

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

2

SENATE BILL 108
Second Edition Engrossed 6/4/91

Short Title: Sales Tax Administration Changes.

(Public)

Sponsors: Senators Winner, Kincaid, and Staton.

Referred to: Finance.

February 20, 1991

A BILL TO BE ENTITLED

AN ACT TO IMPROVE ADMINISTRATION OF THE SALES AND USE TAX BY INCREASING THE LICENSE TAXES, ALLOWING MORE SMALL RETAILERS TO FILE QUARTERLY SALES TAX RETURNS, AND EXTENDING THE LIMITATIONS PERIOD FOR ENFORCING LIABILITY AGAINST CERTAIN TRANSFEREES AND CORPORATE OFFICERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.4(c) reads as rewritten:

"(c) Any person who engages ~~or continues~~ in any business for which a privilege tax is imposed by this Article shall immediately ~~after July 1, 1979,~~ apply for and obtain from the Secretary upon payment of ~~the sum of five dollars (\$5.00) twenty-five dollars (\$25.00)~~ a license to engage in and conduct ~~such the~~ business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in ~~and conduct such the~~ business. Except as hereinafter provided, a license issued under this subsection shall be a continuing license until revoked for failure to comply with the provisions of this Article. ~~However, any person who has heretofore applied for and obtained the license, if the license was in force and effect as of July 1, 1979, shall not be required to apply for and obtain a new license.~~

A license issued under this section becomes void if the license holder ~~Any person who ceases to be engaged in any a business for which a privilege tax is imposed by this Article, and who Article and remains continuously out of business for a period of five years. The burden of proving that a license is still valid is on the license holder. years shall apply for and obtain a new license from the Secretary upon the payment of a tax of five~~

1 dollars (\$5.00), and any license previously issued under this section shall be void. The burden
2 of proof after such period shall be upon the taxpayer to show that he did engage in such
3 business within the period, and that no new license is required.

4 A retailer who sells tangible personal property at a flea market shall conspicuously
5 display his sales tax license when making sales at the flea market."

6 Sec. 2. G.S. 105-164.5 reads as rewritten:

7 **"§ 105-164.5. Imposition of tax; wholesale merchant.**

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

13 (1) Every wholesale merchant as defined in this Article shall apply for and
14 obtain an annual license and ~~pay tax therefor of ten dollars (\$10.00).~~ pay
15 for the license a tax of twenty-five dollars (\$25.00). ~~Such annual.~~ This
16 license tax shall be paid ~~for~~ in advance within the first 15 days of July
17 in each year or, in the case of a new business, within 15 days after
18 business is commenced. Manufacturers making wholesale sales, as
19 defined in this Article, of their own manufactured products, directly
20 and exclusively from the place where ~~such articles of tangible personal~~
21 property the products are manufactured are not are manufactured, shall
22 ~~not be required to obtain an annual wholesale license.~~

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-merchant,~~ or nonresident retail or wholesale merchant as
26 ~~defined~~ for resale shall be taxable at the rate ~~of tax~~ provided in this
27 Article upon 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. Secretary and which are applicable to such sales. Any sale
32 ~~which~~ A sale that does not conform to ~~such the~~ regulations shall be is
33 taxable at the rate ~~of tax~~ provided in this Article upon the retail sale
34 of tangible personal 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 the~~ customer a bill of sale for each sale ~~of~~
38 ~~such tangible personal property~~ whether sold for cash or on credit,
39 ~~credit~~ and shall make and retain a duplicate or carbon copy of each
40 ~~such bill of sale~~ bill of sale, and shall keep ~~on file all such duplicate bills~~
41 each bill of sale on file for at least three years from the date of sale.
42 Failure to comply with ~~the provisions of~~ this subsection shall subject
43 the wholesale merchant to liability for tax upon ~~such the~~ sales at the
44 rate ~~of tax~~ levied in this 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. 3. G.S. 105-164.6(f) reads as rewritten:

5 "(f) Every retailer engaged in business in this State selling or delivering tangible
6 personal property for storage, use or consumption in this State shall immediately ~~after~~
7 ~~July 1, 1979,~~ apply for and obtain from the Secretary upon ~~the payment of the sum of five~~
8 ~~dollars (\$5.00) twenty-five dollars (\$25.00)~~ a license to engage in and conduct ~~such the~~
9 business upon the condition that such person shall pay the tax accruing to the State of
10 ~~North Carolina under the provisions of this Article, and he~~ under this Article; the person
11 shall thereby be duly licensed and registered to engage in ~~and conduct such the~~ business.
12 Except as hereinafter provided, a license issued under this subsection shall be a
13 continuing license until revoked for failure to comply with the provisions of this Article.
14 ~~However, any person who has heretofore applied for and obtained such license, and such~~
15 ~~license was in force and effect as of July 1, 1979, shall not be required to apply for and obtain a~~
16 ~~new license.~~

17 A license issued under this section becomes void if the license holder ~~Any person~~
18 ~~who ceases to be engaged in any a business for which a tax is imposed by this Article,~~
19 ~~and who Article and~~ remains continuously out of business for a period of five years. The
20 burden of proving that a license is still valid is on the license holder. ~~years shall apply for~~
21 ~~and obtain a new license from the Secretary upon the payment of a tax of five dollars (\$5.00),~~
22 ~~and any license previously issued under this section shall be void. The burden of proof after~~
23 ~~such period shall be upon the taxpayer to show that he did engage in such activity within the~~
24 ~~period, and that no new license is required."~~

25 Sec. 4. G.S. 105-164.16(b) reads as rewritten:

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

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

39 The Secretary shall monitor the amount of tax remitted by a taxpayer and shall direct
40 a taxpayer who consistently remits at least twenty thousand dollars (\$20,000) each
41 month to file a return on a semimonthly basis. In determining the amount of tax due
42 from a taxpayer for a reporting period the Secretary shall consider the total amount due
43 from all places of business owned or operated by the same person as the amount due
44 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. 5. G.S. 105-164.29 reads as rewritten:

24 "**§ 105-164.29. Application for licenses by wholesale merchants and retailers.**

25 Every application for a license by a wholesale merchant or retailer shall be made
26 upon a form prescribed by the Secretary and shall set forth ~~the name under which the~~
27 ~~applicant transacts or intends to transact business, the location of his place or places of~~
28 ~~business, and such other all~~ information as the Secretary may require. The application
29 shall be signed by the owner if a natural person; in the case of an association or
30 partnership, by a member or partner; in the case of a corporation, by an executive
31 officer or some other person specifically authorized by the corporation to sign the
32 application, to which shall be attached the written evidence of his authority. ~~Provided,~~
33 ~~however, that persons, firms, or corporations,~~ A wholesale merchant or retailer whose
34 business extends into more than one county ~~shall be~~ is required to secure only one
35 license ~~under the provisions of this Article which license shall to cover all operations of such~~
36 ~~company the business throughout the State of North Carolina.~~ State.

37 When the required application has been made the Secretary shall issue a license to
38 the applicant. ~~grant and issue to each applicant such license.~~ A license is not assignable and
39 is valid only for the person in whose name it is issued and for the transaction of business
40 at the place designated ~~therein.~~ in the license. The license holder shall display the
41 license conspicuously at all times at the place for which it was issued. ~~It shall be at all~~
42 ~~times conspicuously displayed at the place of which issued.~~

43 A ~~retailer person~~ person whose license has been previously suspended or revoked shall pay
44 the Secretary ~~the sum of five dollars (\$5.00)~~ twenty-five dollars (\$25.00) for the

1 reissuance ~~or renewal of such~~ of the license. A wholesale merchant whose annual license
2 has been previously suspended or revoked shall pay the Secretary ~~the sum of ten dollars~~
3 ~~(\$10.00)~~ twenty-five dollars (\$25.00) for the reissuance ~~or renewal of such~~ of the license
4 for the ~~year or fraction thereof for which said license is reissued or renewed.~~ remainder of the
5 license year.

6 Whenever ~~any wholesale merchant or retailer~~ a license holder fails to comply with
7 ~~any provision of this Article or any rule or regulation of the Secretary relating thereto,~~
8 this Article, the Secretary, upon hearing, after giving the ~~wholesale merchant or retailer~~
9 license holder 10 days' notice in writing, specifying the time and place of hearing and
10 requiring ~~him~~ the license holder to show cause why ~~his~~ the license should not be
11 revoked, may revoke or suspend the license. ~~license held by such wholesale merchant or~~
12 ~~retailer.~~ The notice may be served personally or by registered mail directed to the last
13 known address of the ~~person.~~ license holder. All provisions with respect to review and
14 appeals of the Secretary's decisions as provided by G.S. 105-241.2, 105-241.3, and 105-
15 241.4 ~~of the General Statutes shall be applicable~~ apply to this section.

16 Any wholesale merchant or retailer who engages in business as a seller in this State
17 without a license or after ~~his~~ the license has been suspended or revoked, and each officer
18 of any corporation which so engages in business shall be guilty of a misdemeanor and
19 subject to a fine of ~~not exceeding up to~~ five hundred dollars (\$500.00) for each ~~such~~
20 offense."

21 Sec. 6. G.S. 105-164.38 reads as rewritten:

22 "**§ 105-164.38. Tax shall be a lien.**

23 The tax imposed by this Article shall be a lien upon ~~the stock of goods and/or any other~~
24 all property of any person subject to the provisions of this Article who ~~shall sell out or in~~
25 ~~any manner transfer his~~ transfers the business or stock of goods or ~~shall quit goes out of~~
26 business. ~~business, and such~~ Such a person shall be required to make out file the return
27 ~~provided for under Division IV of~~ required by this Article within 30 days after ~~the date he~~
28 ~~sold out his business or stock of goods or quit transferring the business or going out of~~
29 business. ~~business and his successor in~~ The person to whom the business or the purchaser
30 ~~of the entire stock of goods was transferred shall be required to withhold sufficient of the~~
31 purchase money or money's worth in the event there is an exchange of properties to
32 cover the ~~amount of said taxes due and unpaid until such time as the former owner shall~~
33 ~~produce~~ produces a receipt from the Secretary showing that the taxes have been paid or a
34 certificate that no taxes are due. If the ~~purchaser transferee~~ of a business or stock of
35 goods ~~shall fail fails~~ to withhold purchase money ~~as above provided, and the taxes shall be~~
36 ~~due and or money's worth and the taxes remain~~ unpaid after the 30-day period allowed,
37 ~~he~~ the transferee shall be personally liable for ~~the payment of~~ the taxes accrued and
38 unpaid on account of the operation of the business by the former owner. ~~The transferee~~
39 ~~shall be liable for payment of any sales and/or use taxes due by the transferor owner,~~ to the
40 extent of the purchase price paid by the transferee or fair market value of the property
41 transferred whichever is greater. The period of limitations for assessing liability against
42 the transferee and enforcing the lien against the property shall expire one year after the
43 end of the period of limitations for assessment against the transferor. Except as
44 otherwise provided in this section, the ~~The transferee or successor in business and the~~

1 liability of the transferee ~~of successor in business shall be~~ are subject to the provisions of
2 G.S. 105-241.1, 105-241.2, 105-241.3, and 105-241.4 and to other remedies for the
3 collection of taxes to the same extent as if the transferee ~~or successor in business had~~
4 incurred the original tax liability."

5 Sec. 7. G.S. 105-253 reads as rewritten:

6 **"§ 105-253. Personal liability of officers, trustees, or receivers.**

7 (a) Any officer, trustee, or receiver of any corporation required to file report with
8 the Secretary of Revenue, having in his custody funds of the corporation, who allows
9 ~~said the~~ funds to be paid out or distributed to the stockholders of ~~said the~~ corporation
10 without having satisfied the Secretary of Revenue for any State taxes ~~which that~~ are due
11 and have accrued, shall be personally ~~responsible liable~~ for the payment of ~~said the~~ tax,
12 and ~~in addition thereto~~ shall be subject to a-an additional penalty ~~of not more than equal to~~
13 the amount of tax, ~~nor less than twenty five percent (25%) of such tax found to be due or~~
14 ~~accrued tax due.~~

15 (b) Each responsible corporate officer is ~~made~~ personally and individually liable:

16 (1) For all sales and use taxes collected by a corporation upon
17 taxable transactions of the corporation, which liability shall be
18 satisfied upon timely remittance of ~~such the~~ taxes to the Secretary by
19 the corporation;

20 (2) For all sales and use taxes due upon taxable transactions of
21 the corporation but upon which the corporation failed to collect the
22 tax, but only if the responsible officer knew, or in the exercise of
23 reasonable care should have known, that the tax was not being
24 collected; and

25 (3) For all taxes due from the corporation pursuant to the
26 provisions of Article 36 and Article 36A of Subchapter V of this
27 Chapter.

28 ~~His The~~ liability of the responsible corporate officer is ~~shall be~~ satisfied upon timely
29 remittance of ~~such the~~ tax to the Secretary by the corporation. If ~~said tax shall remain the~~
30 tax remains unpaid by the corporation, ~~after the same corporation after it is~~ due and
31 payable, the Secretary ~~of Revenue~~ may assess the tax against, and collect the tax from,
32 any responsible corporate officer in accordance with the provisions of G.S. 105-241.1,
33 which officer shall be the 'taxpayer' in such case, as referred to in G.S. 105-241.1 et seq.
34 As used in this section, the words 'responsible corporate officers' ~~mean the president and~~
35 ~~the treasurer of a corporation and may include such officer'~~ include the president and the
36 treasurer of the corporation and any other officers as have been assigned the duty of
37 filing tax returns and remitting ~~the~~ taxes to the Secretary ~~of Revenue~~ on behalf of the
38 corporation. Any penalties which may be imposed pursuant to the provisions of G.S.
39 105-236 and which are applicable to a deficiency shall apply to any assessment
40 provided for ~~herein in this section.~~ All other provisions of Article 9, Schedule J of the
41 Revenue Laws shall apply to such 9 of this Chapter apply to the assessment to the extent
42 ~~that they are not inconsistent with the provisions of this section.~~

1 **(b1) The period of limitations for assessing any liability against a corporate**
2 **officer, trustee, or receiver shall expire one year after the expiration of the period of**
3 **limitations for assessment against the corporation.**

4 (c) The Secretary of State shall withhold the issuance of any certificate of
5 dissolution to, or withdrawal of, any corporation, domestic or foreign, until the receipt
6 by him of a notice from the Secretary of Revenue to the effect that any such corporation
7 has met the requirements with respect to reports and taxes required by this Subchapter."

8 Sec. 8. Section 4 of this act becomes effective July 1, 1992. The remaining
9 sections of this act become effective July 1, 1991. Sections 1 through 5 of this act apply
10 to licenses issued or renewed on or after July 1, 1991. This act does not extend a period
11 of limitations that expires before the act is ratified.