

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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SENATE DRS85079-MCx-88A (02/28)

Short Title: Greenville Alcoholic Beverage Tax. (Local)

Sponsors: Senator Jenkins.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF GREENVILLE TO LEVY A TAX ON THE SALE OF ALCOHOLIC BEVERAGES TO OFFSET THE RESULTING INCREASED NEED FOR LAW ENFORCEMENT PERSONNEL.

The General Assembly of North Carolina enacts:

SECTION 1. Intent. – This act authorizes the City of Greenville to levy a tax on the sale of alcoholic beverages at all or a class of establishments having retail ABC permits with the proceeds of the tax being dedicated for law enforcement purposes.

SECTION 2. Definitions. – The definitions in G.S. 105-113.68, 105-164.3, 18B-101, and 18B-1000 apply to this act to the extent they are not inconsistent with the provisions of this act. The following definitions also apply in this act:

- (1) Alcoholic beverage. – Any beverage containing at least one-half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.
- (2) Net proceeds. – The gross proceeds of the tax levied pursuant to this act less the cost to the city of administering and collecting the tax.
- (3) Retail ABC permit. – Any written or printed authorization issued by the North Carolina Alcoholic Beverage Control Commission that authorizes the retail sale of an alcoholic beverage for consumption on or off the premises.
- (4) Taxable establishment. – A place that has been issued a retail ABC permit by the North Carolina Alcoholic Beverage Control Commission and is subject to the alcoholic beverage tax levied pursuant to this act or to the license tax levied pursuant to this act.

SECTION 3. Sales and Use Tax Statutes. – The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this act to the extent they are not inconsistent with the provisions of this act.

SECTION 4. Alcoholic Beverage Tax. – The City Council of the City of Greenville may, by ordinance, levy an alcoholic beverage tax of up to one percent (1%) of the sales price of alcoholic beverages sold at retail for consumption on or off the premises by any place within the city for which has been issued a retail ABC permit by the North Carolina Alcoholic Beverage Control Commission. The tax may be levied by the city council upon all establishments for which a retail ABC permit has been issued or upon establishments which qualify as one or more of the categories of eligible places for which a retail ABC permit may be issued, as provided in G.S. 18B-1001, and for which has been issued a retail ABC permit. Before levying the tax authorized in this section, the city council must hold a public hearing on



1 the tax. Notice of the public hearing shall be advertised at least 10 days, but not more than 25
2 days, before the scheduled date of the hearing. The tax authorized in this section is in addition
3 to any State or local sales tax.

4 **SECTION 5.** Date of Levy. – A tax levied pursuant to Section 4 of this act shall
5 become effective on the date specified in the ordinance levying the tax. The effective date must
6 be the first day of a calendar month and may not be earlier than 60 days after the date the
7 ordinance is adopted.

8 **SECTION 6.** Collection. – Every operator of a taxable establishment shall, on and
9 after the effective date of the levy of a tax pursuant to Section 4 of this act, collect the tax. The
10 tax shall be stated and charged separately from the sales price, shall be shown separately on the
11 taxable establishment's sales records, and shall be paid by the purchaser to the taxable
12 establishment as trustee for and on account of the city. The tax shall be added to the sales price
13 and shall be passed on to and collected from the purchaser instead of being borne by the taxable
14 establishment.

15 **SECTION 7.** Administration. – The taxes levied pursuant to Section 4 of this act
16 are due and payable to the city in monthly installments on or before the fifteenth day of the
17 month following the month in which the tax accrues. Every taxable establishment liable for the
18 tax shall, on or before the fifteenth day of each month, prepare and render a return to the city.
19 The city shall design, print, and furnish on request to all taxable establishments the necessary
20 forms for filing returns and instructions to ensure the full collection of the tax.

21 Returns filed with the city pursuant to this act are not public records as defined by
22 G.S. 132-1 and may not be disclosed except as in accordance with G.S. 160A-208.1.

23 **SECTION 8.** Use of Proceeds. – The net proceeds of the tax levied pursuant to
24 Section 4 of this act shall be used only for law enforcement purposes.

25 **SECTION 9.** Penalties. – A person, firm, corporation, or association who fails or
26 refuses to file a return and pay the tax due pursuant to a levy pursuant to Section 4 of this act
27 shall pay a penalty of ten dollars (\$10.00) for each day's omission up to a maximum of two
28 thousand dollars (\$2,000) for each return. In case of failure or refusal to file the return or pay
29 the tax for a period of 30 days after the time required for filing the return or paying the tax,
30 there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, with an
31 additional tax of five percent (5%) for each additional month or fraction thereof until the tax is
32 paid. The city council may, for good cause shown, compromise or forgive the additional tax
33 penalties imposed by this section.

34 Any person who willfully attempts in any manner to evade a tax imposed pursuant
35 to Section 4 of this act or who willfully fails to pay the tax or make and file a return shall, in
36 addition to the penalties provided by law, be guilty of a misdemeanor punishable by a fine not
37 to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.

38 **SECTION 10.** License Tax. – Instead of levying an alcoholic beverage tax
39 pursuant to Section 4 of this act, the City Council of the City of Greenville may, by ordinance,
40 levy a license tax by requiring that a person holding a retail ABC permit for an establishment
41 located in the city shall obtain from the city a city license for the activity authorized by the
42 ABC permit upon payment of an annual tax for each license. The amount of the annual tax
43 shall be determined by the city council, but the aggregate amount of the proceeds of the license
44 taxes levied in any fiscal year pursuant to this section shall not exceed the expense incurred by
45 the city in the previous fiscal year of the city for law enforcement purposes related to the
46 taxable establishments. The taxes authorized in this section shall be in addition to any State or
47 local tax including the tax associated with the licenses required by G.S. 105-113.77. The
48 licenses required by this section are not subject to the prohibition set forth in
49 G.S. 105-113.70(d). The amount of the tax for each taxable establishment may be based upon
50 the occupancy of the taxable establishment, upon the total occupancy of the taxable
51 establishment combined with other taxable establishments which are located within a specified

1 distance, not to exceed one-quarter mile, from the taxable establishment, upon the hours of
2 operation of the taxable establishment, or upon other criteria, as determined by the city council,
3 associated with the expense incurred by the city for law enforcement purposes related to the
4 taxable establishments. The license may be required by city council for all establishments for
5 which a retail ABC permit has been issued or for establishments which qualify as one or more
6 of the categories of eligible places for which a retail ABC permit may be issued, as provided in
7 G.S. 18B-1001, and for which has been issued a retail ABC permit. Before levying the tax
8 authorized in this section, the city council must hold a public hearing on the tax. Notice of the
9 public hearing shall be advertised at least 10 days, but not more than 25 days, before the
10 scheduled date of the hearing. The tax levied pursuant to this section shall become effective on
11 the date specified in the ordinance levying the tax. The net proceeds of the tax levied pursuant
12 to this section shall be used only for law enforcement purposes. A person, firm, corporation, or
13 association who fails or refuses to obtain a license and pay the tax due associated with the
14 license is subject to the civil and criminal penalties as set forth in G.S. 105-236. The city
15 council may, for good cause shown, compromise or forgive the additional penalties imposed.

16 **SECTION 11.** Repeal. – The taxes levied pursuant to Section 4 or Section 10 of
17 this act may be repealed by the city council by enacting an ordinance of repeal. The repeal shall
18 be effective on the date specified in the repeal ordinance. Repeal of a tax levied pursuant to this
19 act does not affect a liability for a tax that was attached before the effective date of the repeal,
20 nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

21 **SECTION 12.** This act is effective upon ratification.