

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 435
SENATE BILL 119

AN ACT TO REPEAL THE PRIVILEGE LICENSE TAX FOR FLEA MARKET VENDORS, TO INCREASE THE TAX FOR FLEA MARKET OPERATORS, TO EXEMPT GOVERNMENTAL ENTITIES FROM THE TAX, TO REDEFINE FLEA MARKETS AS "SPECIALTY MARKETS", AND TO INCREASE THE PENALTY FOR CERTAIN VIOLATIONS.

The General Assembly of North Carolina enacts:

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

"§ 105-53. **Peddlers, itinerant merchants, ~~flea-market vendors and flea-market 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.

(b) Itinerant Merchant. – Every person engaged in business as an itinerant merchant shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax for the license of one hundred dollars (\$100.00) for each county in which he is engaged in business. An 'itinerant merchant' is a merchant, other than a merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other location in a county and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. An itinerant merchant's license is not required to engage in the business of a ~~flea-specialty market vendor at a location licensed as a flea specialty market under subsection (c) of this section-section or at a specialty market that is exempt from the license requirement under subsection (c) because the specialty market operator is the State or a unit of local government.~~ A merchant who sells goods, other than farm products, in a county for less than six consecutive months is considered an itinerant merchant unless he stopped selling goods in that county because of his death

or disablement, the insolvency of his business, or the destruction of his inventory by fire or other catastrophe.

(c) ~~Flea-Specialty Market Operator.~~ – Every person-person, other than the State or a unit of local government, engaged in business as a flea-specialty market operator shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax for the license of ~~one hundred dollars (\$100.00)~~ two hundred dollars (\$200.00) for each county in which he is engaged in business. A 'flea 'specialty market operator' is a ~~person-person, other than the State or a unit of local government,~~ who rents space, at a location other than a permanent retail store, to others for the purpose of selling goods at retail or offering goods for sale at retail.

(d) ~~Flea-Specialty Market Vendor.~~ – ~~Every~~ The requirements and penalties set out in subsections (i) through (m) of this section apply to every person engaged in business as a flea-specialty market vendor-vendor who is liable for retail sales tax under Article 5 of this Chapter. ~~shall obtain a license from the Secretary of Revenue for the privilege of engaging in such business and shall pay an annual tax of twenty five dollars (\$25.00) for a statewide license.~~ A 'flea market—A 'specialty market vendor' is a merchant, other than a merchant with an established retail store in the county, who transports an inventory of goods to a flea-specialty market licensed under subsection (c) of this section and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. A 'flea-'specialty market' is a location, other than a permanent retail store, where space is rented to others for the purpose of selling goods at retail or offering goods for sale at retail.

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

- (1) ~~A peddler, itinerant merchant, or flea market vendor:~~ peddler or itinerant merchant:
 - a. Who sells farm or nursery products produced by him;
 - b. Who sells crafts or goods made by him or his own household personal property;
 - c. Who is a nonprofit charitable, educational, religious, scientific, or civic organization;
 - d. Who sells printed material, wood for fuel, ice, seafood, meat, poultry, livestock, eggs, dairy products, bread, cakes, or pies; or
 - e. Who is an authorized automobile dealer licensed pursuant to Chapter 20 of the General Statutes.
- (2) A peddler who maintains a fixed permanent location from which he makes at least ninety percent (90%) of his sales, but who sells some goods in the county of his fixed location by peddling.
- (3) An itinerant merchant:
 - a. Who locates at a farmer's market;
 - b. Who is part of the State Fair or an agriculture fair which is licensed by the Commissioner of Agriculture pursuant to G.S. 106-520.3; or
 - c. Who sells goods at an auction conducted by an auctioneer licensed pursuant to Chapter 85B of the General Statutes.

(4) A peddler who complies with the requirements of G.S. 25A-38 through G.S. 25A-42, or who complies with the requirements of G.S. 14-401.13.

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

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

~~(h) Information to Department of Revenue. – When a peddler, itinerant merchant, flea market vendor or flea market operator applies to the Department of Revenue for a license, he shall provide the name and permanent address of the peddler, itinerant merchant, flea market vendor or flea market operator. In providing this information, if the peddler, itinerant merchant, flea market vendor or flea market operator is not a corporation, he must provide a copy of a valid driver's license, a special identification card issued under G.S. 20-37.7, military identification or a passport bearing a physical description of the person named reasonably describing the peddler, itinerant merchant, flea market vendor or flea market operator. If the peddler, itinerant merchant, flea market vendor or flea market operator is incorporated, he shall give the name and the registered agent of the corporation and the address of the registered office of the corporation, as filed with the North Carolina Secretary of State.~~

(i) ~~Display and Possession of Licenses.~~ Licenses and Identification. – An itinerant merchant ~~or flea market vendor~~ shall keep both the license required by this section and the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant ~~or flea market vendor~~, at the places or locations at which the goods are to be sold or offered for sale. A peddler shall have the license required by this section and the retail sales tax license with him at all times he offers goods for sale and must produce them upon the request of any ~~person.~~ customer, State and/or local revenue or law enforcement agent. A specialty market vendor shall keep the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are to be sold or offered for sale. A flea specialty market operator shall have the license required by this section available for inspection during all times that the flea-specialty market is open and must produce it upon the request of any ~~person~~ customer, State and/or local revenue or law enforcement agent.

Upon the request of any customer, State and/or local revenue or law enforcement agent, a peddler, itinerant merchant, specialty market operator, or specialty market vendor shall provide its name and permanent address. If the peddler, itinerant merchant,

specialty market operator, or specialty market vendor is not a corporation, he shall, upon the request of any customer, State and/or local revenue or law enforcement agent, provide a valid driver's license, a special identification card issued under G.S. 20-37.7, military identification, or a passport bearing a physical description of the person named reasonably describing the peddler, itinerant merchant, specialty market operator, or specialty market vendor. If the peddler, itinerant merchant, specialty market operator, or specialty market vendor is a corporation, it shall, upon the request of any customer, State and/or local revenue or law enforcement agent, give the name and registered agent of the corporation and the address of the registered office of the corporation, as filed with the North Carolina Secretary of State.

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

(k) Flea-Specialty Market Registration List. – A ~~flea-specialty~~ specialty market operator shall maintain a daily registration list of all ~~flea-specialty~~ specialty market vendors selling or offering goods for sale at the ~~flea-specialty~~ specialty market. This registration list shall clearly and legibly show ~~the flea each specialty market vendor's name, permanent address and the flea market vendor's statewide flea market vendor's address, and retail sales and use tax registration number. license number.~~ If the flea market vendor is exempt from licensing under subsections (e) or (g), the list shall show the reason for exemption and be signed by the flea market vendor and the flea market operator. At the time of registration, the flea ~~The specialty market operator must shall require the flea each specialty market vendor to exhibit a valid flea market vendor's license or county exemption certificate and retail sales tax license for visual inspection by the flea market operator.~~ specialty market operator at the time of registration, and shall require each specialty market vendor to keep the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are offered for sale. Each daily registration list maintained pursuant to this subsection shall be retained by the ~~flea specialty market operator~~ specialty market operator for no less than two years and shall at any time be made available upon request to any law enforcement officer.

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

- (1) Fail to obtain a license as required by this section;
- (2) Knowingly give false information in the application process for a license or when registering pursuant to subsection (k);

- (3) If the person is an itinerant ~~merchant or flea market vendor~~, merchant, fail to display the license as required by subsection (i) or if the person is a peddler or ~~flea specialty~~ market operator, fail to produce the license as required by subsection (i) or if the person is required to do so, fail to comply with subsection (j). Whenever satisfactory evidence shall be presented in any court of the fact that a license was required by this section and such license was not displayed or produced as required by subsection (i), or that permission was required by subsection (j) of this section and was not displayed, the peddler, itinerant merchant, ~~flea market vendor or flea specialty~~ market operator shall be found not guilty of that violation provided he produces in court a valid license or valid permission which had been issued prior to the time he was charged with such violation; or
- (4) Fail to provide name, address, or identification upon request as required by subsection (i) or provide false information in response to such a request.
- (4) ~~If the person is a flea market operator, fail to comply with subsection (k) or knowingly allow a flea market vendor to falsely register as exempt under subsection (k).~~

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

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

Sec. 2. This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Sec. 3. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 26th day of June, 1989.