

NORTH CAROLINA GENERAL ASSEMBLY
1971 SESSION

CHAPTER 77
SENATE BILL 81

AN ACT TO ENABLE EACH COUNTY TO IMPOSE AND LEVY A SALES AND USE
TAX OF 1% UPON CERTAIN TAXABLE TRANSACTIONS.

The General Assembly of North Carolina do enact:

Section 1. Division IX of Article 5 of Chapter 105 of the General Statutes, known as the "Local Option Sales and Use Tax Act", is repealed in its entirety.

Sec. 2. Chapter 105 of the General Statutes is amended by adding a new subchapter VIII at the end thereof, to read as follows:

**"SUBCHAPTER VIII. LOCAL GOVERNMENT
SALES AND USE TAX**

"Article 39.

"Local Government Sales and Use Tax

"§ 105-463. **Short title.** — This article shall be known as the 'Local Government Sales and Use Tax Act.'

"§ 105-464. **Purpose and intent.** — It is the purpose of this article to afford the counties and municipalities of this State with opportunity to obtain an added source of revenue with which to meet their growing financial needs by providing all counties of the State with authority to levy a one per cent (1%) sales and use tax as hereinafter provided.

"§ 105-465. **County election as to adoption of local sales and use tax.** — The board of elections of any county, upon the written request of the board of county commissioners thereof, or upon receipt of a petition signed by qualified voters of the county equal in number to at least fifteen per cent (15%) of the total number of votes cast in the county, at the last preceding election for the office of Governor, shall call a special election for the purpose of submitting to the voters of the county the question of whether a one per cent (1%) sales and use tax as hereinafter provided will be levied.

The special election shall be held under the same rules and regulations applicable to the election of members of the General Assembly, except that no absentee ballots may be used. No new registration of voters shall be required. All qualified voters in the county who are properly registered not later than twenty-one (21) days (excluding Saturdays and Sundays) prior to the election shall be entitled to vote at said election. The county board of elections shall give at least twenty (20) days' public notice prior to the closing of the registration books for the special election.

The county board of elections shall prepare ballots for the special election which shall contain the words, 'FOR the one per cent (1%) local sales and use tax only on those items presently covered by the three per cent (3%) sales and use tax,' and the words, 'AGAINST the one per cent (1%) local sales and use tax only on those items presently covered by the three per cent (3%) sales and use tax', with appropriate squares to that each voter may designate his vote by his cross (x) mark.

The county board of elections shall fix the date of the special election; provided, however, that the special election shall not be held on the day of any biennial election for county officers, nor within sixty (60) days thereof, nor within one (1) year from the date of the last preceding special election under this section.

"§ 105-466. Levy of tax. — (a) In the event a majority of those voting in a special election held pursuant to G.S. 105-465 shall approve the levy of the local sales and use tax, the board of county commissioners may, by resolution, proceed to levy the tax.

(b) In addition, the board of county commissioners may, in the event no election has been held under the provisions of G.S. 105-465 in which the tax has been defeated, after not less than ten (10) days' public notice and after a public hearing held pursuant thereto, by resolution, impose and levy the local sales and use tax to the same extent and with the same effect as if the levy of the tax had been approved in an election held pursuant to G.S. 105-465 except that in such case, the revenue produced thereby shall be expended for necessary expenses only.

(c) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the board of county commissioners in the resolution levying the tax, which shall in no case be earlier than the first day of the second succeeding calendar month after the date of the adoption of the resolution.

(d) The board of county commissioners, upon adoption of said resolution, shall cause a certified copy of the resolution to be delivered immediately to the Commissioner of Revenue, accompanied by a certified statement from the county board of elections, if applicable, setting forth the results of any special election approving the tax in the county. Thereupon, the Commissioner of Revenue shall proceed as authorized in this article to administer the tax in such county, unless said county board of commissioners shall notify the Commissioner of Revenue in writing that, pursuant to a resolution duly adopted by said board, the tax will be collected and administered by the taxing county.

"§ 105-467. Sales tax imposed; limited to items on which the State now imposes a three per cent (3%) sales tax. — The sales tax which may be imposed under this article is limited to a tax at the rate of one per cent (1%) of: (1) the sales price of those articles of tangible personal property now subject to the three per cent (3%) sales tax imposed by the State under G.S. 105-164.4(1); (2) the gross receipts derived from the lease or rental of tangible personal property where the lease or rental of such property is an established business now subject to the three per cent (3%) sales tax imposed by the State under G.S. 105-164.4(2); (3) the gross receipts derived from the rental of any room or lodging furnished by any hotel, motel, inn, tourist camp or other similar accommodations now subject to the three per cent (3%) sales tax imposed by the State under G.S. 105-164.4(3); and (4) the gross receipts derived from services rendered by laundries, dry cleaners, cleaning plants and similar type businesses now subject to the three per cent (3%) sales tax imposed by the State under G.S. 105-164.4(4).

The exemptions and exclusions contained in G.S. 105-164.13 and the refund provisions contained in G.S. 105-164.14 shall apply with equal force and in like manner to the local sales and use tax authorized to be levied and imposed under this article. A taxing county shall have no authority, with respect to the local sales and use tax imposed under this article to change, alter, add to or delete any refund provisions contained in G.S. 105-164.14, or any exemptions or exclusions contained in G.S. 105-164.13, or which are elsewhere provided for.

The local sales tax authorized to be imposed and levied under the provisions of this article shall be applicable to such retail sales, leases, rentals, rendering of services, furnishing of rooms, lodgings or accommodations and other taxable transactions which are made, furnished or rendered by retailers whose place of business is located within the taxing county. The tax imposed shall apply to the furnishing of rooms, lodging or other accommodations within the county which are rented to transients.

However, no tax shall be imposed where the tangible personal property sold is delivered to the purchaser at a point outside the taxing county by the retailer or his agent, or by a common carrier.

"§ 105-468. Use tax imposed; limited to items upon which the State now imposes a three per cent (3%) use tax. — The use tax which may be imposed under this article shall be at the

rate of one per cent (1%) of the cost price of each item or article of tangible personal property when the same is not sold but used, consumed or stored for use or consumption in the taxing county, except that no tax shall be imposed upon such tangible personal property when, if the property were subject to the use tax imposed by G.S. 105-164.6, such property would be taxed by the State of North Carolina at a rate less than three per cent (3%).

Every retailer engaged in business in this State and in the taxing county and required to collect the use tax levied by G.S. 105-164.6 shall also collect the one per cent (1%) use tax when such property is to be used, consumed or stored in the taxing county, said one per cent (1%) use tax to be collected concurrently with the State's use tax; but no retailer not required to collect the use tax levied by G.S. 105-164.6 shall be required to collect the one per cent (1%) use tax. The use tax contemplated by this section shall be levied against the purchaser, and his liability for such use tax shall be extinguished only upon his payment of the use tax to the retailer, where the retailer is required to collect the tax, or to the Commissioner of Revenue, or to the taxing county, as appropriate, where the retailer is not required to collect the tax.

Where a local sales or use tax has been paid with respect to said tangible personal property by the purchaser thereof, either in another taxing county within the State, or in a taxing jurisdiction outside the State where the purpose of the tax is similar in purpose and intent to the tax which may be imposed pursuant to this article, said tax may be credited against the tax imposed under this section by a taxing county upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due the taxing county under this section, the purchaser shall pay to the Commissioner of Revenue or to the taxing county, as appropriate, an amount equal to the difference between the amount so paid in the other taxing county or jurisdiction and the amount due in the taxing county hereunder. The Commissioner of Revenue or the taxing county, as appropriate, may require such proof of payment in another taxing county or jurisdiction as is deemed to be necessary and proper. The use tax levied hereunder shall not be subject to credit for payment of any state sales or use tax not imposed for the benefit and use of counties and municipalities.

"§ 105-469. Collection and administration of local sales and use tax; authorization to promulgate rules and regulations. — Unless the county board of commissioners shall have notified the Commissioner to the contrary, as provided in G.S. 105-466(d), the Commissioner of Revenue shall collect the local sales and use tax imposed by a taxing county pursuant to the provisions of this article and shall be charged with the duty of administering the local sales and use tax authorized to be imposed by this article. In addition to the present statutory provisions authorizing the Commissioner of Revenue to adopt and promulgate rules and regulations pertaining to the administration and collection of taxes, the Commissioner of Revenue is empowered to promulgate such additional rules and regulations as are necessary and proper for the implementation of this article.

"§ 105-470. Retail bracket system; application to local sales and use tax. — For the convenience of the retailer in collecting the State sales or use tax due at the rate of three per cent (3%) and the local sales or use tax due at the rate of one per cent (1%), and to facilitate the administration of this article, every retailer engaged in or continuing in business in any county wherein the tax imposed and levied herein shall be applicable, is required by this article to add to the sales price and collect from the purchaser on all taxable sales an amount equal to the following:

No amount on sales of less than 10¢

1¢ on sales of 10¢ to 29¢

2¢ on sales of 30¢ to 59¢

3¢ on sales of 60¢ to 84¢

4¢ on sales of 85¢ to \$1.12

Sales over \$1.12 — straight four per cent (4%) with major fractions governing.

The use of the bracket system, set out above, shall not relieve the retailer from the duty and liability of collecting and remitting to the Commissioner of Revenue, or to a taxing county, as appropriate, an amount equal to the tax imposed by the taxing county under this article.

"§ 105-471. Retailer to collect sales tax. — Every retailer whose place of business is in a taxing county shall on and after the levy of the tax herein authorized collect the one per cent (1%) local sales tax provided by this article.

The tax to be collected under this article shall be collected as a part of the sales price of the item of tangible personal property sold, the cost price of the item of tangible personal property used, or as a part of the charge for the rendering of any services, renting or leasing of tangible personal property, or the furnishing of any accommodation taxable hereunder. The tax shall be stated and charged separately from the sales price or cost price and shall be shown separately on the retailer's sales record and shall be paid by the purchaser to the retailer as trustee for and on account of the State or county wherein the tax is imposed. It is the intent and purpose of this article that the local sales and use tax herein authorized to be imposed and levied by a taxing county shall be added to the sales price and that the tax shall be passed on to the purchaser instead of being borne by the retailer. The Commissioner of Revenue shall design, print and furnish to all retailers in a taxing county in which he shall collect and administer the tax the necessary forms for filing returns and instructions to insure the full collection from retailers, and the Commissioner may adapt the present form used for the reporting and collecting of the State sales and use tax to this purpose.

"§ 105-472. Disposition and distribution of taxes collected. — With respect to the counties in which he shall collect and administer the tax, the Commissioner of Revenue shall, on a quarterly basis, distribute to each taxing county and to the municipalities therein the net proceeds of the tax collected in that county under this article which amount shall be determined by deducting taxes refunded, the cost to the State of collecting and administering the tax in the taxing county and such other deductions as may be properly charged to the taxing county, from the gross amount of the tax remitted to the Commissioner of Revenue from the taxing county. The Commissioner shall determine the cost of collection and administration, and that amount shall be retained by the State before distribution of the net proceeds of the tax. For the purposes of this article, 'municipalities' shall mean 'incorporated cities and towns'.

The board of county commissioners shall, in the resolution levying the tax, determine that the net proceeds of the tax shall be distributed in one of the following methods and thereafter said proceeds shall be distributed in accordance therewith:

(a) The amount distributable to a taxing county and to the municipalities therein from the net proceeds of the tax collected therein shall be determined upon the following basis: The net proceeds of the tax collected in a taxing county shall be distributed to that taxing county and to the municipalities therein upon a per capita basis according to the total population of the taxing county, plus the total population of the municipalities therein; provided, however, that "total population" of a municipality lying within more than one county shall be only that part of its population which lives within the taxing county. For this purpose, the Commissioner of Revenue shall determine a per capita figure by dividing the net proceeds of the tax collected under this article for the preceding quarter within a taxing county by the total population of that taxing county plus the total population of all municipalities therein according to the most recent annual estimates of population as certified to the Commissioner of Revenue by the Director of the North Carolina Department of Administration. The per capita figure thus derived shall be multiplied by the population of the taxing county and each respective municipality therein according to the most recent annual estimates of population as certified to the Commissioner of Revenue by the Director of the Department of Administration, and each respective product shall be the amount to be distributed to each taxing county and to each municipality therein. The Director of the Department of Administration shall annually cause to be prepared and shall

certify to the Commissioner of Revenue such reasonably accurate population estimates of all counties and municipalities in the State as may be practicably developed; or

(b) The net proceeds of the tax collected in a taxing county shall be divided between the county and the municipalities therein in proportion to the total amount of ad valorem taxes levied by each on property having a tax situs in the taxing county during the fiscal year next preceding such distribution. For purposes of this section, the amount of the ad valorem taxes levied by such county or municipality shall include any ad valorem taxes levied by such county or municipality in behalf of a taxing district or districts and collected by the county or municipality. In computing the amount of tax proceeds to be distributed to any county or municipality, the amount of any ad valorem taxes levied but not substantially collected shall be ignored. Each county and municipality receiving a distributable share of the sales and use tax levied under this article shall in turn immediately share the proceeds with any district or districts in behalf of which the county or municipality levied ad valorem taxes in the proportion that the district levy bears to the total levy of the county or municipality.

Where local use taxes, levied pursuant to this article, or to any other local sales tax act, which cannot be identified as being attributable to any particular taxing county are collected and remitted to the Commissioner, he shall apportion said taxes to the taxing counties in the same proportion that the local sales and use taxes collected each month in a taxing county bears to the total local sales and use taxes collected in all taxing counties each month during the quarter for which a distribution is to be made, and the total net proceeds shall then be distributed as above provided.

"§ 105-473. Repeal of levy. — (a) The board of elections of any county, upon the written request of the board of county commissioners thereof, or upon receipt of a petition signed by qualified voters of the county equal in number to at least fifteen per cent (15%) of the total number of votes cast in the county at the last preceding election for the office of Governor, shall call a special election for the purpose of submitting to the voters of the county the question of whether the levy of a one per cent (1%) sales and use tax theretofore levied should be repealed.

The special election shall be held under the same rules and regulations applicable to the election of members of the General Assembly, except that no absentee ballots may be used. No new registration of voters shall be required. All qualified voters in the county who are properly registered not later than twenty-one (21) days (excluding Saturdays and Sundays) prior to the election shall be entitled to vote at said election. The county board of elections shall give at least twenty (20) days' public notice prior to the closing of the registration books for the special election.

The county board of elections shall prepare ballots for the special election which shall contain the words 'FOR repeal of the one per cent (1%) local sales and use tax levy', and the words 'AGAINST repeal of the one per cent (1%) local sales and use tax levy', with appropriate squares so that each voter may designate his vote by his cross (x) mark.

The county board of elections shall fix the date of the special election; provided, however, that the special election shall not be held on the day of any biennial election for county officers, nor within sixty (60) days thereof, nor within one (1) year from the date of the last preceding special election held under this section.

(b) In the event a majority of those voting in a special election held pursuant to this section shall approve the repeal of the levy, the board of county commissioners shall, by resolution, proceed to terminate the levy and the imposition of the tax in the taxing county unless and until the tax is levied again as provided in G.S. 105-466(a).

(c) In addition, the board of county commissioners may, by resolution and without the necessity of an election proceed to terminate the levy and the imposition of the tax in the taxing county if the tax was levied under the provisions of G.S. 105-466(b).

(d) No termination of taxes levied and imposed under this article shall be effective until the end of the fiscal year in which the repeal election was held.

(e) If the Commissioner of Revenue collects and administers the tax in a taxing county, the board of county commissioners, upon adoption of said resolution, shall cause a certified copy of the resolution to be delivered immediately to the Commissioner of Revenue, accompanied by a certified statement from the county board of elections, if applicable, setting forth the results of any special election approving the repeal of the tax in the county.

(f) No liability for any tax levied under this article which shall have attached prior to the effective date on which a levy is terminated shall be discharged as a result of such termination, and no right to a refund of tax or otherwise, which shall have accrued prior to the effective date on which a levy is terminated shall be denied as a result of such termination.

"§ 105-474. Definitions; construction of article; remedies and penalties. — The definitions set forth in G.S. 105-164.3 shall apply to this article insofar as such definitions are not inconsistent with the provisions of this article, and all other provisions of Article 5 and of Article 9 of subchapter 1, Chapter 105 of the General Statutes, as the same relate to the North Carolina Sales and Use Tax Act shall be applicable to this article unless such provisions are inconsistent with the provisions of this article. The administrative interpretations made by the Commissioner of Revenue with respect to the North Carolina Sales and Use Tax Act, to the extent not inconsistent with the provisions of this article, may be uniformly applied in the construction and interpretation of this article. It is the intention of this article that the provisions of this article and the provisions of the North Carolina Sales and Use Tax Act, insofar as practicable, shall be harmonized.

The provisions with respect to remedies and penalties applicable to the North Carolina Sales and Use Tax Act, as contained in Article 5 and Article 9, subchapter 1, Chapter 105 of the General Statutes, shall be applicable in like manner to the tax authorized to be levied and collected under this article, to the extent that the same are not inconsistent with the provisions of this article."

Sec. 3. The provisions of Section 2 of this act shall not be applicable with respect to any building materials purchased for the purpose of fulfilling any lump sum or unit price contract entered into or awarded, or entered into or awarded pursuant to any bid made, before the effective date of the tax imposed by a taxing county when, absent the provisions of this section, such building materials would otherwise be subject to tax under the provisions of Section 2 of this act.

Sec. 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 5. This act shall be in full force and effect upon its ratification.

In the General Assembly read three times and ratified, this the 15th day of March, 1971.