

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1146  
Finance Committee Substitute Adopted 6/24/93

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, TO MODIFY THE PRIVILEGE LICENSE TAX REQUIREMENTS FOR FLEA MARKET VENDORS AND PEDDLERS, AND TO PROHIBIT SALES OF OVER-THE-COUNTER DRUGS AT FLEA MARKETS UNLESS THE MANUFACTURER AGREES IN WRITING.

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.

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

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

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

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

35 (1) A peddler or itinerant merchant:

- 36 a. Who sells farm or nursery products produced by him;
- 37 b. Who sells crafts or goods made by him or his own household  
38 personal property;
- 39 c. Who is a nonprofit charitable, educational, religious, scientific,  
40 or civic organization;
- 41 d. Who sells printed material, wood for fuel, ice, seafood, meat,  
42 poultry, livestock, eggs, dairy products, bread, cakes, or pies; or
- 43 e. Who is an authorized automobile dealer licensed pursuant to  
44 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 (k1) Prohibited Sales. – An itinerant merchant may not sell an over-the-counter  
41 drug at a specialty market unless the itinerant merchant has the written approval of the  
42 manufacturer of the over-the-counter drug. 'Over-the-counter drugs' are nonlegend  
43 drugs.

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

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

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

7 (3) If the person is an itinerant merchant, fail to display the license as  
8 required by subsection ~~(i) or (j);~~ if the person is a peddler or specialty  
9 market operator, fail to produce the license as required by subsection  
10 ~~(i) or (j);~~ or, if the person is required to do so, fail to comply with  
11 subsection (j). Whenever satisfactory evidence shall be presented in  
12 any court of the fact that a license was required by this section and  
13 such license was not displayed or produced as required by subsection  
14 (i), or that permission was required by subsection (j) of this section and  
15 was not displayed, the peddler, itinerant merchant, or specialty market  
16 operator shall be found not guilty of that violation provided he  
17 produces in court a valid license or valid permission which had been  
18 issued prior to the time he was charged with such ~~violation;~~ or  
19 violation.

20 (4) Fail to provide name, address, or identification upon request as  
21 required by subsection (i) or provide false information in response to  
22 such a request.

23 (5) Fail to provide evidence of the source of merchandise offered for sale  
24 when requested by a law enforcement agent under subsection (i) or to  
25 provide false information in response to the request.

26 (6) Sell over-the-counter drugs in violation of subsection (k1).

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

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 December  
4 1, 1993.