
Coates' Canons Blog: Occupancy Tax 101

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[UPDATED 6/10/14: S.L. 2014-3 eliminated the 15-day minimum annual rent threshold for private residences that are listed with rental agents. The revenue from the rental of a private house that is listed with a rental agent is now subject to occupancy tax even if the house is rented for less than 15 days in the year.]

Occupancy taxes on hotels and other rental accommodations are growing increasingly common in North Carolina. As of October 2013, the General Assembly had granted special authorization to levy occupancy taxes to roughly 200 counties and municipalities. This blog post provides a quick overview of how these somewhat unique taxes work.

Local Government Authorization

There is no general authorization for local occupancy taxes in North Carolina. The only local governments who may levy these taxes are those that have received authorization from the General Assembly via local acts.

The general administrative occupancy tax administrative provisions (G.S. 153A-155 for counties and G.S. 160A-215 for cities) list some but not all of those specially authorized local governments. My friends on the General Assembly staff maintain this more complete list.

Local governments that are not on this list but that are interested in levying occupancy taxes would need to work with their local state legislators to introduce a local bill granting that authority.

Local Levy Procedure

Once it obtains occupancy tax authorization, a local government must pass a resolution formally levying the tax. The general administrative provisions for occupancy taxes require a public hearing on the occupancy tax resolution.

Just like privilege license taxes, food and beverage taxes and all other local taxes other than property taxes, occupancy taxes need not be levied each year in the budget ordinance. Once an occupancy tax is adopted it remains in place until repealed. See G.S. 153A-148 and G.S. 160A-208.

The local governing board (meaning the city council or the board of county commissioners) sets the rate when it first levies the tax. That rate remains in effect unless it is changed or repealed by the local governing board or by the General Assembly.

Rates

All local occupancy tax rates are capped, most between 3% and 6%. Brunswick County appears to be subject to the lowest cap, with its rate limited to 1%. The combined Mecklenburg County/Charlotte occupancy tax rate cap of 8% is the highest in the state and is the only one above 6%. (The extra 2% was authorized in 2005 to help finance the NASCAR Hall of Fame.) Lots of local governments started with 3% rate limits and later obtained additional authorization to raise their rates, usually to 6%.

Use of Proceeds

For almost every jurisdiction, local occupancy tax proceeds are not general fund revenue. Two counties, Cleveland and

Hyde, may use their occupancy tax revenue for any lawful public purpose—but even then Hyde County must spend a certain percentage to benefit its mainland portions.

The other 197 or so local governments that benefit from occupancy tax proceeds face restrictions on their use. Nearly all of these restrictions involve tourism. Other permissible uses for occupancy tax revenue common across the state include beach nourishment and the construction or operation of convention and performing arts centers.

Beginning with the adoption of the general occupancy tax administrative provisions in 1997, local bills authorizing these taxes have (almost always) required the creation of tourism development authorities (“TDAs”) for the taxing units. The local TDA, rather than the local governing board, is charged with deciding how to spend occupancy tax revenue to benefit tourism in the area. Similar requirements have been applied in recent years to local governments that received their initial authority for occupancy taxes prior to 1997 and later sought to raise their maximum tax rates.

The local act that authorized Jacksonville’s occupancy tax (S.L. 2009-429) provides a good example of the expenditure restrictions that have become standard. This bill reads in part:

The City of Jacksonville shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Jacksonville Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Jacksonville and shall use the remainder for tourism-related expenditures. . . .

Definitions. – The following definitions apply in this act:

- (1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.*
- (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 the listed activities.*
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Jacksonville Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.*

Taxable Accommodations

Under G.S. 153A-155 and G.S. 160A-215, local occupancy taxes apply to the same taxpayers that are subject to state sales taxes on accommodations mandated by G.S. 105-164.4(a)(3). In other words, local occupancy taxes apply to the rental of all accommodations other than:

1. A privately owned residence/cottage rented for fewer than 15 days per year (unless the residence is listed with a rental agent, in which case the rental revenue is subject to occupancy taxes regardless of how many days the residence is rented during the year);
2. Rentals of more than 90 continuous days; and,
3. Accommodations related to schools or camps that charge tuition or fees for enrollment.

Local governments do not have the authority to create additional exemptions from their occupancy taxes. This past year, a series of technical changes were adopted in S.L. 2013-414 to eliminate a number of additional exemptions found in older local occupancy tax bills, including those for non-profits that rent out accommodations and for businesses that rent out fewer than five units. All of these types of accommodations should now be subject to occupancy taxes wherever they are levied.

Collection Remedies

Like all local taxes, occupancy taxes may be collected using attachment & garnishment (for wages, bank accounts, and other funds owed to the taxpayer) and levy & sale (of personal property). See G.S. 153A-147 and 160A-207. Unlike



property taxes, however, occupancy taxes do not automatically create a lien on real property. As a result, a local government may not foreclose on real property to satisfy occupancy taxes unless it files a lawsuit in state court and obtains a judgment against the taxpayer.

Unless a local occupancy tax bill states otherwise, the penalties for late payment of occupancy taxes are the same as those that apply to state sales taxes under G.S. 105-236: 5% of the taxes owed per month up to a maximum of 25% for late returns and 10% of the tax owed for late payment. Delinquent taxpayers may also be prosecuted criminally.

In general, there is no successor liability for occupancy taxes. Some local occupancy tax bills (such as this one for Wake County) incorporate the sales tax successor liability provision found in G.S. 105-164.38(b). But absent such special provisions, new owners of hotels and other lodging establishments are not responsible for occupancy taxes owed by the old owners.

For more on occupancy tax collection, please see this bulletin.

Links

- www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2013-2014/SL2014-3.html
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-155
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-215
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-148
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-208
- www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2009-2010/SL2009-429.html
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-164.4
- www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2013-2014/SL2013-414.html
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-147
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-207
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-236
- www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/1995-1996/SL1995-458.html
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-164.38
- sogpubs.unc.edu/electronicversions/pdfs/ptb162.pdf