

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1374

Short Title: Hyde Meals and Land Transfer Taxes. (Local)

Sponsors: Representative A. Williams.

Referred to: Rules, Calendar, and Operations of the House.

May 11, 2004

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE HYDE COUNTY TO INCREASE REVENUES TO
ACQUIRE REAL PROPERTY FOR PUBLIC PURPOSES.

The General Assembly of North Carolina enacts:

PART 1. HYDE MEALS TAX

SECTION 1. Authorization. – The Hyde County Board of Commissioners may, by resolution levy a prepared food tax of up to one percent (1%) of the sales price of prepared food sold within the county 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. Before adopting a resolution under this section, the board of commissioners must give at least 10 days' public notice of its intent to adopt the resolution and must hold a public hearing on the issue of adopting the resolution.

SECTION 2. Definitions. – The definitions in G.S. 105-164.3 apply in this act. In addition, the term "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax.

SECTION 3. Exemptions. – The prepared food tax does not apply to the following sales of prepared food:

- (1) Prepared food served to residents in boarding houses 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 served by a retailer subject to the local occupancy tax if the charge for the prepared food 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 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 in

1 the delicatessen or similar departments of the grocer or grocery
2 section.

3 **SECTION 4.** Collection. – Every retailer subject to the tax levied under this
4 act shall, on and after the effective date of the levy of the tax, collect the tax. This tax
5 shall be collected as part of the charge for furnishing prepared food. The tax shall be
6 stated separately on the sale document and shall be paid by the purchaser to the retailer
7 as trustee for and on account of the county. The tax shall be added to the sales price and
8 passed on to the purchaser instead of being borne by the retailer. The county shall
9 design, print, and furnish to all appropriate businesses and persons in the county the
10 necessary forms for filing returns and instructions to ensure the full collection of the tax.

11 For the convenience of retailers, the county shall determine the amount to be
12 added to the sales price of sales subject to the prepared food tax. The amounts shall be
13 set forth in a bracket system and distributed to each retailer responsible for collecting
14 the prepared food tax. The use of the bracket system does not relieve the retailer from
15 the duty of collecting and remitting an amount equal to the prepared food tax.

16 **SECTION 5.** Administration. – The county shall administer a tax levied
17 under this Part. A tax levied under this Part is due and payable to the county finance
18 officer in monthly installments on or before the 20th day of the month following the
19 month in which the tax accrues. Every person, firm, corporation, or association liable
20 for the tax shall, on or before the 20th day of each month, prepare and render a return on
21 a form prescribed by the county. The return shall state the total gross receipts derived in
22 the preceding month from sales upon which the tax is levied.

23 A return filed with the county finance officer under this Part is not a public
24 record and may not be disclosed except in accordance with G.S. 153A-148.1.

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

38 **SECTION 7.** Penalties. – The uniform meals tax penalty provisions of G.S.
39 153A-154.1 apply to a tax levied under this Part.

40 **SECTION 8.** Use of Proceeds. – The county shall monthly remit to the
41 Authority created in Part 3 of this act the portion of the net proceeds of the tax levied
42 under this Part derived from sales located on Ocracoke Island. The county shall retain
43 the remaining proceeds of the tax and shall use them only to purchase, improve, and
44 operate property for community and recreational use.

1 **SECTION 9.** Effective Date of Levy. – A tax levied under this Part shall
2 become effective on the date specified in the resolution levying the tax. The date must
3 be the first day of a calendar month and may not be before the first day of the second
4 month after the date the resolution is adopted.

5 **SECTION 10.** Repeal. – A tax levied under this Part may be repealed by a
6 resolution adopted by the Hyde County Board of Commissioners. Repeal of a tax levied
7 under this Part shall become effective on the first day of a month and may not become
8 effective until the end of the fiscal year in which the repeal resolution is adopted. Repeal
9 of a tax levied under this Part does not affect a liability for a tax that attached before the
10 effective date of the repeal, nor does it affect a right to a refund of a tax that accrued
11 before the effective date of the repeal.

12 **PART 2. HYDE COUNTY LAND TRANSFER TAX**

13 **SECTION 11.** Authorization. – The Hyde County Board of Commissioners
14 may, by resolution, levy an excise tax on instruments conveying interests in real
15 property located in the county at a rate not to exceed one dollar (\$1.00) for each one
16 hundred dollars (\$100.00) of the consideration or value, whichever is greater, of the
17 interest conveyed, including the value of any lien or encumbrance remaining on the
18 property at the time of sale. Before adopting a resolution under this section, the board of
19 commissioners must give at least 10 days' public notice of its intent to adopt the
20 resolution and must hold a public hearing on the issue of adopting the resolution.

21 **SECTION 12.** Effective Date. – Upon adoption of the resolution, the board
22 of commissioners shall send a certified copy to the register of deeds of the county.
23 Collection of the tax, and liability therefore, shall begin and continue only on and after
24 the first day of a calendar month set by the board of county commissioners in the
25 resolution levying the tax, which may not be earlier than the first day of the second
26 succeeding calendar month after the date the resolution is adopted.

27 **SECTION 13.** Scope and Administration of Tax. – A tax levied under this
28 Part does not apply to transfers exempt pursuant to G.S. 105-228.28 or G.S. 105-228.29
29 from the tax levied by Article 8E of this Chapter. This tax is in addition to the tax levied
30 by Article 8E of this Chapter. A tax levied under this Part applies to transfers of
31 interests in real property located within the taxing county. If the property is located
32 partly in another county, Hyde County may tax the value of only the portion of the
33 property that lies in Hyde County.

34 A tax levied under this Part is payable by the transferor of the interest. Except
35 as otherwise provided in this Part, the provisions of G.S. 105-228.31 through G.S.
36 105-228.37 apply to a tax levied under this Part. The taxing county must provide
37 metering or similar equipment for the collection of tax, in lieu of the use of tax stamps.

38 **SECTION 14.** Use of Proceeds. – The county shall monthly remit to the
39 Authority created in Part 3 of this act the portion of the net proceeds of the tax levied
40 under this Part derived from property located on Ocracoke Island. The county shall
41 retain the remaining proceeds of the tax and shall use them only to purchase, improve,
42 and operate property for community and recreational use.

43 **SECTION 15.** Repeal or Reduction of Tax. – The Hyde County Board of
44 Commissioners may, by resolution, repeal or reduce the rate of a tax levied under this

1 Part. Repeal or reduction of the tax shall become effective on the first day of a month
2 and may not become effective until the end of the fiscal year in which the repeal or
3 reduction resolution was adopted. Repeal of a conveyance tax, or reduction of its rate,
4 under this Part does not affect a liability for a tax that attached before the effective date
5 of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued
6 before the effective date of the repeal or reduction.

7 **PART 3. USE OF OCRACOKE PROCEEDS**

8 **SECTION 16.** Authority. – When the board of commissioners adopts a
9 resolution levying a tax under this act, it shall also adopt a resolution creating a county
10 Authority, which shall be a public authority under the Local Government Budget and
11 Fiscal Control Act. The resolution shall provide for the membership of the Authority
12 including the members' terms of office, and for the filling of vacancies on the Authority.
13 All of the members must be residents of Ocracoke Island. The board of commissioners
14 shall designate one member of the Authority as chair and shall determine the
15 compensation, if any, to be paid to members of the Authority.

16 The Authority shall meet at the call of the chair and shall adopt rules of
17 procedure to govern its meetings. The Finance Officer for Hyde County shall be the ex
18 officio finance officer of the Authority.

19 The Authority shall expend the tax proceeds remitted to it under this act as
20 provided in this Part. The Authority shall also direct the administration of any real
21 property purchased with the tax proceeds.

22 The Authority shall report quarterly and at the close of the fiscal year to the
23 board of commissioners on its receipts and expenditures for the preceding quarter and
24 for the year in such detail as the board may require.

25 **SECTION 17.** Berkley Manor. – The first priority for expenditure of the tax
26 proceeds remitted to the Authority is to finance the purchase of the Berkley Manor
27 Country Inn and its operation for public use. If the Authority is able to purchase the
28 property, the Authority shall ensure that the historical integrity of the buildings and
29 grounds will be protected in perpetuity.

30 **SECTION 18.** Other Purposes. – If the Berkley Manor Country Inn cannot
31 be purchased or if for any other reason there are tax proceeds not needed for the
32 purchase or operation of that property, the Authority may use the tax proceeds not so
33 needed to purchase, improve, and operate property for community and recreational use
34 on Ocracoke Island.

35 **SECTION 19.** This act is effective when it becomes law.