

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 664

Short Title: City of Monroe Prepared Food Tax.

(Local)

Sponsors: Senators Plyler and Purcell.

Referred to: Finance.

March 22, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF MONROE TO LEVY A PREPARED
FOOD TAX.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Authorization. – The Monroe City Council may, by ordinance after not less than 10 days' public notice and a public hearing held pursuant thereto, levy a prepared food and drink tax of up to one percent (1%) of the sales price of prepared food and drink 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. 105-164.4(a)(1). This tax is in addition to State and local sales tax.

SECTION 1.(b) Definitions; Sales and Use Tax Statutes. – 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. 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.

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

- (1) Prepared food and drink 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 and drink served by a retailer subject to the local occupancy tax if the charge for the meals or prepared food or 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.

- 1 (5) Prepared food and drink furnished without charge by an employer to
2 an employee.
- 3 (6) Retail sales by grocers or by grocery sections of supermarkets or other
4 diversified retail establishments, other than sales of prepared food and
5 drink in the delicatessen or similar department of the grocer or grocery
6 section.
- 7 (7) Prepared food and drink served on a federal military reservation.

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

17 **SECTION 1.(e) Administration.** – The city shall administer a tax levied
18 under this section. A tax levied under this section is due and payable to the city's
19 director of finance and administration in monthly installments on or before the 25th day
20 of the month following the month in which the tax accrues. Every retailer liable for the
21 tax shall, on or before the 25th day of each month, prepare and render a return on a form
22 prescribed by the city. The return shall show the total gross receipts derived in the
23 preceding month from sales to which the tax applies.

24 A return filed with the city's director of finance and administration under this
25 section is not a public record and may not be disclosed except in accordance with G.S.
26 160A-208.1.

27 **SECTION 1.(f) Refunds.** – The city shall refund to a nonprofit or
28 governmental entity the prepared food and drink tax paid by the entity on eligible
29 purchases of prepared food and drink. A nonprofit or governmental entity's purchase of
30 prepared food and drink is eligible for a refund under this subsection if the entity is
31 entitled to a refund under G.S. 105-164.14(b) or (c) of local sales and use tax paid on
32 the purchase. The time limitations, application requirements, penalties, and restrictions
33 provided in G.S. 105-164.14(b) and (d) apply to refunds to nonprofit entities; the time,
34 limitations, application requirements, penalties, and restrictions provided in G.S.
35 105-164.14(c), (d), and (e) apply to refunds to governmental entities. When an entity
36 applies for a refund of the prepared food and drink tax paid by it on purchases, it must
37 attach to its application a copy of the application submitted to the Department of
38 Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same
39 purchases. An applicant for a refund under this subsection must provide any
40 information required by the city to substantiate the claim.

41 **SECTION 1.(g) Penalties.** – A person, firm, corporation, or association who
42 fails or refuses to file the return or pay the tax required by this section is subject to the
43 civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for
44 State sales and use taxes. The Monroe City Council has the same authority to waive the

1 penalties for a tax levied under this section that the Secretary of Revenue has to waive
2 the penalties for State sales and use taxes.

3 **SECTION 1.(h)** Use of Proceeds. – The City of Monroe may use the
4 proceeds of a tax levied under this section for any public purpose.

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

9 **SECTION 1.(j)** Repeal. – A tax levied under this section may be repealed by
10 an ordinance adopted by the Monroe City Council. Any repeal shall become effective
11 on the first day of a month and may not become effective until the end of the fiscal year
12 in which the repeal ordinance is adopted. Repeal of a tax levied under this section does
13 not affect a liability for a tax that attached before the effective date of the repeal, nor
14 does it affect a right to a refund of a tax that accrued before the effective date of the
15 repeal.

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