

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1689

Short Title: Aberdeen Meals Tax.

(Local)

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Sponsors: Senator Lee.

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Referred to: Local Government and Regional Affairs.

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June 6, 1994

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

Section 1. Aberdeen Prepared Food and Beverage Tax.

(a) Authorization. – The town board of the Town of Aberdeen 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 Aberdeen 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) 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 whose state a retailer has altered (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.

- 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 meals or prepared food or  
5 beverages is included in a single, nonitemized sales price together with  
6 the charge for rental of a room, lodging, or accommodation furnished  
7 by the retailer.  
8 (5) Prepared food and beverages furnished without charge by an employer  
9 to an employee.  
10 (6) Retail sales by grocers or by grocery sections of supermarkets or other  
11 diversified retail establishments, other than sales of prepared food and  
12 beverages in the delicatessen or similar department of the grocer or  
13 grocery section.

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

23 (e) Administration. – The town shall administer a tax levied under this  
24 section. A tax levied under this section is due and payable to the town's finance officer  
25 in monthly installments on or before the twenty-fifth day of the month following the  
26 month in which the tax accrues. Every retailer liable for the tax shall, on or before the  
27 twenty-fifth day of each month, prepare and render a return on a form prescribed by the  
28 town. The return shall show the total gross receipts derived in the preceding month  
29 from sales to which the tax applies.

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

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

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

3 (g) Penalties. – A person, firm, corporation, or association who fails or  
4 refuses to file a return required by this section is subject to the civil and criminal  
5 penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use  
6 taxes. The Aberdeen Town Board has the same authority to waive the penalties for a  
7 prepared food and beverage tax that the Secretary of Revenue has to waive the penalties  
8 for State sales and use taxes.

9 (h) Use of Proceeds. – The Town of Aberdeen shall remit the net proceeds of  
10 the tax levied under this section on a monthly basis to a special account under the  
11 Appearance and Beautification Commission. The Appearance and Beautification  
12 Commission shall use the net proceeds of the tax as follows:

13 (1)

14 (2)

15 The Appearance and Beautification Commission may expend funds only for  
16 public purposes. The Appearance and Beautification Commission shall report quarterly  
17 and at the close of the fiscal year to the town board on its receipts and expenditures for  
18 the preceding quarter and year in such detail as the town board may require.

19 (i) Effective Date of Levy. – A tax levied under this section shall become  
20 effective on the date specified in the resolution levying the tax. The date must be the  
21 first day of a calendar month and may not be earlier than the first day of the third month  
22 after the date that the resolution is adopted.

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

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