



HOUSE BILL 97: 2015 Appropriations Act, Sec. 32.19: Local Sales Tax Distribution

2015-2016 General Assembly

Committee:

Introduced by:

Analysis of: Sec. 32.19 of S.L. 2015-241

Date:

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SUMMARY: *Sec. 32.19 of S.L. 2015-241, as amended by Sec. 10.1(e1) of S.L. 2015-268, carves out a portion of the local option sales tax revenue and distributes that amount to the counties whose revenue-raising capacity from the local option sales taxes is less than it would be if the distribution of the revenue from the taxes was made on a per capita basis. The carve-out amount to be distributed in fiscal year 2016-2017 is \$84.8 million. This amount is to be adjusted each fiscal year thereafter based upon the annual percentage change in the 2-cent local option sales taxes collected in the previous fiscal year. Seventy-nine counties will receive an allocation from the distribution. A county's allocation percentage is set by statute. The amount allocated to a county must be shared with the municipalities in that county. The General Assembly must periodically review the allocation percentages.*

This section becomes effective July 1, 2016, and applies to local option sales and use taxes collected on or after that date and distributed to counties and cities on or after September 1, 2016.

CURRENT LAW: The State authorized counties to levy a one-cent local option sales tax in 1971, a one-half cent local option sales tax in 1983, and a second one-half cent local option sales tax in 1985. All 100 counties levy these local option sales taxes, which total two cents per dollar spent. The General Assembly authorized these local option sales taxes respectively under Articles 39¹, 40, and 42 of Chapter 105 of the General Statutes. The taxes levied under these Articles are allocated as follows:

- The one-cent local option sales tax authorized under Article 39 is distributed among the 100 counties based on the point of collection (POC).
- The first one-half cent local option sales tax authorized under Article 40 is distributed among the counties based on POC. When originally enacted in 1983, this tax was distributed among the taxing counties on a per capita basis; the General Assembly changed the distribution method to POC in 2007.
- The second one-half cent local option sales tax authorized under Article 42 is distributed among the counties on a per capita basis.

The local option sales tax revenue allocated to a county under Articles 39, 40, and 42 must be shared with that county's municipalities. The allocated amount is apportioned between each county and its municipalities using either a per capita or an ad valorem method.² Each county must select between

¹ Mecklenburg County's authority to levy the First One Cent Local Government Sales and Use Tax comes from Chapter 1096 of the 1967 Session Laws rather than from Article 39. Section 10.1(e1) through (3e4) of S.L.2015-268 note this exception each time Article 39 is used in the statute.

² A few counties have adopted, by either local legislation or court order, a different distribution method.

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these two methods, and the method in effect on July 1 of a year must remain in use until the next June 30th.

The General Assembly has authorized a local option sales tax for public transportation under Article 43 of Chapter 105 of the General Statutes³, and a quarter-cent local option sales tax under Article 46 of the same.⁴ Both of these tax levies are distributed on POC. A county may only enact these taxes if a majority of those voting in a county referendum vote for the levy of the tax. The tax revenue is not shared with the municipalities. Three counties have levied a local option sales tax for public transportation under Article 43, Mecklenburg, Orange and Durham counties. As of January 1, 2016, twenty-nine counties have levied a local option sales tax under Article 46. The provisions of this section do not impact the tax levies made under Article 43 or Article 46.

BILL ANALYSIS: Section 32.19 of S.L. 2015-241, as amended by Section 10.1(e1) of S.L. 2015-268, does not change the allocation and distribution method for the two-cent local option sales taxes; that allocation remains 75% POC and 25% per capita. It does carve out an amount from the total collections of the two-cent local option sales taxes before the remaining revenue is allocated and distributed to the taxing counties and their municipalities. The carve-out amount is allocated to 79 counties based upon a statutory allocation percentage. The amount allocated to a county must be shared with the municipalities in that county. The Secretary of Revenue will distribute the revenue to the counties and cities at the same time the local option sales tax revenues are distributed. A county must use the revenue it receives from this distribution for economic development, public education, or community college purposes. A municipality may use the revenue it receives from this distribution for any public purpose.

The stated purpose of the carve-out amount is to address sales tax leakage that results from the different revenue-raising capacity of local option sales taxes in each taxing county. Some taxing counties generate a substantial portion of their sales tax revenue from residents of other counties who purchase goods and services in that county. The taxing jurisdictions that tend to generate sales tax revenue from non-residents are those that have urban areas, large commuter populations, regional retail centers, and/or high rates of tourism.⁵

The carve-out amount in fiscal year 2016-17 is \$84.8 million. This amount is based upon a Fiscal Research Division estimate of the total amount of additional local option sales tax revenue that some counties would have received in fiscal year 2016-17 if the local option sales tax revenue collected that fiscal year under Articles 39, 40, and 42 were to be distributed among counties 50% POC and 50% per capita.⁶ The estimate is based upon a sales tax base that did not include the sales tax base expansion to repair, maintenance, and installation services as enacted in Section 32.18 of this act. For each subsequent fiscal year, the carve-out amount is the amount for the preceding fiscal year adjusted by the same percentage as the annual percentage change in the two-cent local option sales taxes collected for the preceding fiscal year.⁷

The carve-out amount is allocated among the 79 counties estimated to receive more under a 50% POC and 50% per capita distribution of the two-cent local option sales taxes than they would receive under a

³ For Durham, Forsyth, Guilford, Orange, Mecklenburg, and Wake Counties, the authorization is for one-half cent; for the other 94 counties, the authorization is for one-quarter cent.

⁴ The revenue generated by the one-quarter cent local option sales tax may be used for any public purpose.

⁵ *White Paper on Equity of LOST Revenue in North Carolina*, by Whitney Afonso, PhD, School of Government, University of North Carolina at Chapel Hill. Afonso prepared this paper in 2015 for the North Carolina Association of County Commissioners.

⁶ Based upon that estimate, 79 counties would have received more revenue. The remaining 21 counties would receive less revenue. Any negative numbers were dismissed for purposes of determining the \$84.8 million set-aside amount.

⁷ If the total local option sales tax collected under Articles 39, 40, and 42 increases by 2% in fiscal year 2016-17 over fiscal year 2015-16, then the set-aside amount for 2017-18 will increase by 2%: \$84.8 million * 2% = \$86.5 million.

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75% POC and 25% per capita distribution. The statute⁸ lists each county and the county's allocation percentage of the distribution amount.⁹ The allocation percentage for each county remains the same until the General Assembly changes it.¹⁰

The carve-out amount is to be deducted proportionately each month from the local option sales tax collections under Articles 39, 40, and 42.¹¹ The Fiscal Research Division estimates that the sales tax base expansion enacted by Section 32.18 of this act will increase the total local option sales taxes collected under Articles 39, 40, and 42 by \$67.2 million. To help offset the deduction of the carve-out amount so that no county will receive less local option sales tax revenue in fiscal year 2016-17 than it would otherwise receive without the changes made by this section and by section 32.18 of this act, the Secretary of Revenue is directed to annually withhold \$17.6 million from State sales and use tax collections. The State's contribution of \$17.6 million is to be withheld in equal monthly installments and allocated proportionately to the local option sales tax collections to be distributed each month under Articles 39, 40, and 42. The State contribution amount does not change each year, and it does not have a sunset.

⁸ G.S. 105-524, as enacted by this act.

⁹ If a county would receive less under a 50% POC/50% per capita allocation, then that county's allocation percentage is 0. If a county would receive more under a 50% POC/50% per capita allocation, then the statutory allocation percentage for that county reflects how much more it would receive in fiscal year 2016-17 under a 50% POC/50% per capita allocation than it would otherwise receive under the current 75% POC/25% per capita allocation.

¹⁰ The statute provides that the General Assembly will periodically review the allocation percentages.

¹¹ That means 50% of the set-aside amount is deducted from the one-cent local tax collections distributed under Article 39; 25% from the one-half cent collections distributed under Article 40, and the remaining 25% from the second one-half cent collections distributed under Article 42.