

Article 43.

Local Government Sales and Use Taxes for Public Transportation.

Part 1. General.

§ 105-506. Short title; purpose.

This Article is the Local Government Public Transportation Sales Tax Act and may be cited by that name. This Article gives the counties and transportation authorities of this State an opportunity to obtain an additional source of revenue with which to meet their needs for financing local public transportation systems. It provides them with authority to levy sales and use taxes. All such taxes must be approved in a referendum. (1997-417, s. 1; 2009-527, s. 2(a), (b).)

§ 105-506.1. Definitions.

The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

- (1) Board of trustees. – The governing body of a transportation authority.
- (2) Net proceeds. – Gross proceeds less the cost of administering and collecting the tax.
- (3) Public transportation system. – Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, car-pool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, and the interconnected bicycle and pedestrian infrastructure that supports public transportation, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.
- (4) Transportation authority. – For the purposes of Parts 3 and 4 of this Article, a regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes; and for the purposes of Parts 3 and 5 of this Article, a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes. (1997-417, s. 1; 2009-527, s. 2(a), (b).)

§ 105-506.2. Exemption of food.

A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B or to the sales price of a bundled transaction taxable pursuant to G.S. 105-467(a)(5a). (1997-417, s. 1; 2008-134, s. 74(a); 2009-527, s. 2(a), (b).)

Part 2. Mecklenburg County.

§ 105-507. Limitations.

A county may not levy a tax under this Part unless the county or at least one unit of local government in the county operates a public transportation system. In addition, a county may not levy a tax under this Part unless it has developed a financial plan and distributed it to each unit of local government in the county that operates a local public transportation system. The financial plan must provide for equitable allocation of the net proceeds distributed to the county in consideration of the identified needs of local public transportation systems in the county,

countywide human service transportation systems, and expansion of public transportation service to unserved areas in the county. (1997-417, s. 1; 2009-527, s. 2(a), (b).)

§ 105-507.1. Local election on adoption of sales and use tax.

(a) Resolution. – The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum within the county on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied in accordance with this Part. The election shall be held in accordance with the procedures of G.S. 163-287. The board of commissioners shall hold a public hearing on the question at least 30 days before the date the election is to be held.

(b) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

"[] FOR [] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public transportation systems." (1997-417, s. 1; 2009-527, s. 2(a), (b); 2013-381, s. 10.10; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 105-507.2. Levy and collection of sales and use tax.

If the majority of those voting in a referendum held pursuant to G.S. 105-507.1 vote for the levy of the tax, the board of commissioners of the county may, by resolution, levy one-half percent (½%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Except as provided in this Part, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Part, references to "this Article" mean "Part 1 of Article 43 of Chapter 105 of the General Statutes". (1997-417, s. 1; 2008-134, s. 74(b); 2009-527, s. 2(a), (b).)

§ 105-507.3. Distribution and use of taxes.

(a) Distribution. – The Secretary shall, on a monthly basis, allocate to each taxing county the net proceeds of the tax levied under this Part by that county. If the Secretary collects taxes under this Part in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties, in proportion to the amount of taxes collected in each county under this Part in that month and shall include them in the monthly distribution.

The Secretary shall distribute the net proceeds of the tax levied by a county on a per capita basis among the county and the units of local government in the county that operate public transportation systems. No proceeds shall be distributed to a county that does not operate a public transportation system or to a unit of local government that does not operate a public transportation system.

(b) Use. – A county must allocate the net proceeds distributed to it in accordance with its financial plan adopted pursuant to G.S. 105-507 and use the net proceeds only for financing, constructing, operating, and maintaining local public transportation systems. Any other unit of local government may use the net proceeds distributed to it under this Part only for financing, constructing, operating, and maintaining local public transportation systems. Every unit of government shall use the net proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation systems. (1997-417, s. 1; 2001-427, s. 13(f); 2009-527, s. 2(a), (b).)

§ 105-507.4. Applicability.

This Part applies only to Mecklenburg County. (1997-417, s. 1; 2009-527, s. 2(a), (b).)

Part 3. Transportation Authorities.

§ 105-508. Special districts.

(a) Authority. – A transportation authority may create a special district as provided in Parts 4 and 5 of this Article. A special district is subject to the provisions of this Part as well as the Part under which it was created. A special district created under this Article is a local government body corporate and politic and has the power to carry out the purposes of the Part under which it is established.

(b) Governance. – The following entity shall serve ex officio as the governing board and be responsible for budget adoption and the operation and management of the transit services provided by the district:

- (1) The board of trustees of the transportation authority, if the special district consists of multiple counties. If the special district is expanded under G.S. 105-509(d) or G.S. 105-510(d) to include more than one county, then the board of trustees of the transportation authority shall become the governing board of the district beginning on the first day of the next fiscal year after expansion of the district.
- (2) The county board of commissioners, if the special district consists of one county. The board may contract with the transportation authority as needed.

(c) Filing Requirement. – The transportation authority creating a special district shall name it and file with the Secretary of State the documents creating the district, and shall also file notice of the addition to and removal from the district of any counties, or of the abolition of the special district. (2009-527, s. 2(b).)

§ 105-508.1. Limitations.

A transportation authority may not levy a tax under Part 4 or 5 of this Article unless:

- (1) It operates a public transportation system.
- (2) It has developed a financial plan and distributed it to each unit of local government located within its territorial jurisdiction. The plan must be approved by the board of commissioners of each county in the district prior to the levy of the tax. If the board of commissioners of a county in a multicounty district does not adopt the plan, the transportation authority may remove that county from the district, and no tax may be levied in that county under this Part. The financial plan must provide for equitable use of the net proceeds within or to benefit the special district created under Part 4 or Part 5 of this Article and consider (i) the identified needs of local public transportation systems in the district, (ii) human service transportation systems within the district, and (iii) expansion of public transportation systems to underserved areas of the district. The financial plan must also be approved by all Metropolitan Planning Organizations under Article 16 of Chapter 136 of the General Statutes whose jurisdiction includes any of the area of the special district. The plan may be revised from time to time. An interlocal agreement between the transportation

authority and all the counties in the special district may require periodic review and approval of the financial plan.

- (3) The tax is approved by the voters. (2009-527, s. 2(b).)

§ 105-508.2. Distribution and use of taxes.

(a) Distribution. – The Secretary shall, on a monthly basis, allocate to each special district the net proceeds of the tax levied under this Part within the special tax district, to be used for the benefit of that district.

(b) Use. – A special district must expend the net proceeds distributed to it in accordance with its financial plan adopted pursuant to G.S. 105-508.1 and use the net proceeds only for financing, constructing, operating, and maintaining public transportation systems. The special district shall use the net proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation systems. (2009-527, s. 2(b).)

Part 4. Regional Public Transportation Authority (Triangle).

§ 105-509. Local election on adoption of sales and use tax – regional public transportation authority.

(a) Special District. – A regional public transportation authority may create a special district that consists of the entire area of one or more counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in this section. The proceeds of a tax levied under this section may be used only for the benefit of the special district and only for the purposes provided in this Article. If a referendum in a district fails in all the counties in the district, the transportation authority may abolish the special district.

(b) Resolution. – The board of trustees of the regional public transportation authority may, if all of the conditions listed in this subsection have been met, direct the respective county board or boards of elections to conduct an advisory referendum within the special district on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied within the district in accordance with this Part. The tax may not be levied without voter approval. The election shall be held on a date jointly agreed upon by the authority, the county board or boards of commissioners, and the county board or boards of elections and shall be held on a date permitted by and in accordance with the procedures of G.S. 163-287. The conditions are as follows:

- (1) The board of trustees has obtained approval to conduct a referendum by a vote of the following:
- a. A majority vote of each of the county boards of commissioners within the special district, if it is a multicounty special district.
 - b. A majority of the county board of commissioners within the special district, if it is a single-county special district.
- (2) A public hearing is held on the question by the board or boards of commissioners at least 30 days before the date the election is to be held.

(c) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

"[] FOR [] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public transportation systems."

(d) Expansion. – If a special district created under this Part does not include all the counties in the territorial jurisdiction of a transportation authority, it may be expanded to include an

additional whole county or counties by joint action of the board of trustees of the transportation authority and the board of commissioners of the county or boards of commissioners of the counties to be added, with the approval of the voters in the county or counties to be added. The procedure for expansion of a district is the same as for the initial creation of the district, but the referendum shall be held separately within each of the counties to be added. (2009-527, s. 2(b); 2013-381, s. 10.11; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 105-509.1. Levy and collection of sales and use tax – regional public transportation authority.

If the majority of those voting in a referendum held pursuant to G.S. 105-509 vote for the levy of the tax, the transportation authority may, by resolution, levy one-half percent ($\frac{1}{2}\%$) local sales and use taxes within the special district, in addition to any other State and local sales and use taxes levied pursuant to law. In determining the results of the election in a multicounty district, all the counties of the district shall be considered to be one unit but also must receive a majority vote in each county, except that if the referendum is passed in one or more but not all of the counties, the counties in which the referendum was not approved are removed from the special district upon certification of the election result and the county or counties that approved the referendum shall remain in the special district. Except as provided in this Part, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to "this Article" mean "Part 4 of Article 43 of Chapter 105 of the General Statutes." Any repeal of the tax shall be done by the same procedure as its enactment under this section, and in a multicounty district a petition for repeal under G.S. 105-473 shall be judged by the total votes in all the counties in the district. (2009-527, s. 2(b).)

Part 5. Regional Transportation Authority (Triad).

§ 105-510. Local election on adoption of sales and use tax – regional transportation authority.

(a) Special District. – A regional transportation authority may create a special district that consists of the entire area of one or two counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in this section. The special district may not include counties other than Forsyth and Guilford. The proceeds of a tax levied under this section may be used only for the benefit of the special district and only for the purposes provided in this Article. If a referendum in a district fails, the transportation authority may abolish the special district.

(b) Resolution. – The board of trustees of the regional transportation authority may, if all of the conditions listed in this subsection have been met, direct the respective county board or boards of elections to conduct an advisory referendum within the special district on the question of whether a local sales and use tax at the rate of one-half percent ($\frac{1}{2}\%$) may be levied within the district in accordance with this Part. The tax may not be levied without voter approval. The election shall be held on a date jointly agreed upon by the authority, the county board or boards of commissioners, and the county board or boards of elections and shall be held on a date permitted by and in accordance with the procedures of G.S. 163-287. The conditions are as follows:

- (1) The board of trustees has obtained approval to conduct a referendum by a vote of the following:
 - a. A majority vote of both of the county boards of commissioners within the special district, if it is a multicounty special district.

- b. A majority of the county board of commissioners within the special district, if it is a single-county special district.
- (2) A public hearing is held on the question by the board or boards of commissioners at least 30 days before the date the election is to be held.
- (c) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:
 "[] FOR [] AGAINST
 One-half percent (1/2%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public transportation systems."
- (d) Expansion. – If a special district created under this Part does not include both of the eligible counties under subsection (a) of this section, it may be expanded to include the other county by joint action of the board of trustees of the transportation authority and the board of commissioners of the county to be added, with the approval of the voters in the county to be added. The procedure for expansion of the district is the same as for the initial creation of the district, but the referendum shall be held separately in the county to be added. (2009-527, s. 2(b); 2013-381, s. 10.12; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 105-510.1. Levy and collection of sales and use tax – regional transportation authority.

If the majority of those voting in a referendum held pursuant to G.S. 105-510 vote for the levy of the tax, the transportation authority may, by resolution, levy one-half percent (1/2%) local sales and use taxes within the special district, in addition to any other State and local sales and use taxes levied pursuant to law. In determining the results of the election in a multicounty district, all the counties of the district shall be considered to be one unit but also must receive a majority vote in each county, except that if the referendum is passed in one but not both of the counties, the county in which the referendum was not approved is removed from the special district upon certification of the election result and the county that approved the referendum shall remain in the special district. Except as provided in this Part, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to "this Article" mean "Part 5 of Article 43 of Chapter 105 of the General Statutes." Any repeal of the tax shall be done by the same procedure as its enactment under this section, and in a multicounty district a petition for repeal under G.S. 105-473 shall be judged by the total votes in all the counties in the district. (2009-527, s. 2(b).)

Part 6. Other Counties.

§ 105-511. Applicability.

This Part applies only in counties other than Durham, Forsyth, Guilford, Mecklenburg, Orange, or Wake. (2009-527, s. 2(b).)

§ 105-511.1. Limitations.

A county may not levy a tax under this Part unless the county or at least one unit of local government in the county operates a public transportation system. As used in this Part, operation of a public transportation system includes a contract or interlocal agreement for operation of the public transportation system by another county or municipality, or by a transportation authority created under (i) a municipal charter; or (ii) Article 25, 26, or 27 of Chapter 160A of the General

Statutes. As used in this Part, operation of a public transportation system also includes a contract with a private entity for operation of the public transportation system. (2009-527, s. 2(b).)

§ 105-511.2. Local election on adoption of sales and use tax.

(a) Resolution. – The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum within the county on the question of whether a local sales and use tax at the rate of one-quarter percent (1/4%) may be levied in accordance with this Part. The election shall be held on a date jointly agreed upon by the boards and shall be held on a date permitted by and in accordance with the procedures of G.S. 163-287. The board of commissioners shall hold a public hearing on the question at least 30 days before the date the election is to be held.

(b) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

"[] FOR [] AGAINST

One-quarter percent (1/4%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public transportation systems." (2009-527, s. 2(b); 2013-381, s. 10.13; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 105-511.3. Levy and collection of sales and use tax.

If the majority of those voting in a referendum held pursuant to this Part vote for the levy of the tax, the board of commissioners of the county may, by resolution, levy one-quarter percent (1/4%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Except as provided in this Part, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Part, references to "this Article" mean "Part 6 of Article 43 of Chapter 105 of the General Statutes." (2009-527, s. 2(b).)

§ 105-511.4. Distribution and use of taxes.

(a) Distribution. – The Secretary shall, on a monthly basis, allocate to each taxing county the net proceeds of the tax levied under this Part by that county. If the Secretary collects taxes under this Part in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties, in proportion to the amount of taxes collected in each county under this Part in that month and shall include them in the monthly distribution.

The Secretary shall distribute the net proceeds of the tax levied by a county on a per capita basis among the county and the units of local government in the county that operate a public transportation system as follows:

- (1) To the county based on the population of the county that is not in an incorporated area, and to the municipalities within the county based on the population of that municipality that is located within that county. To determine the population of each county and each municipality, the Secretary shall use the most recent annual estimate of population certified by the State Budget Officer.
- (2) Notwithstanding subdivision (1) of this subsection, if a municipality to which funds are to be allocated neither operates nor contracts for the operation of a public transportation system, the population of that municipality shall be excluded from the calculations of subdivision (1) of this subsection.

- (3) Notwithstanding subdivision (1) of this subsection, if a county to which funds are to be allocated neither operates nor contracts for the operation of a public transportation system, the population of that county not in an incorporated area shall be excluded from the calculations of subdivision (1) of this subsection.

If a county or a municipality that does not receive an allocation of funds on account of subdivision (2) or (3) of this subsection begins to operate or contract for the operation of a public transportation system, that county or municipality shall begin receiving funds beginning the first day of July that is more than 30 days thereafter.

(b) A county or municipality may use funds received under this Part only for financing, constructing, operating, and maintaining public transportation systems. Every unit of government shall use funds to supplement and not to supplant or replace existing funds or other resources for public transportation systems. (2009-527, s. 2(b).)

§ 105-512. Reserved for future codification purposes.

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