

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S

1

SENATE BILL 808

Short Title: Orange/Chatham Revenue Changes.

(Local)

Sponsors: Senators Lee and Walker.

Referred to: Local Government and Regional Affairs.

April 12, 1993

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL LOCAL REVENUE OPTIONS IN
CHATHAM AND ORANGE COUNTIES.

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.

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
4 and 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
10 beverages is included in a single, nonitemized sales price together with
11 the charge for rental of a room, lodging, or accommodation furnished
12 by the 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 (d) Collection. Every retailer subject to the tax levied under this section shall,
20 on and after the effective date of the levy of the tax, collect the tax. This tax shall be
21 collected as part of the charge for furnishing prepared food and beverages. The tax shall be
22 added and charged separately from the sales records, and shall be paid by the
23 purchaser to the retailer as trustee for and on account of the town. The tax shall be
24 added to the sales price and shall be passed on to the purchaser instead of being borne
25 by the retailer. The town shall design, print, and furnish to all appropriate businesses
26 and persons in the town the necessary forms for filing returns and instructions to ensure
27 the full collection of the tax.

28 (e) Administration. The town shall administer a tax levied under this section.
29 A tax levied under this section is due and payable to the town's finance officer in
30 monthly installments on or before the 15th day of the month following the month in
31 which the tax accrues. Every retailer liable for the tax shall, on or before the 15th day
32 of each month, prepare and render a return on a form prescribed by the town. The
33 return shall show the total gross receipts derived in the preceding month from sales to
34 which the tax applies.

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

37 (f) Refunds. The town shall refund to a nonprofit or governmental entity the
38 prepared food and beverage tax paid by the entity on eligible purchases of prepared food
39 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) through (d) of the sales and use tax paid on the purchase. The
42 time limitations, application requirements, penalties, and restrictions provided in G.S.
43 105-164.14(b) and (d) shall apply to refunds to nonprofit entities; the time, limitations,
44 application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and

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

7 (g) Penalties. A person, firm, corporation, or association who fails or refuses
8 to file a return required by this section shall pay a penalty of two dollars (\$2.00) for
9 each day's omission. In case of failure or refusal to file the return or pay the tax for a
10 period of 30 days after the time required for filing the return or for paying the tax, there
11 shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to
12 any other penalty, with an additional tax of five percent (5%) for each additional month
13 or fraction thereof until the tax is paid. The town board may, for good cause shown,
14 compromise or forgive the additional tax penalties imposed by this section.

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

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

24 For the first two years a tax levied under this section is in effect, the Tourism
25 Board shall use the remaining net proceeds of the tax as follows:

- 26 (1) Sixty percent (60%) shall be used to provide visitor services. Visitor
27 services may include any of the following:
- 28 a. Operation of a center where visitors can be provided with
29 information about the community, about facilities and
30 businesses in it, and about points of historical or cultural
31 interest.
 - 32 b. Production and distribution of pamphlets, film clips, and other
33 informational materials on the community.
 - 34 c. Advertising the town and publicizing special events in it.
 - 35 d. Doing market research pertaining to tourism.
 - 36 e. Responding to mail and telephone inquiries submitted by
37 visitors or potential visitors.
 - 38 f. Providing other services to visitors designed to make their stay
39 pleasant and instructive.
- 40 (2) Forty percent (40%) shall be used for facilities, programs, and services
41 designed to attract tourists to the town or made necessary or desirable
42 because of the impact of tourism on the town.

43 Beginning two years after a tax levied under this section has been in effect,
44 the town board, taking into account the experience gained in using the tax proceeds,

1 may change the percentages set out in subdivisions (1) and (2) above. The town board
2 may not, however, authorize the use of the tax proceeds for any purpose other than
3 those provided in subdivisions (1) and (2) above.

4 The Tourism Board may expend funds only for public purposes. The
5 Tourism Board shall report quarterly and at the close of the fiscal year to the town board
6 on its receipts and expenditures for the preceding quarter and year in such detail as the
7 town board may require. The Tourism Board may not, without the prior approval of the
8 town board, purchase any real estate, nor may it spend more than five thousand dollars
9 (\$5,000) for any item covered by subdivision (2) above without the prior approval of the
10 town board.

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

15 (j) Repeal. A tax levied under this section may be repealed by a resolution
16 adopted by the board of commissioners of the Town of Hillsborough. Any repeal shall
17 become effective on the first day of a month and may not become effective until the end
18 of the fiscal year in which the repeal resolution is adopted. Repeal of a tax levied under
19 this section does not affect a liability for a tax that attached before the effective date of
20 the repeal, nor does it affect a right to a refund of a tax that accrued before the effective
21 date of the repeal.

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

32 (1) One member who is a member of the town board.

33 (2) Two members who are members of the Hillsborough Area Chamber of
34 Commerce; these members shall be chosen by the town board from
35 nominees submitted by the board of directors of the Hillsborough Area
36 Chamber of Commerce.

37 (3) Two members who are owners or operators of restaurants in
38 Hillsborough that are affected by this section.

39 (4) Two members chosen by the town board from nominees submitted by
40 the Alliance for Historic Hillsborough, Inc.

41 In appointing members to the initial Tourism Board, the town board shall
42 designate roughly half as having terms of one year and the balance as having terms of
43 two years. In subsequent years, all members shall be appointed for two-year terms.
44 Members shall serve the full term for which appointed regardless of whether they

1 continue to be affiliated with the organization or group which they originally
2 represented.

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

5 The Tourism Board shall elect a Chair and other officers from among its
6 members, each to serve one-year terms. The Tourism Board shall meet at least quarterly
7 on call of the Chair or of any three members. It shall adopt rules of procedure to govern
8 its meetings. The Tourism Board shall promote tourism in Hillsborough and otherwise
9 carry out the duties prescribed in this section. It may, if it sees fit, perform its duties by
10 contracting with appropriate individuals or organizations.

11 Sec. 2. Chapel Hill prepared food and beverage tax.

12 (a) Authorization. The Chapel Hill Town Council may, by resolution or
13 ordinance, levy a prepared food and beverage tax of up to one percent (1%) of the sales
14 price of prepared food and beverages sold at retail for consumption on or off the
15 premises by any retailer within the town that is subject to sales tax imposed by the State
16 under G.S. 105-164.4(a)(1). This tax is in addition to any State or local sales tax.
17 Before adopting or amending an ordinance or resolution levying a tax authorized by this
18 section, the town council shall hold a public hearing on the tax. The town council shall
19 cause public notice of the hearing to be published not less than 10 days nor more than
20 25 days before the date fixed for the hearing.

21 (b) Definitions; Sales and Use Tax Statutes. The definitions in G.S. 105-164.3
22 apply to this section to the extent they are not inconsistent with the provisions of this
23 section. In addition, the term "prepared food and beverages" means any meals, food, or
24 beverages to which a retailer has added value or has altered its state (other than solely
25 by cooling) by preparing, combining, dividing, heating, or serving, in order to make the
26 food or beverage available for immediate human consumption. The provisions of
27 Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this section to the
28 extent they are not inconsistent with the provisions of this section.

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

- 31 (1) Prepared food and beverages served to residents in boarding houses
32 and sold together on a periodic basis with rental of any sleeping room
33 or lodging.
- 34 (2) Retail sales exempt from taxation under G.S. 105-164.13.
- 35 (3) Retail sales through or by means of vending machines.
- 36 (4) Prepared food and beverages served by a retailer subject to the
37 occupancy tax levied by the town if the charge for the prepared food or
38 beverages is included in a single, nonitemized sales price together with
39 the charge for rental of a room, lodging, or accommodation furnished
40 by the retailer.
- 41 (5) Prepared food and beverages furnished without charge by an employer
42 to an employee.
- 43 (6) Retail sales by grocers or by grocery sections of supermarkets or other
44 diversified retail establishments, other than sales of prepared food and

1 beverages in the delicatessen or similar department of the grocer or
2 grocery section.

3 (d) Collection. Every retailer subject to the tax levied under this section shall, on
4 and after the effective date of the levy of the tax, collect the tax. This tax shall be
5 collected as part of the charge for furnishing prepared food and beverages. The tax shall
6 be stated and charged separately from the sales price, shall be shown separately on the
7 retailer's sales records, and shall be paid by the purchaser to the retailer as trustee for
8 and on account of the town. The tax shall be added to the sales price and shall be
9 passed on to and collected from the purchaser instead of being borne by the retailer.

10 For the convenience of each retailer and to facilitate the administration of this
11 section, the town shall determine the amount to be added to the sales price of all sales
12 subject to the prepared food and beverage tax. The amounts shall be set forth in a
13 bracket system and distributed to each retailer responsible for collecting the prepared
14 food and beverage tax. The use of the bracket system does not relieve the retailer from
15 the duty and liability of collecting and remitting to the town an amount equal to the
16 prepared food and beverage tax levied by the town.

17 (e) Administration. The town may adopt regulations necessary to implement
18 this section. A tax levied under this section is due and payable to the town in monthly
19 installments on or before the 15th day of the month following the month in which the
20 tax accrues. Every retailer liable for the tax shall, on or before the 15th day of each
21 month, prepare and render a return on a form prescribed by the town. The return shall
22 show the total gross receipts derived in the preceding month from sales to which the tax
23 applies. The town shall design, print, and furnish to all appropriate retailers the
24 necessary forms for filing returns and instructions to ensure the full collection of the tax.

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

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

41 (g) Penalties. A person, firm, corporation, or association who fails or refuses
42 to file a return and pay the tax due under this section shall pay a penalty of ten dollars
43 (\$10.00) for each day's omission up to a maximum of two thousand dollars (\$2,000) for
44 each return. In case of failure or refusal to file the return or pay the tax for a period of

1 30 days after the time required for filing the return or paying the tax, there shall be an
2 additional tax, as a penalty, of five percent (5%) of the tax due, with an additional tax of
3 five percent (5%) for each additional month or fraction thereof until the tax is paid. The
4 town council may, for good cause shown, compromise or forgive the additional tax
5 penalties imposed by this subsection.

6 Any person who willfully attempts in any manner to evade a tax imposed
7 under this section or who willfully fails to pay the tax or make and file a return shall, in
8 addition to the penalties provided by law, be guilty of a misdemeanor punishable by a
9 fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six
10 months, or both.

11 (h) Use of Proceeds. The town may use the proceeds of a tax levied under
12 this section only for one or both of the following purposes:

13 (1) Public infrastructure improvements in business areas of the town.
14 These improvements may include "Streetscape" improvements in
15 public rights-of-way and other publicly owned areas.

16 (2) Supplemental law enforcement services in business areas of the town.

17 (i) Effective Date of Levy. A tax levied under this section shall become
18 effective on the date specified in the resolution or ordinance levying the tax. That date
19 must be the first day of a calendar month, however, and may not be earlier than the first
20 day of the second month after the date the resolution or ordinance is adopted. The levy
21 of a prepared food and beverage tax may not be effective before January 1, 1994.

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

29 Sec. 3. Pittsboro license tax on peddlers.

30 Notwithstanding the provisions of G.S. 105-53(a) and (m), the Town of
31 Pittsboro may levy a license tax on peddlers who travel from place to place on foot,
32 other than peddlers exempt from tax pursuant to G.S. 105-53(e), in an amount that does
33 not exceed twenty-five dollars (\$25.00). Notwithstanding the provisions of G.S. 105-
34 33(c), the Town of Pittsboro may require peddlers, other than peddlers exempt from tax
35 pursuant to G.S. 105-53(e), who begin business in the town after the expiration of seven
36 months of the town's current license year to pay one hundred percent (100%) of the
37 applicable license tax levied by the town.

38 Sec. 4. Authorizing requirements of payments in lieu of reserved or
39 dedicated recreation area in developments.

40 (a) A town may adopt ordinances applicable in the town and the town's
41 extraterritorial planning jurisdiction to require that developers make payment to the
42 town in lieu of reserving or dedicating recreation area, where the town's planning and
43 development regulations would otherwise require provision of recreation area equalling

- 1 two acres or less. The amount of payment shall be determined through procedures to be
2 established by ordinance and in a manner consistent with G.S. 160A-372.
- 3 (b) This section applies to the Town of Chapel Hill only.
4 Sec. 5. This act is effective upon ratification.