

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

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HOUSE BILL 17

Short Title: Local Option Meals Tax/Brunswick Co. Munis. (Local)

Sponsors: Representatives Iler and Butler (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: State and Local Government, if favorable, Finance, if favorable, Rules, Calendar, and Operations of the House

February 4, 2019

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE MUNICIPALITIES LOCATED IN BRUNSWICK COUNTY TO LEVY EITHER BY RESOLUTION OR BY REFERENDUM A PREPARED FOOD AND BEVERAGES TAX.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Authority. – The governing body of a municipality in Brunswick County may levy a prepared food and beverages tax of up to one-half percent (0.5%) of the sales price of prepared food and beverages sold within the municipality at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. 105-164.4(a)(1) upon the occurrence of an action listed in this subsection. For purposes of catering, the tax applies to food served in the town without regard to the residency of the caterer. This tax is in addition to State and local sales tax. The occurrences on which the municipality may levy the tax are as follows:

- (1) The governing body of the municipality, by resolution and after not less than 10 days' public notice and a public hearing, levies the tax.
- (2) The majority of those voting in a referendum held pursuant to this act vote for the levy of the tax, and the governing body of the municipality, by resolution, levies the tax. If pursuant to this subdivision, the governing body shall direct the county board of elections to conduct an advisory referendum in the municipality on the question of whether to levy a local prepared food and beverages tax in the taxing unit as provided in this act. The election shall be held in accordance with the procedures of G.S. 163-287. The form of the question to be presented on a ballot for a special election concerning the levy of the tax authorized by this act shall be:

" [] FOR [] AGAINST

One-half percent (0.5%) local prepared food tax, in addition to the current local sales and use taxes."

SECTION 1.(b) Definitions. – The definitions in G.S. 105-164.3 apply to this section to the extent they are not inconsistent with the provisions of this section. In addition, the following definitions apply in this act:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax.
- (2) Prepared food and beverages. – The term includes the following:
 - a. Prepared food, as defined in G.S. 105-164.3.
 - b. An alcoholic beverage, as defined in G.S. 18B-101.



1 **SECTION 1.(c)** Exemptions. – The prepared food and beverages tax does not apply
2 to the following sales of prepared food and beverages:

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

18 **SECTION 1.(d)** Collection. – Every retailer subject to the tax levied under this
19 section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall
20 be collected as part of the charge for furnishing prepared food and beverages. The tax shall be
21 stated separately on the sales document and shall be paid by the purchaser to the retailer as trustee
22 for and on account of the municipality. The tax shall be added to the sales price and shall be
23 passed on to the purchaser instead of being borne by the retailer. The entity collecting the tax
24 shall design, print, and furnish to all appropriate businesses and persons in the town the necessary
25 forms for filing returns and instructions to ensure the full collection of the tax.

26 **SECTION 1.(e)** Administration. – The municipality may enter into an agreement
27 with Brunswick County for the administration and collection of the tax levied under this section.
28 In the absence of an agreement, the municipality shall administer the tax levied under this section.
29 A tax levied under this section is due and payable to the local administering authority as agent
30 for the taxing entity in monthly installments on or before the 20th day of the month following the
31 month in which the tax accrues. Every retailer liable for the tax shall, on or before the 20th day
32 of each month, prepare and render a return on a form prescribed by the municipality or, at the
33 municipality's direction, the entity administering and collecting the tax. The return shall show
34 the total gross receipts derived in the preceding month from sales to which the tax applies.

35 A return filed under this section is not a public record and may not be disclosed except
36 in accordance with G.S. 160A-208.1.

37 The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes apply
38 to this section to the extent they are not inconsistent with the provisions of this section. The
39 uniform meals tax penalty provisions of G.S. 160A-214.1 apply to a tax levied under this section.

40 **SECTION 1.(f)** Refunds. – The entity administering the tax shall refund to a
41 nonprofit or governmental entity the prepared food and beverages tax paid by the entity on
42 eligible purchases of prepared food and beverages. A nonprofit or governmental entity's purchase
43 of prepared food and beverages is eligible for a refund under this subsection if the entity is entitled
44 to a refund under G.S. 105-164.14(b) or (c) of local sales and use tax paid on the purchase or if
45 the sale is exempt under G.S. 105-164.13. The time limitations, application requirements,
46 penalties, and restrictions provided in G.S. 105-164.14(b), (d), and (d1) apply to refunds to
47 nonprofit entities; the time, limitations, application requirements, penalties, and restrictions
48 provided in G.S. 105-164.14(c), (d), and (d1) apply to refunds to governmental entities. When
49 an entity applies for a refund of the prepared food and beverages tax paid by it on purchases, it
50 shall attach to its application a copy of the application submitted to the Department of Revenue
51 under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases or a written

1 statement that the purchases were exempt from the tax. An applicant for a refund under this
2 subsection shall provide any information required by the entity administering the tax to
3 substantiate the claim.

4 **SECTION 1.(g)** Use of Proceeds. – The proceeds of a tax levied under this section
5 shall be used as provided in this subsection. The entity administering and collecting the tax may
6 deduct from the gross proceeds of the taxes collected under this act an amount not to exceed three
7 percent (3%) of the gross proceeds to pay for the direct cost of administering and collecting the
8 taxes. The remaining proceeds shall be used for beach nourishment or to construct and improve
9 public infrastructure and facilities or both.

10 **SECTION 1.(h)** Effective Date of Levy. – A tax levied under this section shall
11 become effective on the date specified in the resolution levying the tax. The date shall be the first
12 day of a calendar month and may not be before the first day of the fourth month after the date the
13 resolution is adopted.

14 **SECTION 1.(i)** Repeal. – Repeal or reduction of a tax levied under this section does
15 not affect a liability for a tax that attached before the effective date of the repeal or reduction, nor
16 does it affect a right to a refund of a tax that accrued before the effective date of the repeal or
17 reduction. Any repeal or reduction shall become effective on the first day of a month. Any repeal
18 or reduction may not become effective until the end of the fiscal year in which the repeal
19 resolution is adopted.

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