

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 821
SENATE BILL 647

AN ACT TO PROVIDE A MEANS FOR FINANCING ALL OR PART OF A
CONVENTION CENTER IN CHARLOTTE.

The General Assembly of North Carolina enacts:

Section 1. Part IV. of Chapter 908 of the 1983 Session Laws is rewritten to read:

"Part IV. Mecklenburg Occupancy Tax and
Prepared Food and Beverage Tax.

"Sec. 5. (a) Intent. It is the intent of this Part to provide Mecklenburg County and each municipality in Mecklenburg County the authority to levy a room occupancy tax and to provide Mecklenburg County and the City of Charlotte the authority to levy a prepared food and beverage tax.

(b) Definitions. The definitions in G.S. 105-164.3 apply to this Part insofar as they are not inconsistent with the provisions of this Part. In addition, the following definitions apply in this Part.

- (1) Financing. Debt service, lease payments, or any other obligations or means of supporting capital costs, together with any related reserve requirements.
- (2) Gross Occupancy Receipts. The gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within a taxing entity that is subject to a tax levied pursuant to Section 6 of this Part.
- (3) Local Administrative Authority. Mecklenburg County or the City of Charlotte as the tax collector and administrator of any or all of the taxes levied pursuant to this Part.
- (4) Net Proceeds. The gross proceeds less the deductions by the local administrative authority pursuant to Section 9(a)(1) of this Part to pay for the cost of administering and collecting the taxes authorized by this Part.
- (5) Prepared Food and Beverages. Any food or beverage which a retailer has added value to or has altered its state (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make the food or beverage available for immediate human consumption.

- (6) Retailer. The term includes caterers and all persons regarded by the Secretary of Revenue as retailers under G.S. 105-164.3 as of the effective date of this Part.
- (7) Taxing Entity. A local sovereignty that levies a tax pursuant to this Part.
- (8) Taxable Establishment. Any hotel, motel, inn, tourist camp, or similar place that is subject to a room occupancy tax levied pursuant to this Part and any retailer that sells meals or prepared food or beverages and is subject to a prepared food and beverage tax levied pursuant to this Part.

(c) Relationship to the Sales and Use Tax Statutes. The definitions in G.S. 105-164.3 shall apply to this Part insofar as they are not inconsistent with the provisions of this Part. All other provisions of Article 5 and Article 9 of Subchapter I, Chapter 105 of the General Statutes, as the same relate to the North Carolina Sales and Use Tax Act, shall be applicable to this Part and administered by the local administrative authority unless the provisions are inconsistent with the provisions of this Part. It is the intention of this Part that the provisions of this Part and the provisions of the North Carolina Sales and Use Tax Act, insofar as practicable, shall be harmonized. The provisions with respect to remedies and penalties applicable to the North Carolina Sales and Use Tax Act, as contained in Article 5 and Article 9, Subchapter I, Chapter 105 of the General Statutes, shall be applicable in like manner to the taxes authorized to be levied and collected under this Part, to the extent that the same are not inconsistent with any provision of this Part.

"Sec. 6. (a) County Room Occupancy Tax. Mecklenburg County may, by resolution of its Board of Commissioners, levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). If a municipality has levied a room occupancy tax under Section 6(b) of this Part, then Mecklenburg County may levy the tax at a rate that does not exceed six percent (6%) when combined with the highest rate of tax then levied by any municipality. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose or to accommodations furnished to the same person for ninety continuous days or more.

(b) City Room Occupancy Tax. Effective 120 days after the effective date of this Part, if at any time Mecklenburg County has not levied a room occupancy tax, or has levied the tax at a rate less than six percent (6%), then any municipality in Mecklenburg County may, by ordinance of its town council, levy a room occupancy tax on the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the municipality that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). The tax shall be at a rate that does not exceed six percent (6%) when combined with the Mecklenburg County room occupancy tax rate, if any. This tax is in addition to any State or local sales tax.

This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose or to accommodations furnished to the same person for ninety continuous days or more.

"Sec. 7. (a) County Prepared Food and Beverage Tax. Mecklenburg County may, by resolution of its Board of Commissioners, levy a prepared food and beverage tax of up to one percent (1%) of the sales price of meals and prepared food and beverages sold at retail for consumption on or off the premises by any retailer within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(1). If the City of Charlotte has levied a prepared food and beverage tax under Section 7(b) of this Part, then Mecklenburg County may levy the tax at a rate that does not exceed one percent (1%) when combined with the rate of tax then levied by the City of Charlotte. This tax is in addition to any State or local sales tax.

(b) Charlotte Prepared Food and Beverage Tax. Effective 120 days after the effective date of this Part, if at any time Mecklenburg County has not levied or adopted a resolution to levy a prepared food and beverage tax, or has levied or adopted a resolution to levy the tax at a rate less than one percent (1%), then the City of Charlotte may, by ordinance of its city council, levy a prepared food and beverage tax on the sales price of meals and prepared food and beverages sold at retail for consumption on or off the premises by any retailer within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(1). The tax shall be at a rate that does not exceed one percent (1%) when combined with the Mecklenburg County prepared food and beverage tax rate, if any. This tax is in addition to any State or local sales tax.

(c) Exemptions. The prepared food and beverage tax does not apply to the following sales of meals and prepared food and beverages:

- (1) Meals and prepared food and beverages served to residents in boarding houses and sold together on a periodic basis with rental of any sleeping room or lodging.
- (2) Retail sales exempt from taxation under G.S. 105-164.13 on the effective date of this Part.
- (3) Retail sales through or by means of vending machines.
- (4) Meals and prepared food and beverages served by any taxable establishment subject to the occupancy tax levied pursuant to this Part if the charge for the meals or prepared food or beverages is included in a single, nonitemized sales price together with the charge for rental of a room, lodging, or accommodation furnished by the taxable establishment.
- (5) Meals and prepared food and beverages furnished without charge by an employer to any employee.
- (6) Retail sales by grocers or by grocery sections of supermarkets or other diversified retail establishments other than sales of prepared food and beverages in the delicatessen or similar department of the grocer or grocery section.

"Sec. 8. (a) Public Hearing. Before adopting or amending an ordinance or resolution levying a tax authorized by this Part, the governing body of the taxing entity shall hold a public hearing. The governing body of the taxing entity shall publish notice of the hearing not less than 10 days nor more than 25 days before the date fixed for the hearing.

(b) Effective Date of Levy. A tax levied under this Part shall become effective on the date specified in the resolution or ordinance 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 or ordinance is adopted. The levy of a prepared food and beverage tax may not be effective before January 1, 1992.

(c) Repeal. A tax levied under this Part may be repealed by a resolution or ordinance adopted by the governing body of the taxing entity. Repeal of a tax levied under this Part 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 or ordinance was adopted. Repeal of a tax levied under this Part does not affect a liability for a tax that has 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.

(d) Collection. Every operator of a taxable establishment shall, on and after the effective date of the levy of a tax under this Part, collect the tax. The tax shall be stated and charged separately from the rental charge or sales price, shall be shown separately on the taxable establishment's sales records and shall be paid by the purchaser to the taxable establishment as trustee for and on account of the taxing entity. The tax shall be added to the rental charge or sales price and shall be passed on to and collected from the purchaser instead of being borne by the taxable establishment.

For the convenience of each retailer and to facilitate the administration of this Part, the local administrative authority shall determine the amount to be added to the sales price of all sales subject to the prepared food and beverage tax. The amounts shall be set forth in a bracket system and distributed to each retailer responsible for collecting the prepared food and beverage tax. The use of the bracket system does not relieve the retailer from the duty and liability of collecting and remitting to the local administrative authority an amount equal to the prepared food and beverage tax levied by the taxing entity.

(e) Administration. Mecklenburg County and the City of Charlotte shall determine by agreement which of them will administer and collect each of the taxes levied pursuant to this Part. In the event an agreement cannot be reached, then any tax levied pursuant to this Part shall be administered and collected by Mecklenburg County. The local administrative authority may promulgate additional rules and regulations necessary for the implementation of this Part.

The taxes levied pursuant to this Part are due and payable to the local administrative authority as agent for the taxing entity in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every taxable establishment liable for the tax shall, on or before the 15th day of each month, prepare and render a return to the local administrative authority. The local administrative

authority shall design, print, and furnish to all taxable establishments the necessary forms for filing returns and instructions to ensure the full collection of the tax.

A return filed with the local administrative authority under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(f) Penalties. A person, firm, corporation, or association who fails or refuses to file a return and pay the tax due under this Part shall pay a penalty of ten dollars (\$10.00) for each day's omission up to a maximum of two thousand dollars (\$2,000) for each return. 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 paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The governing body of the taxing entity 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 Part or who willfully fails to pay the tax or make and file a return shall, in addition to the penalties provided by law, be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.

"Sec. 9. (a) Distribution and Use of Proceeds. The local administrative authority, acting on its own behalf or as agent for each taxing entity, shall distribute the proceeds of the taxes levied in this Part as provided in this subsection. The distribution shall be made by the 20th day of each month following the month in which the tax is collected.

- (1) Deduction of Administrative Expense. The local administrative authority may deduct from the gross proceeds of the taxes collected under this Part an amount not to exceed three percent (3%) of the amount collected to pay for the direct cost it has incurred in administering and collecting the taxes authorized by this Part.
- (2) Distribution to Charlotte for Convention Center Facilities. After deducting the amount provided above, the local administrative authority shall transfer an amount equal to three percent (3%) of the gross occupancy receipts and the entire net proceeds of the prepared food and beverage tax to the City of Charlotte. The net proceeds transferred to the City of Charlotte pursuant to this subdivision shall be applied in accordance with the following priorities. No application of any net proceeds to any class of the priorities set forth below in this subdivision shall be made until, with respect to each preceding class of priorities, either all payments for the current fiscal year have been provided for in full or no such payments are required for the current fiscal year.
 - a. To provide for when due payments for the current fiscal year with respect to any financing for new convention center facilities or for the expansion of existing convention center facilities, which may include off-street parking for use in conjunction with the facilities.

- b. To pay costs incurred in an aggregate amount not greater than one million five hundred thousand dollars (\$1,500,000) in each fiscal year for marketing and promoting new or expanded convention center facilities.
 - c. To pay other costs of acquiring, constructing, maintaining, operating, marketing, and promoting new or expanded convention center facilities.
- (3) Distribution to Other Municipalities. After deducting the amounts provided above, the local administrative authority shall determine the amount of the remaining occupancy tax net proceeds that were collected from taxable establishments located in each municipality, other than the City of Charlotte. The local administrative authority shall then distribute to each municipality, other than the City of Charlotte, an amount equal to one hundred twenty percent (120%) of the amount of the remaining occupancy tax net proceeds collected in that municipality. These funds may be expended only for acquiring, constructing, financing, maintaining, operating, marketing, and promoting convention centers, civic centers, performing arts centers, coliseums, auditoriums, and museums, for off-street parking for use in conjunction with these facilities, and for tourism and tourism-related programs and activities including art and cultural programs, events, and festivals.
- (4) Distribution to Charlotte for Convention and Visitor Promotion. Of the occupancy tax net proceeds remaining after deducting the amounts provided in subsections (a)(1) and (a)(2) above, at least fifty percent (50%) of the first one million dollars (\$1,000,000) in each fiscal year, at least thirty-five percent (35%) of the second one million dollars (\$1,000,000) in each fiscal year, and at least twenty-five percent (25%) of the amount in excess of two million dollars (\$2,000,000) in each fiscal year shall be transferred by the local administrative authority to the City of Charlotte for activities and programs aiding and encouraging convention and visitor promotion. The City of Charlotte shall be acting as agent for each occupancy taxing entity.
- (5) Distribution of Remainder between Charlotte and Mecklenburg County. The amount of occupancy tax net proceeds remaining after deducting the amounts provided above shall be allocated by the local administrative authority between Mecklenburg County and the City of Charlotte using the following formula: the ratio of expenditures by each of Mecklenburg County and the City of Charlotte for acquiring, constructing, financing, maintaining, operating, marketing, and promoting convention centers, civic centers, performing arts centers, coliseums, auditoriums, and museums, for off-street parking for use in conjunction with these facilities, and for tourism and tourism-related programs and activities including art and cultural programs, events,

and festivals to total expenditures by both Mecklenburg County and the City of Charlotte for such purposes. There shall be excluded from expenditures by the City of Charlotte for purposes of computing this ratio all expenditures for acquiring, constructing, financing, maintaining, operating, marketing, and promoting the new or expanded convention center facilities in the City of Charlotte for which net proceeds are allocated pursuant to subdivision (2) of this subsection. The ratio shall be computed annually on the basis of the prior fiscal year's expenditures. However, no amount shall be allocated to Mecklenburg County if it has not levied an occupancy tax and a prepared food and beverage tax for the current period. These funds may be expended only for acquiring, constructing, financing, maintaining, operating, marketing, and promoting convention centers, civic centers, performing arts centers, coliseums, auditoriums, museums, for off-street parking for use in conjunction with these facilities, and for tourism and tourism-related programs and activities including art and cultural programs, events, and festivals.

(b) Authority to Contract. Mecklenburg County and each municipality located within Mecklenburg County may contract with any person, agency, association, or nonprofit corporation to undertake or carry out the activities and programs for which the proceeds may be expended. All contracts entered into pursuant to this subsection shall require an annual financial audit of any funds expended and a performance audit of contractual obligations."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1990.