

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 838
SENATE BILL 630

AN ACT TO AMEND THE MECKLENBURG COUNTY SALES AND USE TAX ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1096 of the 1967 Session Laws is hereby amended by adding a new Section 10.1, which shall read as follows:

"Sec. 10.1. Amendment of levy.—(a) Purpose and Intent. It is the purpose of this section to provide a way for the qualified voters of Mecklenburg County to determine by special election whether to delete from Chapter 1096 of the 1967 Session Laws the provision that 'the maximum amount of additional tax imposed by this act on one sale shall be ten dollars (\$10.00)', and to make the use tax provisions of the Mecklenburg County Sales and Use Tax Act consistent with the use tax provisions of the Local Government Sales and Use Tax Act.

(b) County Election as to Amendment of Mecklenburg County Sales and Use Tax Act. The Board of Elections of Mecklenburg County, upon the written request of the Mecklenburg County Board of Commissioners, or upon receipt of a petition signed by qualified voters of Mecklenburg County equal in number to at least fifteen percent (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 one percent (1%) sales and use tax authorized by Chapter 1096 of the 1967 Session Laws, adopted by election held on November 13, 1967, and levied effective March 1, 1968, will be amended as hereinafter provided and, as amended, levied.

The special election shall be held under the same rules and regulations applicable to the election of members of the General Assembly. A new registration of voters is not required and all qualified voters who are properly registered prior to the special election shall be entitled to vote at said election. The Mecklenburg County Board of Elections shall give public notice prior to the closing of the registration books for the special election, as required by G.S. 163-33(8).

The Mecklenburg County Board of Elections shall prepare ballots for the special election which shall contain the words, 'FOR amending the one percent (1%) Mecklenburg County Sales and Use Tax Act to delete the ten dollar (\$10.00) maximum sales and use tax per sale and to make the use tax provisions of the Mecklenburg County Sales and Use Tax Act consistent with the use tax provisions of the Local Government Sales and Use Tax Act', and the words, 'AGAINST amending the one percent (1%) Mecklenburg County Sales and Use Tax Act to delete the ten dollar (\$10.00) maximum

sales and use tax per sale and to make the use tax provisions of the Mecklenburg County Sales and Use Tax Act consistent with the use tax provisions of the Local Government Sales and Use Tax Act', with appropriate squares so that each voter may designate by his cross (X) mark his preference.

The Mecklenburg 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 60 days thereof.

(c) Effective Date of Amended Tax After Special Election Authorizing Levy. In the event a majority of those voting in a special election held under this section shall approve the amendment of the Mecklenburg County Sales and Use Tax Act, and the levy of the sales and use tax pursuant to the act, as amended, the Mecklenburg County Board of Elections shall immediately send a certified statement of the results of the special election to the Secretary of Revenue.

The Mecklenburg County sales and use tax being levied on the date of the special election shall continue to be levied, administered and collected until the last day of the next succeeding calendar month after the date the Secretary of Revenue receives the certified statement from the Mecklenburg County Board of Elections of the results of the special election, after which date it shall no longer be levied.

The Mecklenburg County sales and use tax authorized to be levied pursuant to the Mecklenburg County Sales and Use Tax Act as amended by subsections (d) through (g) of this section shall be imposed on the first day of the second succeeding calendar month after the Secretary of Revenue receives the certified statement of the results of the special election (this day being also described as being the day next following the day the Mecklenburg County sales and use tax being levied on the date of the special election shall cease to be levied).

No liability for the Mecklenburg County sales and use tax being levied on the date of the special election which shall have attached prior to the effective date on which the 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 the levy is terminated, shall be denied.

In the event a majority of those voting in the special election held under this section do not vote for the amendment, the Mecklenburg County sales and use tax being levied on the date of the special election shall continue to be levied, administered and collected as authorized by Chapter 1096 of the 1967 Session Laws.

(d) Amended Sales Tax Imposed; Items on Which the State Now Imposes a Three Percent (3%) Sales Tax. In the event a majority of those voting in the special election shall approve the amendment of the Mecklenburg County Sales and Use Tax Act, Section 4 of Chapter 1096 of the 1967 Session Laws shall remain in effect and shall govern the levy of the Mecklenburg County sales and use tax, as amended, except that the last sentence of Section 4 thereof, which reads as follows, is repealed and shall have no effect on the levy of the amended Mecklenburg County sales and use tax, from and after its effective date: 'The maximum amount of additional tax imposed by this act on one sale shall be ten dollars (\$10.00)'.

(e) Amended Use Tax Imposed; Limited to Items Upon Which the State Now Imposes a Use Tax Under G.S. 105-164.6. In the event a majority of those voting in the special election shall approve the amendment of the Mecklenburg County Sales and Use Tax Act, Section 5 of Chapter 1096, Session Laws of 1967, as amended by Section 3 of Chapter 1100, Session Laws of 1979 is rewritten in its entirety, to read as follows:

'Sec. 5. The use tax which Mecklenburg County may impose under this division shall be at the rate of one percent (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 Mecklenburg 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 percent (3%).

Every retailer engaged in business in this State and in Mecklenburg County and required to collect the use tax levied by G.S. 105-164.6 shall also collect the one percent (1%) use tax when such property is to be used, consumed or stored in said county, said one percent (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 percent (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 Secretary of Revenue, 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 section, said tax may be credited against the tax imposed by this section by Mecklenburg 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 Mecklenburg County under this section, the purchaser shall pay to the Secretary of Revenue an amount equal to the difference between the amount so paid in the other taxing county or jurisdiction and the amount due in Mecklenburg County hereunder. The Secretary of Revenue 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. No credit shall be given under this section for sales or use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not grant similar credit for sales taxes paid under this act.'

The purpose of this amendment to Section 5 of Chapter 1096 of the 1967 Session Laws is to make the imposition of the one percent (1%) use tax in Mecklenburg County the same as in all counties in the State which have imposed a sales and use tax pursuant to Article 39, Subchapter VIII of Chapter 105 of the General Statutes.

(f) Retail Bracket System; Application to Mecklenburg County Sales and Use Tax. In the event a majority of those voting in the special election shall approve the amendment of the Mecklenburg County Sales and Use Tax Act, Section 7 of said act

shall remain in effect and shall govern the levy of the Mecklenburg County sales and use tax, as amended, except that the last sentence of Section 7, which reads as follows, is repealed and shall have no effect on the levy of the amended Mecklenburg County sales and use tax: 'The maximum amount of additional tax imposed by the act on one sale shall be ten dollars (\$10.00).'

(g) Remaining Portions of Chapter 1096 of the 1967 Session Laws to Remain in Effect. In the event a majority of those voting in the special election shall approve the amendment of the Mecklenburg County Sales and Use Tax Act, the Mecklenburg County sales and use tax, as amended, shall be levied, administered and collected as set forth in Chapter 1096 of the 1967 Session Laws, except as hereinabove provided."

Sec. 2. Limit on Frequency of Special Elections. Only one special election can be held in any 12-month period pursuant to the provisions of Section 1 of this act.

Sec. 3. The provisions of Section 1 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 pursuant to such section when, absent the provisions of this section, such building materials would otherwise be subject to a greater amount of tax under the provisions of Section 1 of this act than they would have been had that section not become effective.

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 the provisions or applications of this 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 is effective upon ratification.

In the General Assembly read three times and ratified, this the 7th day of July, 1981.