

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**SENATE BILL 664
Finance Committee Substitute Adopted 7/23/01
House Committee Substitute Favorable 8/28/01**

Short Title: Union/Monroe Prepared Food Tax.

(Local)

Sponsors:

Referred to:

March 22, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE UNION COUNTY OR THE CITY OF MONROE TO
LEVY A PREPARED FOOD TAX.

The General Assembly of North Carolina enacts:

SECTION 1.(a) County Authorization. – The Union 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 tax of one percent (1%) of the sales price of prepared food 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.

A tax levied under this subsection shall become effective on the date specified in the resolution levying the tax. If the City of Monroe has not levied a tax under this section, the date must be the first day of a calendar month and may not be before the first day of the fourth month after the date the resolution is adopted. If the City of Monroe has levied a tax under this section, the date must be the first day of a calendar month, and may not be before the later of (i) the first day of the fourth month after the date the resolution is adopted or (ii) the first day of the first fiscal year after the date the resolution is adopted.

SECTION 1.(b) City Authorization. – If the tax authorized in subsection (a) of this section is not in effect, the Monroe City Council may, by ordinance after not less than 10 days' public notice and a public hearing held pursuant thereto, levy a prepared food tax of one percent (1%) of the sales price of prepared food sold within the city 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 city's authority to levy a tax under this subsection is suspended, and any tax it has levied under this subsection is suspended, on the effective date of a county tax levied under subsection (a) of this section. The city's authority to levy a tax under this subsection is revived

1 effective on the effective date of the repeal of a county tax levied under subsection (a)
2 of this section.

3 A tax levied under this section shall become effective on the date specified in
4 the ordinance levying the tax. The date must be the first day of a calendar month and
5 may not be before the first day of the fourth month after the date the ordinance is
6 adopted.

7 **SECTION 1.(c)** Definitions; Sales and Use Tax Statutes. – The definitions
8 in G.S. 105-164.3 apply to this section to the extent they are not inconsistent with the
9 provisions of this section. The provisions of Article 5 and Article 9 of Chapter 105 of
10 the General Statutes apply to this section to the extent they are not inconsistent with the
11 provisions of this section.

12 **SECTION 1.(d)** Exemptions. – The prepared food tax does not apply to the
13 following sales of prepared food:

- 14 (1) Prepared food served to residents in boarding houses and sold together
15 on a periodic basis with rental of a sleeping room or lodging.
- 16 (2) Retail sales exempt from taxation under G.S. 105-164.13.
- 17 (3) Retail sales through or by means of vending machines.
- 18 (4) Prepared food served by a retailer subject to the local occupancy tax if
19 the charge for the meals or prepared food or drink is included in a
20 single, nonitemized sales price together with the charge for rental of a
21 room, lodging, or accommodation furnished by the retailer.
- 22 (5) Prepared food furnished without charge by an employer to an
23 employee.
- 24 (6) Retail sales by grocers or by grocery sections of supermarkets or other
25 diversified retail establishments, other than sales of prepared food in
26 the delicatessen or similar department of the grocer or grocery section.
- 27 (7) Prepared food served on a federal military reservation.

28 **SECTION 1.(e)** Collection. – Every retailer subject to the tax levied under
29 this section shall, on and after the effective date of the levy of the tax, collect the tax.
30 This tax shall be collected as part of the charge for furnishing prepared food. The tax
31 shall be stated separately on the sale document and shall be paid by the purchaser to the
32 retailer as trustee for and on account of the taxing unit. The tax shall be added to the
33 sales price and shall be passed on to the purchaser instead of being borne by the retailer.
34 The taxing unit shall design, print, and furnish to all appropriate businesses and persons
35 the necessary forms for filing returns and instructions to ensure the full collection of the
36 tax.

37 **SECTION 1.(f)** Administration. – The taxing unit shall administer a tax
38 levied under this section. A tax levied under this section is due and payable to the
39 taxing unit's finance officer in monthly installments on or before the 25th day of the
40 month following the month in which the tax accrues. Every retailer liable for the tax
41 shall, on or before the 25th day of each month, prepare and render a return on a form

1 prescribed by the taxing unit. The return shall show the total gross receipts derived in
2 the preceding month from sales to which the tax applies.

3 A return filed with the finance officer under this section is not a public record
4 and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S.
5 160A-208.1.

6 **SECTION 1.(g)** Refunds. – The taxing unit shall refund to a nonprofit or
7 governmental entity the prepared food tax paid by the entity on eligible purchases of
8 prepared food. A nonprofit or governmental entity's purchase of prepared food is
9 eligible for a refund under this subsection if the entity is entitled to a refund under G.S.
10 105-164.14(b) or (c) of local sales and use tax paid on the purchase. The time
11 limitations, application requirements, penalties, and restrictions provided in G.S.
12 105-164.14(b) and (d) apply to refunds to nonprofit entities; the time, limitations,
13 application requirements, penalties, and restrictions provided in G.S. 105-164.14(c), (d),
14 and (e) apply to refunds to governmental entities. When an entity applies for a refund
15 of the prepared food tax paid by it on purchases, it must attach to its application a copy
16 of the application submitted to the Department of Revenue under G.S. 105-164.14 for a
17 refund of the sales and use tax on the same purchases. An applicant for a refund under
18 this subsection must provide any information required by the taxing unit to substantiate
19 the claim.

20 **SECTION 1.(h)** Penalties. – The uniform meals tax penalty provisions of
21 G.S. 153A-154.1 and G.S. 160A-214.1 apply to a tax levied under this section.

22 **SECTION 1.(i)** Use of Proceeds. – Union County must remit to each
23 incorporated municipality in the county any net proceeds of the tax levied under
24 subsection (a) of this section that are collected from retailers located within that
25 municipality. The municipality must use any proceeds remitted to it under this
26 subsection for the construction, operation, and maintenance of a civic center, for
27 downtown development, and for economic development. Union County may retain the
28 remaining net proceeds of the tax levied under subsection (a) of this section and must
29 use these retained proceeds only for economic development.

30 The City of Monroe must use the net proceeds of any tax it levies under
31 subsection (b) of this section for the construction, operation, and maintenance of a civic
32 center, for Downtown Monroe development, and for economic development.

33 As used in this subsection, the term 'net proceeds' means gross proceeds less
34 the cost to the taxing unit of administering and collecting the tax, as determined by the
35 finance officer, not to exceed three percent (3%) of the first five hundred thousand
36 dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the
37 remaining gross receipts collected each year.

38 **SECTION 1.(j)** Repeal. – A tax levied under this section may be repealed by
39 an ordinance or resolution adopted by the governing body of the taxing unit. Any repeal
40 shall become effective on the first day of a month and may not become effective until
41 the end of the fiscal year in which the repeal ordinance or resolution is adopted. Repeal
42 of a tax levied under this section does not affect a liability for a tax that attached before

- 1 the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued
2 before the effective date of the repeal.
3 **SECTION 2.** This act is effective when it becomes law.