

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 449
SENATE BILL 808

AN ACT AUTHORIZING THE TOWN OF HILLSBOROUGH TO IMPOSE A
PREPARED FOOD AND BEVERAGE TAX.

The General Assembly of North Carolina enacts:

Section 1. Hillsborough Prepared Food and Beverage Tax.

(a) Authorization. – The board of commissioners of the Town of Hillsborough (the town board) 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 Town of Hillsborough 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.

The tax applies to prepared food and beverages served in the Town of Hillsborough even if the caterer serving them is not a resident of the town; the tax does not apply to prepared food and beverages served outside the town even if the caterer serving it is a resident of the town.

(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. In addition, the term "prepared food and beverages" means 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. 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.

(c) 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 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 beverages served by a retailer subject to the local occupancy tax if the charge for the meals or 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.

(d) Collection. – Every retailer subject to the tax levied under this section 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 added and charged separately from the sales records, and shall be paid by the purchaser to the retailer as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the retailer. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(e) Administration. – The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the town's finance officer 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 town. The return shall show the total gross receipts derived in the preceding month from sales to which the tax applies.

A return filed with the town's finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(f) Refunds. – The town 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 subsection 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 beverage 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 subsection shall provide any information required by the town to substantiate the claim.

(g) Penalties. – A person, firm, corporation, or association who fails or refuses to file a return required by this section shall pay a penalty of two dollars (\$2.00) for each day's omission, subject to a maximum of five hundred dollars (\$500.00). 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 for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an

additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The town board may, for good cause shown, compromise or forgive the additional tax penalties imposed by this section.

A person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment not to exceed six months, or both.

(h) Use of Proceeds. – The Town of Hillsborough shall remit the net proceeds of the tax levied under this section on a monthly basis to the Hillsborough Tourism Board. The Tourism Board may deduct the cost of its annual audit from the proceeds remitted to it.

The Tourism Board shall use the remaining net proceeds of the tax as follows:

- (1) Sixty percent (60%) shall be used to provide visitor services. Visitor services may include any of the following:
 - a. Operation of a center where visitors can be provided with information about the community, about facilities and businesses in it, and about points of historical or cultural interest.
 - b. Production and distribution of a free directory of restaurants to include the name, address, and phone number of each restaurant in the town.
 - c. Production and distribution of pamphlets, film clips, and other informational materials on the community.
 - d. Advertising the town and publicizing special events in it.
 - e. Doing market research pertaining to tourism.
 - f. Responding to mail and telephone inquiries submitted by visitors or potential visitors.
 - g. Providing other services to visitors designed to make their stay pleasant and instructive.
- (2) Forty percent (40%) shall be used for facilities, programs, and services designed to attract tourists to the town.

Beginning two years after a tax levied under this section has been in effect, the town board, taking into account the experience gained in using the tax proceeds, may change the percentages set out in subdivisions (1) and (2) above. The town board may not, however, authorize the use of the tax proceeds for any purpose other than those provided in subdivisions (1) and (2) above.

The Tourism Board may expend funds only for public purposes. The Tourism Board shall report quarterly and at the close of the fiscal year to the town board on its receipts and expenditures for the preceding quarter and year in such detail as the town board may require. The Tourism Board may not, without the prior approval of the town board, purchase any real estate, nor may it spend more than five thousand dollars

(\$5,000) for any item covered by subdivision (2) above without the prior approval of the town board.

(i) Effective Date of Levy. – A tax levied under this section shall become effective on the date specified in the resolution levying the tax. The date must be the first day of a calendar month and may not be before January 1, 1994, and before the first day of the fourth month after the date that the resolution is adopted.

(j) Repeal. – A tax levied under this section may be repealed by a resolution adopted by the board of commissioners of the Town of Hillsborough. Any repeal 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 is adopted. Repeal of a tax levied under this section does not affect a liability for a tax that 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.

(k) Hillsborough Tourism Board. – Before or at the time the town board adopts a resolution levying a tax under this section, it shall adopt a resolution creating a Hillsborough Tourism Board, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Tourism Board shall consist of not more than nine members, all appointed by the town board. The members shall represent four organizations or groups in the community, as provided below, and one individual may represent more than one of these organizations or groups. In addition, the town board may appoint representatives of the public at large as long as the number of members of the Tourism Board does not exceed nine. The membership of the Tourism Board shall include the following:

- (1) One member who is a member of the town board.
- (2) One member who is a member of the Hillsborough Area Chamber of Commerce. This member shall be chosen by the town board from nominees submitted by the board of directors of the Hillsborough Area Chamber of Commerce.
- (3) Four members who are owners or operators of restaurants in Hillsborough that are affected by this section.
- (4) One member chosen by the town board from nominees submitted by the Alliance for Historic Hillsborough, Inc.

In appointing members to the initial Tourism Board, the town board shall designate roughly half as having terms of one year and the balance as having terms of two years. In subsequent years, all members shall be appointed for two-year terms. Members shall serve the full term for which appointed regardless of whether they continue to be affiliated with the organization or group which they originally represented.

All members of the Tourism Board shall serve without compensation. The town board may remove a member of the Tourism Board only for good cause.

The Tourism Board shall elect a Chair and other officers from among its members, each to serve one-year terms. The Tourism Board shall meet at least quarterly on call of the Chair or of any three members. It shall adopt rules of procedure to govern its meetings. The Tourism Board shall promote tourism in Hillsborough and

otherwise carry out the duties prescribed in this section. It may, if it sees fit, perform its duties by contracting with appropriate individuals or organizations.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives