

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2005-261
HOUSE BILL 689

AN ACT TO AUTHORIZE THE CITY OF MONROE TO LEVY A PREPARED FOOD AND BEVERAGES TAX BY VOTE OF THE PEOPLE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Authority; Vote. – If the majority of those voting on the question pursuant to this section vote for the levy of the tax, the Monroe City Council may, by ordinance, levy a prepared food and beverages tax of up to one percent (1%) of the sales price of prepared food and beverages 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(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 during any election held in 2006 the question of whether to levy a local prepared food and beverages 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 city council and held in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[] FOR [] AGAINST

One percent (1%) local prepared food and beverages tax, in addition to the current local sales and use taxes, to be used for the Civic Center Project for the City of Monroe."

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 city 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, that meets at least one of the conditions of prepared food under G.S. 105-164.3.

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

- (1) Prepared food and beverages served to residents in boardinghouses and sold together on a periodic basis with rental of a sleeping room or lodging.
- (2) Retail sales exempt from taxation under G.S. 105-164.13.

- (3) Retail sales through or by means of vending machines.
- (4) Prepared food and beverages served by a retailer subject to the local occupancy tax if the charge for the prepared food and beverages is included in a single, nonitemized sales price together with the charge for rental of a room, lodging, or accommodation furnished by the retailer.
- (5) Prepared food and beverages furnished without charge by an employer to an employee.
- (6) Retail sales by grocers or by grocery sections of supermarkets or other diversified retail establishments, other than sales of prepared food and beverages in the delicatessen or similar department of the grocer or grocery section.
- (7) Prepared food and beverages served on a federal military reservation.

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

SECTION 1.(e) Administration. – The city shall administer a tax levied under this section. A tax levied under this section is due and payable to the city's director of finance and administration in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every retailer liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the city. The return shall show the total gross receipts derived in the preceding month from sales to which the tax applies.

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

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

SECTION 1.(f) Refunds. – The city shall refund to a nonprofit or governmental entity the prepared food and beverages tax paid by the entity on eligible purchases of prepared food and beverages. A nonprofit or governmental entity's purchase of prepared food and beverages is eligible for a refund under this subsection if the entity is entitled to a refund under G.S. 105-164.14(b) or (c) of local sales and use tax paid on the purchase or if the sale is exempt under G.S. 105-164.13. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) apply to refunds to nonprofit entities; the time, limitations,

application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and (d) apply to refunds to governmental entities. When an entity applies for a refund of the prepared food and beverages tax paid by it on purchases, it must attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases or a written statement that the purchases were exempt from the tax. An applicant for a refund under this subsection must provide any information required by the city to substantiate the claim.

SECTION 1.(g) Use of Net Proceeds. – The City of Monroe must use the net proceeds of a tax levied under this section for the construction, operation, and maintenance of a civic center.

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

SECTION 1.(i) Repeal. – A tax levied under this section may be repealed by an ordinance adopted by the Monroe City Council. The Monroe City Council shall repeal the tax when the Civic Center Project for which the tax was imposed is constructed and any debt for the Project has been paid. Any repeal shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal ordinance is adopted. Repeal of a tax levied under this section does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives