

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 675

Short Title: Currituck Meals Tax.

(Local)

Sponsors: Representative Owens (by request).

Referred to: Finance.

March 30, 1995

A BILL TO BE ENTITLED

**AN ACT TO AUTHORIZE CURRITUCK COUNTY TO LEVY A PREPARED FOOD
AND BEVERAGE TAX.**

The General Assembly of North Carolina enacts:

Section 1. Prepared Food and Beverage Tax.

(a) **Authorization.** – The Currituck County Board of Commissioners may, by resolution after not less than 10 days' public notice and a public hearing held pursuant thereto, levy a prepared food and beverage tax of up to one percent (1%) of the sales price of prepared food and beverages sold within the county at retail for consumption on or off the premises by a retailer within the county that is subject to sales tax under G.S. 105-164.4(a)(1). This tax is in addition to State and local sales tax.

(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 this section. In addition, the term "prepared food and beverages" means any meals, food, or beverages which a retailer has added value to or whose state has been altered (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make it available for immediate human consumption. 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.

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

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

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

29 (e) Administration. – The county shall administer a tax levied under this
30 section. A tax levied under this section is due and payable to the county in monthly
31 installments on or before the 25th day of the month following the month in which the tax
32 accrues. Every retailer liable for the tax shall, on or before the 25th day of each month,
33 prepare and render a return on a form prescribed by the county. The return shall show the
34 total gross receipts derived in the preceding month from sales to which the tax applies.

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

37 (f) Refunds. – The county shall refund to a nonprofit or governmental entity
38 the prepared food and beverage tax paid by the entity on eligible purchases of prepared
39 food and beverages. A nonprofit or governmental entity's purchase of prepared food and
40 beverages is eligible for a refund under this subsection if the entity is entitled to a refund
41 under G.S. 105-164.14(b) or (c) of local sales and use tax paid on the purchase. The time
42 limitations, application requirements, penalties, and restrictions provided in G.S. 105-
43 164.14(b) and (d) shall apply to refunds to nonprofit entities; the time, limitations,

1 application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and
2 (d) shall apply to refunds to governmental entities. When an entity applies for a refund of
3 the prepared food and beverage tax paid by it on purchases, it shall attach to its
4 application a copy of the application submitted to the Department of Revenue under G.S.
5 105-164.14 for a refund of the sales and use tax on the same purchases. An applicant for
6 a refund under this subsection shall provide any information required by the county to
7 substantiate the claim.

8 (g) Penalties. – A person, firm, corporation, or association who fails or
9 refuses to file the return or pay the tax required by this section is subject to the civil and
10 criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and
11 use taxes. The Currituck County Board of Commissioners has the same authority to
12 waive the penalties for a tax levied under this section that the Secretary of Revenue has to
13 waive the penalties for State sales and use taxes.

14 (h) Use of Proceeds. – The county may use the net proceeds of the tax levied
15 under this section for any lawful purpose.

16 (i) Effective Date of Levy. – A tax levied under this section shall become
17 effective on the date specified in the resolution levying the tax. The date must be the first
18 day of a calendar month and may not be before the first day of the fourth month after the
19 date that the resolution is adopted.

20 (j) Repeal. – A tax levied under this section may be repealed by a resolution
21 adopted by the Currituck County Board of Commissioners. Any repeal shall become
22 effective on the first day of a month and may not become effective until the end of the
23 fiscal year in which the repeal resolution is adopted. Repeal of a tax levied under this
24 section does not affect a liability for a tax that attached before the effective date of the
25 repeal, nor does it affect a right to a refund of a tax that accrued before the effective date
26 of the repeal.

27 Sec. 2. This act is effective upon ratification.