Occupancy Taxes on STRs: Law & Practice

Chris McLaughlin

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When poll is active, respond at **PollEv.com/sogchris**

Does your county/town/city levy occupancy taxes?

- Yes
- No
- No but we are considering that option.

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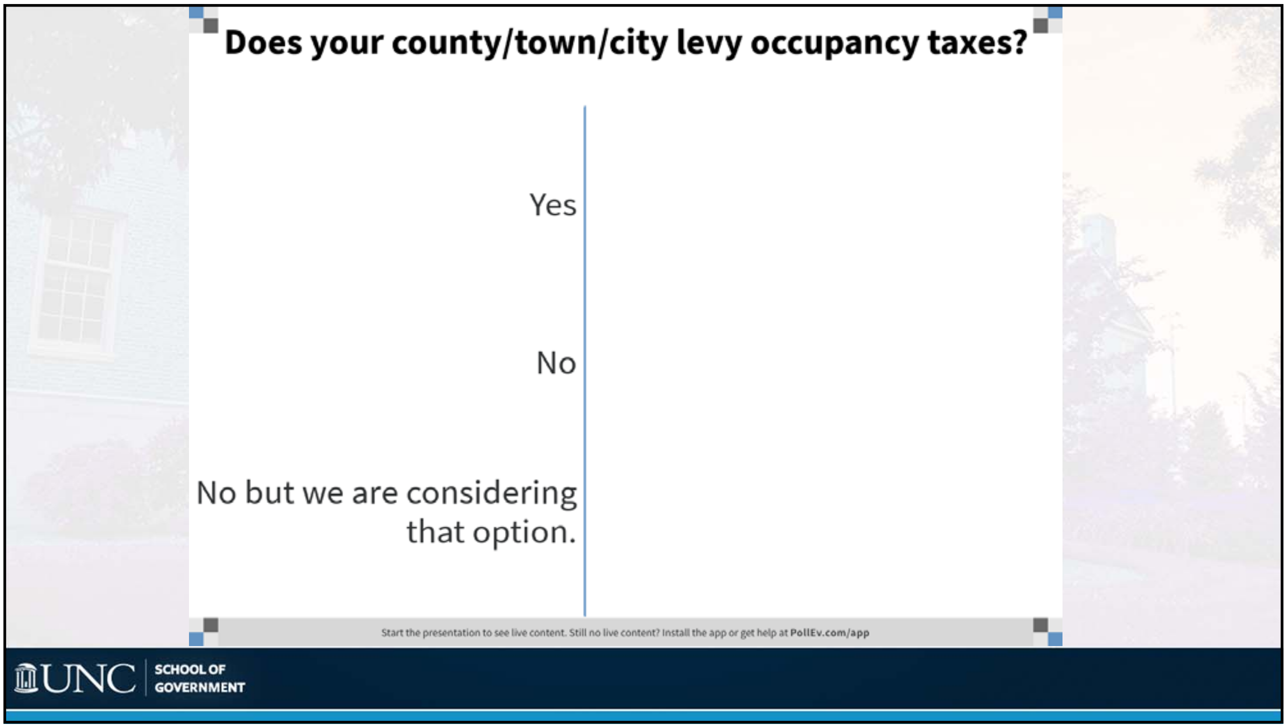
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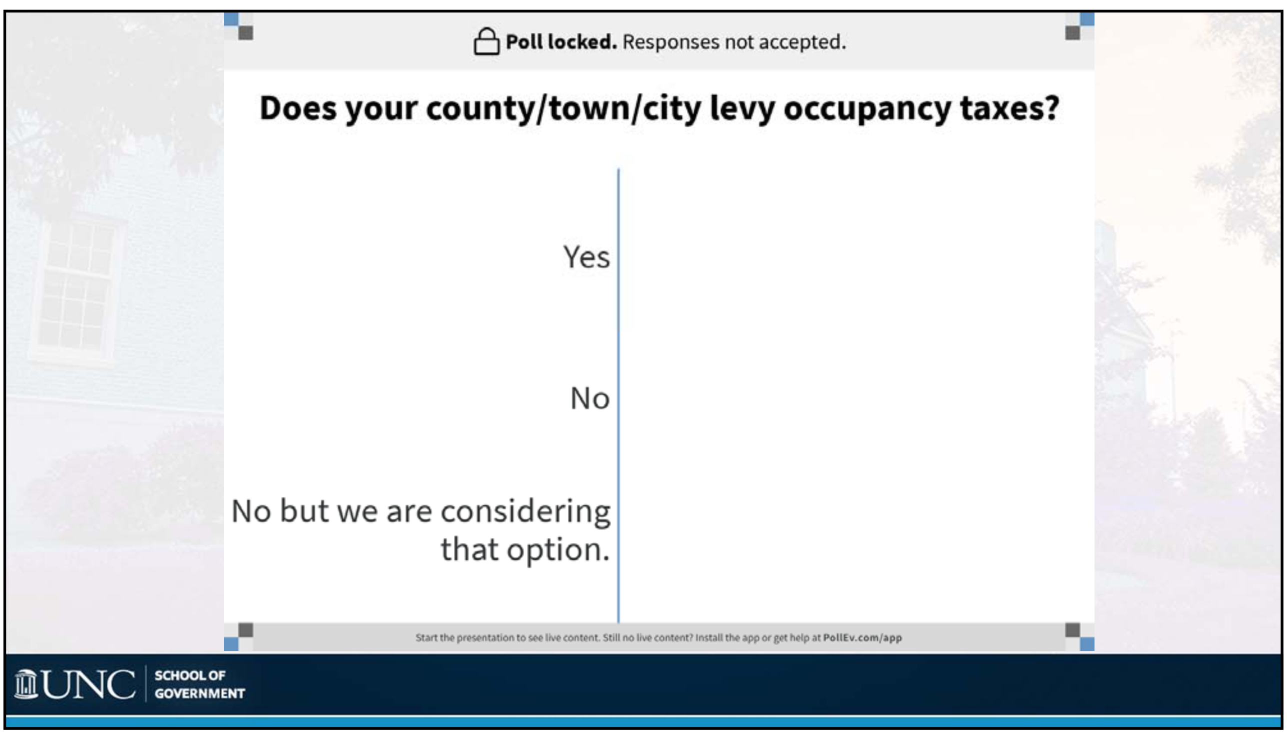
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If you only remember one thing about local occupancy taxes, remember that . . .

It's all about the local bill.

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Why?

- No general authority for local OT
- No local bill = no local OT
- Local bill will control:
  - Rate
  - Use of proceeds
  - Other unique provisions (maybe)
- GA Guidelines for Local OT Bills
  - Appendix B, page 95

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How Do I Find My Local OT Bill?

- List maintained by the General Assembly staff thru 2018:
  - https://canons.sog.unc.edu/wp-content/uploads/2013/11/OCCUPANCY-TAX-OVERVIEW-TABLE-2018.pdf
- Search Session Laws on General Assembly's website
  - https://www.ncleg.net/

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General Admin Provisions

- GS 153A-155 (counties)
- GS 160A-215 (cities)
- Appendix C, page 99

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S.L. 2013-414

- Amended 15+ local bills to make those local OT conform to general provisions

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Basic Steps for Local OT

- Obtain local authorization
- Adopt resolution (public hearing)
- Create Tourism Development Authority
- Collect taxes & distribute to TDA
- TDA decides how to spend OT revenue

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OT Rates

- Check your local bill
- Most capped at 3% or 6%
  - Lowest: 1% (Brunswick County)
  - Highest: 8% (Mecklenburg County)
- Table of OT Rates
  - Appendix D, page 105

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What rentals are taxable?

- A retailer who is required to remit to the Department of Revenue the State sales tax imposed by G.S. 105-164.4(a)(3) on accommodations is required to remit a room occupancy tax to the taxing city/county
  - GS 153A-155(c); GS 160A-215(c)
- G.S. 105164.4(a)(3) points us to G.S. 105-164.4F

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What rentals are taxable?

- GS 105-164.4F (Appendix C, page 99):
- Accommodation = "A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual."
- Bedroom in a private house?
- Houseboat?
- Camp site?

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What rentals are taxable?

- Only 3 exceptions:
- Private residence < 15 days per year and NOT listed with an agent
- Accommodation rented to same person for >= 90 days
- Accommodation included in tuition/fee for school or camp

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No Unique Local OT Exemptions

- Must honor the sales tax provisions in GS 105-164.4F
- No other exemptions unless your local bill says something different (but very few do)
- Except FEDERAL aw trumps STATE law
  - Federal employees exempt if pay using federal credit card
  - Table 5, page 56

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Which of the following STRs should be subject to occupancy taxes?

A. Lakeside cabins owned by church and rented to public on weekly basis

B. Private cottage rented for 4 weekends per year via Airbnb

C. Beach house rented to the same family for all of June, July, and August

Both A and B

All of the above

None of the above

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Taxable Rental Charges

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Beach house has weekly rental price of $3,000. Tenant also pays $200 Airbnb service fees, $250 cleaning fees, $50 damage waiver, plus $300 optional beach club membership. What is the taxable rental price?

$3,800

$3,500

$3,300

$3,000

None of the above

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Taxable Charges

- Credit card fees or reservation/service fees
- Damage waiver fees / security deposits (?)
- Maid/cleaning fees
- Resort fees
- Early arrival/late departure fees
- Extra person charges or crib/rollaway bed charges
- Linen fees
- "Peace of mind" fees (similar to insurance but provided by hotel or rental agency rather than third-party carrier)
- Pet fees
- Table 6, page 57

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Other Charges

- Not included in Taxable Price for OT:
  - Rental/use of separate personal property such as
    - beach equipment,
    - recreational equipment
    - audio-visual equipment
    - golf cart
  - Trip insurance paid to third-parties
  - Voluntary club memberships/guest privileges

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Facilitators and Rental Agents

- Who are they?
  - G.S. 105-164.4F (Appendix C, page 99)
- Facilitator: Airbnb, VRBO, Homeaway, etc.
- Rental Agents: local real estate professionals
- Can be liable for OTs instead of owner

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Who is responsible for OTs?

- § 105-164.4F. Accommodation rentals.
  - (c) Facilitator Transactions. . . . A facilitator that does not send the retailer the tax due on the sales price is liable for the amount of tax the facilitator fails to send. . . . A retailer is not liable for tax due but not received from a facilitator.

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Who is responsible for OTs?

- § 105-164.4F. Accommodation rentals.
  - (d) Rental Agent. - A person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax imposed by this section. The liability of a rental agent for the tax imposed by this section relieves the provider of the accommodation from liability.

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Liability for Occupancy Taxes

- Roy rents out his beach house through Tar Heel Beach Vacations, Inc., a local rental agency.
- The agency lists the beach house on VRBO.
- Occupancy taxes have not been paid on any rentals for summer 2019.

- Who is liable for the unpaid occupancy taxes?

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Who is liable for the unpaid occupancy taxes on Roy's beach house?

Roy

The rental agency

VRBO

All of the above.

Only the rental agency and VRBO

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Who is responsible for OTs?

- The bad news:
  - Owners aren’t responsible for homes rented thru AirBnb or rental agents
- The good news:
  - Rental agencies responsible for OTs on homes listed on AirBnb

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OT Collection Remedies

- Property tax remedies of attachment/garnishment and levy/sale available for ANY local tax
  - GS 153A-147 & GS 160A-207
- No foreclosure (unless civil judgment obtained)
- Set-off Debt Collection (GS 105A)
- 10-year statute of limitations

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OT Collection Remedies

- No general successor liability
  - Roy owes occupancy taxes on his beach house.
  - Roy sells house to Mike.
  - Mike is not responsible for Roy’s unpaid occupancy taxes.
- But check your local bill
  - Wake County incorporates sales tax successor liability (GS 105-164.38(b))

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Penalties for Late Payment

- GS 105-236
- Failure to file return:
  - 5% per month up to 25% total
- Failure to pay tax:
  - 10%
- How to calculate penalty if no return?

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OT and Public Records Law

- G.S. 153A-155 & G.S. 260A-215:
- "A room occupancy tax return filed with the county/city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."
- G.S. 153A-148.1 & G.S. 160A-208.1:
- "local tax records that contain information about a taxpayer's income or receipts are not public records."

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Use of Proceeds: Local Act Controls

- Common Provisions
  - Establish a Tourism Development Authority (TDA)
  - Distribute OT proceeds to the TDA
  - (3% collection fee to city/county)
  - Permitted Uses of OT Revenue:
    - “promote travel and tourism”
    - “tourism-related expenditures”
    - Other unique local uses (e.g., beach nourishment)

- OT returns and payment records NOT public

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Use of Proceeds: Local Act Controls

- What counts as “promotion of tourism” or “tourism-related” expenditures?
-
  - Advertising
  - Signage
  - Convention center
  - Visitors information office
  - Ocean rescue/beach patrol programs
  - Events in other counties/cities?
  - Road maintenance?
  - Police and fire departments?

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