

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

1

HOUSE BILL 1136

Short Title: Local Gross Receipts Tax on Merchants.

(Public)

Sponsors: Representative Beall.

Referred to: Finance.

April 29, 1991

A BILL TO BE ENTITLED

1 AN ACT TO SIMPLIFY LICENSE TAX FILING FOR MANUFACTURERS,
2 WHOLESALERS, AND RETAILERS AND TO AUTHORIZE COUNTIES AND
3 CITIES TO LEVY A GROSS RECEIPTS TAX ON MANUFACTURERS,
4 WHOLESALERS, AND RETAILERS IN LIEU OF THE STATE
5 REIMBURSEMENTS TO LOCAL GOVERNMENTS FOR THE REPEALED
6 INVENTORY TAX.
7

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 105-275.1 and G.S. 105-277A are repealed.

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

11 "**§ 105-102.5. ~~General business~~ Merchant's privilege license.**

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

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

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

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

3 (c) Local Licenses. Counties and municipalities may levy a license tax on
4 retailers and wholesale merchants licensed under this section as provided in G.S. 105-
5 102.6.

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

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

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

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

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

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

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

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

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

- 1 ~~(8) Operating a bagatelle table, merry go round, other riding device,~~
2 ~~hobbyhorse, switchback railway, shooting gallery, swimming pool,~~
3 ~~skating rink, other amusement of a like kind, or a place for other~~
4 ~~games or play with or without name (unless used solely and~~
5 ~~exclusively for private amusement or exercise) at a permanent~~
6 ~~location.~~
- 7 ~~(9) Selling, offering, ordering for sale, repairing, or servicing pianos,~~
8 ~~organs, record players, records, tape players, tape cartridges designed~~
9 ~~for use in tape players, television sets, television accessories or repair~~
10 ~~parts, radios, or radio accessories or repair parts, including radios~~
11 ~~designed for exclusive use in motor vehicles.~~
- 12 ~~(10) Manufacturing ice cream using freezer equipment and selling the ice~~
13 ~~cream at retail; and selling at retail ice cream purchased from a~~
14 ~~manufacturer other than a manufacturer who has paid the tax imposed~~
15 ~~in G.S. 105-97(a). For the purpose of this subdivision, "ice cream"~~
16 ~~means ice cream, frozen custards, sherbets, water ices, yogurt, and/or~~
17 ~~similar frozen products.~~
- 18 ~~(c) Where applicable, the chain store license tax levied in G.S. 105-98 shall be in~~
19 ~~addition to the general business license tax levied in subsection (a).~~
- 20 ~~(d) Exemptions:~~
- 21 ~~(1) A person, firm, or corporation required to be licensed under G.S. 105-~~
22 ~~36.1, 105-37, 105-62, 105-65.1, 105-74, 105-85, 105-89, or 105-89.1~~
23 ~~is not required to procure for the same location the general business~~
24 ~~license imposed by this section.~~
- 25 ~~(2) The tax levied on the businesses described in subdivisions (5) and (6)~~
26 ~~of subsection (b) of this section does not apply to fraternal~~
27 ~~organizations having a national charter, American Legion Posts, posts~~
28 ~~or other local organizations of other veterans' organizations chartered~~
29 ~~by Congress or organized and operating on a statewide or nationwide~~
30 ~~basis, Young Men's Christian Associations, Young Women's Christian~~
31 ~~Associations, or nonstock, nonprofit charitable recreational~~
32 ~~corporations, foundations, or centers to which a municipality or county~~
33 ~~contributes any portion of the operating expense.~~
- 34 ~~(3) The tax levied on the businesses described in subdivision (7) of~~
35 ~~subsection (b) of this section does not apply to the sale, through~~
36 ~~dispensers or otherwise, of milk, milk drinks, dairy products, or~~
37 ~~newspapers, or to dispensers dispensing merchandise for five cents~~
38 ~~(5¢) or less.~~
- 39 ~~(4) The tax levied on the businesses described in subdivision (8) of~~
40 ~~subsection (b) of this section does not apply to machines and devices~~
41 ~~licensed under G.S. 105-65 or G.S. 105-66.1. An organization~~
42 ~~obtaining a license under G.S. 14-309.7 is not required to obtain a~~
43 ~~license under subdivision (8) of subsection (b) of this section, but is~~

1 subject to subsection (e) of this section as if a State license were
2 required.

3 (5) A person, firm, or corporation licensed under this section to conduct a
4 business described in subdivision (9) of subsection (b) is not required
5 to procure a license under G.S. 105-89 by reason of being engaged in
6 the business of selling, installing, or servicing motor vehicle radios.

7 (e) Local Licenses. For the businesses described under subdivisions (1) through
8 (4), (7), (9), and (10) of subsection (b) of this section, counties may not levy a license
9 tax. For the businesses described under subdivision (5) of this section, counties may
10 levy on each business located outside of cities a license tax not in excess of twenty-five
11 dollars (\$25.00). For the businesses described under subdivision (6), counties may levy
12 on each business located outside of cities a license tax not in excess of ten dollars
13 (\$10.00) per alley kept or maintained. For the businesses described under subdivision
14 (8), counties may levy on each business located outside of cities a license tax not in
15 excess of twenty-five dollars (\$25.00).

16 Cities may not levy a license tax on the businesses described under subdivision (3)
17 of subsection (b) of this section. Cities may levy on each of the businesses
18 described in subdivisions (1), (2), (5), and (8) a license tax not in excess of twenty-five
19 dollars (\$25.00); on the businesses described in subdivision (4), cities may levy a
20 license tax not in excess of twelve dollars and fifty cents (\$12.50); on the businesses
21 described in subdivision (6), cities may levy a license tax not in excess of ten dollars
22 (\$10.00) per alley kept or maintained; on the businesses described in subdivision (9),
23 cities may levy a license tax not in excess of five dollars (\$5.00); on the businesses
24 described in subdivision (7), cities may levy a license tax not in excess of four dollars
25 (\$4.00); and on the businesses described in subdivision (10), cities may levy a license
26 tax not in excess of two dollars and fifty cents (\$2.50).

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

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

31 "**§ 105-102.6. Local merchant's privilege license.**

32 (a) License Tax. A county or a municipality may levy a license tax on a retailer
33 or wholesale merchant required to be licensed under G.S. 105-102.5. The tax shall be
34 measured on the gross receipts derived during the preceding year from the retail and
35 wholesale business conducted in the county or municipality. The county or
36 municipality may provide that the preceding year is the preceding calendar year, the
37 license holder's preceding income tax year, or another 12-month period preceding the
38 license year. The license tax that may be levied by a county shall be at a rate of up to
39 fifty-eight cents (58¢) for every one thousand dollars (\$1,000) of gross receipts, subject
40 to a minimum tax of up to thirty dollars (\$30.00). The license tax that may be levied by
41 a municipality shall be at a rate of up to twenty-five cents (25¢) for every one thousand
42 dollars (\$1,000) of gross receipts, subject to a minimum tax of up to thirty dollars
43 (\$30.00).

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

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

10 (2) The gross receipts derived from wholesale sales of alcoholic
11 beverages.

12 (c) Multiple County Taxation Prohibited. A retailer or wholesale merchant
13 engaged in business in more than one county is not subject to more than one county tax
14 on the same gross receipts. If a taxpayer has gross receipts derived from one or more
15 places of business in this State, only a county in which a place of business is located
16 may tax the gross receipts derived from that place of business. If a taxpayer has gross
17 receipts derived from a place of business not located in this State, each county may tax
18 the gross receipts to the extent they are derived from business conducted within that
19 county. As used in this subsection, the term 'place of business' means a fixed place at
20 which the retailer or wholesale merchant maintains the business.

21 (d) Multiple Municipal Taxation Prohibited. A retailer or wholesale merchant
22 engaged in business in more than one municipality is not subject to more than one
23 municipal tax on the same gross receipts. If a taxpayer has gross receipts derived from
24 one or more places of business in municipalities in this State, only a municipality in
25 which a place of business is located may tax the gross receipts derived from that place
26 of business. If a taxpayer has gross receipts derived from a place of business not
27 located in a municipality in this State, each municipality may tax the gross receipts to
28 the extent they are derived from business conducted within that municipality. As used
29 in this subsection, the term 'place of business' means a fixed place at which the retailer
30 or wholesale merchant maintains the business."

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

33 **"§ 105-33.1. Definitions.**

34 The following definitions apply in this Article:

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

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

39 (3) Municipality. A municipal corporation organized under the laws of
40 this State.

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

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

44 (6) Secretary. The Secretary of Revenue.

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

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

3 Sec. 5. G.S. 105-46, 105-51.1, 105-61, 105-62, 105-70, 105-74, 105-80, 105-
4 85, 105-89, 105-89.1, 105-97, 105-98, 105-99, and 105-102.1 are repealed.

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

6 **"§ 105-164.5. Imposition of tax; wholesale merchant.**

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

12 ~~(1) Every wholesale merchant as defined in this Article shall apply for and~~
13 ~~obtain an annual license and pay tax therefor of ten dollars (\$10.00).~~
14 ~~Such annual license shall be paid for in advance within the first 15~~
15 ~~days of July in each year or, in the case of a new business, within 15~~
16 ~~days after business is commenced. Manufacturers making wholesale~~
17 ~~sales, as defined in this Article, of their own manufactured products,~~
18 ~~directly and exclusively from the place where such articles of tangible~~
19 ~~personal property are manufactured, shall not be required to obtain an~~
20 ~~annual wholesale license.~~

21 (1) Every wholesale merchant is subject to the license requirement in G.S.
22 105-164.4(c).

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

28 (3) The sale of any tangible personal property by any wholesale
29 merchant to a nonresident retail or wholesale merchant must be in
30 ~~strict compliance with such regulations as may be promulgated by the~~
31 ~~Secretary and which are applicable to such sales.~~ Any sale which does
32 not conform to such regulations shall be taxable at the rate of tax
33 provided in this Article upon the retail sale of tangible personal
34 property.

35 (4) Every wholesale merchant who sells tangible personal
36 property to retailers or nonresident retail or wholesale merchants for
37 resale shall deliver to such customer a bill of sale for each sale of
38 such tangible personal property whether sold for cash or on credit
39 and shall make and retain a duplicate or carbon copy of each such
40 bill of sale and shall keep on file all such duplicate bills of sale for at
41 least three years from the date of sale. Failure to comply with the
42 provisions of this subsection shall subject the wholesale merchant to
43 liability for tax upon such sales at the rate of tax levied in this
44 Article upon retail sales.

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

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

5 **"§ 105-36. Amusements – Manufacturing, ~~selling, leasing, or distributing moving~~**
6 **picture films.**

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

13 Every person engaged in the business of leasing, furnishing, or distributing movies,
14 including video cassette movies, for use in this State in institutions of learning at which
15 an admission fee is charged shall apply for and obtain from the Secretary of Revenue a
16 statewide license for the privilege of engaging in that business in this State, and shall
17 pay for the license a tax of fifty dollars (\$50.00).

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

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

21 "(a) Every ~~person, firm, or corporation~~ person engaged in the business of giving,
22 offering or managing any form of entertainment or amusement not otherwise taxed or
23 specifically exempted ~~in this Article, under G.S. 105-36, 105-36.1, 105-37, 105-38, or~~
24 105-40, for which an admission is charged, shall pay an annual license tax of fifty
25 dollars (\$50.00) for each room, hall, tent or other place where such admission charges
26 are made.

27 In addition to the license tax levied above, ~~such person, firm, or corporation~~ the person
28 shall pay an additional tax upon the gross receipts of such business at the rate of three
29 percent (3%). Reports shall be made to the Secretary of Revenue, in such form as he
30 may prescribe, within the first 10 days of each month covering all such gross receipts
31 for the previous month, and the ~~additional tax herein levied~~ gross receipts tax shall be paid
32 monthly at the time such reports are made. The annual license tax ~~herein levied~~ shall be
33 treated as an advance payment of the ~~tax upon gross receipts herein levied, and the annual~~
34 ~~license tax~~ gross receipts tax and shall be applied as a credit upon or advance payment of
35 the gross receipts tax.

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

1 Dances and other amusements actually promoted and managed by civic
2 organizations and private and public secondary schools, ~~shall not be~~ schools are not
3 subject to the license tax imposed by this section and the first one thousand dollars
4 (\$1,000) of gross receipts derived from such events shall be exempt from the gross
5 receipts tax herein levied when the entire proceeds of ~~such dances or other amusements~~ the
6 event are used exclusively for the school or civic and charitable purposes of ~~such~~
7 ~~organizations~~ the organization and not to defray the expenses of the organization
8 conducting ~~such dance or amusement~~ the event. The mere sponsorship of a dance or
9 other amusement by such a school, civic, or fraternal organization ~~shall not be deemed to~~
10 does not exempt ~~such~~ the dance or other amusement as provided in this paragraph, but
11 the exemption shall apply only when the dance or amusement is actually managed and
12 conducted by the school, civic, or fraternal organization and the proceeds are used as
13 ~~herein before required~~ required in this section.

14 Dances and other amusements promoted and managed by a qualifying corporation
15 that operates a center for the performing and visual arts are exempt from the license tax
16 and the gross receipts tax imposed under this section if the dance or other amusement is
17 held at the center. 'Qualifying corporation' means a corporation that is exempt from
18 income tax under G.S. 105-130.11(a)(3). 'Center for the performing and visual arts'
19 means a facility, having a fixed location, that provides space for dramatic performances,
20 studios, classrooms and similar accommodations to organized arts groups and individual
21 artists. This exemption ~~shall~~ does not apply to athletic events.

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

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

28 "(a) Peddler. – Every person engaged in business or employed as a peddler shall
29 obtain a statewide license from the Secretary of Revenue for the privilege of peddling
30 goods and shall pay a tax of fifty dollars (\$50.00) for the license. ~~for the license in the~~
31 ~~amount specified in this section.~~ A 'peddler' is a person who travels from place to place
32 with an inventory of goods, who sells the goods at retail or offers the goods for sale at
33 retail, and who delivers the identical goods he carries with him. ~~A peddler of only farm~~
34 ~~products shall pay a tax of twenty five dollars (\$25.00) regardless of the number of counties in~~
35 ~~which he peddles goods. A peddler who travels from place to place on foot, selling goods other~~
36 ~~than or in addition to farm products, shall pay a tax of ten dollars (\$10.00) for each county in~~
37 ~~which he peddles goods. A peddler who travels from place to place by vehicle, selling goods~~
38 ~~other than or in addition to farm products, shall pay a tax of twenty five dollars (\$25.00) for~~
39 ~~each county in which he peddles goods.~~

40 (b) Itinerant Merchant. – Every person engaged in business as an itinerant
41 merchant shall obtain a statewide license from the Secretary of Revenue for the
42 privilege of engaging in business and shall pay a tax of one hundred dollars (\$100.00)
43 for the license. ~~for the license of one hundred dollars (\$100.00) for each county in which he is~~
44 ~~engaged in business.~~ An 'itinerant merchant' is a merchant, other than a merchant with an
45 established retail store in the county, who transports an inventory of goods to a building,

1 vacant lot, or other location in a county and who, at that location, displays the goods for
2 sale and sells the goods at retail or offers the goods for sale at retail. An itinerant
3 merchant's license is not required to engage in the business of a specialty market vendor
4 at a location licensed as a specialty market under subsection (c) of this section or at a
5 specialty market that is exempt from the license requirement under subsection (c)
6 because the specialty market operator is the State or a unit of local government. A
7 merchant who sells goods, other than farm products, in a county for less than six
8 consecutive months is considered an itinerant merchant unless he stopped selling goods
9 in that county because of his death or disablement, the insolvency of his business, or the
10 destruction of his inventory by fire or other catastrophe."

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