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SENATE BILL 1146
Finance Committee Substitute Adopted 6/24/93
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Short Title: Flea Market Tax, Sales, Records.

(Public)

Sponsors:

Referred to:

May 12, 1993

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE STATE PRIVILEGE LICENSE TAX FOR
ITINERANT MERCHANTS AND SPECIALTY MARKET OPERATORS AND
TO MODIFY THE PRIVILEGE LICENSE TAX REQUIREMENTS FOR FLEA
MARKET VENDORS AND PEDDLERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-53 reads as rewritten:

"§ 105-53. Peddlers, itinerant merchants, and specialty market operators.

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

(b) Itinerant Merchant. – Every person engaged in business as an itinerant merchant shall obtain a license from the Secretary of Revenue for the privilege of

1 engaging in business and shall pay a tax for the license of one hundred ten dollars
2 ~~(\$100.00)~~ ~~(\$110.00)~~ for each county in which he is engaged in business. An 'itinerant
3 merchant' is a merchant, other than a merchant with an established retail store in the
4 county, who transports an inventory of goods to a building, vacant lot, or other location
5 in a county and who, at that location, displays the goods for sale and sells the goods at
6 retail or offers the goods for sale at retail. An itinerant merchant's license is not
7 required to engage in the business of a specialty market vendor at a location licensed as
8 a specialty market under subsection (c) of this section or at a specialty market that is
9 exempt from the license requirement under subsection (c) because the specialty market
10 operator is the State or a unit of local government. A merchant who sells goods, other
11 than farm products, in a county for less than six consecutive months is considered an
12 itinerant merchant unless he stopped selling goods in that county because of his death or
13 disablement, the insolvency of his business, or the destruction of his inventory by fire or
14 other catastrophe.

15 (c) Specialty Market Operator. – Every person, other than the State or a unit of
16 local government, engaged in business as a specialty market operator shall obtain a
17 license from the Secretary of Revenue for the privilege of engaging in business and
18 shall pay a tax for the license of two hundred twenty-five dollars ~~(\$200.00)~~ ~~(\$225.00)~~ for
19 each county in which he is engaged in business. A 'specialty market operator' is a
20 person, other than the State or a unit of local government, who rents space, at a location
21 other than a permanent retail store, to others for the purpose of selling goods at retail or
22 offering goods for sale at retail.

23 (d) Specialty Market Vendor. – The requirements and penalties set out in
24 subsections (i) through (m) of this section apply to every person engaged in business as
25 a specialty market vendor who is liable for retail sales tax under Article 5 of this
26 Chapter. A 'specialty market vendor' is a merchant, other than a merchant with an
27 established retail store in the county, who transports an inventory of goods to a specialty
28 market licensed under subsection (c) of this section and who, at that location, displays
29 the goods for sale and sells the goods at retail or offers the goods for sale at retail. A
30 'specialty market' is a location, other than a permanent retail store, where space is rented
31 to others for the purpose of selling goods at retail or offering goods for sale at retail.

32 (e) Exemptions. – This section does not apply to the following:

33 (1) A peddler or itinerant merchant:

- 34 a. Who sells farm or nursery products produced by him;
- 35 b. Who sells crafts or goods made by him or his own household
36 personal property;
- 37 c. Who is a nonprofit charitable, educational, religious, scientific,
38 or civic organization;
- 39 d. Who sells printed material, wood for fuel, ice, seafood, meat,
40 poultry, livestock, eggs, dairy products, bread, cakes, or pies; or
- 41 e. Who is an authorized automobile dealer licensed pursuant to
42 Chapter 20 of the General Statutes.

- 1 (2) A peddler who maintains a fixed permanent location from which he
2 makes at least ninety percent (90%) of his sales, but who sells some
3 goods in the county of his fixed location by peddling.
- 4 (3) An itinerant merchant:
5 a. Who locates at a farmer's market;
6 b. Who is part of the State Fair or an agriculture fair which is
7 licensed by the Commissioner of Agriculture pursuant to G.S.
8 106-520.3; or
9 c. Who sells goods at an auction conducted by an auctioneer
10 licensed pursuant to Chapter 85B of the General Statutes.
- 11 (4) A peddler who complies with the requirements of G.S. 25A-38
12 through G.S. 25A-42, or who complies with the requirements of G.S.
13 14-401.13.
- 14 (f) Person Defined. – As used in this section, 'person' has the same meaning as in
15 G.S. 105-164.3(11).
- 16 (g) County Exemption. – The board of county commissioners of any county in
17 this State, upon proper application, may exempt from the annual license tax levied upon
18 peddlers and itinerant merchants in this section disabled veterans of World War I,
19 World War II, Korean Conflict, and Vietnam Era, who have been bona fide residents of
20 this State for 12 or more months continuously, and widows with dependent children;
21 and when so exempted, the board of county commissioners shall furnish such person or
22 persons with a certificate of exemption, and such certificate shall entitle the holder
23 thereof to sell within the limits of the county without payment of any license tax to the
24 State.
- 25 (h) Repealed by Session Laws 1989, c. 435, s. 1.
- 26 (i) Display and Possession of ~~Licenses and Identification~~ Licenses; Identification
27 of Seller and Source of Merchandise. – An itinerant merchant shall keep both the
28 license required by this section and the retail sales tax license conspicuously and
29 prominently displayed, so as to be visible for inspection by patrons of the itinerant
30 merchant at the places or locations at which the goods are to be sold or offered for sale.
31 A peddler shall have the license required by this section and the retail sales tax license
32 with him at all times he offers goods for sale and must produce them upon the request of
33 any customer, State or local revenue agent, or law enforcement agent. A specialty
34 market vendor shall keep the retail sales tax license conspicuously and prominently
35 displayed, so as to be visible for inspection by patrons of the specialty market vendor at
36 the places or locations at which the goods are to be sold or offered for sale. A specialty
37 market operator shall have the license required by this section available for inspection
38 during all times that the specialty market is open and must produce it upon the request
39 of any customer, State or local revenue agent, or law enforcement agent.
- 40 Upon the request of any customer, State or local revenue agent, or law enforcement
41 agent, a peddler, itinerant merchant, specialty market operator, or specialty market
42 vendor shall provide its name and permanent address. If the peddler, itinerant merchant,
43 specialty market operator, or specialty market vendor is not a corporation, he shall, upon
44 the request of any customer, State or local revenue agent, or law enforcement agent,

1 provide a valid driver's license, a special identification card issued under G.S. 20-37.7,
2 military identification, or a passport bearing a physical description of the person named
3 reasonably describing the peddler, itinerant merchant, specialty market operator, or
4 specialty market vendor. If the peddler, itinerant merchant, specialty market operator,
5 or specialty market vendor is a corporation, it shall, upon the request of any customer,
6 State or local revenue agent, or law enforcement agent, give the name and registered
7 agent of the corporation and the address of the registered office of the corporation, as
8 filed with the North Carolina Secretary of State.

9 Upon the request of a law enforcement agent, a peddler, an itinerant merchant, or a
10 specialty market vendor shall provide evidence of the source of merchandise offered for
11 sale by the peddler or merchant. The evidence may be a receipt or an invoice from the
12 person who sold the merchandise to the peddler or itinerant merchant or other
13 documentation that establishes the source of the merchandise. If a peddler or an
14 itinerant merchant does not provide evidence of the source of merchandise when
15 requested to do so by a law enforcement agent, the agent may take the merchandise into
16 custody until its source is established.

17 (j) Permission of Property Owner. – An itinerant merchant or a peddler who
18 travels from place to place by vehicle, in addition to other requirements of this section,
19 shall obtain a written statement signed by the owner or lessee of any property upon
20 which the itinerant merchant or peddler offers goods for sale giving the owner's or
21 lessee's permission to offer goods for sale upon the property of the owner or lessee.
22 Such statement shall clearly state the name of the owner or lessee, the location of the
23 premises for which the permission is granted, and the dates during which the permission
24 is valid. Further, such statement shall be conspicuously and prominently displayed, so
25 as to be visible for inspection by patrons of the itinerant merchant or peddler, at the
26 places or locations at which the goods are to be sold or offered for sale.

27 (k) Specialty Market Registration List. – A specialty market operator shall
28 maintain a daily registration list of all specialty market vendors selling or offering goods
29 for sale at the specialty market. This registration list shall clearly and legibly show each
30 specialty market vendor's name, permanent address, and retail sales and use tax
31 registration number. The specialty market operator shall require each specialty market
32 vendor to exhibit a valid retail sales tax license for visual inspection by the specialty
33 market operator at the time of registration, and shall require each specialty market
34 vendor to keep the retail sales tax license conspicuously and prominently displayed, so
35 as to be visible for inspection by patrons of the specialty market vendor at the places or
36 locations at which the goods are offered for sale. Each daily registration list maintained
37 pursuant to this subsection shall be retained by the specialty market operator for no less
38 than two years and shall at any time be made available upon request to any law
39 enforcement officer.

40 (l) Penalty-Misdemeanor Violations. – It shall be a misdemeanor, punishable by
41 imprisonment of up to 30 days, a fine of up to two hundred dollars (\$200.00), or both,
42 for a person ~~to~~ to do any of the following:

- 43 (1) Fail to obtain a license as required by this section; ~~section.~~

- 1 (2) Knowingly give false information in the application process for a
 2 license or when registering pursuant to subsection ~~(k)~~; (k).
- 3 (3) If the person is an itinerant merchant, fail to display the license as
 4 required by subsection ~~(i)~~ or (i); if the person is a peddler or specialty
 5 market operator, fail to produce the license as required by subsection
 6 ~~(i)~~ or (i); or, if the person is required to do so, fail to comply with
 7 subsection (j). Whenever satisfactory evidence shall be presented in
 8 any court of the fact that a license was required by this section and
 9 such license was not displayed or produced as required by subsection
 10 (i), or that permission was required by subsection (j) of this section and
 11 was not displayed, the peddler, itinerant merchant, or specialty market
 12 operator shall be found not guilty of that violation provided he
 13 produces in court a valid license or valid permission which had been
 14 issued prior to the time he was charged with such ~~violation~~; or
 15 violation.
- 16 (4) Fail to provide name, address, or identification upon request as
 17 required by subsection (i) or provide false information in response to
 18 such a request.
- 19 (5) Fail to provide evidence of the source of merchandise offered for sale
 20 when requested by a law enforcement agent under subsection (i) or to
 21 provide false information in response to the request.
- 22 (11) Additional Penalties: Misdemeanor Violations. – It shall be a misdemeanor,
 23 punishable by imprisonment of up to 30 days, a fine of up to one thousand dollars
 24 (\$1,000), or both, for a specialty market operator to fail to comply with subsection (k) or
 25 for a specialty market vendor to fail to display the retail sales tax license as required by
 26 subsection (i). For the purposes of this section, the requirement that a retail sales tax
 27 license be displayed is satisfied if the vendor displays either (i) a copy of the license or
 28 (ii) evidence that the license has been applied for and the applicable license fee has been
 29 paid within 30 days before the date the license was required to be displayed. Whenever
 30 satisfactory evidence shall be presented in any court of the fact that display of a retail
 31 sales tax license was required by this section and such license was not displayed, the
 32 specialty market operator or vendor shall not be found guilty of that violation provided
 33 he produces in court a valid license which had been issued prior to the time he was
 34 charged with the violation.
- 35 (12) Felony Violation. – A peddler, an itinerant merchant, or a specialty market
 36 vendor who fails to provide evidence of the source of nonlegend drugs having a value of
 37 more than one hundred dollars (\$100.00) when requested to do so by a law enforcement
 38 agent, as required by subsection (i), or who provides false information in response to the
 39 request after having been advised of his constitutional rights commits a Class J felony.
- 40 (m) Local License. – Counties and cities may levy a license tax on a business
 41 taxed under this section in an amount that does not exceed the State tax. Further, this
 42 section does not affect the authority of a county or city to impose additional
 43 requirements on peddlers, itinerant merchants, specialty market vendors, or specialty
 44 market operators by an ordinance adopted under G.S. 153A-125 or G.S. 160A-178."

1 Sec. 2. The amendments to G.S. 105-53(b) and (c) made by this act, the
2 privilege license tax increases for itinerant merchants and specialty market operators,
3 become effective July 1, 1994. The remainder of this act becomes effective October 1,
4 1993.