

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017**

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**HOUSE BILL 398**

Short Title: Brunswick County/Municipal Meals Taxes. (Local)

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Sponsors: Representatives Iler and Butler (Primary Sponsors).

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

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Referred to: State and Local Government I, if favorable, Finance

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March 20, 2017

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE BRUNSWICK COUNTY OR THE MUNICIPALITIES  
LOCATED THEREIN TO LEVY A PREPARED FOOD AND BEVERAGES TAX.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** Authority. – The Board of Commissioners of Brunswick County may levy a prepared food and beverages tax of up to one-half percent (0.5%) of the sales price of prepared food and drink sold within the county, including all municipalities located there, at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. 105-164.4(a)(1) upon the occurrence of an action listed in this subsection. For purposes of catering, the tax applies to food served in the town without regard to the residency of the caterer. This tax is in addition to State and local sales tax. The occurrences on which the county may levy the tax are as follows:

- (1) The Board of County Commissioners, by resolution and after not less than 10 days' public notice and a public hearing, levies the tax.
- (2) The majority of those voting in a referendum held pursuant to this act vote for the levy of the tax and the Board of Commissioners, by resolution, levies the tax. If pursuant to this subdivision, the Board of County Commissioners shall direct the county board of elections to conduct an advisory referendum within the county on the question of whether to levy a local prepared food tax in the taxing unit as provided in this act. The election 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 [ ] AGAINST

One-half percent (0.5%) local prepared food tax, in addition to the current local sales and use taxes."

**SECTION 1.(b)** Definitions. – 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. In addition, the following definitions apply in this act:

- (1) County. – Defined in G.S. 153A-1.
- (2) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax.
- (3) Prepared food and beverages. – The term includes the following:
  - a. Prepared food, as defined in G.S. 105-164.3.
  - b. An alcoholic beverage, as defined in G.S. 18B-101.



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

- 3           (1) Prepared food and beverages served to residents in boardinghouses and sold  
4 together on a periodic basis with rental of a sleeping room or lodging.
- 5           (2) Retail sales exempt from taxation under G.S. 105-164.13.
- 6           (3) Retail sales through or by means of vending machines.
- 7           (4) Prepared food and beverages served by a retailer subject to the local  
8 occupancy tax if the charge for the prepared food and beverages is included  
9 in a single, nonitemized sales price together with the charge for rental of a  
10 room, lodging, or accommodation furnished by the retailer.
- 11          (5) Prepared food and beverages furnished without charge by an employer to an  
12 employee.
- 13          (6) Retail sales by grocers or by grocery sections of supermarkets or other  
14 diversified retail establishments, other than sales of prepared food and  
15 beverages in the delicatessen or similar department of the grocer or grocery  
16 section.
- 17          (7) Prepared food and beverages served on a federal military reservation.

18           **SECTION 1.(d)** Collection. – Every retailer subject to the tax levied under this  
19 section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall  
20 be collected as part of the charge for furnishing prepared food and beverages. The tax shall be  
21 stated separately on the sales document and shall be paid by the purchaser to the retailer as  
22 trustee for and on account of the county. The tax shall be added to the sales price and shall be  
23 passed on to the purchaser instead of being borne by the retailer. The entity collecting the tax  
24 shall design, print, and furnish to all appropriate businesses and persons in the county the  
25 necessary forms for filing returns and instructions to ensure the full collection of the tax.

26           **SECTION 1.(e)** Administration. – The county shall administer the tax levied under  
27 this section. A tax levied under this section is due and payable to the local finance officer in  
28 monthly installments on or before the 20th day of the month following the month in which the  
29 tax accrues. Every retailer liable for the tax shall, on or before the 20th day of each month,  
30 prepare and render a return on a form prescribed by the county. The return shall show the total  
31 gross receipts derived in the preceding month from sales to which the tax applies.

32           A return filed under this section is not a public record and may not be disclosed  
33 except in accordance with G.S. 153A-148.1.

34           The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes  
35 apply to this section to the extent they are not inconsistent with the provisions of this section.  
36 The uniform meals tax penalty provisions of G.S. 153A-154.1 apply to a tax levied under this  
37 section.

38           **SECTION 1.(f)** Refunds. – The county shall refund to a nonprofit or governmental  
39 entity the prepared food and beverages tax paid by the entity on eligible purchases of prepared  
40 food and beverages. A nonprofit or governmental entity's purchase of prepared food and  
41 beverages is eligible for a refund under this subsection if the entity is entitled to a refund under  
42 G.S. 105-164.14(b) or (c) of local sales and use tax paid on the purchase or if the sale is exempt  
43 under G.S. 105-164.13. The time limitations, application requirements, penalties, and  
44 restrictions provided in G.S. 105-164.14(b), (d), and (d1) apply to refunds to nonprofit entities;  
45 the time, limitations, application requirements, penalties, and restrictions provided in  
46 G.S. 105-164.14(c), (d), and (d1) apply to refunds to governmental entities. When an entity  
47 applies for a refund of the prepared food and beverages tax paid by it on purchases, it shall  
48 attach to its application a copy of the application submitted to the Department of Revenue  
49 under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases or a written  
50 statement that the purchases were exempt from the tax. An applicant for a refund under this  
51 subsection shall provide any information required by the county to substantiate the claim.

1           **SECTION 1.(g)** Use of Proceeds. – The proceeds of a tax levied under this section  
2 shall be used as provided in this subsection. The county may deduct from the gross proceeds of  
3 the taxes collected under this act an amount not to exceed three percent (3%) of the gross  
4 proceeds to pay for the direct cost of administering and collecting the taxes. The remaining  
5 proceeds shall be used for beach nourishment or to construct and improve public infrastructure  
6 and facilities or both.

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

11           **SECTION 1.(i)** Repeal. – A tax levied under this section may be repealed or  
12 reduced by a resolution adopted by the governing body of a municipality. Any repeal or  
13 reduction shall become effective on the first day of a month and may not become effective until  
14 the end of the fiscal year in which the repeal resolution is adopted. Repeal or reduction of a tax  
15 levied under this section does not affect a liability for a tax that attached before the effective  
16 date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before  
17 the effective date of the repeal or reduction.

18           **SECTION 2.(a)** Authority. – Provided the tax authorized in Section 1 of this act is  
19 not in effect, the governing body of a municipality in Brunswick County may levy a prepared  
20 food and beverages tax of up to one-half percent (0.5%) of the sales price of prepared food and  
21 drink sold within the municipality at retail for consumption on or off the premises by a retailer  
22 subject to sales tax under G.S. 105-164.4(a)(1) upon the occurrence of an action listed in this  
23 subsection. For purposes of catering, the tax applies to food served in the town without regard  
24 to the residency of the caterer. This tax is in addition to State and local sales tax. The  
25 occurrences on which the municipality may levy the tax are as follows:

- 26           (1) The governing body of the municipality, by resolution and after not less than  
27 10 days' public notice and a public hearing, levies the tax.
- 28           (2) The majority of those voting in a referendum held pursuant to this act vote  
29 for the levy of the tax and the governing body of the municipality, by  
30 resolution, levies the tax. If pursuant to this subdivision, the governing body  
31 shall direct the county board of elections to conduct an advisory referendum  
32 in the municipality on the question of whether to levy a local prepared food  
33 tax in the taxing unit as provided in this act. The election shall be held in  
34 accordance with the procedures of G.S. 163-287. The form of the question to  
35 be presented on a ballot for a special election concerning the levy of the tax  
36 authorized by this act shall be:

37           " [ ] FOR           [ ] AGAINST

38           One-half percent (0.5%) local prepared food tax, in addition to the current local  
39 sales and use taxes."

40           **SECTION 2.(b)** Definitions. – The definitions in G.S. 105-164.3 apply to this  
41 section to the extent they are not inconsistent with the provisions of this section. In addition, the  
42 following definitions apply in this act:

- 43           (1) Net proceeds. – Gross proceeds less the cost to the town of administering  
44 and collecting the tax.
- 45           (2) Prepared food and beverages. – The term includes the following:
  - 46           a. Prepared food, as defined in G.S. 105-164.3.
  - 47           b. An alcoholic beverage, as defined in G.S. 18B-101.

48           **SECTION 2.(c)** Exemptions. – The prepared food and beverages tax does not  
49 apply to the following sales of prepared food and beverages:

- 50           (1) Prepared food and beverages served to residents in boardinghouses and sold  
51 together on a periodic basis with rental of a sleeping room or lodging.

- 1 (2) Retail sales exempt from taxation under G.S. 105-164.13.
- 2 (3) Retail sales through or by means of vending machines.
- 3 (4) Prepared food and beverages served by a retailer subject to the local
- 4 occupancy tax if the charge for the prepared food and beverages is included
- 5 in a single, nonitemized sales price together with the charge for rental of a
- 6 room, lodging, or accommodation furnished by the retailer.
- 7 (5) Prepared food and beverages furnished without charge by an employer to an
- 8 employee.
- 9 (6) Retail sales by grocers or by grocery sections of supermarkets or other
- 10 diversified retail establishments, other than sales of prepared food and
- 11 beverages in the delicatessen or similar department of the grocer or grocery
- 12 section.
- 13 (7) Prepared food and beverages served on a federal military reservation.

14 **SECTION 2.(d)** Collection. – Every retailer subject to the tax levied under this  
15 section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall  
16 be collected as part of the charge for furnishing prepared food and beverages. The tax shall be  
17 stated separately on the sales document and shall be paid by the purchaser to the retailer as  
18 trustee for and on account of the municipality. The tax shall be added to the sales price and  
19 shall be passed on to the purchaser instead of being borne by the retailer. The entity collecting  
20 the tax shall design, print, and furnish to all appropriate businesses and persons in the town the  
21 necessary forms for filing returns and instructions to ensure the full collection of the tax.

22 **SECTION 2.(e)** Administration. – The municipality may enter into an agreement  
23 with Brunswick County for the administration and collection of the tax levied under this  
24 section. In the absence of an agreement, the municipality shall administer the tax levied under  
25 this section. A tax levied under this section is due and payable to the local administering  
26 authority as agent for the taxing entity in monthly installments on or before the 20th day of the  
27 month following the month in which the tax accrues. Every retailer liable for the tax shall, on  
28 or before the 20th day of each month, prepare and render a return on a form prescribed by the  
29 municipality or, at the municipality's direction, the entity administering and collecting the tax.  
30 The return shall show the total gross receipts derived in the preceding month from sales to  
31 which the tax applies.

32 A return filed under this section is not a public record and may not be disclosed  
33 except in accordance with G.S. 160A-208.1.

34 The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes  
35 apply to this section to the extent they are not inconsistent with the provisions of this section.  
36 The uniform meals tax penalty provisions of G.S. 160A-214.1 apply to a tax levied under this  
37 section.

38 **SECTION 2.(f)** Refunds. – The entity administering the tax shall refund to a  
39 nonprofit or governmental entity the prepared food and beverages tax paid by the entity on  
40 eligible purchases of prepared food and beverages. A nonprofit or governmental entity's  
41 purchase of prepared food and beverages is eligible for a refund under this subsection if the  
42 entity is entitled to a refund under G.S. 105-164.14(b) or (c) of local sales and use tax paid on  
43 the purchase or if the sale is exempt under G.S. 105-164.13. The time limitations, application  
44 requirements, penalties, and restrictions provided in G.S. 105-164.14(b), (d), and (d1) apply to  
45 refunds to nonprofit entities; the time, limitations, application requirements, penalties, and  
46 restrictions provided in G.S. 105-164.14(c), (d), and (d1) apply to refunds to governmental  
47 entities. When an entity applies for a refund of the prepared food and beverages tax paid by it  
48 on purchases, it shall attach to its application a copy of the application submitted to the  
49 Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the  
50 same purchases or a written statement that the purchases were exempt from the tax. An

1 applicant for a refund under this subsection shall provide any information required by the entity  
2 administering the tax to substantiate the claim.

3 **SECTION 2.(g)** Use of Proceeds. – The proceeds of a tax levied under this section  
4 shall be used as provided in this subsection. The entity administering and collecting the tax may  
5 deduct from the gross proceeds of the taxes collected under this act an amount not to exceed  
6 three percent (3%) of the gross proceeds to pay for the direct cost of administering and  
7 collecting the taxes. The remaining proceeds shall be used for beach nourishment or to  
8 construct and improve public infrastructure and facilities or both.

9 **SECTION 2.(h)** Effective Date of Levy. – A tax levied under this section shall  
10 become effective on the date specified in the resolution levying the tax. The date shall be the  
11 first day of a calendar month and may not be before the first day of the fourth month after the  
12 date the resolution is adopted.

13 **SECTION 2.(i)** Repeal. – Repeal or reduction of a tax levied under this section  
14 does not affect a liability for a tax that attached before the effective date of the repeal or  
15 reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of  
16 the repeal or reduction. Any repeal or reduction shall become effective on the first day of a  
17 month.

- 18 (1) Voluntary repeal. – A tax levied under this section may be repealed or  
19 reduced by a resolution adopted by the governing body of the municipality.  
20 Any repeal or reduction may not become effective until the end of the fiscal  
21 year in which the repeal resolution is adopted.
- 22 (2) Mandatory repeal. – A tax levied under this section is repealed upon the  
23 effective date of levy of a tax by Brunswick County pursuant to Section 1 of  
24 this act.

25 **SECTION 3.** This act is effective when it becomes law.