

**ADMINISTRATIVE PROCEDURES  
FOR THE COLLECTION OF THE CUMBERLAND COUNTY  
PREPARED FOOD AND BEVERAGE TAX**

HISTORY:

On September 28, 1993 the Cumberland County Board of Commissioners enacted an Ordinance known as the Cumberland County Prepared Food and Beverage Tax codified as Article IX-A of the Cumberland County Code. The tax so levied is a one percent (1%) tax of the sales price of prepared food and beverages sold at retail for consumption on or off the premises of any retailer within Cumberland County that is subject to sales tax imposed by the State of North Carolina pursuant to N.C.G.S. 105-164.4(a)(1).

Section 7-330 of the Ordinance directs that the Tax Collector of Cumberland County administer and collect the tax and promulgate any and all additional rules and regulations necessary for the complete implementation and administration of the Ordinance. The following administrative procedures are set forth in compliance with Section 7-330 and shall be binding upon all persons subject to the tax as well as all persons enforcing, collecting and administering the tax.

PROCEDURES:

Section 1. ORDINANCE

An Ordinance To Impose And Levy A Prepared Food And Beverage Tax In Cumberland County is attached hereto as Exhibit A.

Section 2. DETERMINATION OF PERSONS SUBJECT TO THE TAX

A. The Tax Collector or designated representative thereof shall compile a list of persons, firms, corporations, and associations subject to collect the food and beverage tax. Such list shall be compiled from any and all reliable sources of information, but shall at least be compiled from the following sources.

1. Names, addresses, and other identifying information obtained from various advertising or other informational media or sources of persons, firms, corporations, and associations which hold themselves out as retailers of prepared food and beverages sold at retail for consumption on or off the premises of the said retailer in Cumberland County and who are determined to be subject to the sales tax pursuant to N.C.G.S. 105-164.4(1). In the event of an inability to make the above determination, determination may be requested from the office of the county attorney.
2. Upon determination that a person, firm, corporation, or association is subject to the food and beverage tax, a food and beverage tax account shall be created for the taxpayer to which tax payments shall be credited and to which debits shall be deducted.

Section 3. EXEMPTION FROM THE TAX

A. Only the following sales of prepared food and beverage sold at retail for consumption on or off the premises of the retailer are exempt from the requirement of the collection of the food and beverage tax.

1. Prepared foods and beverages served to residents in boarding houses and sold together on a periodic basis with rental of any sleeping room or lodging.
2. Retail sales exempt from taxation under N.C.G.S. 105-164.13.
3. Retail sales through or by means of vending machines.
4. Prepared foods and beverages served by a retailer subject to the occupancy tax levied by the County if the charge for the prepared food and beverage is included in a single, non itemized

sales price together with the charge for rental of a room, lodging, or accommodation furnished by the retailer.

5. Prepared foods and beverages furnished without charge by an employer to an employee.

6. Retail sales by grocers or by grocery sections of super-markets or other diversified retail establishments, other than sales of prepared foods and beverages in the delicatessen or similar department of the grocer or grocery section.

7. Prepared foods and beverages served on federal military reservations.

#### Section 4. NOTIFICATION OF RETAILERS SUBJECT TO COLLECTION OF THE TAX; APPEAL OF APPLICABILITY OF NOTIFICATION

A. The Tax Collector, or designated representative, upon determining that a person, firm, corporation, or association is subject to the collection and payment of the food and beverage tax shall send notice by first class mail to said taxpayer together with a copy of the Ordinance, Procedures, a Return Form with instructions for completing the Return Form, and a demand for payment of such taxes as they become due thereafter. A taxpayer is entitled to one notification only.

B. Upon notification as set forth above, or upon a change of status of the taxpayer, the taxpayer may apply to the Tax Collector for a ruling that the taxpayer is not subject to the tax. Such application for a ruling shall be in writing and state with particularity why the taxpayer is not subject to the tax and be accompanied by supporting documentation. The application must be submitted within thirty (30) days of the notification set forth above or as of the date of the claimed change of status. If requested by the taxpayer, a conference shall be held with the Tax Collector and the taxpayer and/or the representative of the taxpayer prior to the issuance of a ruling. The ruling of the Tax Collector shall be in writing and shall be issued within thirty (30) days of either the receipt thereof or the conference. The pendency of a ruling shall not toll the liability for or payment of the tax.

C. A ruling of the Tax Collector adverse to the taxpayer may be appealed to the Food and Beverage Tax Appeals Panel which shall consist of the County Manager, the Assistant County Manager with administrative responsibility for the office of the Tax Collector, and the County Finance Director. Any such appeal must be in writing and state with particularity the reasons why the appellant is not subject to the tax and be accompanied by supporting documentation. The appeal must be submitted to the Appeals Panel within thirty (30) days of the date of the ruling of the Tax Collector. The pendency of an appeal shall not toll the liability for or payment of the tax.

#### Section 5. RETURN FORM

A. All Returns submitted in compliance with the Ordinance and these Procedures shall be on the Return Form or an exact facsimile thereof attached hereto as Exhibit B.

#### Section 6. PREPARATION OF THE RETURN FORM

A. The Return shall show total gross receipts derived in the reporting period from sales of food and beverage.

B. The Return, together with payments due, shall be submitted to the Office of the Tax Collector on or before the 25th day of the month following the month in which the tax accrues. A Return shall be submitted even in the event that no tax is due.

C. The Return may be submitted in person to the Office of the Tax Collector or may be submitted by mail if addressed to the Office of the Cumberland County Tax Collector, Post Office Box 449, Fayetteville, North Carolina 28302-0449. The Return shall be deemed received upon delivery in person or on the date shown in the U. S. Postal Service postmark on the envelope in which the Return is enclosed.

D. The Return may include space for any and all information the Tax Collector requires to administer the tax including, but not limited to,

1. Month of the Return.
2. Social Security Number of taxpayer.
3. Federal Identification Number of taxpayer.
4. Trade name, assumed name, or "doing business as" name of taxpayer.
5. Mailing address of taxpayer.
6. Telephone numbers of taxpayer.
7. Street address of taxpayer.
8. Owner, partners, stockholders, shareholders of tax-payer with address, telephone, and Social Security number
9. Change of ownership.
10. Change of address.
11. Location change.
12. Change of telephone number.
13. Change of name.
14. Sale of business data.
15. Certification as to the truth and accuracy of the Return, and
16. Authorization for the Tax Collector or the Internal Auditor of Cumberland County to enter the taxpayer's premises, and examine the taxpayer's books and records to ensure compliance with the provisions of the law made by a person lawfully entitled to make such a certification and give authorizations.

E. The Return shall include space for the following disclosures and computations.

1. Gross Retail Receipts excluding all sales tax on Line One.
2. Non prepared food and beverage receipts on Line Two. Line Two shall be subtracted from Line One.
3. Net Retail prepared food and beverage receipts on Line Three. Line Three shall be the remainder of the subtraction of Line Two from Line One.
4. Prepared Food and Beverage Tax due for the reporting period on Line Four. Line Three shall be multiplied by 1%.
5. Excess tax collected (to be credited to taxpayers account) on Line Five.
6. Penalty payments (\$5.00 per day up to \$500.00) on Line Six.
7. Additional tax as Penalty (5% of tax due) on Line Seven.
8. Total tax and penalty remitted on Line Eight.

#### Section 7. PAYMENT OF THE TAX

A. Payment of the tax and any penalty due for a current or past due return shall be remitted to the Office of the Tax Collector with a Return Form. A Return shall not be deemed received, notwithstanding any postal mark, if not accompanied by payment in full of the tax and penalties due.

B. If a Return is submitted in person, payment shall be made either in cash, money order or by personal or organizational check bearing the tax identification number of the remitting person or organization. If a Return is made by mail, payment shall be made only by a personal or organizational check bearing the tax identification number of the remitting person or organization

C. If checks are returned because of insufficient funds on deposit, a service charge in the amount authorized by N.C.G.S. 105-357 shall be added to the amount of tax due, and a processing fee in the amount authorized by N.C.G.S. 25-3-512 shall be added to the amount of the tax due.

## Section 8. PROCESSING OF PAYMENTS AND RETURNS

- A. Upon receipt, each Return shall be stamped with the date of receipt by the Office of the Tax Collector.
- B. All Returns shall be filed, disclosed, and otherwise handled as documents which are not public records as defined by N.C.G.S. 132-1.
- C. All payments shall be processed on the day received in the same manner as all other tax payments for deposit.
- D. Tax Collector may assign such departmental employees as are necessary for the completion of the duties and responsibilities as set forth in the Chapter IX-A of the Cumberland County Code. The Tax Collector may, in the event that sufficient staff is not from time to time available to carry out the duties and responsibilities of the collection and administration of the prepared food and beverage tax, report such fact to the County Manager and thereafter be entitled to one additional employee above the number of employees assigned to the Tax Collector during fiscal year 1993-1994 whose duties shall be devoted to the collection and administration of this tax.

## Section 9. REFUNDS

- A. A nonprofit or governmental entity may apply to the Tax Collector for a refund of taxes paid if the entity is entitled to a refund under N.C.G.S. 105-164.14 attached hereto as Exhibit E. Any and all time limitations, application requirements, penalties, and restrictions set forth in N.C.G.S. 105-164.14 shall apply to an application for refund of the tax.
- B. The Tax Collector shall make any such refund within thirty (30) working days after a determination has been made that the entity is entitled to a refund.
- C. The Tax Collector shall require from the taxpayer any information deemed relevant to substantiate a refund. However, in no case shall the Tax Collector authorize a refund to any taxpayer without a copy of the application for refund submitted to the North Carolina Department of Revenue for a refund of sales and use tax on the same purchase.

## Section 10. ENFORCEMENT AND PENALTIES

- A. Each account shall be reviewed by the fifth (5th) working day following the 25th day of the month. If a Return Form with full payment has not been received on the date of the review, the taxpayer whose account is delinquent shall be notified of such delinquency by certified mail and a demand made for the submission of the Return Form and payment of all taxes and penalties due.
- B. A taxpayer filing a late return of less than 30 days shall compute the penalty at the rate of \$5.00 per day for each days omission to file up to the sum of \$500.00 and shall submit the amount of penalty due along with the payment of the tax.
- C. In addition to the sum as set forth above, a taxpayer filing a late return of more than 30 days shall pay an additional tax of 5% of the tax due with an additional tax of 5% for each additional month of delinquency.
- D. The Tax Collector shall maintain a list of those taxpayers who have not filed a Return Form for two consecutive months and shall file against those taxpayers a criminal warrant as provided for in Cumberland County Code Section 7-334. This action shall be in addition to all other penalties.

## Section 11. AUDITS

- A. Pursuant to the certification on the Return Form, the records and account books of every taxpayer may be examined and audited on the premises of the taxpayer at any time during usual business hours by the Tax Collector, Internal Auditor of Cumberland County, or designated representative for the sole purpose of determining compliance with the food and beverage tax.

B. In the event the Tax Collector, the Internal Auditor of Cumberland County, or designated representative is refused access to the premises, records and/or account books of a taxpayer, such denial shall result in a letter being delivered by certified mail to the taxpayer requesting the right to enter the premises to examine books and records. In the event such entry or examination of books and records is denied, such denial shall be deemed a willful attempt to evade the tax and shall result in the filing of misdemeanor charges. In the alternative, the Tax Collector may institute an action requiring the taxpayer to show cause why such examination should not take place as provided for in N.C.G.S. 105-164.30.

#### Section 12. EFFECTIVE DATE

A. These procedures shall be effective January 1, 1994.

## **CUMBERLAND COUNTY PREPARED FOOD AND BEVERAGE TAX RULES AND REGULATIONS**

Enabling legislation by the North Carolina General Assembly defines "Prepared Food and Beverages" as any food or beverage 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 consumption.

For the purpose of establishing standards and definitions which may be applied uniformly with regard to the Cumberland County Prepared Food and Beverage Tax, we have listed some general rules and regulations you should follow.

### SUBJECT BUSINESS

Any retailer within Cumberland County that is subject to sales tax imposed by the State of North Carolina under section 105-164(a)(1) of the North Carolina General Statutes, which would include:

restaurants; cafes; cafeterias; coffee shops; grills; snack bars/carts; lounges; bars; taverns; mobile vendors; vendors at sporting; cultural & entertainment events; fast food establishments; drive-in establishments; private club dining facilities; independent bakeries; grocer & independent delicatessens; convenience stores/marts; luncheon counters/soda fountains at drugstores; pharmacies and other general retail stores; nightclubs; wet bars; concession stands; ice cream parlors/shops; employee cafeterias that charge for food or beverages; and any other establishments, place of business, or enterprise maintaining facilities, equipment, services, or inventory for the sale of any type or kind of prepared food, food product, meal or beverage sold to consumer

### PREPARED FOOD AND BEVERAGES: Taxable and Non-Taxable

Sales from vending machines are specifically exempted from the Prepared Food and Beverage Tax. Sales of prepared food and beverages available for immediate consumption that are sold on a "take-out", "to-go" or delivery basis are subject to the Prepared Food and Beverage Tax.

An alcoholic or non-alcoholic beverage sold by the drink or as part of a meal is subject to this tax. Exceptions would be soft drinks and alcoholic beverages (1) purchased in unopened package form (i.e., 6 packs, cans, bottles, cases) and (2) not to be consumed on the premises of the retailer or where otherwise served by a caterer. Examples of taxable beverages include a bottled drink sold by a caterer or bar for opening and consumption by a customer on the retailer's premises or wherever served by a caterer and orange and milk served at a fast food establishment. Non-taxable beverages include can drinks sold by a convenience store and a bottle of wine sold by a retailer for "take-out" by the consumer.

Prepared food and beverage sales made to the general public or employees that are paid for, directly or indirectly, by cash, charge card, payroll deduction, meal ticket, voucher or other means are subject to this tax and must be collected by the retailer or employer.

Sales derived from Salad Bars (i.e., cut up fruits and vegetables) sold in various sized servings, usually by the pound or plate are subject to this tax.

Salad preparations such as potato salad, cole slaw, macaroni, bean and congealed salads (including chicken salad, etc.) as well as sliced or unsliced meats sold in carry-out containers are not subject to this tax. Any of the foregoing sold as part of a meal, deli tray, or otherwise as part of a steamed table product is subject to this tax.

Whole pies and cakes are not subject to this tax.

In addition, the following rules and regulations apply to the category of retailers set forth below:

#### INDEPENDENT BAKERIES

Food and beverages prepared by an independent bakery are taxable only if sold as an individual serving for carry out or to be consumed at dining facilities located on the bakery premises.

#### CATERERS AND FOOD DELIVERY SERVICES

Any food or beverage prepared by a caterer or food delivery service (regardless of the primary place of business or place of food preparation) and served within Cumberland County will be subject to the Prepared Food and Beverage Tax.

Any food or beverage prepared by caterers or food delivery services located within Cumberland County to be served outside the County will not be subject to the Prepared Food and Beverage Tax.

#### CONVENIENCE STORES

Examples of food and beverages subject to this tax include hot dogs (whether placed on rotisserie by customer or retailer), brewed coffee, fountain drinks and dip ice cream, etc.

Prepackaged sandwiches prepared by someone other than the retailer are not subject to this tax.

#### TEMPORARY VENDORS

All temporary food and beverage vendors that operate as such must make a fifty Dollar (\$50.00) cash prepayment to the Cumberland County Tax Office prior to commencement of business. No later than five (5) days after the close of the temporary location, a return must be filed with the Cumberland County Tax Office and any additional tax monies must be paid with the return. A refund will be made if determination is made by the Tax Office that the tax amount due (plus penalties, if any) is less than the original prepayment amount.

#### GROCER, INDEPENDENT DELICATESSENS AND OTHER DIVERSIFIED RETAIL ESTABLISHMENTS

Sales of prepared food and beverage in independent delicatessens and in the delicatessen or similar department of a grocer or other diversified retail establishment that are subject to taxation under the Ordinance shall be limited to the sale of any prepared food and beverage that is (1) heated when sold, (2) sold as a single serving, or (3) sold as a steamed table product. For purposes of this procedure, a "steamed table product" shall mean any one or more foods and beverages sold collectively as a meal available for immediate consumption, including without limitation both heated and cooled foods and beverages.

Deli trays (meat, cheese, fruit, etc.) are subject to the Prepared Food and Beverage Tax.

Sales derived from salad bars (i.e., cut-up fruits and vegetables) sold in various sized servings, usually by the pound or plate, are subject to this tax.