Occupancy Taxes on STRs: Law & Practice

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Does your county/town/city levy occupancy taxes?

Yes

No

No but we are considering that option.

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

It's all about the local bill.



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



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/



General Admin Provisions

• GS 153A-155 (counties)

• GS 160A-215 (cities)

Appendix C, page 99



S.L. 2013-414

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



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



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



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



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?



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

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

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





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





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



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

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.

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.

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?



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 are NOT responsible for taxes on rentals thru AirBnb/VRBO if that facilitator collects taxes on those rentals

- The good news:
 - Rental agencies ARE responsible for OTs on rentals listed on AirBnb/VRBO

OTs and Airbnb/VRBO

Lump sum payments from Airbnb/VRBO?

Homeowners claim taxes paid by Airbnb/VRBO?



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



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))

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?



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

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)
- Can TDAs see payment records?



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?

