

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 114
HOUSE BILL 32

AN ACT TO SIMPLIFY THE ALCOHOLIC BEVERAGE TAX STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Article 2C of Chapter 105 of the General Statutes is rewritten to read:

"Article 2C.

"Schedule B-C. Alcoholic Beverage License
and Excise Taxes.

"Part 1. General Provisions.

"§ 105-113.68. **Definitions; scope.**—(a) Definitions. As used in this Article, unless the context clearly requires otherwise:

- (1) 'ABC Commission' means the North Carolina Alcoholic Beverage Control Commission established under G.S. 18B-200.
- (2) 'ABC law' means a statute in this Article or in Chapter 18B or a rule issued by the Secretary under the authority of this Chapter.
- (3) 'ABC permit' means a written or printed authorization issued by the ABC Commission pursuant to Chapter 18B, other than a purchase-transportation permit. Unless the context clearly requires otherwise, 'ABC permit' means a presently valid permit.
- (4) 'Alcoholic beverage' means a 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.
- (5) 'Fortified wine' means a wine made by fermentation from grapes, fruits, berries, rice, or honey, to which nothing has been added other than pure brandy made from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine, and which has an alcoholic content of not more than twenty-four percent (24%) alcohol by volume.
- (6) 'License' means a certificate, issued pursuant to this Article by the Secretary or by a city or county, that authorizes a person to engage in a phase of the alcoholic beverage industry.
- (7) 'Malt beverage' means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one half of one percent (0.5%) and not more than six percent (6%) alcohol by volume.

- (8) 'Person' means an individual, firm, partnership, association, corporation, other organization or group, or other combination of individuals acting as a unit.
- (9) 'Sale' means a transfer, trade, exchange, or barter, in any manner or by any means, for consideration.
- (10) 'Secretary' means the Secretary of Revenue.
- (11) 'Spirituous liquor' or 'liquor' means distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin, and all other distilled spirits and mixtures of cordials, liqueurs, and premixed cocktails in closed containers for beverage use regardless of the dilution.
- (12) 'Unfortified wine' means wine that has an alcoholic content produced only by natural fermentation or by the addition of pure cane, beet, or dextrose sugar, and that has an alcoholic content of not more than seventeen percent (17%) alcohol by volume.
- (13) 'Wholesaler or importer' when used with reference to wholesalers or importers of wine includes resident wineries that sell their wines at retail.
- (14) 'Wine' means unfortified and fortified wine.

(b) Scope. All alcoholic beverages shall be taxed as provided in this Article regardless whether they meet all criteria of these definitions.

"§ 105-113.69. License tax; effect of license.—The taxes imposed in Parts 2 and 3 of this Article are license taxes on the privilege of engaging in the activity authorized by the license. Licenses issued by the State or a local government under this Article authorize the licensee to engage in only those activities that are authorized by the corresponding ABC permit. The activities authorized by each retail ABC permit are described in Article 10 of Chapter 18B, and the activities authorized by each commercial ABC permit are described in Article 11 of that Chapter.

"§ 105-113.70. Issuance, duration, transfer of license.—(a) Issuance, Qualifications. Each person who receives an ABC permit shall obtain the corresponding license, if any, under this Article. All State licenses are issued by the Secretary. All local licenses are issued by the city or county where the establishment for which the license is sought is located. The information required to be provided and the qualifications for a State or local license are the same as the information and qualifications required for the corresponding ABC permit. Upon proper application and payment of the prescribed tax, issuance of a State or local license is mandatory if the applicant holds the corresponding ABC permit. No license may be issued under this Article until the applicant has received from the ABC Commission the applicable permit for that activity, and no county license may be issued for an establishment located in a city in that county until the applicant has received from the city the applicable license for that activity.

(b) Duration. All licenses issued under this section are annual licenses for the period from May 1 to April 30.

(c) Transfer. A license may not be transferred from one person to another or from one location to another.

(d) License Exclusive. Neither the State nor a local government may require a license for activities related to the manufacture or sale of alcoholic beverages other than the licenses stated in this Article.

"§ 105-113.71. Local government may refuse to issue license.— (a) Refusal to Issue. Notwithstanding G.S. 105-113.70, the governing board of a city or county may refuse to issue a license if it finds that the applicant committed any act or permitted any activity in the preceding year that would be grounds for suspension or revocation of his permit under G.S. 18B-104. Before denying the license, the governing board shall give the applicant an opportunity to appear at a hearing before the board and to offer evidence. The applicant shall be given at least 10 days' notice of the hearing. At the conclusion of the hearing the board shall make written findings of fact based on the evidence at the hearing. The applicant may appeal the denial of a license to the superior court for that county, if notice of appeal is given within 10 days of the denial.

(b) Local Exceptions. The governing bodies of the following counties and cities in their discretion may decline to issue on- premises unfortified wine licenses: the counties of Alamance, Alexander, Ashe, Avery, Chatham, Clay, Duplin, Granville, Greene, Haywood, Jackson, Macon, Madison, McDowell, Montgomery, Nash, Pender, Randolph, Robeson, Sampson, Transylvania, Vance, Watauga, Wilkes, Yadkin; any city within any of those counties; and the cities of Greensboro, Aulander, Pink Hill, and Zebulon.

"§ 105-113.72. Cancellation, revocation of license.—(a) Basis. When the ABC Commission certifies to the Secretary that an ABC permit has been canceled or revoked, the Secretary shall immediately cancel or revoke the corresponding license. The Secretary may revoke a license for failure to pay a license tax or an alcoholic beverage excise tax or for failure to furnish a proper bond.

(b) Tax not Refundable. A person whose license is canceled or revoked is not entitled to a refund of taxes.

"§ 105-113.73. Misdemeanor.—Except as otherwise expressly provided, violation of a provision of the ABC law is a misdemeanor and is punishable as provided in G.S. 14-3.

"Part 2. State Licenses.

"§ 105-113.74. State commercial licenses.—

(a) License and Tax. A person holding any of the following commercial ABC permits shall obtain a State license for the activity authorized by the permit. The annual tax for each license is as stated.

ABC Permit	Corresponding State License	Tax
Brewery	Brewery	\$500.00
Unfortified winery	Unfortified winery	100.00
Fortified winery	Fortified winery	100.00
Distillery	Distillery	100.00
Fuel Alcohol	Fuel Alcohol	10.00
Bottler	Bottler	250.00
Malt beverage importer, wine importer, or both	Importer	150.00

Nonresident malt beverage vendor, nonresident wine vendor, or both	Nonresident vendor	150.00 or 25.00 as provided in (b) below
Malt beverage wholesaler	Malt beverage wholesaler	150.00
Wine wholesaler	Wine wholesaler	150.00
Both malt beverage wholesaler and wine wholesaler		250.00
Salesman	Salesman	12.50
Vendor representative	Salesman	12.50

(b) Nonresident Vendor Tax. The license tax payable by an applicant for a State nonresident vendor license who sells 500 or more cases of alcoholic beverages in North Carolina during a license year is one hundred fifty dollars (\$150.00), and the license tax payable by an applicant who sells fewer than 500 cases of alcoholic beverages in North Carolina during a license year is twenty-five dollars (\$25.00). A vendor who pays the lower fee shall pay the one hundred twenty-five dollars (\$125.00) difference between that and the higher fee once his sales during the year reach 500 cases.

"§ 105-113.75. State beer and wine retail licenses.—A person holding any of the following retail ABC permits shall obtain a State license for the activity authorized by the permit. The annual tax for each license is as stated.

ABC Permit	Corresponding State License	Tax
On-premises malt beverage, off-premises malt beverage, or both	Retail malt beverage	\$20.00
On-premises unfortified wine, on-premises fortified wine, or both	Retail wine: on-premises	25.00
Off-premises unfortified wine, off-premises fortified wine, or both	Retail wine: off-premises	20.00

"§ 105-113.76. Sales on railroad trains.—(a) License. Each person operating a railroad train in this State on which alcoholic beverages are sold shall obtain from the Secretary a State railroad sales license. The annual fee for this license is one hundred dollars (\$100.00) for each railroad system over which cars are operated in this State.

(b) Payment of Excise Tax. The holder of a State railroad sales license shall submit monthly reports of the amount of alcoholic beverages sold in this State and shall remit the applicable excise tax due on the sale of these beverages when the report is submitted. The report is due on or before the 15th day of the month following the month in which the beverages are sold. The report shall be made on a form prescribed by the Secretary.

"Part 3. Local Licenses.

"§ 105-113.77. City beer and wine retail licenses.—(a) License and Tax. A person holding any of the following retail ABC permits for an establishment located in a city shall obtain from the city a city license for that activity. The annual tax for each license is as stated.

ABC Permit	Tax for Corresponding License
On-premises malt beverage.....	\$15.00
Off-premises malt beverage	5.00
On-premises unfortified wine, on-premises fortified wine, or both	15.00
Off-premises unfortified wine, off-premises fortified wine, or both.....	10.00

(b) Tax on Additional License. The tax stated in subsection (a) is the tax for the first license issued to a person. The tax for each additional license of the same type issued to that person for the same year is one hundred ten percent (110%) of the base license tax, that increase to apply progressively for each additional license.

"§ 105-113.78. County beer and wine retail licenses.—A person holding any of the following retail ABC permits for an establishment located in a county shall obtain from the county a county license for that activity. The annual tax for each license is as stated.

ABC Permit	Tax for Corresponding License
On-premises malt beverage.....	\$25.00
Off-premises malt beverage	5.00
On-premises unfortified wine, on-premises fortified wine, or both	25.00
Off-premises unfortified wine, off-premises fortified wine, or both.....	25.00

"§ 105-113.79. City wholesaler license.—A city may require city malt beverage and wine wholesaler licenses for businesses located inside the city, but may not require a license for a business located outside the city, regardless whether that business sells or delivers malt beverages or wine inside the city. The city may charge an annual tax of not more than twenty- five percent (25%) of the annual tax for the equivalent State license as set by G.S. 105-113.74.

"Part 4. Excise Taxes, Distribution of Tax Revenue.

"§ 105-113.80. Excise taxes on beer, wine, and liquor.—(a) Beer. An excise tax is levied on the sale of malt beverages at the rate of:

- (1) forty-eight and three hundred eighty-seven one thousandths cents (48.387c) per gallon on malt beverages in barrels holding at least seven and three-fourths gallons; and
- (2) fifty-three and three hundred seventy-six one thousandths cents (53.376c) per gallon on malt beverages in cans, bottles, barrels, or other containers holding less than seven and three- fourths gallons.

(b) Wine. An excise tax of twenty-one cents (21c) per liter is levied on the sale of unfortified wine, and an excise tax of twenty-four cents (24c) per liter is levied on the sale of fortified wine.

(c) Liquor. An excise tax of twenty-two and one-half percent (22 1/2%) of the retail price is levied on liquor sold in ABC stores. Pursuant to G.S. 18B-804(b), the price of liquor on which this tax is computed is the distiller's price plus (i) the State ABC warehouse freight and bailment charges, and (ii) a markup for local ABC boards. This tax is in lieu of sales and use taxes; accordingly, liquor is exempt from those taxes as provided in G.S. 105-164.13(37).

"§ 105-113.81. Exemptions.—(a) Major Disaster. Wholesalers and importers of malt beverages and wine are not required to remit excise taxes on malt beverages or wine rendered unsalable by a major disaster. To qualify for this exemption, the wholesaler or importer shall prove to the satisfaction of the Secretary that a major disaster occurred. A major disaster is the destruction, spoilage, or rendering unsalable of 50 or more cases, or the equivalent, of malt beverages or 25 or more cases, or the equivalent, of wine.

(b) Sales to Oceangoing Vessels. Wholesalers and importers of malt beverages and wine are not required to remit excise taxes on malt beverages and wine sold and delivered for use on oceangoing vessels. An oceangoing vessel is a ship that plies the high seas in interstate or foreign commerce, in the transport of freight or passengers, or both, for hire exclusively. To qualify for this exemption the beverages shall be delivered to an officer or agent of the vessel for use on that vessel. Sales made to officers, agents, crewmen, or passengers for their personal use are not exempt.

(c) Sales to Armed Forces. Wholesalers and importers of malt beverages and wine are not required to remit excise taxes on malt beverages and wine sold to the United States Armed Forces. The Secretary may require malt beverages and wine sold to the Armed Forces to be marked 'For Military Use Only' to facilitate identification of those beverages.

(d) Out-of-State Sales. Wholesalers and importers of malt beverages and wine are not required to remit excise taxes on malt beverages and wine shipped out of this State for resale outside the State.

(e) Tasting. Resident breweries and wineries are not required to remit excise taxes on malt beverages and wine given free of charge to customers, visitors, and employees on the manufacturer's licensed premises for consumption on those premises.

"§ 105-113.82. Distribution of part of beer and wine taxes.— (a) Amount, Method. The Secretary shall annually distribute the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine to the counties and cities in which the retail sale of these beverages is authorized:

- (1) Of the tax on malt beverages levied under G.S. 105- 113.80(a), twenty-three and three-fourths percent (23 3/4%);
- (2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and
- (3) Of the tax on fortified wine levied under G.S. 105- 113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount of excise tax to be distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be

sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount of excise tax to be distributed, that portion to be determined on the basis of population. The amounts to be distributed under subdivisions (1), (2), and (3) shall be computed separately.

(b) Reduction in Amount Distributed. Where the sale of malt beverages, unfortified wine, or fortified wine is prohibited in a defined area of a city or county in which the sale of the beverage is authorized, the amount otherwise distributable to the city or county on the basis of population under subsection (a) shall be reduced in the same ratio that the area of the defined area bears to the total area of the city or county, unless the defined area is a city. If the defined area in a county is a city, the reduction in the amount otherwise distributable to the county under subsection (a) shall be based on population instead of area. All reductions shall be retained by the State.

(c) Exception. Notwithstanding subsection (a), in a county in which ABC stores have been established by petition, revenue shall be distributed as though the entire county had approved the retail sale of a beverage whose retail sale is authorized in part of the county.

(d) Time. The distribution shall be made within 60 days after September 30 of each year and shall be based on collections during the preceding 12-month period ending September 30.

(e) Population Estimates. To determine the population of a city or county for purposes of the distribution required by this section, the Secretary shall use the most recent annual estimate of population certified by the State Budget Officer.

(f) City Defined. As used in this section, the term 'city' means a city as defined in G.S. 153A-1(1) or an urban service district defined by the governing body of a consolidated city- county.

(g) Use of Funds. Funds distributed to a county or city under this section may be used for any public purpose.

"Part 5. Administration.

"§ 105-113.83. Payment of excise taxes.—(a) Liquor. The excise tax on liquor levied under G.S. 105-113.80(c) is payable monthly by the local ABC board to the Secretary. The tax shall be paid on or before the 15th day of the month following the month in which the tax was collected.

(b) Beer and Wine. The excise taxes on malt beverages and wine levied under G.S. 105-113.80(a) and (b), respectively, are payable to the Secretary by the resident wholesaler or importer who first handles the beverages in this State. The taxes on malt beverages and wine shall be paid only once on the same beverages. The tax shall be paid on or before the 15th day of the month following the month in which the beverage is first sold or otherwise disposed of in this State by the wholesaler or importer. When excise taxes are paid on wine or malt beverages, the wholesaler or importer shall submit to the Secretary verified reports on forms provided by the Secretary detailing sales records for the month for which the taxes are paid. The report shall indicate the amount of excise tax due, contain the information required by the Secretary, and indicate separately any transactions to which the excise tax does not apply.

(c) Railroad Sales License. This section does not affect the duty of a holder of a State railroad sales license to remit excise taxes on alcoholic beverages sold by that licensee in this State, as provided in G.S. 105-113.76.

"§ 105-113.84. Invoices; report of resident brewery, resident winery, or nonresident vendor.—(a) Invoice. When a resident brewery, resident winery, or nonresident vendor sells or delivers wine or malt beverages to a North Carolina wholesaler or importer, he shall give that wholesaler or importer two copies of the sales invoice. He shall also file one copy with the Secretary. The invoice shall state:

- (1) the name and address of the licensee making the sale or delivery;
- (2) the name, address, and license number of the wholesaler or importer receiving the beverages;
- (3) the kind of beverage sold or delivered; and
- (4) the exact quantities of beverages sold or delivered, specified by size and type of container.

(b) Monthly Report. Each resident brewery, resident winery, or nonresident vendor that sells or delivers wine or malt beverages in North Carolina shall prepare and file with the Secretary a monthly report, on a form provided by the Secretary, stating the exact quantities of those beverages sold to North Carolina wholesalers or importers during the previous month. The report shall specify the size and type of containers sold. The report shall be filed on or before the 15th day of the month following the month in which the beverages are sold or delivered.

"§ 105-113.85. Discount.—Each wholesaler or importer who remits the excise taxes on malt beverages or wine may deduct from the amount payable by him a discount of four percent (4%). This discount covers losses due to spoilage and breakage, expenses incurred in preparing the records and reports required by this Article, and the expense of furnishing a bond. No discount is allowed on taxpaid beverages given as free goods for advertising.

"§ 105-113.86. Bonds.—(a) Wholesalers and Importers. Each holder of a malt beverage wholesaler license, a wine wholesaler license, or an importer license shall furnish a bond, secured by a corporate surety, in an amount of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000) to cover his tax liability. The bond shall be conditioned on compliance with this Article, shall be payable to the State, and shall be in a form acceptable to the Secretary. The Secretary shall proportion the bond amount to the anticipated tax liability of the wholesaler or importer. The Secretary shall periodically review the sufficiency of bonds furnished by wholesalers and importers, and shall increase the amount of a bond required of a wholesaler or importer when the amount of the bond furnished no longer covers the wholesaler's or importer's anticipated tax liability.

(b) Nonresident Vendors. The Secretary may require the holder of a nonresident vendor license to furnish a bond, secured by a corporate surety, in an amount not to exceed two thousand dollars (\$2,000). The bond shall be conditioned on compliance with this Article, shall be payable to the State, and shall be in a form acceptable to the Secretary.

"§ 105-113.87. Refund for excise tax paid on sacramental wine.—(a) Refund Allowed. A person who purchases wine for the purpose stated in G.S. 18B-103(8) may obtain a refund from the Secretary for the amount of the excise tax levied under this Article. The Secretary shall make refunds annually.

(b) Application. An applicant for a refund authorized by this section shall file a written request with the Secretary for the refund due for the prior calendar year on or before April 15. The Secretary may by rule prescribe what information and records shall be supplied by the applicant to qualify for the refund.

(c) Late Application. An application for a refund filed later than required in subsection (b) shall be accepted by the Secretary but shall be subject to the following late penalties: an application filed by May 15, twenty-five percent (25%); an application filed after May 15 but no later than October 15, fifty percent (50%). No refund may be made if the application is filed after October 15.

"§ 105-113.88. Record keeping requirements.—(a) Requirement. Every person licensed under this Article shall maintain complete and accurate records of all purchases and sales of alcoholic beverages taxable under this Article. These records shall be kept separate from all other records the person keeps. Each person shall also maintain copies of all reports filed with the Secretary and invoices, sales tickets, and other data that substantiate those reports.

(b) Length of Time Records Shall Be Kept. Every person licensed under this Article shall keep the records, reports, and other information required by this section for three years.

"§ 105-113.89. Other applicable administrative provisions.— The administrative provisions of Article 9 of this Chapter apply to this Article. In addition, the following administrative provisions of Schedule B of this Chapter apply to the license taxes levied under this Article: G.S. 105-103, 105-104, 105-105, 105-108, 105-109, 105-110, and 105-112. In applying the provisions of Schedule B to this Article, the month 'May' shall be substituted for the month 'July'."

Sec. 2. G.S. 18B-1006 is amended by adding a new subsection to read:

"(h) Purchase Restrictions. A retail permittee may purchase malt beverages, unfortified wine, or fortified wine only from a wholesaler or importer who maintains a place of business in this State and has the proper permit."

Sec. 3. Article 11 of Chapter 18B is amended by adding a new section to read:

"§ 18B-1118. Purchase restrictions.—The holder of a malt beverage wholesaler, wine wholesaler, malt beverage importer, wine importer, or bottler permit may not purchase malt beverages or wine for resale in this State from a nonresident who does not have the proper nonresident vendor permit."

Sec. 4. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(37) Spirituous liquor. This exemption does not prohibit the levy of sales and use taxes on mixed beverages. As used in this subdivision, the terms 'spirituous liquor' and 'mixed beverage' have the same meanings as in G.S. 18B-101(14) and G.S. 18B- 101(10) respectively."

Sec. 5. G.S. 18B-108 is rewritten to read:

"§ 18B-108. Sales on trains.—Alcoholic beverages may be sold on railroad trains in this State upon receipt of the required revenue license under G.S. 105-113.76."

Sec. 6. The last sentence of G.S. 18B-306 is amended by changing the comma after the word "section" to a period and deleting the remainder of that sentence.

Sec. 7. G.S. 18B-804(b)(4) is amended by deleting the reference "105-113.93" and substituting the reference "105-113.80(c)".

Sec. 8. G.S. 18B-804(c) is amended by deleting the reference "105-113.95" and substituting the reference "105-113.80(b)".

Sec. 9. G.S. 18B-804(d) is amended by deleting the reference "105-113.86" and substituting the reference "105-113.80(b)".

Sec. 10. G.S. 105-33(i) is amended by deleting the words "the sheriff".

Sec. 11. G.S. 105-236(11) and G.S. 105-237.1(a) are each amended by deleting the phrase "Chapter 18" each time it appears and substituting the phrase "Chapter 18B".

Sec. 12. Excise tax revenue from excise taxes on malt beverages, unfortified wine, and fortified wine that has been allocated by the Department of Revenue for distribution to a city but has not been distributed as of the effective date of this act because the city is inactive is reallocated to the State for appropriation by the General Assembly and is, therefore, not distributable to that city or to any other city or county in a distribution of excise tax revenue under Article 2C of Chapter 105 of the General Statutes. An inactive city is a city that is inactive and does not currently have a finance officer.

Sec. 13. G.S. 108A-93 is amended by deleting the reference "105-113.86" and substituting the reference "105-113.82".

Sec. 14. This act is effective upon ratification. This act does not affect licenses issued for the period May 1, 1984, to April 30, 1985.

In the General Assembly read three times and ratified, this the 23rd day of April, 1985.