

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

H.B. 458  
Mar 26, 2019  
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40209-MCxf-128C

Short Title: Henderson Meals Tax. (Local)

Sponsors: Representative Garrison.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF HENDERSON TO LEVY A PREPARED FOOD AND BEVERAGES TAX.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** Authority. – The Henderson City Council may, by resolution and after not less than 10 days' public notice and a public hearing, levy a prepared food and beverages tax of up to one percent (1%) of the sales price of prepared food and beverages sold within the City of Henderson at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. 105-164.4(a)(1) upon the occurrence of an action listed in this subsection. For purposes of catering, the tax applies to food served in the City without regard to the residency of the caterer. This tax is in addition to State and local sales tax.

**SECTION 1.(b)** Definitions. – 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 following definitions apply in this act:

- (1) Net proceeds. – Gross proceeds less the cost to the City of administering and collecting the tax.
- (2) Prepared food and beverages. – The term includes the following:
  - a. Prepared food. – Defined in G.S. 105-164.3.
  - b. An alcoholic beverage. – Defined in G.S. 18B-101.

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

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



\* D R H 4 0 2 0 9 - M C X F - 1 2 8 C \*

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

9           **SECTION 1.(e)** Administration. – The City of Henderson may enter into an  
10 agreement with Vance County for the administration and collection of the tax levied under this  
11 section. In the absence of an agreement, the City shall administer the tax levied under this section.  
12 A tax levied under this section is due and payable to the local administering authority as agent  
13 for the taxing entity in monthly installments on or before the twentieth day of the month following  
14 the month in which the tax accrues. Every retailer liable for the tax shall, on or before the  
15 twentieth day of each month, prepare and render a return on a form prescribed by the City or, at  
16 the City's direction, the entity administering and collecting the tax. The return shall show the total  
17 gross receipts derived in the preceding month from sales to which the tax applies. A return filed  
18 under this section is not a public record and may not be disclosed except in accordance with  
19 G.S. 160A-208.1.

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

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

38           **SECTION 1.(g)** Use of Proceeds. – The proceeds of a tax levied under this section  
39 shall be used as provided in this subsection. The entity administering and collecting the tax may  
40 deduct from the gross proceeds of the taxes collected under this act an amount not to exceed three  
41 percent (3%) of the gross proceeds to pay for the direct cost of administering and collecting the  
42 taxes. The remaining proceeds shall be used for the promotion of travel and tourism in and  
43 tourism-related expenditures in the City of Henderson. For purposes of this act, the phrase  
44 "promote travel and tourism" means to advertise or market an area or activity, publish and  
45 distribute pamphlets and other materials, conduct market research, or engage in similar  
46 promotional activities that attract tourists or business travelers to the area, as well as  
47 administrative expenses incurred in engaging in the listed activities, and the term "tourism-related  
48 expenditures" means expenditures that, in the judgment of the City, are designed to increase the  
49 use of lodging facilities, meeting facilities, or convention facilities in the City or to attract tourists  
50 or business travelers to the City, including tourism-related capital expenditures.

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

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

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