

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 115

Short Title: Simplify Business License Tax.

(Public)

Sponsors: Senators Winner, Kincaid, and Staton.

Referred to: Finance.

February 20, 1991

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY LICENSE TAX FILING FOR RETAILERS AND WHOLESALEERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.16(b) reads as rewritten:

"(b) General Reporting Periods. - Returns of taxpayers who are required by this subsection to report on a monthly or quarterly basis are due within 15 days after the end of each monthly or quarterly period. Returns of taxpayers who are required to report on a semimonthly basis are due within 10 days after the end of each semimonthly period.

A taxpayer who is consistently liable for less than ~~twenty-five dollars (\$25.00)~~ fifty dollars (\$50.00) a month in State and local sales and use taxes may, with the approval of the Secretary, file a return on a quarterly basis. A taxpayer who is consistently liable for at least twenty thousand dollars (\$20,000) a month in State and local sales and use taxes shall, when directed to do so by the Secretary, file a return on a semimonthly basis. All other taxpayers shall file a return on a monthly basis. Quarterly reporting periods end on the last day of March, June, September, and December; monthly reporting periods end on the last day of the month; and semimonthly reporting periods end on the 15th of each month and the last day of each month.

The Secretary shall monitor the amount of tax remitted by a taxpayer and shall direct a taxpayer who consistently remits at least twenty thousand dollars (\$20,000) each month to file a return on a semimonthly basis. In determining the amount of tax due from a taxpayer for a reporting period the Secretary shall consider the total amount due from all places of business owned or operated by the same person as the amount due from that person.

1 A taxpayer who is directed to remit sales and use taxes on a semimonthly basis but
2 who is unable to gather the information required to submit a complete return for either
3 the first reporting period or both the first and second semimonthly reporting periods
4 may, upon written authorization by the Secretary, file an estimated return for that first
5 reporting period or both periods on the basis prescribed by the Secretary. Once a
6 taxpayer is authorized to file an estimated return for the first period or both periods, the
7 taxpayer may continue to file an estimated return for the first or both periods until the
8 Secretary, by written notification, revokes the taxpayer's authorization to do so. When
9 filing a return for the second semimonthly reporting period, a taxpayer who files an
10 estimated return for the first period but not both periods shall remit the amount of tax
11 due for both the first and second reporting periods, less the amount he remitted with his
12 estimated return.

13 A taxpayer who files an estimated return for both periods is considered to have been
14 granted an extension for both the first and second reporting periods. Notwithstanding
15 G.S. 105-164.19, if a taxpayer who files an estimated return for both periods files a
16 reconciling return for those periods within ten days of the due date of the return for the
17 second period and any underpayment of estimated taxes remitted with the reconciling
18 return is less than ten percent (10%) of the amount of taxes due for both the first and
19 second reporting periods, no interest shall be charged. Otherwise, a taxpayer who files
20 an estimated return for both periods shall be charged interest at the statutory rate from
21 the due date of the return for the first reporting period to the date the reconciling return
22 is filed."

23 Sec. 2. G.S. 105-102.5 reads as rewritten:

24 "**§ 105-102.5. ~~General business~~ Merchant's privilege license.**

25 (a) License. Every retailer or wholesale merchant (i) engaged in business selling
26 or leasing motor vehicles, motor fuel, or special fuel or (ii) engaged in a business
27 required to be licensed under G.S. 105-164.4(c) or 105-164.6(f) of the Sales and Use
28 Tax Act shall obtain from the Secretary of Revenue a merchant's privilege license for
29 the privilege of engaging in business as a retailer or a wholesale merchant. The tax for
30 each merchant's privilege license is fifty dollars (\$50.00) and one license shall be
31 obtained for each location at which the retailer or wholesale merchant is engaged in
32 business. The retailer or wholesale merchant shall keep the merchant's privilege license
33 displayed conspicuously at the location for which it was issued.

34 (b) Exemptions. This section does not apply to:

35 (1) A distributor or operator of merchandising dispensers licensed under
36 G.S. 105-65.1.

37 (2) A specialty market vendor, a peddler, or an itinerant merchant as
38 defined in G.S. 105-53.

39 (c) Local Licenses. Counties may levy a license tax of up to thirty-five dollars
40 (\$35.00) on a wholesale merchant licensed under this section. Counties may not levy a
41 license tax on a retailer licensed under this section unless the retailer is also a wholesale
42 merchant licensed under this section. Municipalities may levy a license tax on retailers
43 and wholesale merchants licensed under this section as provided in G.S. 105-102.6.

1 ~~(a) Every person, firm, or corporation engaging in any one of the businesses~~
2 ~~listed in subsection (b) of this section shall apply for and procure from the Secretary of~~
3 ~~Revenue a State "general business license" for the transaction of such business. The tax~~
4 ~~for each license shall be fifty dollars (\$50.00) and one license shall be obtained for each~~
5 ~~location at which any of the businesses enumerated in subsection (b) is engaged in;~~
6 ~~however, only one general business license is required for any one location regardless of~~
7 ~~how many of the enumerated businesses are being engaged in at that location by the~~
8 ~~person, firm, or corporation.~~

9 ~~(b) The general business license shall be procured and the tax paid by the person,~~
10 ~~firm, or corporation engaged in any one or more of the following business activities:~~

11 ~~(1) Selling, leasing, furnishing, and/or distributing movies, including~~
12 ~~video movies, for use in places where no admission fee is charged or~~
13 ~~in schools, public or private, or other institutions of learning in this~~
14 ~~State.~~

15 ~~(2) Selling bicycles, bicycle supplies, or accessories.~~

16 ~~(3) Selling or renting office machines, home appliances, or burglar alarms,~~
17 ~~smoke alarms, or other warning devices. As used in this subdivision,~~
18 ~~the term "office machine" includes cash registers, typewriters, word~~
19 ~~processing equipment, addressograph machines, adding machines,~~
20 ~~bookkeeping machines, calculators, billing machines, check writing~~
21 ~~machines, copying machines, dictating equipment, and data processing~~
22 ~~equipment. As used in this subdivision, the term "home~~
23 ~~appliances" includes washing machines, clothes dryers, refrigerators,~~
24 ~~freezers, vacuum cleaners, air conditioning units other than~~
25 ~~permanently installed units using internal ductwork, and sewing~~
26 ~~machines.~~

27 ~~(4) Operating a campground, trailer park, tent camping area, or similar~~
28 ~~place for profit, advertising in any manner for transient patronage, or~~
29 ~~soliciting such business, regardless of whether the rental to patrons is~~
30 ~~on a daily, weekly, biweekly or monthly basis.~~

31 ~~(5) Operating billiard or pool tables, whether operated by slot or~~
32 ~~otherwise.~~

33 ~~(6) Operating a bowling alley, or alleys of like kind.~~

34 ~~(7) Selling sandwiches (such term not to be construed to include crackers~~
35 ~~or cookies in combination with any food filling) in drug stores or any~~
36 ~~other stands or places not operating as a restaurant; operating,~~
37 ~~maintaining or placing on location fewer than five cigarette or other~~
38 ~~tobacco products dispensers, soft drink dispensers, food or other~~
39 ~~merchandising dispensers, or weighing machines; retailing soft drinks;~~
40 ~~or retailing or jobbing cigarettes or any other tobacco products.~~

41 ~~(8) Operating a bagatelle table, merry-go-round, other riding device,~~
42 ~~hobbyhorse, switchback railway, shooting gallery, swimming pool,~~
43 ~~skating rink, other amusement of a like kind, or a place for other~~
44 ~~games or play with or without name (unless used solely and~~

- 1 exclusively for private amusement or exercise) at a permanent
2 location.
- 3 (9) Selling, offering, ordering for sale, repairing, or servicing pianos,
4 organs, record players, records, tape players, tape cartridges designed
5 for use in tape players, television sets, television accessories or repair
6 parts, radios, or radio accessories or repair parts, including radios
7 designed for exclusive use in motor vehicles.
- 8 (10) Manufacturing ice cream using freezer equipment and selling the ice
9 cream at retail; and selling at retail ice cream purchased from a
10 manufacturer other than a manufacturer who has paid the tax imposed
11 in G.S. 105-97(a). For the purpose of this subdivision, "ice
12 cream" means ice cream, frozen custards, sherbets, water ices, yogurt,
13 and/or similar frozen products.
- 14 (e) Where applicable, the chain store license tax levied in G.S. 105-98 shall be in
15 addition to the general business license tax levied in subsection (a).
- 16 (d) Exemptions:
- 17 (1) A person, firm, or corporation required to be licensed under G.S. 105-
18 36.1, 105-37, 105-62, 105-65.1, 105-74, 105-85, 105-89, or 105-89.1
19 is not required to procure for the same location the general business
20 license imposed by this section.
- 21 (2) The tax levied on the businesses described in subdivisions (5) and (6)
22 of subsection (b) of this section does not apply to fraternal
23 organizations having a national charter, American Legion Posts, posts
24 or other local organizations of other veterans' organizations chartered
25 by Congress or organized and operating on a statewide or nationwide
26 basis, Young Men's Christian Associations, Young Women's Christian
27 Associations, or nonstock, nonprofit charitable recreational
28 corporations, foundations, or centers to which a municipality or county
29 contributes any portion of the operating expense.
- 30 (3) The tax levied on the businesses described in subdivision (7) of
31 subsection (b) of this section does not apply to the sale, through
32 dispensers or otherwise, of milk, milk drinks, dairy products, or
33 newspapers, or to dispensers dispensing merchandise for five cents
34 (5¢) or less.
- 35 (4) The tax levied on the businesses described in subdivision (8) of
36 subsection (b) of this section does not apply to machines and devices
37 licensed under G.S. 105-65 or G.S. 105-66.1. An organization
38 obtaining a license under G.S. 14-309.7 is not required to obtain a
39 license under subdivision (8) of subsection (b) of this section, but is
40 subject to subsection (e) of this section as if a State license were
41 required.
- 42 (5) A person, firm, or corporation licensed under this section to conduct a
43 business described in subdivision (9) of subsection (b) is not required

1 to procure a license under G.S. 105-89 by reason of being engaged in
2 the business of selling, installing, or servicing motor vehicle radios.

3 (e) ~~Local Licenses.~~ For the businesses described under subdivisions (1) through
4 (4), (7), (9), and (10) of subsection (b) of this section, counties may not levy a license
5 tax. For the businesses described under subdivision (5) of this section, counties may
6 levy on each business located outside of cities a license tax not in excess of twenty-five
7 dollars (\$25.00). For the businesses described under subdivision (6), counties may levy
8 on each business located outside of cities a license tax not in excess of ten dollars
9 (\$10.00) per alley kept or maintained. For the businesses described under subdivision
10 (8), counties may levy on each business located outside of cities a license tax not in
11 excess of twenty-five dollars (\$25.00).

12 Cities may not levy a license tax on the businesses described under subdivision (3)
13 of subsection (b) of this section. Cities may levy on each of the businesses
14 described in subdivisions (1), (2), (5), and (8) a license tax not in excess of twenty-five
15 dollars (\$25.00); on the businesses described in subdivision (4), cities may levy a
16 license tax not in excess of twelve dollars and fifty cents (\$12.50); on the businesses
17 described in subdivision (6), cities may levy a license tax not in excess of ten dollars
18 (\$10.00) per alley kept or maintained; on the businesses described in subdivision (9),
19 cities may levy a license tax not in excess of five dollars (\$5.00); on the businesses
20 described in subdivision (7), cities may levy a license tax not in excess of four dollars
21 (\$4.00); and on the businesses described in subdivision (10), cities may levy a license
22 tax not in excess of two dollars and fifty cents (\$2.50).

23 Counties and cities may not levy a license tax under this section on a person, firm, or
24 corporation required to be licensed under G.S. 105-65.1."

25 Sec. 3. Article 2 of Chapter 105 of the General Statutes is amended by
26 adding after G.S. 105-102.5 a new section to read:

27 "**§ 105-102.6 Municipal merchant's privilege license.**

28 (a) License Tax. A municipality may levy a license tax on a retailer or wholesale
29 merchant required to be licensed under G.S. 105-102.5. The tax shall be measured on
30 the the gross receipts derived during the preceding year from the retail and wholesale
31 business conducted in the municipality. The municipality may provide that the
32 preceding year is the preceding calendar year, the license holder's preceding income tax
33 year, or another 12-month period preceding the license year. The license tax shall be at
34 a rate of up to fifty cents (50¢) for every one thousand dollars (\$1,000) of gross receipts,
35 subject to a minimum tax of up to thirty dollars (\$30.00) and a maximum tax of up to
36 two thousand dollars (\$2,000).

37 (b) Scope. If a person operates at the same location both a wholesale or retail
38 business and another business not required to be licensed under G.S. 105-102.5, this
39 section applies only to the gross receipts derived from the retail or wholesale business.
40 The tax applies to the entire gross receipts derived from the retail or wholesale business,
41 including the receipts derived from the sale of items exempt from sales and use tax.
42 Except as otherwise authorized in this Article, a municipality may not levy a license tax
43 on:

1 (1) A retailer or wholesale merchant that is exempt from federal income
2 tax under section 501 of the Code.

3 (2) The gross receipts derived from wholesale sales of alcoholic
4 beverages.

5 (c) Multiple Taxation Prohibited. A retailer or wholesale merchant engaged in
6 business in more than one municipality is not subject to more than one municipal tax on
7 the same gross receipts. If a taxpayer has gross receipts derived from one or more
8 places of business in municipalities in this State, only a municipality in which a place of
9 business is located may tax the gross receipts derived from that place of business. If a
10 taxpayer has gross receipts derived from a place of business not located in a
11 municipality in this State, each municipality may tax the gross receipts to the extent
12 they are derived from business conducted within that municipality. As used in this
13 subsection, the term 'place of business' means a fixed place at which the retailer or
14 wholesale merchant maintains the business."

15 Sec. 4. Article 2 of Chapter 105 of the General Statutes is amended by
16 adding a new section to read:

17 **"§ 105-33.1 Definitions.**

18 The following definitions apply in this Article:

19 (1) Code. The Internal Revenue Code as enacted as of January 1, 1991,
20 including any provisions enacted as of that date which become
21 effective either before or after that date.

22 (2) Motor fuel. Defined in G.S. 105-430.

23 (3) Municipality. A municipal corporation organized under the laws of
24 this State.

25 (4) Person. An individual, a firm, a partnership, an association, a
26 corporation, or another organization or group acting as a unit.

27 (5) Retailer. Defined in G.S. 105-164.3.

28 (6) Secretary. The Secretary of Revenue.

29 (7) Special fuel. Fuel as defined in G.S. 105-449.2.

30 (8) Wholesale merchant. Defined in G.S. 105-164.3."

31 Sec. 5. G.S. 105-46, 105-51.1, 105-61, 105-62, 105-70, 105-74, 105-80, 105-
32 85, 105-89, 105-89.1, 105-97, 105-98, 105-99, and 105-102.1 are repealed.

33 Sec. 6. G.S. 105-164.5 reads as rewritten:

34 **"§ 105-164.5. Imposition of tax; wholesale merchant.**

35 There is hereby levied and imposed, in addition to all other taxes of every kind now
36 imposed by law, a privilege or license tax upon every person who engages in the
37 business of selling tangible personal property at wholesale in this State ~~as defined herein,~~
38 ~~the same to be collected and the amount to be determined in the following manner, to wit: as~~
39 follows:

40 (1) ~~Every wholesale merchant as defined in this Article shall apply for and~~
41 ~~obtain an annual license and pay tax therefor of ten dollars (\$10.00).~~
42 ~~Such annual license shall be paid for in advance within the first 15~~
43 ~~days of July in each year or, in the case of a new business, within 15~~
44 ~~days after business is commenced. Manufacturers making wholesale~~

1 sales, as defined in this Article, of their own manufactured products,
 2 directly and exclusively from the place where such articles of tangible
 3 personal property are manufactured, shall not be required to obtain an
 4 annual wholesale license.

5 (1) Every wholesale merchant is subject to the license requirement in G.S.
 6 105-164.4(c).

7 (2) The sale of any tangible personal property by any wholesale
 8 merchant to anyone other than to a registered retailer, wholesale
 9 merchant or nonresident retail or wholesale merchant as defined for
 10 resale shall be taxable at the rate of tax provided in this Article upon
 11 the retail sale of tangible personal property.

12 (3) The sale of any tangible personal property by any wholesale
 13 merchant to a nonresident retail or wholesale merchant must be in
 14 ~~strict compliance with such regulations as may be promulgated by the~~
 15 ~~Secretary and which are applicable to such sales.~~ Any sale which does
 16 not conform to such regulations shall be taxable at the rate of tax
 17 provided in this Article upon the retail sale of tangible personal
 18 property.

19 (4) Every wholesale merchant who sells tangible personal
 20 property to retailers or nonresident retail or wholesale merchants for
 21 resale shall deliver to such customer a bill of sale for each sale of
 22 such tangible personal property whether sold for cash or on credit
 23 and shall make and retain a duplicate or carbon copy of each such
 24 bill of sale and shall keep on file all such duplicate bills of sale for at
 25 least three years from the date of sale. Failure to comply with the
 26 provisions of this subsection shall subject the wholesale merchant to
 27 liability for tax upon such sales at the rate of tax levied in this
 28 Article upon retail sales.

29 (5) The tax levied is and shall be in addition to all other taxes
 30 whether levied in the form of excise, license or privilege or other
 31 taxes."

32 Sec. 7. G.S. 105-36 reads as rewritten:

33 **"§ 105-36. Amusements – Manufacturing, ~~selling, leasing, or distributing moving~~**
 34 **picture films.**

35 Every ~~person, firm, or corporation~~ person engaged in the business of manufacturing,
 36 ~~selling, leasing, furnishing and/or distributing films to be used in this State in moving~~
 37 ~~picture theatres or other places in~~ places, other than institutions of learning, at which an
 38 admission fee is charged shall apply for and obtain from the Secretary of Revenue a
 39 statewide license for the privilege of engaging in such business in this State, and shall
 40 pay for such license a tax of six hundred twenty-five dollars (\$625.00).

41 Every person engaged in the business of leasing, furnishing, or distributing movies,
 42 including video cassette movies, for use in this State in institutions of learning at which
 43 an admission fee is charged shall apply for and obtain from the Secretary of Revenue a

1 statewide license for the privilege of engaging in that business in this State, and shall
2 pay for the license a tax of fifty dollars (\$50.00).

3 Counties, cities, and towns shall not levy a license tax on the business taxed under
4 this section."

5 Sec. 8. G.S. 105-37.1(a) reads as rewritten:

6 "(a) Every ~~person, firm, or corporation~~ person engaged in the business of giving,
7 offering or managing any form of entertainment or amusement not otherwise taxed or
8 specifically exempted ~~in this Article, under G.S. 105-36, 105-36.1, 105-37, 105-38, or~~
9 105-40, for which an admission is charged, shall pay an annual license tax of fifty
10 dollars (\$50.00) for each room, hall, tent or other place where such admission charges
11 are made.

12 In addition to the license tax levied above, ~~such person, firm, or corporation~~ the person
13 shall pay an additional tax upon the gross receipts of such business at the rate of three
14 percent (3%). Reports shall be made to the Secretary of Revenue, in such form as he
15 may prescribe, within the first 10 days of each month covering all such gross receipts
16 for the previous month, and the ~~additional tax herein levied~~ gross receipts tax shall be paid
17 monthly at the time such reports are made. The annual license tax ~~herein levied~~ shall be
18 treated as an advance payment of the ~~tax upon gross receipts herein levied, and the annual~~
19 license tax-gross receipts tax and shall be applied as a credit upon or advance payment of
20 the gross receipts tax.

21 Every ~~person, firm, or corporation~~ person giving, offering, or managing any dance or
22 athletic contest of any kind, except high school and elementary school athletic contests,
23 for which an admission fee in excess of fifty cents (50¢) is charged, shall pay an annual
24 license tax of fifty dollars (\$50.00) for each location where such charges are made, and,
25 in addition, a tax upon the gross receipts derived from admission charges at the rate of
26 three percent (3%). The additional tax upon gross receipts shall be levied and collected
27 in accordance with such regulations ~~as may be made by the Secretary of Revenue.~~
28 Secretary. No tax shall be levied on admission fees for high school and elementary
29 school contests.

30 Dances and other amusements actually promoted and managed by civic
31 organizations and private and public secondary ~~schools, shall not be~~ schools are not
32 subject to the license tax imposed by this section and the first one thousand dollars
33 (\$1,000) of gross receipts derived from such events shall be exempt from the gross
34 receipts tax herein levied when the entire proceeds of ~~such dances or other amusements~~ the
35 event are used exclusively for the school or civic and charitable purposes of ~~such~~
36 ~~organizations~~ the organization and not to defray the expenses of the organization
37 conducting ~~such dance or amusement~~ the event. The mere sponsorship of a dance or
38 other amusement by such a school, civic, or fraternal organization ~~shall not be deemed to~~
39 does not exempt ~~such~~ the dance or other amusement as provided in this paragraph, but
40 the exemption shall apply only when the dance or amusement is actually managed and
41 conducted by the school, civic, or fraternal organization and the proceeds are used as
42 ~~herein before required.~~ required in this section.

43 Dances and other amusements promoted and managed by a qualifying corporation
44 that operates a center for the performing and visual arts are exempt from the license tax

1 and the gross receipts tax imposed under this section if the dance or other amusement is
2 held at the center. 'Qualifying corporation' means a corporation that is exempt from
3 income tax under G.S. 105-130.11(a)(3). 'Center for the performing and visual arts'
4 means a facility, having a fixed location, that provides space for dramatic performances,
5 studios, classrooms and similar accommodations to organized arts groups and individual
6 artists. This exemption ~~shall~~ does not apply to athletic events.

7 The license and gross receipts taxes imposed by this section do not apply to a ~~person,~~
8 ~~firm, or corporation~~ person that is exempt from income tax under Article 4 of this Chapter
9 and is engaged in the business of operating a teen center. A 'teen center' is a fixed
10 facility whose primary purpose is to provide recreational activities, dramatic
11 performances, dances, and other amusements exclusively for teenagers."

12 Sec. 9. G.S. 105-53(a) and (b) read as rewritten:

13 "(a) Peddler. – Every person engaged in business or employed as a peddler shall
14 obtain a statewide license from the Secretary of Revenue for the privilege of peddling
15 goods and shall pay a tax of fifty dollars (\$50.00) for the license. ~~for the license in the~~
16 ~~amount specified in this section.~~—A 'peddler' is a person who travels from place to place
17 with an inventory of goods, who sells the goods at retail or offers the goods for sale at
18 retail, and who delivers the identical goods he carries with him. ~~A peddler of only farm~~
19 ~~products shall pay a tax of twenty five dollars (\$25.00) regardless of the number of counties in~~
20 ~~which he peddles goods. A peddler who travels from place to place on foot, selling goods other~~
21 ~~than or in addition to farm products, shall pay a tax of ten dollars (\$10.00) for each county in~~
22 ~~which he peddles goods. A peddler who travels from place to place by vehicle, selling goods~~
23 ~~other than or in addition to farm products, shall pay a tax of twenty five dollars (\$25.00) for~~
24 ~~each county in which he peddles goods.~~

25 (b) Itinerant Merchant. – Every person engaged in business as an itinerant
26 merchant shall obtain a statewide license from the Secretary of Revenue for the
27 privilege of engaging in business and shall pay a tax of one hundred dollars (\$100.00)
28 for the license. ~~for the license of one hundred dollars (\$100.00) for each county in which he is~~
29 ~~engaged in business.~~—An 'itinerant merchant' is a merchant, other than a merchant with an
30 established retail store in the county, who transports an inventory of goods to a building,
31 vacant lot, or other location in a county and who, at that location, displays the goods for
32 sale and sells the goods at retail or offers the goods for sale at retail. An itinerant
33 merchant's license is not required to engage in the business of a specialty market vendor
34 at a location licensed as a specialty market under subsection (c) of this section or at a
35 specialty market that is exempt from the license requirement under subsection (c)
36 because the specialty market operator is the State or a unit of local government. A
37 merchant who sells goods, other than farm products, in a county for less than six
38 consecutive months is considered an itinerant merchant unless he stopped selling goods
39 in that county because of his death or disablement, the insolvency of his business, or the
40 destruction of his inventory by fire or other catastrophe."

41 Sec. 10. This act becomes effective July 1, 1992.