

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH70164-LYx-59 (3/5)

Short Title: Monroe Prepared Food Tax. (Local)

Sponsors: Representative Gibson.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF MONROE TO LEVY A PREPARED
FOOD TAX.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Without Referendum. – If the question of whether to levy a prepared food tax has not been defeated within five years in a referendum held under subsection (b) of this section, the Monroe City Council may, by ordinance after not less than 10 days' public notice and a public hearing held pursuant thereto, levy a prepared food tax of up to one percent (1%) of the sales price of prepared food sold within the City of Monroe at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. 105-164.4(a)(1). This tax is in addition to State and local sales tax.

SECTION 1.(b) After Referendum. – If a majority of those voting in a referendum held pursuant to this subsection vote for the levy of the tax, the Monroe City Council may, by ordinance after not less than 10 days' public notice and a public hearing held pursuant thereto, levy a prepared food tax of up to one percent (1%) of the sales price of prepared food sold within the City of Monroe at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. 105-164.4(a)(1). This tax is in addition to State and local sales tax.

The Monroe City Council may direct the county board of elections to submit to the qualified voters of the city the question of whether to levy a local prepared food tax of one percent (1%) as provided in this section.

The election must be held on a date jointly agreed upon by the board of elections and the city council, and must be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[] FOR [] AGAINST

1 One percent (1%) local prepared meals tax, in addition to the current local
2 sales and use taxes."

3 **SECTION 1.(c)** Definitions; Sales and Use Tax Statutes. – The definitions
4 in G.S. 105-164.3 apply to this section to the extent they are not inconsistent with the
5 provisions of this section. The provisions of Article 5 and Article 9 of Chapter 105 of
6 the General Statutes apply to this section to the extent they are not inconsistent with the
7 provisions of this section.

8 **SECTION 1.(d)** Exemptions. – The prepared food tax does not apply to the
9 following sales of prepared food:

- 10 (1) Prepared food served to residents in boarding houses and sold together
11 on a periodic basis with rental of a sleeping room or lodging.
- 12 (2) Retail sales exempt from taxation under G.S. 105-164.13.
- 13 (3) Retail sales through or by means of vending machines.
- 14 (4) Prepared food served by a retailer subject to the local occupancy tax if
15 the charge for the meals or prepared food or drink is included in a
16 single, nonitemized sales price together with the charge for rental of a
17 room, lodging, or accommodation furnished by the retailer.
- 18 (5) Prepared food furnished without charge by an employer to an
19 employee.
- 20 (6) Retail sales by grocers or by grocery sections of supermarkets or other
21 diversified retail establishments, other than sales of prepared food in
22 the delicatessen or similar department of the grocer or grocery section.
- 23 (7) Prepared food served on a federal military reservation.

24 **SECTION 1.(e)** Collection. – Every retailer subject to the tax levied under
25 this section shall, on and after the effective date of the levy of the tax, collect the tax.
26 This tax shall be collected as part of the charge for furnishing prepared food. The tax
27 shall be stated separately on the sale document and shall be paid by the purchaser to the
28 retailer as trustee for and on account of the city. The tax shall be added to the sales
29 price and shall be passed on to the purchaser instead of being borne by the retailer. The
30 city shall design, print, and furnish to all appropriate businesses and persons in the city
31 the necessary forms for filing returns and instructions to ensure the full collection of the
32 tax.

33 **SECTION 1.(f)** Administration. – The city shall administer a tax levied
34 under this section. A tax levied under this section is due and payable to the city's
35 director of finance and administration in monthly installments on or before the 25th day
36 of the month following the month in which the tax accrues. Every retailer liable for the
37 tax shall, on or before the 25th day of each month, prepare and render a return on a form
38 prescribed by the city. The return shall show the total gross receipts derived in the
39 preceding month from sales to which the tax applies.

40 A return filed with the city's director of finance and administration under this
41 section is not a public record and may not be disclosed except in accordance with G.S.
42 160A-208.1.

43 **SECTION 1.(g)** Refunds. – The city shall refund to a nonprofit or
44 governmental entity the prepared food tax paid by the entity on eligible purchases of

1 prepared food. A nonprofit or governmental entity's purchase of prepared food is
2 eligible for a refund under this subsection if the entity is entitled to a refund under G.S.
3 105-164.14(b) or (c) of local sales and use tax paid on the purchase. The time
4 limitations, application requirements, penalties, and restrictions provided in G.S.
5 105-164.14(b) and (d) apply to refunds to nonprofit entities; the time limitations,
6 application requirements, penalties, and restrictions provided in G.S. 105-164.14(c), (d),
7 and (e) apply to refunds to governmental entities. When an entity applies for a refund
8 of the prepared food tax paid by it on purchases, it must attach to its application a copy
9 of the application submitted to the Department of Revenue under G.S. 105-164.14 for a
10 refund of the sales and use tax on the same purchases. An applicant for a refund under
11 this subsection must provide any information required by the city to substantiate the
12 claim.

13 **SECTION 1.(h)** Penalties. – The uniform meals tax penalty provisions of
14 G.S. 160A-214.1 apply to a tax levied under this section.

15 **SECTION 1.(i)** Use of Proceeds. – The City of Monroe must use the
16 proceeds of a tax levied under this section for the construction, operation, and
17 maintenance of a civic center.

18 **SECTION 1.(j)** Effective Date of Levy. – A tax levied under this section
19 shall become effective on the date specified in the ordinance levying the tax. The date
20 must be the first day of a calendar month and may not be before the first day of the
21 fourth month after the date the ordinance is adopted.

22 **SECTION 1.(k)** Repeal. – A tax levied under this section may be repealed
23 by an ordinance adopted by the Monroe City Council. Any repeal shall become
24 effective on the first day of a month and may not become effective until the end of the
25 fiscal year in which the repeal ordinance is adopted. Repeal of a tax levied under this
26 section does not affect a liability for a tax that attached before the effective date of the
27 repeal, nor does it affect a right to a refund of a tax that accrued before the effective date
28 of the repeal.

29 **SECTION 1.(l)** Sunset. – A tax levied under this act expires 15 years after
30 the effective date of its levy. The city's authorization to levy a tax under this act expires
31 15 years after the effective date of the first tax the city levies under this act, even if the
32 tax has not remained in effect for the entire 15-year period. The expiration of a tax
33 pursuant to this subsection does not affect the rights or liabilities of the city, a taxpayer,
34 or another person arising under the expired tax; nor does it affect the right to any refund
35 or credit of a tax that would otherwise have been available under the expired tax before
36 its expiration.

37 **SECTION 2.** This act is effective when it becomes law.