

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 15 October 2008

SUBJECT: Heavy equipment rental gross receipts tax

ATTACHMENT(S): Proposed resolution; Session Law 2008-144

SUMMARY OF REQUEST:

During 2008, the General Assembly eliminated “heavy equipment” held for “short-term lease or rental” from the definition of taxable property for the purpose of the *ad valorem* business personal property tax (Session Law 2008-144). In lieu of such tax, the General Assembly has permitted local governments to enact a “gross receipts tax” on the actual rental income generated from the short-term lease or rental of such heavy equipment. Such tax may be levied by counties at the rate of one and two-tenths percent (1.2%) of the gross receipts from such short-term lease or rental.

Attached is a draft resolution for the enactment of such a tax for Henderson County, to replace the revenue lost by the elimination of such property from subjection to the *ad valorem* business personal property tax.

County staff will present further information on this matter.

BOARD ACTION REQUESTED:

Adoption of the proposed resolution.

If the Board is so inclined, the following motion is suggested:

I move that the Board adopt the resolution enacting the heavy equipment gross rental receipts tax.

DRAFT

**ORDINANCE LEVYING TAX:
GROSS RECEIPTS DERIVED FROM RETAIL SHORT-TERM LEASE OR RENT OF HEAVY
EQUIPMENT**

WHEREAS, the North Carolina General Assembly has ratified Senate Bill 1852, signed into law as Session Law 2008-144 and effective for taxable years beginning on or after July 1, 2009; and

WHEREAS, this Session Law enacted G. S. §105-275(42a), which repealed the property tax on certain heavy equipment (as defined in G.S. §153A-561(a)), and enacted G. S. §153A-156.1, which authorized counties to replace the lost tax revenue through the levy of a local tax on gross receipts derived from short-term leases or rentals of such heavy equipment.

NOW, THEREFORE BE IT ORDAINED by the Henderson County Board of Commissioners that the following tax is levied:

SECTION 1. Tax on Gross Receipts derived from retail short term heavy equipment leases or rentals. The County of Henderson hereby imposes and levies a tax of one and two-tenths percent (1.2%) of the gross receipts from the short-term lease or rental of heavy equipment, as authorized by (and as such terms are used and intended in) G. S. §153A-156.1.

SECTION 2. Administration. The County through its Finance Officer and Assessor, will administer and collect from operators of leasing and rental entities the tax levied hereby. The Assessor may promulgate additional lawful rules and regulations necessary for implementation and collection of the tax.

SECTION 3. Payment of Taxes and Filing of Returns. The taxes levied hereby are due and payable to the County in monthly installments on or before the fifteenth (15th) day of the month following the month in which the tax accrues. Every entity required to collect the tax shall, on or before the fifteenth (15th) day of each month, prepare and render a return to the County Assessor's Office, and shall pay all taxes due under this Resolution to the County Finance Officer. The County shall design, print, and furnish to all such entities the necessary forms for filing returns and instructions to insure the full collection of the tax. These tax proceeds shall be placed in a segregated account by the collecting entity and are the property of the County. A return filed for this purpose is not a public record as defined by G.S. §132-1 and may not be disclosed except as provided by law.

SECTION 4. Enforcement. Enforcement of this tax shall be pursuant to the provisions of G.S. §153A-156.1(d).

SECTION 5. Effective Date. This ordinance shall become effective July 1, 2009.

Adopted this _____ day of October, 2008.

By: _____
WILLIAM MOYER
Chairman

ATTEST:

Secretary to the Board of Commissioners

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2008-144
SENATE BILL 1852

AN ACT TO RESOLVE PROBLEMS WITH APPLYING PROPERTY TAX TO
HEAVY EQUIPMENT RENTED ON A SHORT-TERM BASIS BY REPLACING
THE PROPERTY TAX ON THIS EQUIPMENT WITH A TAX ON THE GROSS
RECEIPTS FROM RENTING THE EQUIPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-275 is amended by adding a new subdivision to read:
"§ 105-275. **Property classified and excluded from the tax base.**

The following classes of property are hereby designated special classes under authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be listed, appraised, assessed, or taxed:

(42a) Heavy equipment on which a gross receipts tax may be imposed under G.S. 153A-156.1 and G.S. 160A-215.2."

SECTION 2. Article 7 of Chapter 153A of the General Statutes is amended by adding a new section to read:

§ 153A-156.1. Heavy equipment gross receipts tax in lieu of property tax.

(a) Definitions. – The following definitions apply in this section:

(1) Heavy equipment. – Earthmoving, construction, or industrial equipment that is mobile, weighs at least 1,500 pounds, and meets any of the descriptions listed in this subdivision. The term includes an attachment for heavy equipment, regardless of the weight of the attachment.

a. It is a self-propelled vehicle that is not designed to be driven on a highway.

b. It is industrial lift equipment, industrial material handling equipment, industrial electrical generation equipment, or a similar piece of industrial equipment.

(2) Short-term lease or rental. – Defined in G.S. 105-187.1.

(b) Tax Authorized. – A county may, by resolution, impose a tax at the rate of one and two-tenths percent (1.2%) on the gross receipts from the short-term lease or rental of heavy equipment by a person whose principal business is the short-term lease or rental of heavy equipment at retail. The heavy equipment subject to this tax is exempt from property tax under G.S. 105-275, and this tax provides an alternative to a property tax on the equipment. A person is not considered to be in the short-term lease or rental business if the majority of the person's lease and rental gross receipts are derived from leases and rentals to a person who is a related person under G.S. 105-163.010.

The tax authorized by this section applies to gross receipts that are subject to tax under G.S. 105-164.4(a)(2). Gross receipts from the short-term lease or rental of heavy equipment are subject to a tax imposed by a county under this section if the place of business from which the heavy equipment is delivered is located in the county.

(c) Payment. – A person whose principal business is the short-term lease or rental of heavy equipment is required to remit a tax imposed by this section to the county finance officer. The tax is payable quarterly and is due by the last day of the month following the end of the quarter. The tax is intended to be added to the amount

charged for the short-term lease or rental of heavy equipment and paid to the heavy equipment business by the person to whom the heavy equipment is leased or rented.

(d) Enforcement. – The penalties and collection remedies that apply to the payment of sales and use taxes under Article 5 of Chapter 105 of the General Statutes apply to a tax imposed under this section. The county finance officer has the same authority as the Secretary of Revenue in imposing these penalties and remedies.

(e) Effective Date. – A tax imposed under this section becomes effective on the date set in the resolution imposing the tax. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the resolution is adopted.

(f) Repeal. – A county may, by resolution, repeal a tax imposed under this section. The repeal is effective on the date set in the resolution. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the resolution is adopted."

SECTION 3. Article 9 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-215.2. Heavy equipment gross receipts tax in lieu of property tax.

(a) Definitions. – The following definitions apply in this section:

(1) Heavy equipment. – Defined in G.S. 153A-156.1.

(2) Short-term lease or rental. – Defined in G.S. 105-187.1.

(b) Tax Authorized. – A city may, by resolution, impose a tax at the rate of eight tenths percent (0.8%) on the gross receipts from the short-term lease or rental of heavy equipment by a person whose principal business is the short-term lease or rental of heavy equipment at retail. The heavy equipment subject to this tax is exempt from property tax under G.S. 105-275, and this tax provides an alternative to a property tax on the equipment. A person is not considered to be in the short-term lease or rental business if the majority of the person's lease and rental gross receipts are derived from leases and rentals to a person who is a related person under G.S. 105-163.010.

The tax authorized by this section applies to gross receipts that are subject to tax under G.S. 105-164.4(a)(2). Gross receipts from the short-term lease or rental of heavy equipment are subject to a tax imposed by a city under this section if the place of business from which the heavy equipment is delivered is located in the city.

(c) Payment. – A person whose principal business is the short-term lease or rental of heavy equipment is required to remit a tax imposed by this section to the city finance officer. The tax is payable quarterly and is due by the last day of the month following the end of the quarter. The tax is intended to be added to the amount charged for the short-term lease or rental of heavy equipment and paid to the heavy equipment business by the person to whom the heavy equipment is leased or rented.

(d) Enforcement. – The penalties and collection remedies that apply to the payment of sales and use taxes under Article 5 of Chapter 105 of the General Statutes apply to a tax imposed under this section. The city finance officer has the same authority as the Secretary of Revenue in imposing these penalties and remedies.

(e) Effective Date. – A tax imposed under this section becomes effective on the date set in the resolution imposing the tax. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the resolution is adopted.

(f) Repeal. – A city may, by resolution, repeal a tax imposed under this section. The repeal is effective on the date set in the resolution. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the resolution is adopted."

SECTION 4. G.S. 105-259(b) reads as rewritten:

"§ 105-259. Secrecy required of officials; penalty for violation.

(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State

may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(5d) To provide the following information to a county or city on an annual basis, when the county or city needs the information for the administration of its local prepared food and beverages ~~tax or room occupancy tax~~, room occupancy tax, vehicle rental tax, or heavy equipment rental tax:

- a. The name, address, and identification number of retailers who collect the sales and use taxes imposed under Article 5 of this Chapter and may be engaged in a business subject to a ~~local prepared food and beverages tax or room occupancy tax~~ one or more of these local taxes.
- b. The name, address, and identification number of a retailer audited by the Department of ~~Revenue~~ regarding the sales and use taxes imposed under Article 5 of this Chapter, when the Department determines that the audit results may be of interest to the county or city in the administration of ~~its local prepared food and beverages tax or room occupancy tax~~ one or more of these local taxes.

SECTION 5. Section 1 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2009. The remainder of this act is effective when it becomes law. A tax imposed under G.S. 153A-156.1 or G.S. 160A-215.2, as enacted by this act, may not become effective before January 1, 2009.

In the General Assembly read three times and ratified this the 8th day of July, 2008.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 8:06 p.m. this 2nd day of August, 2008