

SUBCHAPTER VIII. LOCAL GOVERNMENT SALES AND USE TAX.

Article 39.

First One-Cent (1¢) Local Government Sales and Use Tax.

§ 105-463. Short title.

This Article shall be known as the First One-Cent (1¢) Local Government Sales and Use Tax Act. (1971, c. 77, s. 2; 2002-123, s. 7(b).)

§ 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 percent (1%) sales and use tax as hereinafter provided. (1971, c. 77, s. 2.)

§ 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, or upon receipt of a petition signed by qualified voters of the 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 a one percent (1%) sales and use tax will be levied.

The special election shall be held under the same rules applicable to the election of members of the General Assembly.

The county board of elections shall prepare ballots for the special election. The question presented on the ballot shall be "FOR one percent (1%) local sales and use tax on items subject to State sales and use tax at the general State rate and on food" or "AGAINST one percent (1%) local sales and use tax on items subject to State sales and use tax at the general State rate and on food".

The county board of elections shall fix the date of the special election on a date permitted by G.S. 163A-1592, except that the special election shall not be held within one year from the date of the last preceding special election under this section. (1971, c. 77, s. 2; 1981, c. 560, s. 2; 1991, c. 689, s. 315; 1996, 2nd Ex. Sess., c. 13, s. 1.2; 2013-381, s. 10.8; 2017-6, s. 3.)

§ 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 within five years under the provisions of G.S. 105-465 in which the tax has been defeated, after not less than 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.

(b1) If the board of commissioners of a county has imposed the local sales and use tax authorized by this Article and any or all of the taxes authorized by Articles 40 and 42 of this Chapter, with or without a special election, and the county subsequently becomes part of a consolidated city-county, the taxes shall continue in effect unless and until repealed by the governing board of the consolidated city-county.

(c) Collection of the tax, and liability therefor, must begin and continue only on and after the first day of a calendar quarter, as set by the board of county commissioners in the resolution levying the tax. The county must give the Secretary at least 90 days advance notice of a new tax levy or tax rate change. The applicability of a new tax or a tax rate change to purchases from printed catalogs becomes effective on the first day of a calendar quarter after a minimum of 120 days from the date the Secretary notifies the seller that receives orders by means of a catalog or similar publication of the new tax or tax rate change. A local rate increase may only be effective on the first day of a calendar quarter after a minimum of 60 days' notice to sellers by the Secretary.

(d) Upon adoption of a resolution levying the tax, the board of county commissioners shall immediately deliver a certified copy of the resolution to the Secretary, 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. Upon receipt of these documents, the Secretary shall collect and administer the tax as provided in this Article. (1971, c. 77, s. 2; 1973, c. 302; c. 476, s. 193; 1977, c. 372, s. 1; 1993, c. 485, s. 22; 1995, c. 461, s. 16; 2000-120, s. 12; 2001-414, s. 28; 2003-284, s. 45.10; 2010-95, s. 12; 2016-5, s. 3.17(b).)

§ 105-467. Scope of sales tax.

(a) Sales Tax. – The sales tax that may be imposed under this Article is limited to a tax at the rate of one percent (1%) of the following:

- (1) A retailer's net taxable sales and gross receipts that are subject to the general rate of sales tax imposed by the State under G.S. 105-164.4 except the tax does not apply to the sales price of an item taxable under G.S. 105-164.4(a)(1a).
- (2) through (4) Repealed by Session Laws 2011-330, s. 45, effective June 27, 2011.
- (5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but is exempt from the State sales and use tax pursuant to G.S. 105-164.13B.
- (5a) The sales price of a bundled transaction that includes food subject to tax under subdivision (5) of this subsection, if the price of the food exceeds ten percent (10%) of the price of the bundle. A retailer must determine the price of food in a bundled transaction in accordance with G.S. 105-164.4D.
- (5b) Repealed by Session Laws 2013-3.4(c), effective July 1, 2014, and applicable to purchases made on or after that date.
- (6), (7) Repealed by Session Laws 2011-330, s. 45, effective June 27, 2011.
- (8) The presumed sales price of an item of tangible personal property under G.S. 105-164.12B.

(b) Exemptions and Refunds. – The State exemptions and exclusions contained in Article 5 of Subchapter I of this Chapter, except for the exemption for food in G.S. 105-164.13B, apply to the local sales and use tax authorized to be levied and imposed under this Article. The State refund provisions contained in G.S. 105-164.14 and G.S. 105-164.14A apply to the local sales and use tax authorized to be levied and imposed under this Article. A refund of an excessive or erroneous State sales tax collection allowed under G.S. 105-164.11 and a refund of State sales tax paid on a rescinded sale or cancelled service contract under G.S. 105-164.11A apply to the local sales and use tax authorized to be levied and imposed under this Article. The aggregate annual local refund amount allowed an entity under G.S. 105-164.14(b) for the State's fiscal year may not exceed thirteen million three hundred thousand dollars (\$13,300,000).

Except as provided in this subsection, a taxing county may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax. A local school administrative unit and a joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and equipment on their behalf is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services. Sales and use tax liability indirectly incurred by the entity as part of a real property contract for real property that is owned or leased by the entity and is a capital improvement for use by the entity is considered a sales or use tax liability incurred on direct purchases by the entity for the purpose of this subsection. The refund allowed under this subsection does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund is due in the same time and manner as provided in G.S. 105-164.14(c). Refunds applied for more than three years after the due date are barred.

(c) Sourcing. – The sourcing principles in Article 5 of Subchapter I of this Chapter apply in determining whether the local sales tax applies to a transaction. (1971, c. 77, s. 2; 1983 (Reg. Sess., 1984), c. 1097, s. 9; 1987, c. 557, s. 7; c. 832, s. 4; 1989, c. 692, s. 3.7; 1991, c. 689, s. 316; 1996, 2nd Ex. Sess., c. 13, s. 1.3; 1998-98, s. 30.1; 1998-171, s. 9; 2001-347, s. 2.15; 2001-414, s. 29; 2001-424, s. 34.16(b); 2001-430, s. 13; 2001-487, s. 67(e); 2002-16, s. 12; 2002-159, s. 61; 2005-276, s. 33.23; 2006-66, s. 7.20(a); 2006-162, s. 32; 2007-244, s. 6; 2007-368, s. 2; 2008-107, s. 28.12(c); 2010-166, s. 3.8; 2011-330, s. 45; 2013-316, ss. 3.1(c), 3.4(c), (d); 2013-414, s. 49(b); 2014-3, ss. 6.1(i), 8.2(b); 2015-259, s. 4.2(f); 2016-5, s. 3.8(b); 2016-94, s. 38.5(n); 2017-204, s. 2.9(c).)

§ 105-468. Scope of use tax.

The use tax authorized by this Article is a tax at the rate of one percent (1%) of the purchase price of an item or transaction that is not sold in the taxing county but is for storage, use, or consumption in the taxing county and sourced in accordance with Article 5 of Subchapter I of this Chapter. The tax applies to the same items that are subject to tax under G.S. 105-467. The collection and administration of this tax shall be in accordance with Article 5 of Subchapter I of this Chapter.

Where a local sales or use tax was due and has been paid on an item or transaction by the purchaser in another taxing county within the State, or where a local sales or use tax was due and has been paid 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, the tax paid may be credited against the tax imposed under this section by a taxing county upon the same property or transaction. 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 Secretary 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. The Secretary may require such proof of payment in another taxing county or jurisdiction as is deemed to be necessary. The use tax levied under this Article is not 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 Article. (1971, c. 77, s. 2; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1100, s. 2; 1989, c. 692, s. 3.8; 1991, c. 689, s. 317; 1996, 2nd Ex. Sess., c. 13, s. 1.4; 2012-79, s. 1.10; 2013-414, s. 49(a); 2016-5, s. 3.7(b); 2017-204, s. 2.9(d).)

§ 105-468.1. Certain building materials exempt from sales and use taxes.

The provisions of this Article shall not be applicable with respect to any tangible personal property or digital property purchased for the purpose of fulfilling a real property contract for a capital improvement 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 property would otherwise be subject to tax under the provisions of this Article. (1971, c. 77, s. 3; 2017-204, s. 2.4(e).)

§ 105-469. Secretary to collect and administer local sales and use tax.

(a) The Secretary shall collect and administer a tax levied by a county pursuant to this Article. As directed by G.S. 105-164.13B, taxes levied by a county on food are administered as if they were levied by the State under Article 5 of this Chapter. The references in this section to Article 39 of this Chapter and Chapter 1096 of the 1967 Session Laws and Articles 40 and 42 of this Chapter do not include the adjustments made pursuant to G.S. 105-524. The Secretary must, on a monthly basis, distribute local taxes levied on food to the taxing counties as follows:

- (1) The Secretary must allocate one-half of the net proceeds on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary must then adjust the amount allocated to each county as provided in G.S. 105-486(b). The Secretary must include one-half of the amount allocated under this subdivision in the distribution made under Article 40 of this Chapter and must include the remaining one-half in the distribution made under Article 42 of this Chapter.
- (2) The Secretary must allocate the remaining net proceeds proportionately to each taxing county based upon the amount of sales tax on food collected in the taxing

county in the 1997-1998 fiscal year under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws relative to the total amount of sales tax on food collected in all taxing counties in the 1997-1998 fiscal year under Article 39 of this Chapter and under Chapter 1096 of the 1967 Session Laws. The Secretary must include the amount allocated under this subdivision in the distribution made under Article 39 of this Chapter.

(b) The Secretary shall require retailers who collect use tax on sales to North Carolina residents to ascertain the county of residence of each buyer and provide that information to the Secretary along with any other information necessary for the Secretary to allocate the use tax proceeds to the correct taxing county. (1971, c. 77, s. 2; 1973, c. 476, s. 193; 1993, c. 485, s. 23; 1996, 2nd Ex. Sess., c. 14, s. 12; 2003-284, s. 45.11(a); 2003-416, s. 27(a); 2004-170, s. 32; 2005-435, s. 41; 2015-268, s. 10.1(e2).)

§ 105-470: Repealed by Session Laws 1991, c. 689, s. 318.

§ 105-471. Retailer to collect sales tax.

Every person liable for tax in a taxing county shall on and after the levy of the tax herein authorized collect the one percent (1%) local sales tax provided by this Article. A person is required to collect a local use tax on a transaction if a local sales tax does not apply to the transaction in accordance with G.S. 105-164.8(c).

The tax to be collected under this Article shall be collected as a part of the sales price of an item or transaction subject to tax in accordance with G.S. 105-467. The tax shall be stated and charged separately from the sales price or purchase price and shall be shown separately on the sales record, except as provided in G.S. 105-164.7, and shall be paid by the purchaser to the person liable for the tax 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 person liable for the tax. The Secretary of Revenue shall design the necessary forms for filing returns and instructions to insure the full collection from a person liable for this tax, and the Secretary may adapt the present form used for the reporting and collecting of the State sales and use tax to this purpose. (1971, c. 77, s. 2; 1973, c. 476, s. 193; 2016-5, s. 3.7(c); 2017-204, s. 2.9(e); 2018-5, s. 38.5(w).)

§ 105-472. Disposition and distribution of taxes collected.

(a) County Allocation. – The Secretary shall, on a monthly basis, allocate to each taxing county for which the Secretary collects the tax the net proceeds of the tax collected in that county under this Article. For the purpose of this section, "net proceeds" means the gross proceeds of the tax collected in each county under this Article less taxes refunded, the cost to the State of collecting and administering the tax in the county as determined by the Secretary, and other deductions that may be charged to the county. If the Secretary collects local sales or use taxes in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate the taxes among the taxing counties in proportion to the amount of taxes collected in each

county under this Article during that month and shall include them in the monthly distribution. Amounts collected by electronic funds transfer payments are included in the distribution for the month in which the return that applies to the payment is received.

(b) **Distribution Between Counties and Cities.** – The Secretary shall divide the amount allocated to each taxing county among the county and its municipalities in accordance with the method determined by the county. The board of county commissioners shall, by resolution, choose one of the following methods of distribution:

- (1) **Per Capita Method.** – The net proceeds of the tax collected in a taxing county shall be distributed to that county and to the municipalities in the county on a per capita basis according to the total population of the taxing county, plus the total population of the municipalities in the county. In the case of a municipality located in more than one county, only that part of its population living in the taxing county is considered its "total population". In order to make the distribution, the Secretary shall determine a per capita figure by dividing the amount allocated to each taxing county by the total population of that county plus the total population of all municipalities in the county. The Secretary shall then multiply this per capita figure by the population of the taxing county and by the population of each municipality in the county; each respective product shall be the amount to be distributed to the county and to each municipality in the county. To determine the population of each county and each municipality, the Secretary shall use the most recent annual estimate of population certified by the State Budget Officer.
- (2) **Ad Valorem Method.** – The net proceeds of the tax collected in a taxing county shall be distributed to that county and the municipalities in the county 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 the distribution. For purposes of this section, the amount of the ad valorem taxes levied by a county or municipality includes ad valorem taxes levied by the county or municipality in behalf of a taxing district and collected by the county or municipality. In addition, the amount of taxes levied by a county includes ad valorem taxes levied by a merged school administrative unit described in G.S. 115C-513 in the part of the unit located in the county. In computing the amount of tax proceeds to be distributed to each county and municipality, the amount of any ad valorem taxes levied but not substantially collected shall be ignored. Each county and municipality receiving a distribution of the proceeds of the tax levied under this Article shall in turn immediately share the proceeds with each district 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. Any county or municipality that fails to provide the Department of Revenue with information concerning ad valorem taxes levied by it adequate to permit a timely determination of its appropriate share of tax proceeds collected under this Article may be excluded by the Secretary from each monthly distribution with respect to which the information was not provided in a timely manner, and those tax proceeds shall then be distributed only to the remaining counties or municipalities, as appropriate. For the purpose of computing the distribution of the tax under this subsection to any county and

the municipalities located in the county for any month with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the county and the municipalities in the county, the Department shall use the last property valuation of the public service company that has been certified.

The board of county commissioners in each taxing county shall, by resolution adopted during the month of April of each year, determine which of the two foregoing methods of distribution shall be in effect in the county during the next succeeding fiscal year. In order for the resolution to be effective, a certified copy of it must be delivered to the Secretary in Raleigh within 15 calendar days after its adoption. If the board fails to adopt a resolution choosing a method of distribution not then in effect in the county, or if a certified copy of the resolution is not timely delivered to the Secretary, the method of distribution then in effect in the county shall continue in effect for the following fiscal year. The method of distribution in effect on the first of July of each fiscal year shall apply to every distribution made during that fiscal year.

(b1) Repealed by Session Laws 2008-134, s. 14(b), effective July 28, 2008.

(c) Municipality Defined. – As used in this Article, the term "municipality" means "city" as defined in G.S. 153A-1.

(d) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999. (1971, c. 77, s. 2; 1973, c. 476, s. 193; c. 752; 1979, c. 12, s. 1; 1979, 2nd Sess., c. 1137, s. 49; 1981, c. 4, s. 2; 1985 (Reg. Sess., 1986), c. 934, s. 2; 1991, c. 325, s. 8; 1993, c. 485, s. 24; 1999-458, s. 6; 2001-427, s. 13(a); 2001-487, s. 118(b); 2002-72, s. 5; 2003-349, s. 5; 2004-203, s. 5(j); 2007-323, s. 31.16.3(d); 2008-134, s. 14(b).)

§ 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 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 levy of a one percent (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.

The county board of elections shall prepare ballots for the special election which shall contain the words "FOR repeal of the one percent (1%) local sales and use tax levy," and the words "AGAINST repeal of the one percent (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 on a date permitted by G.S. 163A-1592; provided, however, that the special election shall not be held within one 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) The board of county commissioners, upon adoption of said resolution, shall cause a certified copy of the resolution to be delivered immediately to the Secretary 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. (1971, c. 77, s. 2; 1973, c. 476, s. 193; 1981, c. 560, s. 2; 1995, c. 461, s. 17; 2013-381, s. 10.9; 2017-6, s. 3.)

§ 105-474. Definitions; construction of Article; remedies and penalties.

The definitions set forth in Article 5 of Subchapter I of this Chapter shall apply to this Article insofar as such definitions are not inconsistent with the provisions of this Article, and all other provisions of Articles 5 and 9 of Subchapter I of this Chapter 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 Secretary 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 Articles 5 and 9 of Subchapter I of this Chapter, 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. (1971, c. 77, s. 2; 1973, c. 476, s. 193; 2017-204, s. 2.9(f).)

§§ 105-475 through 105-479. Reserved for future codification purposes.