1 of Chapter 850 of the 1985 Session Laws (1986 Session) or has levied the tax at a rate of less than three percent (3%), the Cary Town Council may, by ordinance, levy a room occupancy tax at a rate that does not exceed three percent (3%) when combined with the Wake County occupancy tax rate, if any. Before adopting an ordinance to levy a room occupancy tax, the Cary Town Council must hold a public hearing on the proposed tax and must give at least 10 days' public notice of the hearing. This tax shall apply to the gross receipts derived from the rental in the Town of Cary of any room, lodging, or similar accommodation subject to sales tax under G.S. 105-164.4(a)(3). This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose. This tax is in addition to any State or local sales tax.

(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 on the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. 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 town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted by him to the town a discount of one percent (1%) of the amount collected as reimbursement for the expenses incurred in collecting the tax.

(c) Administration. The town shall administer a tax levied under this act. A tax levied under this act is due and payable to the town 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 town. The return shall state the total gross receipts derived in the preceding month from rentals and sales upon which the tax is levied. A return filed with the tax collector under this act is not a

public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A 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. 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 any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The Cary Town Council may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.

Any person who willfully attempts in any manner to evade a tax imposed under this act or 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) and imprisonment not to exceed six months, or both.

(e) Use and Distribution of Tax Proceeds. The Town of Cary shall distribute the net proceeds of the occupancy tax as follows:

- (1) The first fifty percent (50%) of net proceeds from the tax in each fiscal year up to a maximum of one hundred thousand dollars (\$100,000) shall be transferred by the town to the Cary Convention and Visitor Commission established pursuant to this act for use by the Commission for activities and programs aiding and encouraging convention and visitor promotion;
- (2) The remaining net proceeds shall be retained by the town and may be used only to fund visitor-related programs and activities, including cultural programs, events, or festivals, and convention and visitor programs and activities of the Cary Convention and Visitor Commission.

The town may contract with a nonprofit organization to undertake or carry out the activities and programs for which the proceeds may be expended. All contracts entered into with nonprofit organizations shall require an annual financial audit of any funds expended and a performance audit of contractual obligations. As used in this subsection, "net proceeds" means gross proceeds less the direct cost to the town of administering and collecting the tax, not to exceed three percent (3%) of the amount collected.

(f) Commission Established. When the Cary Town Council adopts an ordinance levying an occupancy tax, it shall also adopt an ordinance establishing the Cary Convention and Visitor Commission. The Commission shall be governed by a Board of Directors consisting of five members appointed by the Cary Town Council as follows:

- (1) At least one owner or operator of hotels, motels, or other taxable accommodations;
- (2) At least one person directly involved in a tourist-or convention-related business who does not own or operate a hotel, motel, or other taxable accommodation;

- (3) At least one resident of Cary who is not directly involved in a tourist or convention-related business and who does not own or operate a hotel, motel, or other taxable accommodations; and
- (4) At least one individual who is a member of the Cary Chamber of Commerce, selected by the Chairman of the Board of Directors of the Cary Chamber of Commerce.

Members shall be appointed by the town council and shall serve according to the ordinances and regulations of the town concerning service on the board of directors.

(g) Powers and Duties of Commission. The Cary Convention and Visitor Commission may contract with any person, firm, or agency to advise and assist it in the promotion of travel, tourism, and conventions. The Commission shall prepare an annual budget based on anticipated revenues and shall submit the budget to the Cary Town Manager for processing and approval through the regular budget procedure of the town. The Commission shall make quarterly reports to the town detailing its revenues, expenditures, and activities. The town may audit the Commission's financial records upon reasonable notice to the Commission. At the end of each fiscal year, any funds of the Commission not expended, and not obligated or reserved as approved by the town council, shall be remitted to the Town of Cary for use in accordance with subdivision (e)(2).

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

(i) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Cary Town Council. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Effect of County Tax on Previously Levied Town Tax. If the Town of Cary levies an occupancy tax under Section 1 of this act, and the Wake County Board of Commissioners subsequently adopts a resolution levying an occupancy tax in Wake County, the occupancy tax levied by the town shall be repealed as of the effective date of the county levy if the county levies an occupancy tax at the rate of three percent (3%), and shall otherwise be reduced by the amount that the combined county and town occupancy tax rates exceed three percent (3%) if the county rate is less than three percent (3%).

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1990.