

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 413
SENATE BILL 923

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

The General Assembly of North Carolina enacts:

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

(b) Levy after Referendum. – The Cumberland County Board of Commissioners may direct the county board of elections to conduct a referendum on the question of whether a county meals tax at a rate of up to one percent (1%) will be levied in accordance with this act. Before directing the county board of elections to conduct the referendum, the board of commissioners shall hold a public hearing on the tax. The board of commissioners shall publish notice of the hearing not less than 10 days nor more than 25 days before the date fixed for the hearing.

The election shall be held on a date jointly agreed upon by the two boards and 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 a local tax on prepared food and beverages at a rate of up to one percent (1%)". "AGAINST a local tax on prepared food and beverages at a rate of up to one percent (1%)".

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

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

- (1) Financing. – Debt service, lease payments, or any other obligation or means of supporting capital costs, together with any related reserve requirements.
- (2) Prepared food and beverages. – Any meals, food, or beverages to which a retailer has added value or has altered its state (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make the food or beverage available for immediate human consumption.

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

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

- (1) Prepared food and beverages served to residents in boarding houses and sold together on a periodic basis with rental of any 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 occupancy tax levied by the county if the charge for the prepared food or 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 federal military reservations.

Sec. 4. Collection. – Every retailer subject to the tax levied under this act 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 and charged separately from the sales price, shall be shown separately on the retailer's sales records, and shall be paid by the purchaser to the retailer as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to and collected from the purchaser instead of being borne by the retailer.

Sec. 5. Administration. – A tax levied under this act is due and payable to the county in monthly installments on or before the 25th day of the month following the month in which the tax accrues. Every retailer liable for the tax shall, on or before the 25th day of each month, prepare and render a return on a form prescribed by the county.

The return shall show the total gross receipts derived in the preceding month from sales to which the tax applies. The county shall design, print, and furnish to all appropriate retailers the necessary forms for filing returns and instructions to ensure the full collection of the tax.

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

Sec. 6. Refunds. – The county shall refund to a nonprofit or governmental entity the prepared food and beverage 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 section if the entity is entitled to a refund under G.S. 105-164.14 of local sales and use tax paid on the purchase. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) shall apply to refunds to nonprofit entities; the time, limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(c), (d), and (e) shall 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 shall 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. An applicant for a refund under this section shall provide any information required by the county to substantiate the claim.

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

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

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

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

Sec. 9. Effective Date of Levy. – A tax levied under this act shall 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. The levy of a prepared food and beverage tax may not be effective before January 1, 1994.

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

Sec. 11. Repeal. – A tax levied under this act may be repealed by a resolution adopted by the Cumberland County Board of Commissioners. The Cumberland County Board of Commissioners shall repeal the tax when the new or expanded arena facilities for which the tax was imposed are constructed and any debt for those facilities has been paid. Repeal of a tax levied under this act 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 resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that has 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.

Sec. 12. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives