

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2008-116
HOUSE BILL 2690

AN ACT TO AUTHORIZE THE COUNTY OF DURHAM TO LEVY A ONE PERCENT SALES TAX ON RESTAURANT MEALS IN THE COUNTY OF DURHAM IF APPROVED BY THE VOTERS.

The General Assembly of North Carolina enacts:

SECTION 1. Authorization. – If the majority of those voting in a referendum held pursuant to this act vote for the levy of the tax, the Board of Commissioners for the county may, by resolution, levy a local prepared food tax up to one percent (1%) of the sales price in addition to any other State and local sales and use taxes levied pursuant to law. The tax applies to the sales price of prepared food and drink sold within the taxing unit, including all municipalities located therein, at retail, for consumption on or off the premises, by a retailer within the county that is subject to sales tax under G.S. 105-164.4(a)(1). A prepared food tax must become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

SECTION 2. Vote. – The governing body of a taxing unit may direct the county board of elections to conduct an advisory referendum on the question of whether to levy a local prepared food tax in the taxing unit as provided in this act. The election shall be held on November 4, 2008, and shall be held in accordance with the procedures of G.S. 163-287.

SECTION 3. Ballot Question. – 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 percent (1%) local prepared food tax, in addition to the current local sales and use taxes."

SECTION 4. Definitions. – The definitions in G.S. 105-164.3 apply to this act. In addition, the following definitions apply in this act:

- (1) County. – Defined in G.S. 153A-1.
- (2) Person. – Defined in G.S. 105-228.90.
- (3) Prepared food and drink. – The same meaning as "prepared food" under G.S. 105-164.3.
- (4) Taxing unit. – A county.

SECTION 5. Exemptions. – The prepared food tax levied under this act does not apply to the following sales of prepared food and drink:

- (1) Prepared food and drink 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 drink served by a retailer subject to the local occupancy tax if the charge for the prepared food and drink 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 drink 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 drink in the delicatessen or similar department of the grocer or grocery section.

SECTION 6. Collection. – Every retailer subject to a tax levied under this act must, on and after the effective date of the levy of the tax, collect the tax. This tax must be collected as part of the charge for furnishing prepared food and drink. The tax must be stated and charged separately from the sales records and must be paid by the purchaser to the retailer as trustee for and on account of the taxing unit. The tax must be added to the sales price and passed on to the purchaser instead of being borne by the retailer. The taxing unit must design, print, and furnish to all appropriate businesses and persons in the taxing unit the necessary forms for filing returns and instructions to ensure the full collection of the tax.

SECTION 7. Administration. – The taxing unit must administer a tax levied under this act. A tax levied under this act is due and payable to the local finance officer 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 must, on or before the 15th day of each month, prepare and file a return on a form prescribed by the taxing unit. The return must show the total gross receipts derived in the preceding month from sales to which the tax applies.

A return filed with the local finance officer under this act is not a public record and may not be disclosed except as provided in G.S. 153A-148.1.

SECTION 8. Refunds. – The taxing unit must refund to a nonprofit or governmental entity the prepared food tax paid by the entity on eligible purchases of prepared food and drink. A nonprofit or governmental entity's purchase of prepared food and drink is eligible for a refund under this section 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 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 section must provide any information required by the taxing unit to substantiate the claim.

SECTION 9. Penalties. – A person that fails or refuses to file the return or pay a tax levied under this act is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing body of the taxing unit has the same authority to waive the penalties for a tax levied under this act that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

SECTION 10. Repeal or Reduction. – A prepared food tax levied under this act may be repealed or reduced by a resolution adopted by the governing body of the taxing unit. Repeal or reduction of a prepared food tax must become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a prepared food tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

SECTION 11. Taxing Proceeds. – If the referendum passes, the county may deduct from the gross proceeds of the taxes collected under this act an amount not to exceed three percent (3%) of the gross proceeds to pay for the direct cost of administering and collecting the taxes. The remaining proceeds shall be distributed as follows:

- (1) Eighty percent (80%) for civic and cultural amenities.
- (2) Ten percent (10%) for marketing.
- (3) Five percent (5%) for workforce training.
- (4) Five percent (5%) for community cleanup.

SECTION 12. Scope; Conditions. – This act applies to the County of Durham only. An interlocal agreement adopting the percentages set out in Section 11 of this act shall be adopted by both the City of Durham and the County of Durham prior to the referendum on the November 4, 2008, ballot and shall, without modification, be in effect at all times.

SECTION 13. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of July, 2008.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives