

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 774

Short Title: New Hanover Meals Tax.

(Local)

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Sponsors: Representatives Gottovi; Hill, Redwine, and Wright.

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Referred to: Finance.

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April 7, 1993

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE NEW HANOVER COUNTY TO LEVY A PREPARED  
FOOD AND BEVERAGE TAX, THE PROCEEDS OF WHICH WILL BE USED  
ONLY TO PROMOTE TOURISM IN THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Prepared Food and Beverage Tax.

(a) Authorization. – The New Hanover 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 subject to sales tax under G.S. 105-164.4(a)(1). This tax is in addition to State and local sales tax.

(b) Definition of "Prepared Food and Beverages". – As used in this act, the term "prepared food and beverages" means meals, food, and 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 them available for immediate human consumption.

(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.

1 (4) Prepared food and beverages served by a business subject to the  
2 county occupancy tax if the charge for the meals or prepared food or  
3 beverages is included in a single, nonitemized sales price together with  
4 the charge for rental of a room, lodging, or accommodation furnished  
5 by the business.

6 (5) Prepared food and beverages furnished without charge by an employer  
7 to an employee.

8 (6) Retail sales by grocers or by grocery sections of supermarkets or other  
9 diversified retail establishments, other than sales of prepared food and  
10 beverages in the delicatessen or similar department of the grocer or  
11 grocery section.

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

21 For the convenience of retailers, the county shall determine the amount to be  
22 added to the sales price of sales subject to the prepared food and beverage tax. The  
23 amounts shall be set forth in a bracket system and distributed to each retailer responsible  
24 for collecting the prepared food and beverage tax. The use of the bracket system does  
25 not relieve the retailer from the duty of collecting and remitting an amount equal to the  
26 prepared food and beverage tax.

27 (e) Administration. – The county shall administer a tax levied under this act.  
28 A tax levied under this act is due and payable to the county finance officer in monthly  
29 installments on or before the fifteenth day of the month following the month in which  
30 the tax accrues. Every person, firm, corporation, or association liable for the tax shall,  
31 on or before the fifteenth day of each month, prepare and render a return on a form  
32 prescribed by the county. The return shall show the total gross receipts derived in the  
33 preceding month from sales to which the tax applies.

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

36 (f) Refunds. – The county shall refund to a nonprofit or governmental entity  
37 the prepared food and beverage tax paid by the entity on eligible purchases of prepared  
38 food and beverages. A nonprofit or governmental entity's purchase of prepared food  
39 and beverages is eligible for a refund under this subsection if the entity is entitled to a  
40 refund under G.S. 105-164.14(b) through (d) of the sales and use tax paid on the  
41 purchase. The time limitations, application requirements, penalties, and restrictions  
42 provided in G.S. 105-164.14(b) and (d) shall apply to refunds to nonprofit entities; the  
43 time, limitations, application requirements, penalties, and restrictions provided in G.S.  
44 105-164.14(c) and (d) shall apply to refunds to governmental entities. When an entity

1 applies for a refund of the prepared food and beverage tax paid by it on purchases, it  
2 shall attach to its application a copy of the application submitted to the Department of  
3 Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same  
4 purchases. An applicant for a refund under this subsection shall provide any  
5 information required by the county to substantiate the claim.

6 (g) Use of Proceeds. – New Hanover County shall remit the net proceeds of a  
7 tax levied under this act on a monthly basis to the Cape Fear Coast Convention and  
8 Visitors Bureau, Inc., a nonprofit corporation. As used in this subsection, "net  
9 proceeds" means gross proceeds less the cost to the county of administering and  
10 collecting the tax, as determined by the finance officer.

11 The Convention and Visitors Bureau shall use the proceeds remitted to it  
12 under this act only to promote travel and tourism in New Hanover County. The  
13 Convention and Visitors Bureau may expend funds only for public purposes.

14 The Convention and Visitors Bureau shall report quarterly and at the close of  
15 the fiscal year to the New Hanover County Board of Commissioners on its receipts and  
16 expenditures for the preceding quarter and year in such detail as the board may require.

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

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

28 Sec. 2. Penalties. – A person, firm, corporation, or association who fails or  
29 refuses to file a return required by this act shall pay a penalty of ten dollars (\$10.00) for  
30 each day's omission. In case of failure or refusal to file the return or pay the tax for a  
31 period of 30 days after the time required for filling the return or for paying the tax, there  
32 shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to  
33 any other penalty, with an additional tax of five percent (5%) for each additional month  
34 or fraction thereof until the tax is paid. The New Hanover County Board of  
35 Commissioners may, for good cause shown, compromise or forgive the additional tax  
36 penalties imposed by this section.

37 A person who willfully attempts in any manner to evade a tax imposed under  
38 this act or who willfully fails to pay the tax or make and file a return shall, in addition to  
39 all other penalties provided by law, be guilty of a misdemeanor and shall be punishable  
40 by a fine not to exceed one thousand dollars (\$1,000) and imprisonment not to exceed  
41 six months.

42 Sec. 3. This act is effective upon ratification.