

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 923
House Committee Substitute Favorable 7/15/93
Corrected Copy 7/19/93

Short Title: Cumberland Meals Tax.

(Local)

Sponsors:

Referred to:

April 20, 1993

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE CUMBERLAND COUNTY TO LEVY A PREPARED
2 FOOD AND BEVERAGE TAX TO PROVIDE A MEANS FOR FINANCING ALL
3 OR PART OF AN ARENA IN CUMBERLAND COUNTY.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. Authorization. – (a) Levy. If no referendum has been held in the county
7 as provided in subsection (b) of this section within five years at which the tax was
8 defeated, the Cumberland County Board of Commissioners may, by resolution, levy a
9 prepared food and beverage tax of up to one percent (1%) of the sales price of prepared
10 food and beverages sold at retail for consumption on or off the premises by any retailer
11 within the county that is subject to sales tax imposed by the State under G.S. 105-
12 164.4(a)(1). Before adopting or amending a resolution levying the tax, the board of
13 commissioners shall hold a public hearing on the tax. The board of commissioners shall
14 publish notice of the hearing not less than 10 days nor more than 25 days before the date
15 fixed for the hearing. After holding the public hearing, the board of commissioners may
16 either levy the tax as provided in this subsection or initiate a referendum as provided in
17 subsection (b) of this section.

18 (b) Levy after Referendum. – The Cumberland County Board of
19 Commissioners may direct the county board of elections to conduct a referendum on the
20 question of whether a county meals tax at a rate of up to one percent (1%) will be levied
21 in accordance with this act. Before directing the county board of elections to conduct
22 the referendum, the board of commissioners shall hold a public hearing on the tax. The

1 board of commissioners shall publish notice of the hearing not less than 10 days nor
2 more than 25 days before the date fixed for the hearing.

3 The election shall be held on a date jointly agreed upon by the two boards and
4 shall be held in accordance with the procedures of G.S. 163-287. The form of the
5 question to be presented on a ballot for a special election concerning the levy of the tax
6 authorized by this act shall be: "FOR a local tax on prepared food and beverages at a
7 rate of up to one percent (1%)". "AGAINST a local tax on prepared food and
8 beverages at a rate of up to one percent (1%)".

9 If the majority of those voting in a referendum held pursuant to this
10 subsection vote for the levy of a local meals tax, the Cumberland County Board of
11 Commissioners may, by resolution, levy a prepared food and beverage tax of up to one
12 percent (1%) of the sales price of prepared food and beverages sold at retail for
13 consumption on or off the premises by any retailer within the county that is subject to
14 sales tax imposed by the State under G.S. 105-164.4(a)(1).

15 Sec. 2. Definitions; Sales and Use Tax Statutes. – (a) The definitions in G.S.
16 105-164.3 apply to this act to the extent they are not inconsistent with the provisions of
17 this act. In addition, the following definitions apply in this act:

18 (1) Financing. – Debt service, lease payments, or any other obligation or
19 means of supporting capital costs, together with any related reserve
20 requirements.

21 (2) Prepared food and beverages. – Any meals, food, or beverages to
22 which a retailer has added value or has altered its state (other than
23 solely by cooling) by preparing, combining, dividing, heating, or
24 serving, in order to make the food or beverage available for immediate
25 human consumption.

26 (b) The provisions of Article 5 and Article 9 of Chapter 105 of the General
27 Statutes apply to this act to the extent they are not inconsistent with the provisions of
28 this act.

29 Sec. 3. Exemptions. – The prepared food and beverage tax does not apply to
30 the following sales of prepared food and beverages:

31 (1) Prepared food and beverages served to residents in boarding houses
32 and sold together on a periodic basis with rental of any sleeping room
33 or lodging.

34 (2) Retail sales exempt from taxation under G.S. 105- 164.13.

35 (3) Retail sales through or by means of vending machines.

36 (4) Prepared food and beverages served by a retailer subject to the
37 occupancy tax levied by the county if the charge for the prepared food
38 or beverages is included in a single, nonitemized sales price together
39 with the charge for rental of a room, lodging, or accommodation
40 furnished by the retailer.

41 (5) Prepared food and beverages furnished without charge by an employer
42 to an employee.

43 (6) Retail sales by grocers or by grocery sections of supermarkets or other
44 diversified retail establishments, other than sales of prepared food and

1 beverages in the delicatessen or similar department of the grocer or
2 grocery section.

3 (7) Prepared food and beverages served on federal military reservations.

4 Sec. 4. Collection. – Every retailer subject to the tax levied under this act
5 shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall
6 be collected as part of the charge for furnishing prepared food and beverages. The tax
7 shall be stated and charged separately from the sales price, shall be shown separately on
8 the retailer's sales records, and shall be paid by the purchaser to the retailer as trustee for
9 and on account of the county. The tax shall be added to the sales price and shall be
10 passed on to and collected from the purchaser instead of being borne by the retailer.

11 Sec. 5. Administration. – A tax levied under this act is due and payable to the
12 county in monthly installments on or before the 25th day of the month following the
13 month in which the tax accrues. Every retailer liable for the tax shall, on or before the
14 25th day of each month, prepare and render a return on a form prescribed by the county.
15 The return shall show the total gross receipts derived in the preceding month from sales
16 to which the tax applies. The county shall design, print, and furnish to all appropriate
17 retailers the necessary forms for filing returns and instructions to ensure the full
18 collection of the tax.

19 A return filed with the county under this act is not a public record as defined
20 by G.S. 132-1 and may not be disclosed except as required by law.

21 Sec. 6. Refunds. – The county shall refund to a nonprofit or governmental
22 entity the prepared food and beverage tax paid by the entity on eligible purchases of
23 prepared food and beverages. A nonprofit or governmental entity's purchase of
24 prepared food and beverages is eligible for a refund under this section if the entity is
25 entitled to a refund under G.S. 105-164.14 of local sales and use tax paid on the
26 purchase. The time limitations, application requirements, penalties, and restrictions
27 provided in G.S. 105-164.14(b) and (d) shall apply to refunds to nonprofit entities; the
28 time, limitations, application requirements, penalties, and restrictions provided in G.S.
29 105-164.14(c), (d), and (e) shall apply to refunds to governmental entities. When an
30 entity applies for a refund of the prepared food and beverages tax paid by it on
31 purchases, it shall attach to its application a copy of the application submitted to the
32 Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on
33 the same purchases. An applicant for a refund under this section shall provide any
34 information required by the county to substantiate the claim.

35 Sec. 7. Penalties. – A person, firm, corporation, or association who fails or
36 refuses to file a return and pay the tax due under this act shall pay a penalty of five
37 dollars (\$5.00) for each day's omission up to a maximum of five hundred dollars
38 (\$500.00) for each return. In case of failure or refusal to file the return or pay the tax
39 for a period of 30 days after the time required for filing the return or paying the tax,
40 there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, with an
41 additional tax of five percent (5%) for each additional month or fraction thereof until the
42 tax is paid. The board of commissioners may, for good cause shown, compromise or
43 forgive the additional tax penalties imposed by this section.

1 Any person who willfully attempts in any manner to evade a tax imposed
2 under this act or who willfully fails to pay the tax or make and file a return shall, in
3 addition to the penalties provided by law, be guilty of a misdemeanor punishable by a
4 fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six
5 months, or both.

6 Sec. 8. Use of Proceeds. – The county shall transfer the proceeds of the
7 prepared food and beverage tax to the Cumberland County Civic Center Commission,
8 an agency of Cumberland County. The proceeds transferred to the Cumberland County
9 Civic Center Commission shall be used (i) to provide for, when due, payments for the
10 current fiscal year with respect to any financing for new arena facilities or for the
11 expansion of the existing arena facilities, which may include off-street parking for use
12 in conjunction with the facilities and (ii) to pay other costs of acquiring, constructing,
13 maintaining, operating, marketing, and promoting the new arena or expanded arena
14 facilities.

15 The Commission may contract with any person, agency, association, or
16 nonprofit corporation to carry out the activities and programs for which the tax proceeds
17 may be expended. All contracts entered into pursuant to this subsection shall require an
18 annual financial audit of any funds expended and a performance audit of contractual
19 obligations.

20 Sec. 9. Effective Date of Levy. – A tax levied under this act shall become
21 effective on the date specified in the resolution levying the tax. That date must be the
22 first day of a calendar month, however, and may not be earlier than the first day of the
23 second month after the date the resolution is adopted. The levy of a prepared food and
24 beverage tax may not be effective before January 1, 1994.

25 Sec. 10. Restaurant Representation. – Upon enactment of a prepared food
26 and beverage tax, the Cumberland County Board of Commissioners shall, by resolution,
27 appoint one or more restaurant owners or operators in Cumberland County to the
28 Cumberland County Civic Center Commission and shall also appoint one or more
29 restaurant owners or operators to the governing body of the Fayetteville Area
30 Convention and Visitors Bureau.

31 Sec. 11. Repeal. – A tax levied under this act may be repealed by a resolution
32 adopted by the Cumberland County Board of Commissioners. The Cumberland County
33 Board of Commissioners shall repeal the tax when the new or expanded arena facilities
34 for which the tax was imposed are constructed and any debt for those facilities has been
35 paid. Repeal of a tax levied under this act shall become effective on the first day of a
36 month and may not become effective until the end of the fiscal year in which the repeal
37 resolution was adopted. Repeal of a tax levied under this act does not affect a liability
38 for a tax that has attached before the effective date of the repeal, nor does it affect a
39 right to a refund of a tax that accrued before the effective date of the repeal.

40 Sec. 12. This act is effective upon ratification.