

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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HOUSE BILL 1249*

Short Title: Brevard Meals Tax. (Local)

Sponsors: Representative Whitmire (Primary Sponsor).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Finance.

May 29, 2014

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE CITY OF BREVARD TO LEVY A PREPARED FOOD
3 AND BEVERAGES TAX.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** Authority. – The city council of the City of Brevard may, by
6 resolution and after not less than 10 days' public notice and a public hearing, levy a prepared
7 food and beverages tax of up to one and one-half percent (1.5%) of the sales price of prepared
8 food and beverages sold within the City of Brevard at retail for consumption on or off the
9 premises by a retailer subject to sales tax under G.S. 105-164.4(a)(1). For purposes of catering,
10 the tax applies to food served in the city without regard to the residency of the caterer. This tax
11 is in addition to State and local sales tax.

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

- 15 (1) Net proceeds. – Gross proceeds less the cost to the city of administering and
16 collecting the tax.
- 17 (2) Prepared food and beverages. – The term includes the following:
- 18 a. Prepared food, as defined in G.S. 105-164.3, including any food to
19 which a retailer has added value or altered its state, other than by
20 cooling, by preparing, combining, dividing, heating, or serving, in
21 order to make the food available for human consumption.
- 22 b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at
23 least one of the conditions of prepared food under G.S. 105-164.3.

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

- 26 (1) Prepared food and beverages served to residents in boardinghouses and sold
27 together on a periodic basis with rental of a sleeping room or lodging.
- 28 (2) Retail sales exempt from taxation under G.S. 105-164.13.
- 29 (3) Retail sales through or by means of vending machines.
- 30 (4) Prepared food and beverages served by a retailer subject to the local
31 occupancy tax if the charge for the prepared food and beverages is included
32 in a single, nonitemized sales price together with the charge for rental of a
33 room, lodging, or accommodation furnished by the retailer.
- 34 (5) Prepared food and beverages furnished without charge by an employer to an
35 employee.



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

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

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

14 **SECTION 1.(e)** Administration. – The City of Brevard may enter into an
15 agreement with Transylvania County for the administration and collection of the tax levied
16 under this section. In the absence of an agreement, the city shall administer the tax levied under
17 this section. A tax levied under this section is due and payable to the local administering
18 authority as agent for the taxing entity in monthly installments on or before the 15th day of the
19 month following the month in which the tax accrues. Every retailer liable for the tax shall, on
20 or before the 15th day of each month, prepare and render a return on a form prescribed by the
21 city or, at the city's direction, the entity administering and collecting the tax. The return shall
22 show the total gross receipts derived in the preceding month from sales to which the tax
23 applies.

24 A return filed under this section is not a public record and may not be disclosed
25 except in accordance with G.S. 160A-208.1.

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

30 **SECTION 1.(f)** Refunds. – The entity administering the tax shall refund to a
31 nonprofit or governmental entity the prepared food and beverages tax paid by the entity on
32 eligible purchases of prepared food and beverages. A nonprofit or governmental entity's
33 purchase of prepared food and beverages is eligible for a refund under this subsection if the
34 entity is entitled to a refund under G.S. 105-164.14(b) or (c) of local sales and use tax paid on
35 the purchase or if the sale is exempt under G.S. 105-164.13. The time limitations, application
36 requirements, penalties, and restrictions provided in G.S. 105-164.14(b), (d), and (d1) apply to
37 refunds to nonprofit entities; the time, limitations, application requirements, penalties, and
38 restrictions provided in G.S. 105-164.14(c), (d), and (d1) apply to refunds to governmental
39 entities. When an entity applies for a refund of the prepared food and beverages tax paid by it
40 on purchases, it shall attach to its application a copy of the application submitted to the
41 Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the
42 same purchases or a written statement that the purchases were exempt from the tax. An
43 applicant for a refund under this subsection shall provide any information required by the entity
44 administering the tax to substantiate the claim.

45 **SECTION 1.(g)** Use of Proceeds. – The proceeds of a tax levied under this section
46 shall be used as provided in this subsection. The entity administering and collecting the tax may
47 deduct from the gross proceeds of the taxes collected under this act an amount not to exceed
48 three percent (3%) of the gross proceeds to pay for the direct cost of administering and
49 collecting the taxes. The remaining proceeds shall be used to construct and improve public
50 infrastructure and facilities, including projects located in or related to the historic downtown,

1 recreation-based infrastructure and facilities, and gateway opportunities that exist, such as
2 Pisgah National Forest or Brevard Music Center.

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

7 **SECTION 1.(i)** Repeal. – A tax levied under this section may be repealed or
8 reduced by a resolution adopted by the Brevard City Council. Any repeal or reduction shall
9 become effective on the first day of a month and may not become effective until the end of the
10 fiscal year in which the repeal resolution is adopted. Repeal or reduction of a tax levied under
11 this section does not affect a liability for a tax that attached before the effective date of the
12 repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the
13 effective date of the repeal or reduction.

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