

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1079  
Second Edition Engrossed 5/16/96

Short Title: Repeal State Food Tax/Freeze Hiring.

(Public)

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Sponsors: Representatives Hayes; Aldridge, Allred, Arnold, Baker, Bowie, J. Brown, Buchanan, Cansler, Capps, Carpenter, Cocklereece, Creech, Culp, Cummings, Davis, Decker, Dickson, Eddins, Edwards, Esposito, Gardner, Gray, Hiatt, Hill, Holmes, Ives, Justus, Linney, McComas, McCombs, Mitchell, Morgan, Nichols, Pate, Preston, Pulley, Rayfield, Reynolds, J. Robinson, Russell, Sexton, Sharpe, Sherrill, Shubert, Thompson, Weatherly, C. Wilson, and G. Wilson.

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Referred to: Finance.

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May 13, 1996

1 A BILL TO BE ENTITLED  
2 AN ACT TO PHASE OUT OVER FOUR YEARS THE FOUR PERCENT STATE  
3 SALES TAX ON FOOD AND REDUCE THE SIZE OF STATE GOVERNMENT  
4 BY AUTHORIZING THE GOVERNOR TO FREEZE HIRING FOR STATE  
5 EMPLOYEES OTHER THAN EDUCATION, PUBLIC SAFETY, PUBLIC  
6 HEALTH, AND OTHER APPROPRIATE POSITIONS.

7 The General Assembly of North Carolina enacts:

8 Section 1. Effective January 1, 1997, through December 31, 1999, G.S. 105-  
9 164.4(a) is amended by adding a new subdivision to read:

10 "(1f) The following rates apply to the sales price of food and other items that  
11 would be exempt from the tax imposed by this Article if they were  
12 purchased with coupons issued under the Food Stamp Program, 7  
13 U.S.C. § 51:

14 Effective Dates

Rate

1 January 1, 1997, through December 31, 1997 – three percent (3%)

2 January 1, 1998, through December 31, 1998 – two percent (2%)

3 January 1, 1999, through December 31, 1999 – one percent (1%)."

4 Sec. 2. Effective January 1, 2000, Article 5 of Chapter 105 of the General  
5 Statutes is amended by adding a new section to read:

6 **"§ 105-164.13B. Food exempt from tax.**

7 The taxes imposed by this Article do not apply to food and other items that are not  
8 otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S.  
9 105-164.13 if purchased with coupons issued under the Food Stamp Program, 7 U.S.C. §  
10 51."

11 Sec. 3. Article 1 of Chapter 143 of the General Statutes is amended by adding  
12 a new section to read:

13 **"§ 143-10.2A. Moratorium on State employee hiring; abolishing vacant positions.**

14 (a) The Governor may, by executive order, institute a moratorium on filling vacant  
15 positions in State government. The Governor may exclude from the moratorium  
16 positions in the State's public school system funded by way of State aid to local public  
17 school units, positions in law enforcement and other positions directly related to public  
18 safety, positions directly related to public health, and other appropriate positions  
19 designated by the Governor.

20 (b) The vacant positions subject to a moratorium instituted pursuant to this section  
21 may be deleted from future State budgets submitted by the Governor and approved by the  
22 General Assembly.

23 (c) The Office of State Budget and Management shall be responsible for the  
24 monitoring and oversight of the moratorium, as directed by the Governor."

25 Sec. 4. G.S. 105-465 reads as rewritten:

26 **"§ 105-465. County election as to adoption of local sales and use tax.**

27 The board of elections of any county, upon the written request of the board of county  
28 ~~commissioners thereof, commissioners,~~ or upon receipt of a petition signed by qualified  
29 voters of the county equal in number to at least fifteen percent (15%) of the total number  
30 of votes cast in the county, at the last preceding election for the office of Governor, shall  
31 call a special election for the purpose of submitting to the voters of the county the  
32 question of whether a one percent (1%) sales and use tax ~~as hereinafter provided~~ will be  
33 levied.

34 The special election shall be held under the same rules ~~and regulations~~ applicable to the  
35 election of members of the General Assembly. No new registration of voters shall be  
36 required. All qualified voters in the county who are properly registered not later than 21  
37 days (excluding Saturdays and Sundays) prior to the election shall be entitled to vote at  
38 ~~said the~~ election. The county board of elections shall give at least 20 days' public notice  
39 prior to the closing of the registration books for the special election.

40 The county board of election shall prepare ballots for the special ~~election which shall~~  
41 ~~contain the words, election.~~ The question presented on the ballot shall be 'FOR the one  
42 percent (1%) local sales and use tax only on those items presently covered by the four percent  
43 (4%) sales and use tax,' and the words, on items subject to State sales and use tax at the

1 general State rate and on food' or 'AGAINST the one percent (1%) local sales and use tax  
2 only on those items presently covered by the four percent (4%) sales and use tax,' with  
3 appropriate squares so that each voter may designate his vote by his cross (X) mark. on items  
4 subject to State sales and use tax at the general State rate and on food'.

5 The county board of elections shall fix the date of the special ~~election; provided,~~  
6 ~~however, election, except~~ that the special election shall not be held on the date or within  
7 60 days of any biennial election for county officers, ~~nor within 60 days thereof, nor within~~  
8 one year from the date of the last preceding special election under this section."

9 Sec. 5. G.S. 105-467 reads as rewritten:

10 **"§ 105-467. Scope of sales tax.**

11 The sales tax ~~which that~~ may be imposed under this Article is limited to a tax at the  
12 rate of one percent (1%) ~~of:~~ of the following:

- 13 (1) The sales price of ~~those articles of~~ tangible personal property ~~now~~ subject  
14 to the general rate of sales tax imposed by the State under G.S. 105-  
15 164.4(a)(1) and ~~(4b); (a)(4b).~~
- 16 (2) The gross receipts derived from the lease or rental of tangible personal  
17 property when the lease or rental of the property is subject to the general  
18 rate of sales tax imposed by the State under G.S. ~~105-164.4(a)(2); 105-~~  
19 164.4(a)(2).
- 20 (3) The gross receipts derived from the rental of any room or ~~lodging~~  
21 ~~furnished by any hotel, motel, inn, tourist camp or other similar~~  
22 accommodations ~~now~~ subject to the general rate of sales tax imposed by  
23 the State under G.S. ~~105-164.4(a)(3); and 105-164.4(a)(3).~~
- 24 (4) The gross receipts derived from services rendered by laundries, dry  
25 cleaners, and other businesses ~~now~~ subject to the general rate of sales  
26 tax imposed by the State under G.S. 105-164.4(a)(4).
- 27 (5) The sales price of food that is not otherwise exempt from tax pursuant to  
28 G.S. 105-164.13 but would be exempt from the State sales and use tax  
29 pursuant to G.S. 105-164.13 if it were purchased with coupons issued  
30 under the Food Stamp Program, 7 U.S.C. § 51.

31 The sales tax authorized by this Article does not apply to sales that are taxable by the  
32 State under G.S. 105-164.4 but are not specifically included in ~~subdivisions (1) through (4)~~  
33 ~~of this section.~~

34 The State exemptions and exclusions contained in G.S. 105-164.13 and the State  
35 refund provisions contained in G.S. 105-164.14 ~~shall apply with equal force and in like~~  
36 ~~manner~~ to the local sales and use tax authorized to be levied and imposed under this  
37 Article. A taxing county ~~shall have no authority, with respect to the local sales and use tax~~  
38 ~~imposed under this Article to change, alter, add to or delete any refund provisions contained in~~  
39 ~~G.S. 105-164.14, or any exemptions or exclusions contained in G.S. 105-164.13 or which are~~  
40 ~~elsewhere provided for. may not allow an exemption, exclusion, or refund that is not~~  
41 allowed under the State sales and use tax.

42 The local sales tax authorized to be imposed and levied under ~~the provisions of this~~  
43 Article ~~shall apply to such retail sales, leases, rentals, the rendering of services,~~

1 ~~furnishing of rooms, lodgings or accommodations and other~~ applies to taxable  
2 transactions which are made, furnished or rendered by retailers whose place of business is  
3 located within the taxing county. The tax imposed shall apply to the furnishing of rooms,  
4 lodging or other accommodations within the county which are rented to transients. For  
5 the purpose of this Article, the situs of a transaction is the location of the retailer's place  
6 of business."

7 Sec. 6. G.S. 105-468 reads as rewritten:

8 **"§ 105-468. Scope of use tax.**

9 The use tax ~~which may be imposed under authorized by this Article shall be~~ is a tax at  
10 the rate of one percent (1%) of the cost price of each item or article of tangible personal  
11 property ~~when it that is not sold in the taxing county but is used, consumed~~ consumed, or  
12 stored for use or consumption in the taxing county, ~~except that no tax shall be imposed upon~~  
13 ~~tangible personal property when the property would be taxed by the State at a rate other than the~~  
14 ~~general rate of tax set in G.S. 105-164.4 if it were taxable under G.S. 105-164.6.~~ county. The  
15 tax applies to the same items that are subject to tax under G.S. 105-467.

16 Every retailer who is engaged in business in this State and in the taxing county and is  
17 required to collect the use tax levied by G.S. 105-164.6 shall ~~also~~ collect the one percent  
18 (1%) use tax when ~~such the~~ property is to be used, ~~consumed~~ consumed, or stored in the  
19 taxing county, ~~one percent (1%) use tax to be collected concurrently with the State's use tax; but~~  
20 ~~no retailer not required to collect the use tax levied by G.S. 105-164.6 shall be required to collect~~  
21 ~~the one percent (1%) use tax.~~ county. The use tax contemplated by this section shall be  
22 levied against the purchaser, and the purchaser's liability for the use tax shall be  
23 extinguished only upon payment of the use tax to the retailer, where the retailer is  
24 required to collect the tax, or to the Secretary of Revenue, ~~or to the taxing county, as~~  
25 ~~appropriate,~~ Secretary, where the retailer is not required to collect the tax.

26 Where a local sales or use tax has been paid with respect to tangible personal property  
27 by the purchaser, either in another taxing county within the State, or in a taxing  
28 jurisdiction outside the State where the purpose of the tax is similar in purpose and intent  
29 to the tax which may be imposed pursuant to this Article, the tax paid may be credited  
30 against the tax imposed under this section by a taxing county upon the same property. If  
31 the amount of sales or use tax so paid is less than the amount of the use tax due the taxing  
32 county under this section, the purchaser shall pay to the Secretary of Revenue ~~or to the~~  
33 ~~taxing county, as appropriate,~~ an amount equal to the difference between the amount so  
34 paid in the other taxing county or jurisdiction and the amount due in the taxing county.  
35 The Secretary of Revenue ~~or the taxing county, as appropriate,~~ may require such proof of  
36 payment in another taxing county or jurisdiction as is deemed to be necessary. The use  
37 tax levied under this Article is not subject to credit for payment of any State sales or use  
38 tax not imposed for the benefit and use of counties and municipalities. No credit shall be  
39 given under this section for sales or use taxes paid in a taxing jurisdiction outside this  
40 State if that taxing jurisdiction does not grant similar credit for sales taxes paid under this  
41 Article."

42 Sec. 7. The first paragraph of Section 4 of Chapter 1096 of the 1967 Session  
43 Laws, as amended, is amended as follows:

- 1 (1) By deleting the word "and" before subdivision (4).
- 2 (2) By changing the period at the end of subdivision (4) to a semicolon and  
3 adding the word "and".
- 4 (3) By adding a new subdivision to read:
- 5 "(5) The sales price of food and other items that are not otherwise exempt  
6 from tax pursuant to G.S. 105-164.13 but would be exempt from the  
7 State sales and use tax pursuant to G.S. 105-164.13 if purchased with  
8 coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

9 Sec. 8. Section 5 of Chapter 1096 of the 1967 Session Laws is amended by  
10 deleting the first sentence of that section and substituting the following sentences to read:

11 "The use tax that Mecklenburg County may impose under this division is a tax at the  
12 rate of one percent (1%) of the cost price of each item or article of tangible personal  
13 property that is not sold but is used, consumed, or stored for use or consumption in  
14 Mecklenburg County. The tax applies to the same items that are subject to tax under  
15 Section 4 of this act."

16 Sec. 9. Approval under Article 39, 40, or 42 of Chapter 105 of the General  
17 Statutes or under the Mecklenburg County Sales and Use Tax Act, Chapter 1096 of the  
18 1967 Session Laws, as amended, of local sales and use taxes on items subject to State  
19 sales and use tax at the general State rate constitutes approval of local sales and use taxes  
20 on food.

21 Sec. 10. Except as otherwise provided in this act, this act becomes effective  
22 January 1, 1997, and applies to sales made on or after that date. Section 1 of this act is  
23 repealed effective January 1, 2000.

24 Sec. 11. If the State budget savings from a moratorium instituted by the  
25 Governor pursuant to G.S. 143-10.2A are not sufficient to offset the loss of revenue  
26 resulting from the tax law changes made by this act, the Governor shall submit as part of  
27 the Governor's proposed budget sufficient permanent position reductions to ensure that  
28 the full revenue loss is offset.

29 Sec. 12. This act does not affect the rights or liabilities of the State, a taxpayer,  
30 or another person arising under a statute amended or repealed by this act before its  
31 amendment or repeal; nor does it affect the right to any refund or credit of a tax that  
32 would otherwise have been available under the amended or repealed statute before its  
33 amendment or repeal. If any provision of this act or its application is held invalid, the  
34 invalidity does not affect other provisions or applications of this act that can be given  
35 effect without the invalid provisions or application, and to this end the provisions of this  
36 act are severable.