



State of North Carolina

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MEMORANDUM

TO: Andy Sabol, Director
Sales and Use Tax Division

FROM: Kay Miller Hobart *KMH*
Special Deputy Attorney General

DATE: 15 September 2005

SUBJECT: Dare County Local Sales and Use Tax Authorized by Sess. Law 2004-123

You have asked for an opinion regarding certain issues surrounding Session Law 2004-123, which authorizes Dare County to levy an additional 1% local sales and use tax. Subsequent to this authorizing legislation, the Dare County Board of Commissioners adopted a resolution levying the additional 1% tax. The additional tax is effective 1 January 2006. N.C. Gen. Stat. § 105-466(d) provides that upon receipt of a certified copy of the resolution, the Secretary shall collect and administer the tax. The Secretary was provided with a certified copy of the Board's resolution on 5 August 2005. Collection of the tax can only begin on the first day of January or July, as set by the resolution. N.C. Gen. Stat. § 105-466(c).

We understand that a special election is to be held on 8 November 2005 under N.C. Gen. Stat. § 105-473 for the purpose of submitting to the voters the question of whether the levy of the additional tax should be repealed.¹ Under N.C. Gen. Stat. § 105-473(d), no termination of taxes levied and imposed under this Article shall be effective until the end of the fiscal year in which the repeal election was held. This provision is made applicable to the taxes at issue by virtue of N.C. Gen. Stat. § 105-529. Dare County has requested that the Department defer issuing notices to retailers of the rate change until after the results of the November election.

¹ The adoption, levy, collection, administration and repeal of the additional tax must be in accordance with Article 39 of Chapter 105. N.C. Gen. Stat. § 105-529. N.C. Gen. Stat. § 105-473 is contained within Article 39.



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You have asked our opinion whether, regardless of the outcome of the November election, the additional 1% tax will be imposed on 1 January 2006. For the reasons that follow, our response is yes.

N.C. Gen. Stat. § 105-528 authorized the Dare County Board of Commissioners to levy an additional 1% sales and use tax. That section contains no provisions for repeal. Instead, N.C. Gen. Stat. § 105-529 states that any repeal of the additional tax authorized by section 528 "must be in accordance with Article 39." The only provision regarding repeal in Article 39 is N.C. Gen. Stat. § 105-473. The pertinent provisions of this section are as follows:

"(a) The board of elections of any county . . . shall call a special election for the purpose of submitting to the voters the question of whether the levy of a one percent (1%) sales and use tax theretofore levied should be repealed."

"(d) No termination of taxes levied and imposed under this Article shall be effective until the end of the fiscal year in which the repeal was held."

An initial question is whether the November election is premature. Under subsection (a) the election is for the purpose of submitting to the voters the question of whether the tax "theretofore levied" should be repealed. In this case, the levy of the tax does not occur until 1 January 2006, so the election cannot be for the repeal of a tax "theretofore levied." See N.C. Gen. Stat. § 105-466.

Assuming arguendo, however, that the election were valid and that the voters voted to repeal the tax, the earliest the repeal could be effective would be 1 July 2006. N.C. Gen. Stat. § 105-473(d). N.C. Gen. Stat. § 105-466(c) requires a county to provide the Secretary with at least 90 days advance notice of a new tax levy or a rate change.

By statute, the Secretary is required to begin collecting the additional tax on 1 January 2006, regardless of the outcome of any election. Notices should therefore not be deferred.

This is an advisory memorandum. It has not been reviewed and approved in accordance with the procedures for issuing an Attorney General's opinion.