

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1146

Short Title: Flea Market Tax, Sales, Records.

(Public)

Sponsors: Senator Sherron.

Referred to: Finance.

May 12, 1993

A BILL TO BE ENTITLED

1 AN ACT TO INCREASE THE STATE PRIVILEGE LICENSE TAX FOR
2 ITINERANT MERCHANTS AND SPECIALTY MARKET OPERATORS, TO
3 MODIFY THE PRIVILEGE LICENSE TAX REQUIREMENTS FOR FLEA
4 MARKET VENDORS, AND TO PROHIBIT SALES OF OVER-THE-COUNTER
5 DRUGS AT FLEA MARKETS.
6

7 The General Assembly of North Carolina enacts:

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

9 **"§ 105-53. Peddlers, itinerant merchants, and specialty market operators.**

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

22 (b) Itinerant Merchant. – Every person engaged in business as an itinerant
23 merchant shall obtain a license from the Secretary of Revenue for the privilege of
24 engaging in business and shall pay a tax for the license of one hundred ten dollars

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

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

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

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

32 (1) A peddler or itinerant merchant:

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

42 (2) A peddler who maintains a fixed permanent location from which he
43 makes at least ninety percent (90%) of his sales, but who sells some
44 goods in the county of his fixed location by peddling.

- 1 (3) An itinerant merchant:
2 a. Who locates at a farmer's market;
3 b. Who is part of the State Fair or an agriculture fair which is
4 licensed by the Commissioner of Agriculture pursuant to G.S.
5 106-520.3; or
6 c. Who sells goods at an auction conducted by an auctioneer
7 licensed pursuant to Chapter 85B of the General Statutes.
8 (4) A peddler who complies with the requirements of G.S. 25A-38
9 through G.S. 25A-42, or who complies with the requirements of G.S.
10 14-401.13.

11 (f) Person Defined. – As used in this section, 'person' has the same meaning as in
12 G.S. 105-164.3(11).

13 (g) County Exemption. – The board of county commissioners of any county in
14 this State, upon proper application, may exempt from the annual license tax levied upon
15 peddlers and itinerant merchants in this section disabled veterans of World War I,
16 World War II, Korean Conflict, and Vietnam Era, who have been bona fide residents of
17 this State for 12 or more months continuously, and widows with dependent children;
18 and when so exempted, the board of county commissioners shall furnish such person or
19 persons with a certificate of exemption, and such certificate shall entitle the holder
20 thereof to sell within the limits of the county without payment of any license tax to the
21 State.

22 (h) Repealed by Session Laws 1989, c. 435, s. 1.

23 (i) ~~Display and Possession of Licenses and Identification~~ Licenses; Identification
24 of Seller and Source of Merchandise. – An itinerant merchant shall keep both the
25 license required by this section and the retail sales tax license conspicuously and
26 prominently displayed, so as to be visible for inspection by patrons of the itinerant
27 merchant at the places or locations at which the goods are to be sold or offered for sale.
28 A peddler shall have the license required by this section and the retail sales tax license
29 with him at all times he offers goods for sale and must produce them upon the request of
30 any customer, State or local revenue agent, or law enforcement agent. A specialty
31 market vendor shall keep the retail sales tax license conspicuously and prominently
32 displayed, so as to be visible for inspection by patrons of the specialty market vendor at
33 the places or locations at which the goods are to be sold or offered for sale. A specialty
34 market operator shall have the license required by this section available for inspection
35 during all times that the specialty market is open and must produce it upon the request
36 of any customer, State or local revenue agent, or law enforcement agent.

37 Upon the request of any customer, State or local revenue agent, or law enforcement
38 agent, a peddler, itinerant merchant, specialty market operator, or specialty market
39 vendor shall provide its name and permanent address. If the peddler, itinerant merchant,
40 specialty market operator, or specialty market vendor is not a corporation, he shall, upon
41 the request of any customer, State or local revenue agent, or law enforcement agent,
42 provide a valid driver's license, a special identification card issued under G.S. 20-37.7,
43 military identification, or a passport bearing a physical description of the person named
44 reasonably describing the peddler, itinerant merchant, specialty market operator, or

1 specialty market vendor. If the peddler, itinerant merchant, specialty market operator,
2 or specialty market vendor is a corporation, it shall, upon the request of any customer,
3 State or local revenue agent, or law enforcement agent, give the name and registered
4 agent of the corporation and the address of the registered office of the corporation, as
5 filed with the North Carolina Secretary of State.

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

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

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

36 (k1) Prohibited Sales. – An itinerant merchant may not sell over-the-counter drugs
37 at a specialty market. 'Over-the-counter drugs' are nonlegend drugs.

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

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

42 (2) Knowingly give false information in the application process for a
43 license or when registering pursuant to subsection ~~(k);~~ (k).

- 1 (3) If the person is an itinerant merchant, fail to display the license as
2 required by subsection ~~(i) or (i)~~; if the person is a peddler or specialty
3 market operator, fail to produce the license as required by subsection
4 ~~(i) or (i)~~; or, if the person is required to do so, fail to comply with
5 subsection (j). Whenever satisfactory evidence shall be presented in
6 any court of the fact that a license was required by this section and
7 such license was not displayed or produced as required by subsection
8 (i), or that permission was required by subsection (j) of this section and
9 was not displayed, the peddler, itinerant merchant, or specialty market
10 operator shall be found not guilty of that violation provided he
11 produces in court a valid license or valid permission which had been
12 issued prior to the time he was charged with such ~~violation; or~~
13 violation.
- 14 (4) Fail to provide name, address, or identification upon request as
15 required by subsection (i) or provide false information in response to
16 such a request.
- 17 (5) Fail to provide evidence of the source of merchandise offered for sale
18 when requested by a law enforcement agent under subsection (i) or to
19 provide false information in response to the request.
- 20 (6) Sell over-the-counter drugs in violation of subsection (k1).

21 (11) Additional Penalties. – It shall be a misdemeanor, punishable by
22 imprisonment of up to 30 days, a fine of up to one thousand dollars (\$1,000), or both,
23 for a specialty market operator to fail to comply with subsection (k) or for a specialty
24 market vendor to fail to display the retail sales tax license as required by subsection (i).
25 For the purposes of this section, the requirement that a retail sales tax license be
26 displayed is satisfied if the vendor displays either (i) a copy of the license or (ii)
27 evidence that the license has been applied for and the applicable license fee has been
28 paid within 30 days before the date the license was required to be displayed. Whenever
29 satisfactory evidence shall be presented in any court of the fact that display of a retail
30 sales tax license was required by this section and such license was not displayed, the
31 specialty market operator or vendor shall not be found guilty of that violation provided
32 he produces in court a valid license which had been issued prior to the time he was
33 charged with the violation.

34 (m) Local License. – Counties and cities may levy a license tax on a business
35 taxed under this section in an amount that does not exceed the State tax. Further, this
36 section does not affect the authority of a county or city to impose additional
37 requirements on peddlers, itinerant merchants, specialty market vendors, or specialty
38 market operators by an ordinance adopted under G.S. 153A-125 or G.S. 160A-178."

39 Sec. 2. This act becomes effective December 1, 1993.