

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**HOUSE BILL 2290\***

Short Title: Burgaw Meals Tax.

(Local)

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Sponsors: Representatives Hughes; and Church.

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Referred to: Finance.

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May 21, 2008

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE TOWN OF BURGAW TO LEVY A PREPARED  
2 FOOD AND BEVERAGES TAX.

3  
4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** Authority. – The Burgaw Board of Commissioners may, by  
6 resolution and after not less than 10 days' public notice and a public hearing, levy a  
7 prepared food and beverages tax of up to one percent (1%) of the sales price of prepared  
8 food and beverages sold within the Town of Burgaw at retail for consumption on or off  
9 the premises by a retailer subject to sales tax under G.S. 105-164.4(a)(1). This tax is in  
10 addition to State and local sales tax.

11 **SECTION 1.(b)** Definitions. – The definitions in G.S. 105-164.3 apply to  
12 this section to the extent they are not inconsistent with the provisions of this section. In  
13 addition, the following definitions apply in this act:

- 14 (1) Net proceeds. – Gross proceeds less the cost to the town of  
15 administering and collecting the tax.
- 16 (2) Prepared food and beverages. – The term includes the following:  
17 a. Prepared food, as defined in G.S. 105-164.3.  
18 b. An alcoholic beverage, as defined in G.S. 18B-101, that meets  
19 at least one of the conditions of prepared food under  
20 G.S. 105-164.3.

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

- 23 (1) Prepared food and beverages served to residents in boardinghouses and  
24 sold together on a periodic basis with rental of a sleeping room or  
25 lodging.
- 26 (2) Retail sales exempt from taxation under G.S. 105-164.13.
- 27 (3) Retail sales through or by means of vending machines.
- 28 (4) Prepared food and beverages served by a retailer subject to the local  
29 occupancy tax if the charge for the prepared food and beverages is

1 included in a single, nonitemized sales price together with the charge  
2 for rental of a room, lodging, or accommodation furnished by the  
3 retailer.

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

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

10 (7) Prepared food and beverages served on a federal military reservation.

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

20 **SECTION 1.(e)** Administration. – The town shall administer a tax levied  
21 under this section. A tax levied under this section is due and payable to the town's  
22 director of finance and administration in monthly installments on or before the 15th day  
23 of the month following the month in which the tax accrues. Every retailer liable for the  
24 tax shall, on or before the 15th day of each month, prepare and render a return on a form  
25 prescribed by the town. The return shall show the total gross receipts derived in the  
26 preceding month from sales to which the tax applies.

27 A return filed with the town's director of finance and administration under  
28 this section is not a public record and may not be disclosed except in accordance with  
29 G.S. 160A-208.1.

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

34 **SECTION 1.(f)** Refunds. – The town shall refund to a nonprofit or  
35 governmental entity the prepared food and beverages tax paid by the entity on eligible  
36 purchases of prepared food and beverages. A nonprofit or governmental entity's  
37 purchase of prepared food and beverages is eligible for a refund under this subsection if  
38 the entity is entitled to a refund under G.S. 105-164.14(b) or (c) of local sales and use  
39 tax paid on the purchase or if the sale is exempt under G.S. 105-164.13. The time  
40 limitations, application requirements, penalties, and restrictions provided in  
41 G.S. 105-164.14(b), (d), and (d1) apply to refunds to nonprofit entities; the time,  
42 limitations, application requirements, penalties, and restrictions provided in  
43 G.S. 105-164.14(c), (d), (d1), and (e) apply to refunds to governmental entities. When  
44 an entity applies for a refund of the prepared food and beverages tax paid by it on

1 purchases, it shall attach to its application a copy of the application submitted to the  
2 Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on  
3 the same purchases or a written statement that the purchases were exempt from the tax.  
4 An applicant for a refund under this subsection shall provide any information required  
5 by the town to substantiate the claim.

6 **SECTION 1.(g)** Use of Proceeds. – The Town of Burgaw may use the  
7 proceeds of a tax levied under this section to promote travel and tourism and for  
8 tourism-related expenditures, including capital expenditures.

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

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

20 **SECTION 2.** This act is effective when it becomes law.