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*North Carolina  
City and County*  
Privilege  
License  
Taxes

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# Preface

This book, the fifth edition of this title, is intended to assist city and county officials whose duties include administration of the privilege license tax. It is, therefore, addressed primarily to city and county tax collectors, city and county attorneys, and city clerks, though it may be of interest to managers, finance officers, and governing board members. The new edition is made necessary by actions of the General Assembly since 1994.

The book has four chapters. Chapter I introduces the tax and describes its basic features; Chapter II is a section-by-section analysis of the former and current provisions of Schedule B of the Revenue Act; Chapter III discusses licenses for businesses with Alcoholic Beverage Control permits; and Chapter IV discusses the various remedies available to local governments in enforcing collection of the privilege license tax. The appendixes contain material already published in other forms by David M. Lawrence. Appendix A, the model for the administrative provision of a privilege license tax ordinance, was previously published by the Institute of Government as *Local Government Law Bulletin*, Number 4 in 1975. Appendix B contains the tables from *Local Government Finance in North Carolina*, which was published by the Institute in 1990. It shows city license taxes limited or prohibited by state statute and county license taxes authorized by state statute. The tables reflect changes in the law enacted since 1990.

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# I

## Introduction

The privilege license tax is an excise tax, levied on the *privilege* of conducting a particular trade or business in a county or city. Historically, the statute that was centrally important to local government privilege license taxes was Schedule B of the Revenue Act (N.C. Gen. Stat. §§ 105-33 through 105-113),<sup>1□</sup> which levied the state license tax and limited or prohibited certain city taxes and both authorized and limited county taxes. In 1997, the General Assembly amended Schedule B to repeal all provisions that levied state license taxes except the following: 105-37.1 (general amusements); 105-38.1 (motion picture shows); 105-41 (professionals); 105-83 (installment paper dealers); 105-88 (loan agencies, pawnbrokers, check-cashing businesses); 105-102.3 (banks); and 105-102.6 (publishers of newsprint publications that use recycled paper).<sup>2□</sup> The repeal of these provisions, however, did not affect the authority of cities and counties to tax the businesses covered by the repealed provisions. All of the limitations and prohibitions applicable to cities and counties that were contained in the repealed sections were transferred to G.S. 160A-211, for cities, and to G.S. 153A-152, for counties. These repealed provisions now contained in G.S. 160A-211 and G.S. 153A-152 are referred to in this book as “former” Schedule B provisions. The provisions as they existed at the time of repeal are analyzed in Chapter II of this book.

Counties do not have a general power to levy license taxes. Their sole authorization to tax is contained in the repealed sections of Schedule B listed in G.S. 153A-152. If a county is not authorized by Schedule B to tax a particular activity, a county license tax on that activity is not permitted.<sup>3□</sup>

Cities, on the other hand, are granted a general taxing authority by G.S. 160A-211 and may levy a reasonable privilege license tax on any business activity, unless a tax on a particular activity is either limited or prohibited by one of the provisions listed in G.S. 160A-211, current Schedule B, or some other statute. For example, no statute limits or prohibits a city license tax on antique stores, so a city may levy a tax on those businesses in any reasonable amount it deems appropriate. But G.S. 105-41 expressly prohibits cities from taxing professionals, such as accountants, and a tax on such a business would be unlawful. Some cities have shown considerable imagination in classifying and defining the activities to be taxed so that virtually every business and occupation is taxed. They have found that a privilege license tax measured by gross receipts produces a substantial amount of revenue, and such a tax is valid<sup>4</sup> if it is imposed on an activity not limited by the provisions of G.S. 160A-211 or current Schedule B,

or is limited by the maximum amounts authorized by those statutes.<sup>5</sup>

Cities and counties wishing to levy a privilege license tax must adopt an ordinance levying the tax, listing the activities taxed and the rates of tax. Appendix A provides a guide for drafting the administrative provisions of such an ordinance. The provisions of former and current Schedule B are not self-executing for cities and counties, so that even if a local government wishes to limit its privilege license tax to those activities covered in former and current Schedule B, it must still adopt an ordinance levying the tax. Cities and counties may choose any twelve-month period as the privilege license tax year. A majority of local governments use a license year of July 1 to June 30, which coincides with the regular fiscal year.

Once a privilege license tax ordinance is adopted, it need not be reenacted each year. Nevertheless, the ordinance should be reviewed frequently to ensure that it is current with the limitations of Schedule B and other relevant statutes. Experience has shown that municipalities and counties sometimes continue to levy taxes under invalid ordinance provisions, requiring refunds to taxpayers and causing embarrassment to tax officials.

The name “privilege license” tax can be misleading because the word “license” may be taken to mean that the tax has a larger regulatory element than it does. The privilege license tax is a revenue-generating measure and should not be used to regulate otherwise legitimate businesses.<sup>6</sup> Of course, the rates imposed by Schedule B on some activities, such as fortune-telling and itinerant merchantry,<sup>7</sup> have their own regulatory impact because the relatively high rates will discourage many from undertaking the activities. While every city and county privilege license tax ordinance should provide that payment of the tax does not satisfy other local regulations, such as health and zoning codes,<sup>8</sup> a local government should not try to regulate out of existence otherwise legitimate business activities by imposing confiscatory license tax rates or some vague “good character” test.

In discussing occupation taxes in his classic treatise on municipal corporations, Judge Dillon stresses the distinction between using police power to regulate an occupation and using taxing power to extract revenue for the privilege of engaging in the occupation.<sup>9</sup> Chapter 160A of the General Statutes empowers municipalities to tax businesses and occupations and to regulate businesses in entirely separate provisions. Chapter 153A does the same for counties.<sup>10</sup> Zoning, one of the most effective regulators of business location, is entirely apart from any taxing authority or provision.<sup>11</sup> Nevertheless, a city may be tempted to use the privilege license tax for regulatory purposes without the carefully drawn standards and procedural protections that must be included in a regulatory measure.<sup>12</sup> The city may instead give either the tax collector or the governing board power to deny a license because the business is “undesirable” or the ap-

plicant is not of “good moral character.” *Carolina Restaurants, Inc. v. City of Kinston*<sup>13</sup> illustrates the fate of such ordinances.

In that case the plaintiff applied for a license to operate a restaurant where the zoning ordinance permitted restaurants. The section of the city’s privilege license tax ordinance covering restaurants required that applicants be of good moral character and gave the city council unfettered discretion to deny a license even though the applicant tendered the correct amount of the tax. The council denied the plaintiff a license, whereupon the plaintiff obtained a permanent injunction restraining the city from enforcing that section of the ordinance. The court of appeals, in one short paragraph, affirmed the issuance of the injunction on the grounds that the city’s action concerning the ordinance denied the plaintiff due process of law.<sup>14</sup> The lesson of this and similar cases is that vague or loosely drawn regulatory provisions in a privilege license tax are not likely to survive challenge.

Another danger in attempting to give the privilege license tax too large a regulatory role is that the fee or tax that accompanies regulatory measures ordinarily may not exceed the cost of administering the regulation. A revenue measure is not bound by any such limitation.<sup>15</sup> If the ordinance as a whole is viewed more as a regulatory device than as a revenue measure, then the entire tax-rate schedule might be placed in jeopardy.

Before issuing privilege licenses some local governments may wish to require that applicants demonstrate that they have met other municipal requirements, such as zoning. This sort of requirement has been held not to convert the privilege license tax ordinance to a regulatory measure and has been upheld.<sup>16</sup>

Sometimes a single business establishment—typically a general store or service station—is required to purchase several licenses. This is a legal application of the tax,<sup>17</sup> though it may often seem inequitable.<sup>18</sup> A person or business establishment must pay a license tax for each taxable activity performed. One possible way for cities to avoid levying a number of small license taxes on a single business is to provide in the ordinance for a general license, such as a retail merchant’s license, so a business need not obtain an additional license for each taxable activity. One qualification to this option should be noted. If the business activities are limited by former or current Schedule B, then the amount of the general license tax should not exceed what the business establishment would have paid if it had paid the separate Schedule B license taxes.<sup>19</sup>

Cities and counties may tax some businesses that do not have a permanent location in the taxing jurisdiction but that do send agents or employees into the jurisdiction to perform repair or service work or to deliver goods on a regular basis. If a business firm does not have a location in a city or county, the mere delivery of goods—by itself—is probably not enough to allow the jurisdiction to impose a privilege license tax.<sup>20</sup> If, however, the agents or employees are taking

orders for goods, receiving payments, or both, then the firm is “doing business” in the jurisdiction to an extent that will justify a privilege license tax.<sup>21</sup> The definition of “doing business” in the ordinance should include such activities if the city or county intends to tax them.<sup>22</sup>

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## Notes

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1. Hereinafter, General Statutes in the text will be cited as G.S.

2. 1996 N.C. Sess. Laws ch. 14.

3. See Appendix B for the list of activities that counties are authorized to tax.

4. See *Nesbitt v. Gill*, 227 N.C. 174, 41 S.E.2d 646 (1947), concerning a license tax on horse and mule dealers graduated on the basis of the number of head of stock, and *Albertson v. Wallace*, 81 N.C. 479 (1879), concerning a license tax graduated on the basis of the amount of gross sales of alcoholic beverages, that upheld graduated state license taxes and—by implication—municipal taxes as well.

5. For example, several cities levy a general retail or wholesale merchant’s tax on businesses not taxed under other specific provisions of the ordinance. The rate of this tax is a percentage of a business’s annual gross receipts or sales. There is no former or current Schedule B limitation on such a tax. In addition, some cities impose a tax on activities limited by former or current Schedule B—motorcycle dealers, for example—and the rate of the tax is a percentage of the dealer’s annual gross sales. In this case the maximum amount of the tax would still be the amount specified in N.C. Gen. Stat. § 160A-211 and former § 105-89.1 for motorcycle dealers, based on the population of the city where the business is located. If a gross receipts tax is levied on a business that conducts some activities that are limited or prohibited by Schedule B provisions and others that are not, the tax must be adjusted to take the limitations and prohibitions into account. For example, if a city levies a retail merchant’s tax measured by gross receipts on a department store that sells clothing, shoes, computers, washing machines, and bicycles, the portion of the tax representing sales of bicycles may not exceed the \$25.00 limitation imposed by N.C. Gen. Stat. § 160A-211 and former § 105-102.5(b)(2), and receipts from the sale of computers and washing machines must be completely excluded because a city tax on that part of the business is prohibited by N.C. Gen. Stat. § 160A-211 and former § 105-51.

6. See *State v. Irwin*, 126 N.C. 989, 35 S.E. 430 (1900).

7. City and county taxes on fortune-tellers are unlimited in amount [N.C. Gen. Stat. §§ 153A-152, 160A-211, and 105-58]. The maximum city and county tax on itinerant merchants is \$100 [N.C. Gen. Stat. §§ 153A-152, 160A-211, and 105-53(d)].

8. See section 2 of the model ordinance contained in Appendix A.

9. 4 J. Dillon, *Municipal Corporations* 2461-62 (5th ed. 1911). This distinction is also noted in *Northcutt v. Clayton*, 269 N.C. 428, 432, 152 S.E.2d 471, 475 (1967).

10. The authority to regulate businesses is granted by N.C. Gen. Stat. §§ 160A-194 and 153A-134; the authority to levy privilege license taxes by N.C. Gen. Stat. §§ 160A-211 and 153A-152. See also the discussion of this distinction in Campbell, *Business and Occupational Licensing by Cities and Counties*, 25 Local Government Law Bulletin (Institute of Government 1983).

11. See N.C. Gen. Stat. ch. 160A, art. 19, pt. 3, and ch. 153A, art. 18, pt. 3.

12. For a comprehensive discussion of these standards and procedures see Note, *Due*

*Process Limitations on Occupational Licensing*, 59 Va. L. Rev. 1097 (1973); *see also* Gibson v. Berryhill, 411 U.S. 564 (1973), and Schware v. Board of Bar Examiners, 353 U.S. 232 (1957). The courts are especially sensitive concerning occupational licensing when the exercise of First Amendment rights is involved; *see* Neisser, *Charging for Free Speech: User Fees and Insurance in the Marketplace of Ideas*, 74 Geo. L.J. 257 (1985).

13. 32 N.C. App. 588, 233 S.E.2d 74 (1977).

14. For a case with the same result but with more extensive reasoning, see Hornsby v. Allen, 326 F.2d 605 (5th Cir. 1964), involving denial of an application for a municipal liquor license.

15. *See* N.C. Gen. Stat. §§ 153A-134 and 160A-194 and Great Atlantic and Pacific Tea Co. v. Maxwell, 199 N.C. 433, 154 S.E. 838 (1930).

16. *See* Mom N Pops, Inc. v. City of Charlotte, 979 F. Supp. 372 (W.D.N.C. 1997).

17. *See* F. S. Royster Guano Co. v. Tarboro, 126 N.C. 68, 35 S.E. 231 (1900).

18. Those who administer the privilege license tax must resign themselves to its many inequities and curiosities and trust that eventually the General Assembly will either remedy its shortcomings or replace the tax with another source of local revenue.

19. If, for example, a business that sells motorcycles and lubricating oil—the tax on each of which is limited by former Schedule B—applied for a general retail merchant’s license in lieu of two separate licenses, the amount of the license tax could not exceed the sum of the maximum taxes that could be charged under N.C. Gen. Stat. §§ 160A-211, 105-89 (oil), and -89.1 (motorcycle dealers). This is so because it does not appear to be lawful for a municipality to circumvent the limitations of Schedule B by requiring a business to purchase a general retail merchant’s license at a higher rate of tax to do precisely the same activities that Schedule B sets tax limitations on for cities.

20. *See* Hilton v. Harris, 207 N.C. 465, 177 S.E. 411 (1934), and Pocomoke Guano Co. v. City of New Bern, 158 N.C. 354, 74 S.E. 2 (1912).

21. *Id.*

22. Section 4 of the Model Ordinance in Appendix A defines those doing business in the taxing jurisdiction to include businesses located outside the jurisdiction who conduct business there by agents or employees.

## II

# Statutory Categories

**[G.S. 160A-211; G.S. 153A-152;**

## **Schedule B (Article 2, Chapter 105)]**

As explained in the introduction, most of the provisions of Schedule B of the Revenue Act were repealed in 1997. The repeal of these provisions, however, did not affect the authority of cities and counties to tax the businesses covered by the repealed provisions. All of the limitations and prohibitions applicable to cities and counties that were contained in the repealed sections were transferred to G.S. 160A-211, for cities, and to G.S. 153A-152, for counties. G.S. 160A-211 and G.S. 153A-152, by reference, apply those repealed provisions to cities and counties.

This chapter is a section-by-section analysis of each provision of former and current Schedule B that in some way limits, authorizes, or prohibits a local privilege license tax on a particular occupation or business activity. If the heading of a section contains in parentheses G.S. 160A-211 or G.S. 153A-152, that section is a former provision of Schedule B; if the heading contains no parenthetical statutory reference, then the section is a provision of current Schedule B.

First appears the section number of the section being discussed; second, the list of occupations or business activities taxed; third, exemptions or other special provisions; fourth, the state tax rate, if relevant to local taxes; fifth, the tax rate for cities (“cities,” as used here, includes cities and towns); sixth, the tax rate for counties; and seventh, a comment on the statute including a discussion of significant opinions of the attorney general, judicial decisions, and issues of interpretation. For some of the provisions, an asterisk appears beside one of the first six categories. This symbol indicates a question about that category, and that question will be raised and discussed in the comment section. If a single statutory section covers a variety of different activities in subsections, each subsection is discussed separately.

A special word about exemptions: the exemptions that are discussed as the third item in the format, sometimes with additional extended discussion in the comments under item 7, are exemptions for state and county tax purposes only, unless the exemption unequivocally applies as well to city taxes. Schedule B is primarily a statute levying a state tax, and any exemptions are therefore from the state tax. Cities, under their general taxing power, still have authority to levy a privilege license tax on the activities exempted by Schedule B provisions unless

the exemption specifically applies to city taxes. Even though cities may still tax the activities exempted, the Schedule B exemptions remain important for cities to consider because (1) a city must determine as a matter of policy whether it should tax by local ordinance an activity exempted from the state tax; and (2) if a city does decide to tax the activity, it must establish the rate of tax in its ordinance—it is not bound by any Schedule B rate limitation. Cities and counties must, however, grant two general exemptions. G.S. 105-249 expressly applies the exemption of blind persons from any privilege license tax to cities and counties, and G.S. 105-249.1 expressly applies the exemption for persons in the armed forces who were engaging in the business taxed before they entered the armed services.

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## **Movies: Selling and Leasing**

- 1 G.S. 105-36 (G.S. 160A-211)
  - 2 **Activities.** Manufacturing, selling, leasing, furnishing, or distributing films to be shown in motion picture theaters or other places charging an admission fee.
  - 3 **Exemptions and special provisions.** Cities and counties may not tax the activities listed in this section.
- 

## **Outdoor Theaters**

- 1 G.S. 105-36.1 (G.S. 160A-211)
  - 2 **Activities.** Operating an outdoor or drive-in movie theater for compensation.
  - 3 **Exemptions and special provisions.** Counties may not tax the activities listed in this section.
  - 4 **State tax rate.** No state tax.
  - 5 **City tax rate.** The maximum city tax may not exceed \$100.
- 

## **Movie Theaters**

- 1 G.S. 105-37 (G.S. 160A-211)
- 2 **Activities.** Operation of a movie theater\* for compensation.
- 3 **Exemptions\*\* and special provisions.** Counties may not tax the activities listed in this section. As shown below, the maximum tax rate that cities may impose under this section may differ depending on the frequency of operation of

the  
theater.

- 4 **State tax rate.** No state tax.
- 5 **City tax rate.** Except for those businesses noted below, the maximum city tax may not exceed \$200. For any movie theater operated three days or less each week, the maximum city tax is half the tax otherwise allowed.
- 7 **Comment.** \*The license tax levied under this section is on each “room” used for screening movies. Therefore, movie theaters that operate two, three, or more screening rooms must pay a separate tax for each room.

\*\*To be liable for the tax under this section, the person or firm who conducts the activity must be doing so “for compensation.” If no admission fee is charged, then obviously the activity is exempt. Also exempt is a center “for the performing and visual arts . . . if the showing of motion pictures is not the primary purpose” of the center. To qualify for this exemption the center must be a facility with a fixed location having classrooms, studios, and similar accommodations and must be owned by a corporation that is exempt from the state income tax.

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## General Amusements

- 1 G.S. 105-37.1
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### Entertainments

- 2 **Activities.** Giving, offering, or managing any form of entertainment or amusement for which an admission is charged and that is not otherwise taxed or specifically exempted in Schedule B.
- 3 **Exemptions and special provisions.** G.S. 105-40 exempts from the tax levied by this section the following organizations and activities:
  - a. All exhibitions, performances, and entertainments, except as expressly provided by Schedule B as being taxable, produced by local talent exclusively, for the benefit of religious, charitable, benevolent, or educational purposes, as long as no compensation is paid to the local talent;
  - b. the North Carolina Symphony;
  - c. all exhibits, shows, attractions, and amusements operated by a society or association organized under the provisions of Chapter 106 of the General Statutes (agricultural organizations) where a permit has been obtained

- from the Secretary of Revenue to operate without paying a license tax;
- d. outdoor historical dramas;
  - e. elementary and secondary school athletic contests, dances, and other amusements;
  - f. dances and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts if the dance or other amusement is held at the center;
  - g. a person exempt from North Carolina income tax who operates a teen - center;
  - h. entertainments or amusements offered or given on the Cherokee Indian reservation when the person giving, offering, or managing the entertainment or amusement is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council;
  - i. arts festivals held by a person exempt from North Carolina income tax provided the following conditions are met: (1) the person holds no more than two arts festivals a year, (2) each of the arts festivals lasts no more than seven days, (3) the arts festivals are held outdoors on public property and involve a variety of exhibitions and activities;
  - j. community festivals held by a person exempt from North Carolina income tax provided the following conditions are met: (1) the person holds no more than one community festival a year, (2) the community festival lasts no more than seven days, (3) the community festival involves a variety of exhibitions and activities, the majority of which are held outdoors and are open to the public.

- 4 State tax rate. Not relevant.
  - 5 City tax rate. The maximum city tax may not exceed \$25.
  - 6 County tax rate. County taxes are prohibited on general entertainments.
- 

## Dances

- 2 Activities. Giving or managing any dance or athletic contest of any kind that charges an admission fee in excess of fifty cents.
- 3 Exemptions and special provisions. The same as in item 3 above.
- 4 State tax rate. Not relevant.
- 5 City tax rate. The maximum city tax is \$25.
- 6 County tax rate. County taxes are prohibited on dances.

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## Circuses and Animal Shows

- 2 **Activities.** Exhibiting performances, such as a circus or dog show, or any other similar show, exhibition, or performance not taxed in other sections of Schedule B.
  - 4 **State tax rate.** Not relevant.
  - 5 **City tax rate.** The maximum city tax is \$25 per day of the exhibition at each location.
  - 6 **County tax rate.** The same as for cities.
- 

## Professionals

- 1 G.S. 105-41
- 2 **Activities.** Practice of the following professions: attorney-at-law; physician; veterinarian; surgeon; osteopath; chiropractor; chiropodist; dentist; ophthalmologist; optician; optometrist; any person practicing any professional art of healing; professional engineer as defined in G.S. 89C-3; land surveyor as defined in G.S. 89C-3; architect; landscape architect; photographer; canvasser for any photographer; agent of a photographer in transmitting pictures or photographs to be copied, enlarged, or colored; real estate broker or salesman as defined in G.S. 93A-2; real estate loan broker; real estate appraiser as defined in G.S. 93E-1-4; public accountant; licensed embalmer; and licensed mortician.
- 3 **Exemptions and special provisions.** Faith healers and professional persons over the age of seventy-five are exempt from the tax.\* Cities and counties may not tax any of the activities listed in this section.
- 7 **Comment.** \*For faith healers to qualify for the exemption from the state tax, they must be adherents of an established church or religious organization and confine their healing practices to prayer or spiritual means. Counties may not tax faith healers exempt from the state tax, but cities may, at least so far as state law is concerned. A municipal license tax might, however, encounter difficulty as an infringement of the faith healer's freedom of religion as guaranteed by the First Amendment.

Persons licensed by the North Carolina Board of Massage and Bodywork Therapy pursuant to Article 36, Chapter 90, of the General Statutes are health professionals who must obtain a state license and are therefore exempt from city and county license taxes.

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## Private Protective Services

- 1 G.S. 105-42 (G.S. 160A-211)
- 2 **Activities.** Engaging in the business of private detective or private investigator.
- 3 **Exemptions or other special provisions.** Cities and counties may not tax any of the activities listed in this section.
- 7 **Comment.** The following business activities are not included in the definitions of “private detective” or “private investigator,” and therefore cities may levy a privilege license tax on them: armored car business; counterintelligence service business; courier service business; detection of deception examiner; security guard and patrol business; and guard-dog service business. (See G.S. Chapters 74C and 74D for definitions.)

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## Collection Agencies

- 1 G.S. 105-45 (G.S. 160A-211)
- 2 **Activities.** Engaging in the business of operating a collecting agency, defined as collecting for a profit, claims, accounts, bills, notes, or other money obligations for others.
- 3 **Exemptions and special provisions.** Licensed attorneys-at-law who collect bills as part of their practices are exempt from the tax levied by this section. Counties may not tax the activities listed in this section.
- 4 **State tax rate.** No state tax.
- 5 **City tax rate.** The maximum city tax is \$50.
- 7 **Comment.** Two separate conditions must be met before a person or firm is subject to taxation as a collecting agency. First, the person must be engaged in the business with the intent to make a profit, and second, the collecting must be done for others—a business that collects its own bills or accounts is not liable for this tax.

---

## Undertakers

- 1 G.S. 105-46 (G.S. 160A-211)
- 2 **Activities.** Engaging in the business of burying the dead or the retail sale of coffins.
- 3 **Exemptions and special provisions.** A cabinetmaker who is not an undertaker but makes coffins to order is exempt from this tax. Counties may not tax the

activities listed in this section.

- 4 State tax rate. No state tax.
  - 5 City tax rate. The maximum city tax is \$50.
  - 7 Comment. Manufacturers of coffins who do not sell at retail are not liable for this tax.
- 

## Alarm Systems

- 1 G.S. 105-51.1 (G.S. 160A-211)
- 2 Activities. Engaging in the business of installing, servicing, and monitoring fire alarms, smoke alarms, and communication systems.
- 3 Exemptions and special provisions. Cities and counties may not tax the activities listed in this section.

## Peddlers, Itinerant Merchants, and Specialty Market Operators

- 1 G.S. 105-53 (G.S. 160A-211 and 153A-152)
- 

### Peddlers

- 2 Activities. Engaging in the business of peddler, defined as “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.”
- 3 Exemptions and special provisions. The following persons and firms are exempt from the peddler’s tax:
  - a. sellers of farm or nursery products they produced;
  - b. sellers of crafts or goods they or their household produced;
  - c. nonprofit charitable, educational, religious, scientific, or civic organizations;
  - d. sellers of printed material, wood for fuel, ice, seafood, meat, poultry, livestock, eggs, dairy products, bread, cakes, or pies;
  - e. licensed automobile dealers;
  - f. peddlers who maintain a fixed permanent location from which they make at least 90 percent of their sales;
  - g. peddlers who comply with G.S. 25A-38 through G.S. 25A-42 (consumer credit sales at residences with right to cancel) or G.S. 14-401.13 (off-

premises sales of consumer goods or services of \$25 or more).

- 4 State tax rate. No state tax.
- 5 City tax rate. The maximum city tax rates are as follows:

Peddler of farm products only	\$25
Peddler on foot	\$10
Peddler with vehicle	\$25

- 6 County tax rate. The same as for cities.
- 

## Itinerant Merchants

- 2 Activities. Engaging in the business of itinerant merchant, defined as “a merchant, other than a merchant with an established retail store in the county [city], who transports an inventory of goods to a building, vacant lot, or other location in a county [city] 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 merchant who sells goods, other than farm products, in a county [city] 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 destruction of his inventory by fire or other catastrophe.”
  - 3 Exemptions and special provisions. The same as in 3a, b, c, d, and e above for peddlers, plus an itinerant merchant
    - f. who is a specialty market vendor at a licensed specialty market or at a specialty market operated by the state or a local government;
    - g. who locates at a farmer’s market;
    - h. who is part of the State Fair or an agricultural fair licensed by the commissioner of agriculture; or
    - i. who sells goods at an auction conducted by an auctioneer licensed in compliance with Chapter 85B.
  - 4 State tax rate. No state tax.
  - 5 City tax rate. The maximum city tax is \$100.
  - 6 County tax rate. The same as for cities.
- 

## Specialty Market Operators

- 2 Activities. Engaging in the business of operating a specialty market, defined as “a person 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.”

- 4 State tax rate. No state tax.
  - 5 City tax rate. The maximum city tax is \$200.
  - 6 County tax rate. The same as for cities.
- 

## **Contractors**

- 1 G.S. 105-54 (G.S. 160A-211)
- 2 Activities. Offering or bidding for a fixed price, commission, fee, or wage to construct any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, electric or steam railway, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure.
- 3 Exemptions and special provisions. Counties may not levy a tax on the activities listed in this section.
- 4 State tax rate. No state tax.
- 5 City tax rate. The maximum city tax may not exceed \$10.
- 2 Activities. Undertaking or executing a contract for or superintending any of the construction projects listed in item 2 above.
- 3 Exemptions and special provisions. The same as in item 3 above.
- 4 State tax rate. No state tax.
- 5 City tax rate. The maximum city tax may not exceed \$10.
- 7 Comment. No employee or subcontractor of any person or firm that has paid the contractor’s license levied by this section shall be required to purchase a contractor’s license for himself so long as he is employed by the holder of the - license.

Both G.S. 105-54(h) and G.S. 105-91 provide that a person taxed by G.S. 105-91 (plumbers, electricians, and heating contractors) is not required to purchase a contractor’s license under G.S. 105-54. But the reverse situation presumably does not hold, because a general contractor licensed under G.S. 105-54 wishing to engage in any of the activities listed in G.S. 105-91 must also purchase a license under that section.

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## **Installing Elevators and Sprinkler Systems**

- 1 G.S. 105-55 (G.S. 160A-211 and 153A-152)
- 2 Activities. Engaging in the business of selling or installing elevators or automatic sprinkler systems.

- 3 Exemptions and special provisions. Cities and counties in which a business taxed under this section maintains a principal office or a branch office may tax the business. A city or county may not levy a tax on a person engaged in a business taxed by this section if the person does not maintain an established (principal or branch office) place of business in the city or county.
  - 4 State tax rate. No state tax.
  - 5 City tax rate. The maximum city tax is \$100.
  - 6 County tax rate. The same as for cities.
  - 7 Comment. Businesses taxed under this section are not subject to the contractor's license levied in accordance with G.S. 105-91.
- 

## Fortune-tellers

- 1 G.S. 105-58 (G.S. 153A-152)
  - 2 Activities. Engaging in the business of telling or pretending to tell fortunes, practicing the art of palmistry, clairvoyance, and other crafts of a similar kind for a reward.
  - 3 Exemptions and special provisions. Fortune-tellers and persons practicing similar crafts who appear under contract in theaters licensed under G.S. 105-37 are exempt from the tax levied by this section.
  - 4 State tax rate. No state tax.
  - 5 City tax rate. This section does not limit the amount of tax a city may charge on fortune-telling and similar activities.
  - 6 County tax rate. The same as for cities.
- 

## Hotels and Motels

- 1 G.S. 105-61 (G.S. 160A-211)
- 2 Activities. Operating a hotel, motel, tourist court, tourist home, or similar place advertising in any manner or soliciting for transient patronage. A hotel is defined as a building or group of buildings providing lodging and usually (but not necessarily) meals, entertainment, and various personal services for the public. A motel is a building or group of buildings where rooms usually are directly accessible from an outdoor parking area and are used primarily as lodging for the public.

The principal test in deciding whether this section applies is the use of such places for temporary abode by transient patrons. It is immaterial whether a particular room is occupied by a "permanent" guest or whether it is rented on a daily, weekly, or monthly basis.

3 Exemptions and special provisions. A single private residence or cottage designed for single-family occupancy located in a resort area and occupied during a part of the season by the owner or owners thereof but rented the remainder of the season to others for single-family occupancy is exempt; but if the owner owns more than one such cottage, each cottage in excess of one that is rented to transients is subject to the tax. Counties may not tax the activities listed in this section.

4 State tax rate. No state tax.

5 City tax rate. \$1 per room, with a minimum tax of \$25.

7 Comment. In computing the number of rooms, the lobby, the clubroom, the office, the dining room, the kitchen, and the rooms occupied by the owner or lessee of the business for his private use or the use of his family shall not be counted.

Any tax on the sale of food by a hotel or motel under G.S. 105-62 is separate from and in addition to the tax levied under this section.

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## Restaurants

1 G.S. 105-62 (G.S. 160A-211)

2 Activities. Operating a restaurant, café, cafeteria, hotel with dining service on the European plan, drugstore, or other place where prepared food is sold.

3 Exemptions and special provisions. Counties may not tax the activities listed in this section. Cafés or cafeterias in industrial plants that are maintained for the convenience of employees and are nonprofit are exempt from the tax.

4 State tax rate. No state tax.

5 City tax rate. \$25 for a business that has no seats for customers or seats for no more than four customers. \$85 for a business with five seats or more.

7 Comment. Food items sold through vending machines are not taxable under this section.

Subsection 105-62(c) makes it plain that the exemption for nonprofit cafeterias located in industrial plants applies to city taxes.

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## Music Machines

1 G.S. 105-65 (G.S. 160A-211 and 153A-152)

2 Activities. Operating, maintaining, or placing on location any machine or machines that play records or produce music.

4 State tax rate. No state tax.

5 City tax rate. The maximum city tax is \$5 per machine.

- 6 **County tax rate.** The same as for cities.
- 7 **Comment.** Subsection (f) of this section gives cities and counties special enforcement powers regarding the tax on music machines. If any tax, interest, or penalty owed on such machines is not paid or the license is not attached to the machine, local tax collection officials are authorized to “seize, remove, and hold such machines until all such defaults have been remedied.”

Since the tax levied under the authority of this section is on each machine, counties and cities should provide stickers or stamps to be affixed to licensed machines so that they can be easily seen for enforcement purposes.

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## **Merchandising Machines**

- 1 G.S. 105-65.1 (G.S. 160A-211)
  - 2 **Activities.** Operating, maintaining, or placing on location weighing machines or merchandising dispensers which store any articles or merchandise to be - purchased.
  - 3 **Exemptions and special provisions.** Cities and counties may not tax the activities listed in this section.
  - 7 **Comment.** See G.S. 105-102.5 concerning municipal taxation of certain types of vending machines under the sundries tax.
- 

## **Electronic Video Games**

- 1 G.S. 105-66.1 (G.S. 160A-211 and 153A-152)
- 2 **Activities.** Owning or operating machines that play electronic video games when a coin or other thing of value is deposited in the machine.
- 3 **Exemptions and special provisions.** A person or firm is “engaged in the business of owning . . . or operating an electronic video game machine” if he has a machine located at his own place of business or if he places or exhibits machines at business locations other than his own.
- 4 **State tax rate.** No state tax
- 5 **City tax rate.** The maximum city tax is \$5 per machine.
- 6 **County tax rate.** The same as for cities.
- 7 **Comment.** Since the tax levied under the authority of this section is on each - machine, cities and counties should provide stickers or stamps to be affixed to - licensed machines so that they can be easily seen for enforcement purposes. The ordinance should also provide that the license is not transferable from one machine to another.

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## Dry Cleaners

- 1 G.S. 105-74 (G.S. 160A-211)
  - 2 **Activities.** Engaging in the business of operating a cleaning plant, pressing club, or hat-blocking establishment.
  - 3 **Exemptions and special provisions.** Counties may not tax the activities listed in this section. Bona fide college students who operate a pressing or dry-cleaning business at their college during the school term are exempt from the tax.
  - 4 **State tax rate.** No state tax.
  - 5 **City tax rate.** \$50 for each business location if the business does not solicit business outside the county where it is located; \$100 for each location if it solicits business outside the county where it is located.
  - 7 **Comment.** The tax may be charged only if the business is located in the city.
- 

## Soliciting Activities

- 2 **Activities.** Soliciting dry-cleaning or pressing work to be done by a plant that is out-of-state.
  - 3 **Exemptions and special provisions.** Counties and cities may not tax the activities of soliciting under this subsection. Bona fide college students who operate a pressing or dry-cleaning business at their college during the school term are exempt from the tax.
  - 4 **State tax rate.** No state tax.
  - 7 **Comment.** In a letter to W. A. Watts [41 N.C.A.G. 80 (1970)], the attorney general has advised that if a dry-cleaning or pressing business has several pick-up stations or receiving outlets in the city, only one tax may be levied on the business; a separate tax may not be charged for each station.
- 

## Barbershops and Beauty Parlors

- 1 G.S. 160A-211(b)
- 2 **Activities.** Engaging in the business of conducting a barbershop, beauty salon or parlor, or other shop of like kind.
- 3 **Exemptions and special provisions.** Counties may not tax the activities listed in this section.

- 5 **City tax rate.** The maximum city tax may not exceed \$2.50 for each barber, manicurist, cosmetologist, beautician, or other operator employed in the shop or parlor.
- 

## **Tobacco Warehouses**

- 1 G.S. 105-77 (G.S. 160A-211)
  - 2 **Activities.** Engaging in the business of operating a warehouse for the sale of leaf tobacco on commission.
  - 3 **Exemptions and special provisions.** Counties may not tax the activities listed in this section.
  - 4 **State tax rate.** No state tax.
  - 5 **City tax rate.** The maximum city tax is \$50 for each warehouse.
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## **Dealers in Firearms and Other Weapons**

- 1 G.S. 105-80 (G.S. 160A-211 and 153A-152)
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### **Dealers in Firearms**

- 2 **Activities.** Engaging in the business of selling or offering for sale firearms.
  - 3 **Exemptions and special provisions.** Dealers in antique firearms and weapons of mass death and destruction, as those terms are defined in G.S. 14-409.11 and G.S. 14-288.8, are exempt. Also, persons who make occasional sales, purchases, or exchanges for the enhancement of a personal collection of firearms are exempt.
  - 4 **State tax rate.** No state tax.
  - 5 **City tax rate.** The maximum city tax is \$50.
  - 6 **County tax rate.** The same as for cities.
- 

### **Dealers in Other Weapons**

- 2 **Activities.** Engaging in the business of selling or offering for sale bowie knives, dirks, daggers, leaded canes, iron or metallic knuckles, or similar weapons.
- 4 **State tax rate.** No state tax.
- 5 **City tax rate.** The maximum city tax is \$200.

- 6 **County tax rate.** The same as for cities.
  - 7 **Comment.** The intent of this statute appears to be to authorize the levy of a relatively high tax on dealers in certain hand-held weapons; the difficulty is in identifying the items to be taxed. What, for example, is a bowie knife? The book *American Knives: The First History and Collectors' Guide*, by H. Peterson (1957), states on page 26: "All [collectors and students of knives] agree that a bowie is a most desirable knife to own, but ask them exactly what a bowie is, and agreement ends. Some maintain that it is a sheath knife with a clipped point. Any knife, no matter what its size, can qualify. Others insist that only large fighting knives with clipped points can qualify. A third group feels that the shape of the point is immaterial as long as it is a large knife; and a final group is willing to classify all of the various sheath knives from the period from 1830 to 1890 as bowies." The knife shown on page 27 of the book is described as a "classical bowie"; its blade is 13 1/2 inches long.
- 

## **Installment Paper Dealers**

- 1 G.S. 105-83
  - 2 **Activities.** Engaging in the business of dealing in, buying, or discounting installment paper, notes, bonds, contracts, evidences of debt or other securities where a lien is reserved or taken upon personal property located in this state to ensure payment.
  - 3 **Exemptions and special provisions.** Cities and counties may not tax the activities listed in this section.
- 

## **Laundries**

- 1 G.S. 105-85 (G.S. 160A-211)
- 2 **Activities.** Engaging in the business of operating a laundry, including wet- or damp-wash laundries and businesses known as launderettes, launderalls, and similar types of businesses; or engaging in the business of supplying or renting clean linen or towels or wearing apparel.
- 3 **Exemptions and special provisions.** Counties may not tax the activities taxed under this section.
- 4 **State tax rate.** No state tax.
- 5 **City tax rate.** \$50 for each business location if the business does not solicit business outside the county where it is located; \$100 for each location if it solicits business outside the county where it is located.
- 7 **Comment.** The tax may be charged only if the business is located in the city.

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## Soliciting Laundry Work

- 2 **Activities.** Soliciting laundry work to be done by a plant that is out-of-state.
  - 3 **Exemptions and special provisions.** Counties and cities may not tax the activities of soliciting taxed under this subsection.
  - 7 **Comment.** In a letter to W. A. Watts [41 N.C.A.G. 80 (1970)], the attorney general has advised that if a laundry has several pick-up stations or receiving outlets in the city, only one tax may be levied on the business; a separate tax may not be charged for each station.
- 

## Outdoor Advertising

- 1 G.S. 105-86 (G.S. 160A-211)
- 2 **Activities.** Engaging in the business of outdoor advertising by placing, erecting, or maintaining one or more outdoor advertising signs or structures of any nature by means of signboards, poster boards, painted bulletins, or other painted matter; or any other outdoor advertising devices, erected upon the grounds, walls, or roofs of buildings.
- 3 **Exemptions and special provisions.** Counties may not tax the activities listed in this section. The following signs and advertisements are exempt: advertising signs of movie theaters licensed under G.S. 105-37; signs on property advertising the business conducted on that property; notices posted by a public authority or required by law in any legal proceedings; and signs of 60-square feet or less bearing an announcement of any city or town advertising itself if the sign is maintained at public expense; signs advertising a person's own business containing 12-square feet or less and displayed in no more than five counties.
- 4 **State tax rate.** No state tax.
- 5 **City tax rate.** The maximum city tax is \$35 for each city or town in which a sign or other advertising is maintained.

## Loan Agencies, Pawnbrokers, and Check-Cashing Businesses

- 1 G.S. 105-88

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## Loan Agencies

- 2 **Activities.** Engaging in the regular business of making loans or lending money, accepting liens on or contracts of assignment of salaries, wages, or any part thereof, or other security or evidence of debt for repayment of such loans in installment payment or otherwise; and maintaining in connection with such activity any office or established place for the conduct, negotiation, or transaction of such business, or advertising or soliciting such business in any manner.
  - 3 **Exemptions and special provisions.** The tax levied by this section does not apply to banks, industrial banks, the negotiation of loans on real estate, credit unions, trust companies, and savings and loan associations.
  - 4 **State tax rate.** Not relevant.
  - 5 **City tax rate.** The maximum city tax is \$100.
  - 6 **County tax rate.** The same as for cities.
- 

## Pawnbrokers

- 2 **Activities.** Engaging in the business of pawnbroker, as regulated by Chapter 91A of the General Statutes.
  - 4 **State tax rate.** Not relevant.
  - 5 **City tax rate.** The maximum city tax is \$100.
  - 6 **County tax rate.** The same as for cities.
- 

## Check-Cashing Businesses

- 2 **Activities.** Engaging in the business of check cashing, as regulated under Article 22 of Chapter 53 of the General Statutes. This is the business of cashing checks, drafts, or money orders for a fee.
- 3 **Exemptions and special provisions.** Banks, savings institutions, credit unions, farm credit systems, and businesses principally engaged in the retail sale of goods or services are exempt from the taxes levied in this section.
- 4 **State tax rate.** Not relevant.
- 5 **City tax rate.** The maximum city tax is \$100.
- 6 **County tax rate.** The same as for cities.

# Service Stations, Wholesale Supply Dealers, and Automobile Dealers

1 G.S. 105-89 (G.S. 160A-211 and 153A-152)

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## Service Stations

- 2 **Activities.** [Subsection (a)] Engaging in the business of servicing, storing, painting, repairing, welding, or upholstering motor vehicles, trailers, and semi-trailers; or retail selling or delivering of any tires, tools, batteries, electrical equipment, automotive accessories, radios designed for exclusive use in automobiles, supplies, motor fuels, lubricants, or any such commodities.
  - 3 **Exemptions and special provisions.** No additional tax under this subsection may be levied on any employee, agent, or salesman whose employer or principal has paid the tax levied in this subsection for each location.
  - 4 **State tax rate.** No state tax.
  - 5 **City tax rate.** The maximum city tax is \$12.50.
  - 6 **County tax rate.** The same as for cities.
- 

## Wholesale Supply Dealers

- 2 **Activities.** [Subsection (b)] Engaging in the business of buying, selling, distributing, exchanging, or delivering automotive accessories, including radios designed for exclusive use in automobiles, parts, tires, tools, batteries, other automotive equipment or supplies, or any such commodities at wholesale.
- 3 **Exemptions and special provisions.** The term “wholesale” as used in this subsection applies to manufacturers, jobbers, and others who sell to retail dealers, except manufacturers of batteries.

No additional license tax may be levied under this subsection on any employee, agent, or salesman whose employer or principal has paid the tax for each location.

A person who has paid the wholesaler’s tax levied under this subsection shall not be required to pay any additional tax under subsection (a) above for engaging in any of the activities listed in that subsection.
- 4 **State tax rate.** No state tax.
- 5 **City tax rate.** The maximum city tax is \$37.50.
- 6 **County tax rate.** The same as for cities.
- 7 **Comment.** See the comment to the section below dealing with the tax on au-

tomobile dealers.

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## Automobile Dealers

2 **Activities.** [Subsection (c)] Engaging in the business of buying, selling, distributing, servicing, storing, or exchanging motor vehicles, trailers, semitrailers, tires, tools, batteries, electrical equipment, lubricants, or automotive equipment, radios designed for exclusive use in automobiles, and supplies.

3 **Exemptions and special provisions.** No additional tax may be levied under this subsection on any employee or salesman whose employer has paid the tax.

The tax may not be levied on dealers in semitrailers weighing not more than 500 pounds and carrying not more than a 1,000-pound load that are to be towed by passenger cars or on dealers of four-wheel, farm-type wagons equipped with rubber tires and designed to be pulled or towed by passenger cars or farm tractors.

Any person who deals exclusively in motor fuels and lubricants and who has paid the tax levied by subsection (a) above may not be taxed under this subsection or under subsection (b) above.

Premises on which cars are stored or sold, if owned or operated by a licensed dealer under the same name, shall not be considered a separate place of business when this business is conducted within the corporate limits of any city or town in which the licensed business is conducted.

4 **State tax rate.** No state tax.

5 **City tax rate.** The maximum city tax is \$25. Also, if any business taxed under this subsection is of a seasonal, temporary, transient, or itinerant nature, cities may levy a tax of \$300 on each location.

6 **County tax rate.** The same as for cities.

7 **Comment.** Considerable overlap exists with regard to the activities covered in the three subsections of this statute. City and county officials who administer the tax should take care to see that a business has paid all of the license taxes applicable to it but has not been doubly taxed contrary to the express provisions of the statute, as discussed in item 3 above. For example, a supermarket or convenience store that sells only one article, such as lubricating oil, from among those listed in subsection (a) is still required to purchase a license under that section. Also, both subsection (a), the service station tax, and subsection (c), the automobile dealer tax, cover the sale of tires, tools, batteries, electrical equipment, car radios, and lubricants. Although the sale of fuel and lubricants is not included in the motor vehicle dealer's license, subsection (c)(2) expressly provides that a person licensed as a dealer under subsection (c) is not required to purchase a license under subsection (a) or (b). The apparent intent of this exemption is to

allow motor vehicle dealers licensed under subsection (c) to sell fuel and lubricants without purchasing a service station license under subsection (a). A business that sells tires, batteries, or car radios but does not sell either motor fuel or automobiles would apparently be required to purchase only the service station license because of the “or any of such commodities” language in that provision, which does not appear in the dealer provision.

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## **Motorcycle Dealers**

- 1 G.S. 105-89.1 (G.S. 160A-211 and 153A-152)
  - 2 **Activities.**Engaging in the business of buying, selling, distributing, or exchanging motorcycles, motorcycle supplies, or any of such commodities.
  - 3 **Exemptions and special provisions.** No additional license tax may be levied on any employee or salesman whose employer has paid the tax levied by this section.
  - 4 **State tax rate.** No state tax.
  - 5 **City tax rate.** The maximum city tax is \$12.50.
  - 6 **County tax rate.**The same as for cities.
- 

## **Emigrant and Employment Agents**

- 1 G.S. 105-90 (G.S. 160A-211 and 153A-152)
- 2 **Activities.** Engaging in the business of soliciting, hiring, or contracting with laborers for employment out of state; or engaging in the business of securing employment for a person or persons and charging a fee, commission, or other compensation.
- 3 **Exemptions and special provisions.** The following employment agencies and persons are exempt from the tax levied by this section: federal, state, and local agencies; agencies whose sole business is procuring employees for work in the production and harvesting of farm crops within North Carolina; and nonprofit registries for registered nurses and licensed practical nurses.
- 4 **State tax rate.** No state tax.
- 5 **City tax rate.** The maximum city tax is \$100.
- 6 **County tax rate.**The same as for cities.
- 7 **Comment.** In a letter to John H. McMurray, dated October 1, 1970, the attorney general expressed the opinion that a municipality could not levy a tax on an employment agency that had no office or property within the municipality and did business therein entirely by telephone.

From the wording of subsection (b), an employment agency is liable for the

tax regardless of whether the person who seeks employment or his employer pays the fee.

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## **Plumbers, Heating Contractors, and Electricians**

- 1 G.S. 105-91 (G.S. 160A-211)
- 2 **Activities.** Engaging in the business of a plumber, installing plumbing fixtures, piping or equipment, steam or gas fitter, hot-air heating systems, electrical equipment, or offering to perform such services.
- 3 **Exemptions and special provisions.** Counties may not tax the activities listed in this section. A person engaged exclusively in a business licensed under this section is not liable for a license tax levied under G.S. 105-54 (contractors) or G.S. 105-55 (installing elevators and sprinkler systems).
- 4 **State tax rate.** No state tax.
- 5 **City tax rate.** The maximum city tax is \$50.
- 7 **Comment.** With respect to electricians and electrical contractors, a license procured under this section covers the installation of electrical equipment, fixtures, and wiring in or on the consumer's premises, or on the "customer's side" of the point of delivery of electric service, but it does not cover the installation of or service to transmission or distribution lines or work on the "distributor's side" of the point of delivery of electric service.

With respect to plumbers and plumbing contractors, a license procured under this section covers plumbing work and plumbing installations in buildings and on the premises where the buildings are situated and up to the connection with the sewer or water mains, but it does not cover the construction of or work on water and sewer systems or mains.

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## **Manufacturers and Sellers of Ice Cream**

- 1 G.S. 105-97 (G.S. 160A-211)
- 2 **Activities.** Engaging in the business of manufacturing or distributing ice cream at wholesale.
- 3 **Exemptions and special provisions.** Counties may not tax the activities listed in this subsection. The tax does not apply to a farmer who manufactures and sells only the products of his own cows.
- 4 **State tax rate.** No state tax.
- 5 **City tax rate.** If the machine or equipment used is of the continuous freezer type, the tax is \$0.37-per-gallon-capacity based on the rated capacity in gallons per hour according to the manufacturer's rating, with a minimum tax of \$12.50

per freezer.

If the equipment used is not of the continuous freezer type, the tax is \$1.25-per-gallon-capacity for the freezer, with a minimum tax of \$12.50 per freezer.

If the equipment used is not a standard freezer with a manufacturer's capacity rating, the tax is \$50.

- 7 **Comment.** "Ice cream," as used in this statute, includes frozen custards, sherbets, water ices, and similar frozen products.

In *Eastern Carolina Tastee-Freez, Inc. v. City of Raleigh*, 256 N.C. 208, 123 S.E.2d 632 (1962), the court held that a city may not prohibit the peddling of ice cream products at retail by the use of mobile units that use bells or other noise-makers as an advertising device. The basis for this decision was that the activity was authorized by the state once a state peddler's license was obtained, and there was no express statutory authority allowing a municipality to prohibit the activity.

In *State v. Byrd*, 259 N.C. 141, 130 S.E.2d 55 (1963), the City of Raleigh again attempted to prohibit the sale of ice cream from mobile units by broadening the scope of its ordinance and also by reciting in the preamble the safety hazards to children posed by such units. This ordinance was also invalidated.

In *Frosty Ice Cream, Inc. v. Hord*, 263 N.C. 43, 138 S.E.2d 816 (1964), Charlotte hit upon a successful device for controlling the sale of ice cream from mobile units. The city enacted an ordinance prohibiting the making of any loud or unnecessary noises on the city streets and included in its definition of such noises the sound of bells, whistles, and similar devices used to attract attention or invite business patronage. The court refused to enjoin enforcement of this ordinance against mobile units that sell ice cream.

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## Chain Stores

- 1 G.S. 105-98 (G.S. 160A-211)
- 2 **Activities.** Engaging in the business of operating or maintaining in this state, (a) two or more stores or mercantile establishments under the same general management, supervision, or ownership where goods, wares, or merchandise are sold or offered for sale, or from which such goods, wares, or merchandise are sold or distributed at wholesale or retail; or (b) controlling by lease, either as lessor or lessee or by contract, the manner in which any such store or stores are operated, or the varieties, character, or brands of merchandise which are sold therein.
- 3 **Exemptions and special provisions.** Counties may not tax the activities listed in this section. The following activities are not subject to the chain-store tax levied by this section: retail or wholesale dealers in motor vehicles and automotive

equipment and supply dealers at wholesale who do not sell other items taxable under the chain store tax; retail stores of nonprofit organizations engaged exclusively in the sale of merchandise processed by handicapped persons employed by nonprofit organizations in North Carolina; manufacturers and retail and wholesale dealers who sell fertilizers, farm chemicals, soil preparations, or seeds; retail outlets, commonly known as “bakery thrift stores,” owned and operated by wholesale bakeries at locations apart from the wholesale bakery under the same ownership, management, and control of the wholesale bakery and used solely as retail outlets for the surplus or broken products of the wholesale bakery when the operation of such stores is only incidental to the operation of the wholesale bakery.

- 4 **State tax rate.** No state tax.
- 5 **City tax rate.** \*The maximum city tax is \$50.
- 7 **Comment.** \*As may be noted in item 2, stores may fit the definition of a chain store in one of two ways. To be liable for the city chain-store tax, a store must fit the definition given in part (a) of item 2; that is, it must be one of two or more stores under the same general management, supervision, or ownership. This appears to exclude from the tax those stores that are operated on a franchise basis where the varieties of goods sold are controlled by contract, but the ownership of each store is separate. Moreover, the store that is designated the principal office of the chain is not subject to the tax levied by this section.

A store is still a chain store within the meaning of this section, even though the various stores in the chain are operated under separate charters of incorporation, if there is common ownership of a majority of stock in such separately incorporated companies. In like manner the section applies to any group of stores a majority interest in which is owned by an individual or a partnership.

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## **Distributing or Selling Motor Fuels at Wholesale**

- 1 G.S. 105-99 (G.S. 160A-211)
- 2 **Activities.** Engaging in the business of distributing or selling at wholesale any motor fuels.
- 3 **Exemptions and special provisions.** Cities and counties may not tax the activities listed in this section.

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## **Cooperative Marketing Associations**

- 1 G.S. 105-102.1 (G.S. 160A-211)
- 2 **Activities.** Every cooperative marketing association operating solely for the

purpose of marketing the products of its members or other farmers, which operations may include activities that are directly related to such marketing activities, and turning back to them the proceeds of sales, less the necessary operating expenses of the association, including interest and dividends on capital stock, on the basis of the quantity of product furnished by them, and every mutual ditch or irrigation association, mutual or cooperative telephone association or company, mutual canning association, cooperative breeding association, or like organizations or associations of a purely local character deriving receipts solely from assessments, dues, or fees collected from members for the sole purpose of meeting expenses, or production credit associations organized under the act of Congress known as the Farm Credit Act of 1933.

- 3 Exemptions and special provisions. Cities and counties may not tax the activities listed in this section.

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## Banks

- 1 G.S. 105-102.3
- 2 Activities. Banks and banking associations, including each national banking association that is organized and operating in North Carolina as a commercial bank, an industrial bank, a savings bank\* created other than under Chapter 54B of the General Statutes or the Home Owners' Loan Act of 1933, a trust company, or any combination of such facilities or services and whether such bank or banking association is organized under state or federal law.
- 3 Exemptions and special provisions. Cities and counties may not tax the activities listed in this section.
- 7 Comment.\*Although savings and loan associations are not included in the businesses taxed under this section, cities and counties are still prohibited from taxing them by the provisions of G.S. 105-228.24(b).

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## Miscellaneous Businesses

- 1 G.S. 105-102.5 (G.S. 160A-211 and 153A-152)

Before it was repealed, G.S. 105-102.5 levied a single state license tax on ten different types of businesses. Where local government license taxes are concerned, however, each type is treated separately, with a different rate. This section explains the authority of local governments to tax each category and the limits to that authority.

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## Video Rental or Sale

- 2 **Activities.** [Subsection (b)(1)] Selling, leasing, furnishing, and/or distributing movies, including video movies, for use in places where no admission fee is charged or in schools or other institutions of learning.
  - 3 **Exemptions and special provisions.** Counties may not tax the activities listed in this subsection.
  - 4 **State tax rate.** Not state tax.
  - 5 **City tax rate.** The maximum city tax is \$25.
- 

## Bicycle Dealers

- 2 **Activities.** [Subsection (b)(2)] Selling bicycles, bicycle supplies, or bicycle accessories.
  - 3 **Exemptions and special provisions.** Counties may not tax the activities listed in this subsection.
  - 4 **State tax rate.** No state tax.
  - 5 **City tax rate.** The maximum city tax is \$25.
- 

## Automatic Machines

- 2 **Activities.** [Subsection (b)(3)] Selling or renting any of the following types of automatic machines: (a) office machines, including cash registers, typewriters, word-processing equipment, addressograph machines, adding machines, bookkeeping machines, calculators, billing machines, check-writing machines, copying machines, dictating equipment, and data-processing equipment; (b) home appliances, including washing machines, clothes dryers, refrigerators, freezers, vacuum cleaners, air-conditioning units (other than permanently installed units using internal ductwork), and sewing machines; and (c) warning devices, including burglar alarms and smoke alarms.
- 3 **Exemptions and special provisions.** Cities and counties may not tax the activities listed in this subsection.
- 7 **Comment.** Cities may tax the business of servicing any of the machines listed in this subsection, and they are not limited as to the rate of tax. Although cities are prohibited by this subsection from levying a tax on businesses that sell or lease computers, they may levy a tax on the business of selling computer software.

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## Campgrounds and Trailer Parks

- 2 **Activities.**[Subsection (b)(4)] Operating for profit a campground, trailer park, tent-camping area, or similar place and advertising or soliciting transient patronage. It is irrelevant whether rental to patrons is on a daily, weekly, biweekly, or monthly basis.
  - 3 **Exemptions and special provisions.** Counties may not tax the activities listed in this subsection.
  - 4 **State tax rate.** No state tax.
  - 5 **City tax rate.** The maximum city tax is \$12.50.
- 

## Pool Tables

- 2 **Activities.** [Subsection (b)(5)] Operating billiard or pool tables, whether by slot (coin) or otherwise.
  - 3 **Exemptions and special provisions.** County taxes on operating billiard or pool tables are authorized only on businesses located outside the corporate limits of municipalities. The following organizations operating tables are exempt from the tax: fraternal organizations having a national charter; American Legion Posts and posts of other local veterans' organizations chartered by Congress or organized and operating on a statewide or national basis; YMCAs; YWCAs; and nonstock, nonprofit, charitable recreational corporations, foundations, or centers to which a city or county contributes any portion of the operating funds.
  - 4 **State tax rate.** No state tax.
  - 5 **City tax rate.** The maximum city tax is \$25 for each business location where tables are operated.
  - 6 **County tax rate.** The same as for cities.
- 

## Bowling Alleys

- 2 **Activities.** [Subsection (b)(6)] Operating a bowling alley or alleys of like kind.
- 3 **Exemptions and special provisions.** The same as for pool tables, above.
- 4 **State tax rate.** No state tax.
- 5 **City tax rate.** The maximum city tax is \$10 for each alley kept or maintained.
- 6 **County tax rate.** The same as for cities.

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## Sundries

- 2 **Activities.** [Subsection (b)(7)] (a) The sale of sandwiches in drugstores or other stands or places not licensed and taxed as a restaurant under G.S. 105-62 (“sandwiches” does not include crackers or cookies in combination with any food filling); (b) operating, maintaining, or placing on location fewer than five of the following types of dispensers or machines: dispensers of cigarettes or other tobacco products, dispensers of soft drinks, dispensers of food or other merchandise, or weighing machines; (c) retailing soft drinks; or (d) retailing or jobbing cigarettes or other tobacco products.
- 3 **Exemptions and special provisions.** Counties may not tax any of the activities listed in this subsection. Sales of milk, milk drinks, dairy products, and newspapers through dispensers or by other means are exempt from this tax. Sales through dispensers of merchandise for five cents or less are also exempt.

A city may not tax a business under this subsection when that business is required to be licensed under G.S. 105-65.1.

- 4 **State tax rate.** No state tax.
- 5 **City tax rate.\*** The maximum city tax is \$4.
- 7 **Comment.\***Under this provision a single tax is levied on each location at which any one or more of the listed activities is undertaken. Thus at a single location a business establishment might sell cigarettes and other tobacco products over the counter, sell packaged sandwiches, and operate a soft-drink stand; such a business establishment would be required to purchase one \$4 municipal sundries license. At the same time, a business establishment that sells only packaged sandwiches would also be required to purchase a single \$4 municipal sundries license.

Three sections affect the authority of cities to tax various categories of vending machines: this subsection [(b)(7)], G.S. 105-65.1, and G.S. 160A-211. This subsection permits cities to tax businesses operating fewer than five vending machines and sets a limit on the rate of tax. Subsection 105-65.1 prohibits cities from taxing businesses operating five or more vending machines. But both this subsection and G.S. 105-65.1 are subject to certain exceptions, and a city may tax the businesses excepted from either under G.S. 160A-211. Owners and operators of the following types of machines appear to be taxable under G.S. 160A-211:

- a. A person who places machines or dispensers on location only at his own place of business, if he has five or more;
- b. A person who places machines or dispensers at a single building that is occupied by a single commercial, manufacturing, or industrial business, if

he has five or more;

- c. Machines dispensing only pure uncarbonated fruit or vegetable juices, if the owner or operator has five or more;
- d. Machines dispensing only milk, milk drinks, dairy products, or newspapers, regardless of the number of machines; or
- e. Machines that only dispense merchandise costing five cents or less, regardless of the number of machines.

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Pinball Machines and Similar Amusements

- 2 **Activities.** [Subsection (b)(8)] Operating a bagatelle table; merry-go-round or other riding device; hobbyhorse; switchback railway; shooting gallery; swimming pool; skating rink; other amusements of a like kind; or a place for other games or play with or without name at a permanent location.
- 3 **Exemptions and special provisions.** County taxes on activities listed in this subsection are authorized only on businesses located outside the corporate limits of municipalities. Any of the listed activities that are used exclusively for private amusement or exercise are exempt. Articles taxed under G.S. 105-65 (music machines) and under G.S. 105-66.1 (electronic video games) are also exempt from taxation under this subsection.
- 4 **State tax rate.** No state tax.
- 5 **City tax rate.** The maximum city tax is \$25.
- 6 **County tax rate.** The same as for cities.

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## Sale of Pianos and Record Players

- 2 **Activities.** [Subsection (b)(9)] Selling, offering or ordering for sale, repairing or servicing pianos, organs, record players, records, tape players, tape cartridges designed for use in tape players, television sets, television accessories and repair parts, radios (including radios designed for exclusive use in motor vehicles), and radio accessories and repair parts.
- 3 **Exemptions and special provisions.** Counties may not tax the businesses listed in this subsection. Persons licensed under this subsection are not required to purchase a license under G.S. 105-89 for selling, installing, or servicing motor vehicle radios.
- 4 **State tax rate.** No state tax.
- 5 **City tax rate.** The maximum city tax is \$5.

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## Sellers of Ice Cream

- 2 **Activities.** [Subsection (b)(10)] Selling at retail ice cream purchased from a

manufacturer who has not paid the manufacturer's tax levied by G.S. 105-97; or manufacturing ice cream using a counter freezer and selling at retail only.

- 3 Exemptions and special provisions. Counties may not tax the activities listed in this subsection.
  - 4 State tax rate. No state tax.
  - 5 City tax rate. The maximum city tax is \$2.50.
  - 7 Comment. "Ice cream," as used in this subsection, includes frozen custards, sherbets, water ices, yogurt, and similar frozen products.
- 

## **Users of Newsprint**

- 1 G.S. 105-102.6
- 2 Activities. Engaging in the business of producing publications printed on newsprint and acquiring and using newsprint for this business.
- 3 Exemptions and special provisions.\* Cities and counties may not tax the activities taxed under this section.
- 7 Comment. \*Most of the businesses taxed under this section are newspapers, and this section prohibits cities from taxing them as users of newsprint. But cities are not prohibited from taxing newspapers under a miscellaneous business provision or for engaging in the business of selling newspapers or selling advertising.

### III

## ABC Licenses

Each person who obtains a permit from the state Alcoholic Beverage Control (ABC) Commission to sell alcoholic beverages—malt beverages, fortified and unfortified wine—must also purchase a local ABC license to engage in that business. And to obtain the license, the permit holder must pay a tax to the local governments in which the business is conducted.<sup>1□</sup> Before a local government can determine the amount of license tax to charge an ABC permit holder, it must first determine the type of permit, or permits, held by the business. Although the ABC Commission issues a variety of permits for the sale of alcoholic beverages, only seven are of concern to local governments: (1) on-premises malt beverage; (2) off-premises malt beverage; (3) on-premises unfortified wine; (4) off-premises unfortified wine; (5) on-premises fortified wine; (6) off-premises fortified wine; and (7) malt beverage and wine wholesaler. Once the applicant for a license holds the appropriate ABC permit and tenders the correct amount of payment for the tax, issuance of the local government license is mandatory;<sup>2□</sup> a tax collector may not withhold issuance of an ABC license because the applicant has failed to comply with a local zoning or other regulatory requirement.<sup>3□</sup>

The license tax schedule for cities is:<sup>4□</sup>

On-premises malt beverage	\$15
Off-premises malt beverage	\$ 5
On-premises unfortified wine, fortified wine, or both	\$15
Off-premises unfortified wine, fortified wine, or both	\$10

The tax for an additional license of the same type to the same person is 110 percent of the basic license. Apparently this means that if, for example, a person purchases an on-premises malt beverage license for \$5 and then applies for an off-premises malt beverage license, the charge for the second license would be \$5.50, 110 percent of the first license. A person holding both a malt beverage permit and a wine permit must purchase both licenses. For example, a business with both an off-premises malt beverage permit and an off-premises wine permit would have to purchase both licenses, for a total of \$15.

In addition, a city may levy a tax on a beer or wine wholesaler located in the city. The maximum tax for a beer wholesaler is \$37.50; for a wine wholesaler, \$37.50; for a wholesaler of both beer and wine, \$62.50. The wholesaler tax may not be charged a business located outside the city.<sup>5□</sup>

The license tax schedule for counties is:

On-premises malt beverage	\$25
Off-premises malt beverage	\$ 5
On-premises unfortified wine, fortified wine, or both	\$25
Off-premises unfortified wine, fortified wine, or both	\$25

A county license must be obtained for a business operated anywhere in the county, including within a municipality; but if the business is within a municipality, the county license cannot be issued until the business has obtained its municipal license.<sup>6□</sup>

Neither a city nor a county may require a license for the sale of mixed drinks.<sup>7□</sup>

The license year for local government ABC licenses is May 1 to April 30,<sup>8□</sup> which is different from the usual July 1 to June 30 business license year. Once issued, a license may not be transferred from one person to another or from one location to another; a new license must be purchased.<sup>9□</sup>

A local government may refuse to issue an ABC license if the governing board determines that the applicant “committed any act or permitted any activity” in the preceding year that would be grounds for revocation or suspension of the applicant’s ABC permit under G.S. 18B-104.<sup>10□</sup> A permit can be revoked or suspended for any violation of the ABC laws.<sup>11□</sup> Before the governing board denies a license, it must give the applicant an opportunity for a hearing, and, if a hearing is requested, it must make written findings of fact based on the evidence at the hearing.<sup>12□</sup> The applicant may appeal a denial of the license to the superior court.<sup>13□</sup>

A special set of enforcement remedies applies to local government ABC licenses. G.S. 105-113.89 provides that Article 9 of Chapter 105 applies to ABC license taxes. Most of the remedies in Article 9 are intended for the collection of state taxes, but the penalty for the late payment of a license tax in G.S. 105-236(2) is similar to the penalty prescribed for Schedule B taxes in G.S. 105-109: 5 percent of the tax for each month that the tax is unpaid, with a maximum of 25 percent, or \$5, whichever is greater. Also, G.S. 105-113.73 makes violation of an ABC law, presumably including the requirement to obtain an ABC license, a Class 1 misdemeanor.

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## Notes

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1. N.C. Gen. Stat. § 105-113.70.

2. *Id.*

3. *Melkonian v. Board of Adjustment*, 85 N.C. App. 351, 355 S.E.2d 503, *cert. denied*, 320 N.C. 631, 360 S.E.2d 91 (1987).

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4. N.C. Gen. Stat. § 105-113.77.
  5. *Id.* § 105-113.79.
  6. *Id.* § 105-113.70(a).
  7. *Id.* § 105-113.70(d).
  8. *Id.* § 105-113.70(b).
  9. N.C. Gen. Stat. § 105-113.70(c).
  10. *Id.* § 105-113.71(a).
  11. *Id.* § 18B-104.
  12. *Id.* § 105-113.71(a).
  13. *Id.*

## IV

# Enforcement

The remedies available to enforce collection of a local privilege license tax depend in part on whether the local government levying the tax is a city or county and whether the local government has provided for the particular remedy in its ordinance.

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## Schedule B Enforcement Remedies

G.S. 105-109, one of the administrative provisions of Schedule B, provides two remedies for use against a business that continues in business after its privilege license has expired without obtaining a new license. This failure to renew the license is made a Class 1 misdemeanor and is subject to a penalty of 5 percent of the amount of the tax for each thirty-day period that the tax is unpaid. These two remedies apply only to continuing in business under an expired license; they do not apply when a business begins operating without purchasing a required license.

These G.S. 105-109 remedies apply to all city license taxes, whether levied under authority of Schedule B or G.S. 160A-211,<sup>1□</sup> but they apply only to county taxes that are levied under the authority of Schedule B:<sup>2□</sup> Those on loan agencies, pawnbrokers, and check-cashing businesses (G.S. 105-88).

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## Criminal Prosecution for Ordinance Violation

Since only continuing in business without a license is made a criminal offense by G.S. 105-109—and even then only for cities, with one exception—local governments may, under G.S. 14-4, bring a criminal prosecution for an ordinance violation for beginning business without a license. Such an offense is a Class 3 misdemeanor, and a tax collector can initiate a prosecution by applying to a magistrate for a criminal summons to be directed to the offending business.<sup>3□</sup> The magistrate may accept a guilty plea and enter judgment against the business.<sup>4□</sup>

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## Enjoining Violations

Cities, under G.S. 160A-175(d), and counties, under G.S. 153A-123(d), may obtain equitable relief to prohibit the violation of a privilege license tax ordinance. If a city or county wishes to have this remedy available, it must so provide in its ordinance, as § 33(b) of the Model Ordinance does (see Appendix A), and it should refer in the ordinance to G.S. 160A-175(d) or to G.S. 153A-123(d), whichever is appropriate.

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## Levy and Garnishment

Cities, under G.S. 160A-207, and counties, under G.S. 153A-147, may use the Machinery Act remedies of levy and garnishment to enforce collection of privilege license taxes. The property subject to the remedies and the procedures for their use are governed by G.S. 105-366, -367, and -368. The remedies and procedures can be used only after the tax is due and are subject to the priority of any property tax lien.

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## Statute of Limitations

No specific statute of limitations applying to the collection of city and county privilege license taxes is contained in G.S. Chapters 105, 153A, or 160A. The two-year statute of limitations on misdemeanor prosecutions contained in G.S. 15-1 applies to any criminal action brought pursuant to either G.S. 14-4 or G.S. 105-109. Apparently, no statute of limitations applies to the use of civil remedies, such as levy and garnishment, to collect a delinquent privilege license tax and any accrued penalties. Although G.S. 1-56 applies a catchall ten-year statute of limitations to all actions not otherwise specifically covered elsewhere, the supreme court held in *City of Wilmington v. Cronly*, 122 N.C. 383, 30 S.E. 9 (1898), that neither this statute nor any other statute of limitations applies to bar the collection of city or county taxes unless it specifically so provides.

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## Notes

1. N.C. Gen. Stat. § 105-109(e).

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2. *Id.* § 105-109(b).
  3. *See id.* § 15A-303.
  4. *Id.* § 7A-273.

## Appendix A

# Privilege License Ordinance Model Administrative Provisions

The following model for the administrative provisions of a local privilege license tax ordinance was prepared by James Stoddard Hayes, while he was a third-year student at The University of North Carolina at Chapel Hill School of Law, and by David M. Lawrence and William A. Campbell, members of the Institute of Government faculty. The model has undergone a careful review within the Institute and by a committee of city attorneys who graciously gave of their time. With the revisions suggested by these reviews, the model ordinance is herein published. The introduction that follows highlights a few of its provisions. (Throughout, the ordinance is cast as if adopted by a city. It is, however, equally suitable for adoption by a county.)

The model makes no effort to suggest the classes of business to be taxed, the rates, or bases of taxation, leaving these decisions to each unit. It does, however, specify the connection with the city or county that must exist before the business is taxable. If the business location is maintained within the unit, or if a person solicits business, picks up or delivers goods, or extends services within the unit, there is a sufficient connection to tax that business or person under the ordinance. In a few instances a business that is located within the city or conducts business within the city under the terms of the ordinance may in fact be conducting an exclusively interstate business and thus be immune from local privilege license taxation under the Commerce Clause of the United States Constitution. The case law on this subject is extensive and complex, and this model makes no effort to define the situations where there may be such a constitutional immunity. Rather, such situations are more properly a matter of administration of the ordinance, where the facts of each situation will determine the outcome.

In some cities and counties, privilege license ordinances serve two purposes: (1) raising revenue, and (2) regulating some or all of the businesses taxed. Thus some ordinances condition approval of the license for certain businesses on the applicants' showing themselves to be of good moral character. In others, one reason for refusing the license is that the applicant had not been bonded, as required by another city ordinance. The model does not mix purposes in this way; it is concerned solely with raising revenue. Two reasons account for this single concern. First, there is some reason to question the constitutionality of the stand-

ards that applicants must conform to as set out in some local ordinances. Arguably, some of these standards are unconstitutionally vague. Second, both city and county laws now provide several enforcement devices for local ordinances, so that there is really no need to make the tax collector an enforcer of police measures. Therefore, section 2 of the ordinance specifies that the ordinance is enacted for revenue purposes only and makes clear that paying the license tax and receiving the license does not give the licensee any vested right in this business such that the business might not otherwise be regulated.

Perhaps the most significant element of the model is the use of the “conference” between the tax collector and the taxpayer. The ordinance makes it unlawful to conduct a taxed business within the unit without having paid the tax. This provision makes acquisition of a license so important that the drafters of the model thought it advisable to afford due process rights of notice and hearing to any taxpayer faced with the loss or refusal of a license. Three situations can lead to a conference between the taxpayer and the tax collector: initial refusal to issue a license, proposed revocation of an issued license, and disagreement over the amount of tax due. In each case, the taxpayer may request a conference with the tax collector, at which the reasons for the collector’s actions will be discussed. Such a conference may be quite informal, so long as the taxpayer knows the reasons for the collector’s actions and has an opportunity to challenge those reasons.

Finally, the ordinance provides several means of enforcement. Criminal prosecution and the injunction are available to stop businesses from operating - without a license, while levy, sale, attachment, and garnishment are available to collect taxes that have not been paid.

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## Article I. General

§ 1. **Definitions.** When used in this ordinance (unless the context requires a different meaning):

(a) “Person” includes any individual, trustee, executor, other fiduciary, corporation, unincorporated association, partnership, sole proprietorship, company, firm, or other legal entity.

(b) “Business” includes each trade, occupation, profession, business, and franchise taxed under this ordinance.

(c) A business is “seasonal” in nature when it is conducted for profit six months out of the year or less.

§ 2. **Construction of This Ordinance.** This ordinance is enacted for revenue purposes only. Therefore, it should be construed to require payment of the maximum tax permitted under its terms. In addition issuance of a license in accord-

ance with this ordinance does not excuse a licensee from compliance with any other applicable ordinance or statute. This ordinance does not prevent the city from imposing license taxes on additional businesses, from increasing or decreasing the amount of any license tax, or from regulating any business taxed.

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## Article II. Levy

§ 3. **Levy of Tax.** An annual privilege license tax is hereby levied on each business conducted within this city listed in sections \_\_\_\_\_ through \_\_\_\_\_ of this ordinance in the amounts set forth in those sections.

§ 4. **Who Must Pay Tax.** Each person who conducts a business within this city is subject to this ordinance. A person “conducts business” when he engages in one act of business taxed under this ordinance. He conducts the business “within the city” if he maintains a business location within the city; or if, either personally or through agents, he (1) solicits business within the city limits or (2) picks up or delivers goods or services within the city limits.

§ 5. **Period of License; Due Date.**

(a) Annual licenses. Unless the section of this ordinance levying the privilege license tax applicable to a particular business provides otherwise, a license issued in accordance with this ordinance is good for the twelve-month period beginning July 1 and ending June 30. The tax is due on July 1 of each year. However, if a person begins a business after July 1 of a year, the tax for that year is due before the business is begun.

(b) Licenses for periods shorter than one year. If the section of this ordinance levying the privilege license tax applicable to a particular business so provides, a license may be issued for a period of one day, one week, or some comparable period of less than a full license year. A person may not commence a business conducted within the city and taxed under such a provision until the privilege license tax due is paid and may not continue such a business beyond the period for which the license is issued.

§ 6. **Proration of Tax.** If a business is begun after January 31 and before July 1, the amount of tax due is half the amount otherwise due. If a business is seasonal in nature and if the amount of tax is not based on gross receipts, the amount of tax due is half the amount otherwise due.

§ 7. **Refunds.** If for any reason a licensee discontinues his or her business during the license year, he or she is not entitled to a refund.

§ 8. **Separate Businesses.** A separate license is required and a separate privilege license tax must be paid for each place of business unless two or more places of business under common ownership are contiguous to each other, communicate directly with and open into each other, and are operated as a unit. In

addition a separate privilege license tax must be paid for each business taxable under this ordinance conducted by the taxpayer at any one location; however, the tax collector may issue a single license for all taxable business conducted at one location by a single taxpayer.

**§ 9. Computation of Tax Based on Gross Receipts.**

(a) Whenever this ordinance levies a privilege license tax computed on the basis of gross receipts, "gross receipts" means the amount reported as gross receipts on a business's state income tax return, or on the federal income tax return filed with the state income tax return if the state return does not separately state gross receipts for the most recently completed tax year.

(b) If a business has not been in operation long enough for the information required in subsection (a) of this section to be available, the tax collector shall estimate gross receipts for the business on the basis of gross receipts of comparable businesses, or any other information that the tax collector considers useful.

On or before the July 31 immediately after the license year, each licensee who paid the tax for the past license year based on estimated gross receipts shall submit to the tax collector a sworn final report showing the amount of gross receipts for the license year. If the amount shown is more than estimated gross receipts, the licensee shall pay the amount of additional tax that would have been due had the estimate been accurate. If the amount shown is less than estimated gross receipts, the city shall refund to the licensee the difference between the actual tax paid and the amount of tax that would have been due had the estimate been accurate.

**§ 10. Exemptions.**

(a) Generally. Except as otherwise provided in this section or by state law, no person is exempt from the payment of a privilege license tax levied by this ordinance.

(b) Charitable organizations. A person who operates a business for a religious, educational, civic, patriotic, charitable, or fraternal purpose, when the entire gross income of the business is used for such a purpose, is exempt from paying any privilege license tax levied by this ordinance.

(c) Blind persons and members of the armed forces and merchant marine. Blind persons and persons who serve in the United States armed forces or the merchant marine are exempt from paying any privilege license tax levied by this ordinance to the extent provided by G.S. 105-249 and G.S. 105-249.1.

(d) Must obtain license. A person exempt from paying a privilege license tax levied by this ordinance shall nevertheless obtain a license from the tax collector. The license shall state that the licensee is exempt from paying the privilege license tax.

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## Article III. Licenses

§ 11. **Application.** A person shall apply to the tax collector for each license required by this ordinance no less than thirty days before the date the tax is due. The application, which shall be submitted on forms provided by the tax collector, shall contain:

(a) The name of the applicant and whether the applicant is an individual, a partnership, a corporation, or some other entity.

(b) The nature of the business.

(c) Where the business is conducted.

(d) An address where notices and statements may be mailed to as required by this ordinance.

(e) Whether the business is regulated by a state occupational licensing board subject to G.S. Chapter 93B, and if so, the serial number of the state license the applicant currently holds.

(f) Any other information the tax collector determines to be necessary to compute the amount of tax due.

§ 12. **Reasons for Refusal or Revocation of a License.** The tax collector shall refuse to issue a license or shall revoke a license for either of the following reasons:

(a) The applicant misrepresents a fact relevant to the amount of tax due or his or her qualifications for a license.

(b) The applicant refuses to provide information necessary to compute the amount of tax due.

§ 13. **Unqualified Applicants; Right to a Conference.** After receipt of the completed application, if the tax collector believes that a reason exists for refusing a license under § 12 of this ordinance, the tax collector shall refuse to accept payment of the tax and shall not issue the license. At the applicant's request, the tax collector shall, in accordance with § 22 of this ordinance, give the applicant a written statement of the reason for refusing the license. The applicant may, within ten days after the day the statement is received, request a conference to discuss the refusal. In the request the applicant shall specify why the application for a license should not be refused. The tax collector shall arrange the conference within a reasonable time.

If the collector refuses to issue a license, the applicant may reapply for a license at any time thereafter. If the reason for which the application was refused no longer exists, and if no other reason exists for refusing to issue a license, the tax collector shall issue the license in compliance with § 14 of this ordinance.

§ 14. **Tax Collector to Issue License; Payment of Tax a Prerequisite.** After receipt of the completed application, if the tax collector believes that no rea-

son exists for refusal of a license under § 12 of this ordinance, the tax collector shall determine the amount of tax due and notify the applicant of that amount. The tax collector shall not issue a license until the tax is paid.

§ 15. **Amount of Tax Disputed.** If disputes arise over the amount the tax collector determines to be due, the applicant may either refuse to pay and request a conference with the tax collector to discuss the determination or pay the amount and request a conference to discuss the right to a refund. If a conference is requested, the tax collector shall arrange it within a reasonable time.

§ 16. **Revocation.** The tax collector shall revoke a license if a reason exists to revoke it as set forth in § 12 of this ordinance. Before revoking a license, the tax collector shall give the licensee written notice of the grounds for revocation, in accordance with § 22 of this ordinance. The licensee may within ten days after the day on which notice is served request a conference with the tax collector in writing. The request shall specify the reasons why the license should not be revoked. The tax collector shall arrange the conference within a reasonable time.

If the licensee fails to request a conference within ten days after the day on which notice is served, the tax collector shall revoke the license. If the licensee requests a conference, the tax collector may not revoke the license until after the conference.

If the tax collector revokes a license, the former licensee may apply for a new license at any time thereafter. If the reason for which the license was revoked no longer exists and if no other reason exists for refusing to issue a license, the tax collector shall issue the license in accordance with § 14 of this ordinance.

§ 17. **Form and Contents of License.** A license shall show the name of the person licensed, the place where the business is conducted (if it is to be conducted at one place), the nature of the business licensed, the period for which the license is issued, and the amount of tax paid. In addition if a machine is licensed, the license shall show the serial number of the machine. The tax collector shall keep a copy of each license issued.

§ 18. **Assignments.** A license may be assigned if (1) a business licensed under this ordinance and carried on at a fixed place is sold as a unit to any person, and (2) the purchaser is to carry on the same business at the same place. Such a change shall be reported to the tax collector in accordance with § 19 of this ordinance. Otherwise, each license issued under this ordinance is a personal privilege and is not assignable.

§ 19. **Changes in the Business Conducted by Licensee During the Tax Year.** A licensee or an assignee shall report a change in the information contained in the license application to the tax collector within ten days after the change occurs. If information shown on the license itself is affected, the licensee or assignee shall surrender the license to the tax collector when reporting the change.

(a) Changes affecting the amount of tax due. If there are no reasons for revoking the license under § 12 of this ordinance and the change results in the imposition of a separate or additional tax, the tax collector shall reissue a license reflecting the change upon payment of the separate or additional tax.

(b) Changes not affecting the amount of tax due. If there are no reasons for revoking the license under § 12 of this ordinance and the change does not result in an imposition of a separate or additional tax, the tax collector shall reissue a license reflecting the change upon payment of a fee of \_\_\_\_\_.

(c) Change requiring refusal of a license. If there is reason for revoking the license under § 12 of this ordinance, the tax collector shall refuse to reissue a license and shall instead begin proceedings to revoke the license in accordance with § 6 of this ordinance.

§ 20. **Tax Collector to Furnish Duplicates.** Upon satisfactory proof that a license has been lost or destroyed, the tax collector shall furnish a duplicate for a fee of \_\_\_\_\_.

§ 21. **Record of Conferences.** The tax collector shall maintain for three years a record of each conference held in accordance with this article. The record shall contain the applicant's or licensee's name, the date of the conference, and a brief statement of the issues discussed and the result reached. After three years, the tax collector shall dispose of the record in accordance with G.S. 121-5.

§ 22. **Providing Notice to an Applicant or Licensee.** Whenever this ordinance requires the tax collector to give a written statement or notice to an applicant or a licensee, the tax collector may do so in one of three ways:

(a) By personally delivering the statement or notice to the applicant or licensee;

(b) By mailing the statement or notice by registered or certified mail and returning the receipt requested to the address specified for that purpose in the license application; or

(c) By causing the statement or notice to be served on the applicant or licensee in accordance with the procedures for service of process under Rule 4, North Carolina Rules of Civil Procedure.

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## Article IV. Enforcement and Collection

§ 23. **Duty to Determine Whether Tax Due.** Each person has the duty to determine whether the business he or she conducts is taxed under this ordinance and if so, whether that tax has been paid for the current tax year.

§ 24. **Tax Collector to Investigate.** If the tax collector has reason to believe that a person is conducting a business in the city in violation of this ordinance, the tax collector shall conduct an investigation to determine the person's tax lia-

bility.

§ 25. **Duty to Keep Books.** Each person who conducts a business taxed under this ordinance shall keep all records and books necessary to compute the tax liability. If a person fails to keep books and records as required, the tax collector shall make a determination of that person's tax liability from the information available.

§ 26. **Duty to Permit Inspection.** Each person who conducts business in the city shall permit the tax collector to inspect the business premises during normal business hours to determine the nature of the business conducted there and to examine the books and records to determine the nature and amount of business transacted.

§ 27. **Duty to Post License.** A licensee shall post the license or licenses conspicuously in the place of business licensed. If the licensee has no regular place of business, the license must be kept where it may be inspected at all times by the proper city officials. If a machine is licensed, the license shall be affixed to the machine.

§ 28. **Notice of Deficiency.** If the tax collector determines that a person has not paid the full amount of tax due under this ordinance, either for the current license year or for a prior license year, the tax collector shall give the person written notice of the deficiency, in accordance with § 22 of this ordinance. The notice of deficiency shall specify the total amount of tax due; the section of this ordinance upon which the tax is based; the amount of tax paid; any interest due; the balance owed; the manner and time period in which the person may respond to the notice of the deficiency; and the consequences of failing to respond as specified.

§ 29. **Request for a Conference.** The person may, within ten days after the day on which notice is served, request a conference in writing. The request shall specify the person's objections to the notice of deficiency. By way of illustration but not limitation, a person who receives notice of a deficiency may object on the following grounds:

- (a) That the tax due has already been paid;
- (b) That the tax collector miscalculated the amount of tax due;
- (c) That the tax collector based his calculation on incorrect or insufficient information concerning either the nature or the amount of business conducted; or
- (d) That the tax collector based the determination on an erroneous interpretation of a section of this ordinance that establishes a category of business subject to a particular tax.

§ 30. **Deficiency to Become Final.** If the taxpayer fails to request a conference under § 29 of this ordinance, the deficiency becomes final and the tax collector shall proceed to collect the deficiency.

§ 31. **Conference Held.** If the taxpayer requests a conference, the tax collec-

tor shall not proceed to collect the deficiency until hearing the taxpayer's objections and determining that the deficiency should become final. The tax collector shall maintain a record of each conference held for three years in accordance with § 29 of this ordinance. The record shall contain the name of the taxpayer, the date of the conference, a brief statement of the issues discussed, and the results of the discussion. After three years, the tax collector shall dispose of the record in compliance with G.S. 121-5.

**§ 32. Collection of Deficiency.**

(a) The tax collector may use any of the following methods to collect a deficiency:

- (1) Criminal prosecution in accordance with section 33(a) of this ordinance;
- (2) Equitable relief in accordance with section 33(b) of this ordinance; or
- (3) The remedies of levy, sale, attachment and garnishment in accordance with G.S. 160A-207.

(b) Any person who continues to conduct a business taxed under this ordinance without payment of the tax is liable for the additional tax of 5 percent every thirty days as imposed by G.S. 105-109.

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## **§ 33. Enforcement of Ordinance.**

(a) Criminal Remedies. Conducting business within this city without having paid the privilege license tax imposed by this ordinance, or without a valid license issued in accordance with this ordinance, or without posting a license in compliance with § 27 of this ordinance is a misdemeanor, punishable as provided in G.S. § 105-109 or § 14-4. Each day that a person conducts business in violation of this ordinance is a separate offense. Payment of a fine imposed in criminal proceedings in accordance with this section does not relieve a person of the liability for taxes imposed under this ordinance.

(b) Equitable Remedies. In addition to the criminal remedies set forth in subsection (a) of this section and in compliance with G.S. 160A-175(d), the city may seek an injunction against any person who conducts a business in violation of this ordinance.

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Note: This model generally follows the one by David M. Lawrence, editor, in *Local Government Law Bulletin*, no. 4 (Chapel Hill, N.C.: Institute of Government, December 1975), with stylistic changes.

# Appendix B

## Table of Statutes

### I. City License Taxes—Restricted by Law

#### Occupation, business, etc. G.S.

##### Alcoholic Beverage Businesses

Malt beverages, wholesale	105-113.79
Malt beverages, retail	105-113.77
Unfortified wine, wholesale	105-113.79
Unfortified wine, retail	105-113.77
Fortified wine, wholesale	105-113.79
Fortified wine, retail	105-113.77

##### Amusements

Animal shows, e.g., circuses, menageries, wild west shows, dog and/or pony shows	105-37.1
Athletic contests	105-37.1
Bagatelle tables and comparable amusements	105-102.5*
Billiard parlors and pool halls	105-102.5*
Bowling alleys	105-102.5*
Electronic video games	105-66.1*
Games of skill, e.g., shooting galleries and comparable amusement	105-102.5*
Juke boxes (music machines)	105-65*
Places for "games or play with or without name," not otherwise taxed	105-102.5*
Riding devices, e.g., merry-go- rounds, hobby horses, switchback railways (roller coasters?), and similar amusements	105-102.5*
Swimming pools, skating rinks, and similar amusements	105-102.5*
Theaters, motion picture	105-37*
Theaters, outdoor drive-in	105-36.1*
Videos, sale or rental	105-102.5*
Other amusements for which admission is charged, not otherwise taxed	105-37.1

##### Building-Trade Occupations

Automatic sprinkler systems, sale or installation	105-55*	
Contractors, construction	105-54*	
Contractors, electric	105-91*	
Contractors, heating	105-91*	
Contractors, plumbing	105-91*	
Elevators, sale or installation	105-55*	
Manufacture and/or Sale of Particular Products		
Automotive equipment and supply dealers, wholesale	105-89*	
Bicycle dealers	105-102.5*	
Coffins, retail dealers	105-46*	
Firearms dealers	105-80*	
Ice cream: manufacturer, whole- saler, distributor, retailer	105-97.*	105-102.5*
Motorcycle dealers	105-89.1*	
Motor vehicle dealers	105-89*	
Phonographs: sale, repair, or maintenance	105-102.5*	
Phonograph records, sale	105-102.5*	
Pianos and organs: sale, repair, or maintenance	105-102.5*	
Radios and accessories: sale, repair, or maintenance	105-102.5*	
Sundries	105-102.5*	
Television sets and accessories: sale, repair, or maintenance	105-102.5*	
Weapons dealers (e.g., bowie knives, dirks, daggers, iron or metallic knuckles)	105-80*	
Service Occupations and Businesses		
Advertisers, outdoor	105-86*	
Automotive service stations	105-89*	
Barber shops	160A-211(b)	
Beauty parlors	160A-211(b)	
Dry cleaners and pressing clubs, including solicitation from out of state	105-74*	
Hat blockers	105-74*	
Laundries, including laundro- mats	105-85*	
Linen supply companies	105-85*	
Employment agents, emigrant	105-90*	
Employment agents, domestic	105-90*	
Hotels, motels,		

tourist homes, etc.	105-61*
Campgrounds, trailer parks, etc.	105-102.5*
Restaurants, cafeterias, other places where prepared food is sold	105-62*
Taxicabs and motor vehicles	20-97
Undertakers <sup>†</sup>	105-46*
Utilities	
Electric companies	105-116(e)
Gas companies	160A-211(c)
Sewer companies	105-116(e)
Telegraph companies	105-119(e)
Water companies	105-116(e)
Other Businesses and Occupations	
Chain stores	105-98*
Check cashing	105-88
Collection agencies	105-45*
Specialty market operators	105-53*
Itinerant merchants	105-53*
Loan agencies	105-88
Pawnbrokers	105-88
Peddlers	105-53
Tobacco warehouses	105-77*

\*Former Schedule B provision, now limited by G.S. 160A-211.

<sup>†</sup>Under N.C. Gen. Stat. § 105-41, cities may not tax morticians and embalmers.

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## II. City License Taxes—Prohibited by Law

### Occupation, business, etc. G.S.

#### Alcoholic Beverage Businesses

Malt beverages, brewery	105-113.70(d)
Unfortified wines, winery	105-113.70(d)
Fortified wines, winery	105-113.70(d)

#### Amusements

Motion pictures: manufacture, sale, lease, furnishing, and distribution	105-36*
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#### Dealers in Various Types of Merchandise

Automatic machines	105-102.5*
Burglar alarms, dealers	105-51.1*

#### Household appliances

(refrigerators, washing machines, and vacuum cleaners), dealers	105-102.5*
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Office equipment (cash regis- ters, typewriters, adding or bookkeeping machines, billing machines, check protectors, addressograph machines, duplicating machines, card- punching, assorting, and tab- ulating machines), dealers	105-102.5*
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#### Occupations and Professions Subject to Licensing Boards

Accountants	105-41
Architects	105-41
Attorneys	105-41
Auctioneers	85B-6
Chiropodists	105-41
Chiropractors	105-41
Dentists	105-41
Embalmers	105-41
Engineers, professional	105-41
Healers, professional	105-41
Land surveyors	105-41
Landscape architects	105-41

Massage therapists	105-41
Morticians	105-41
Ophthalmologists	105-41
Opticians	105-41
Optometrists	105-41
Osteopaths	105-41
Pest control applicators	106-65.40
Photographers	105-41
Physicians	105-41
Private detectives	105-42
Real estate agents	105-41
Real estate appraisers	105-41
Surgeons	105-41
Veterinarians	105-41
Utilities	
Bus companies	105-120.1
Telephone companies	105-120(d)
Trucking companies	
licensed by the state	20-97(b)
Other Businesses and Occupations	
Banks	105-102.3
Bondsmen	58-71-190
Cooperative-marketing	
associations	105-102.1
Corporations, domestic	
and foreign <sup>‡</sup>	105-122(g)
Insurance companies	105-228.10
Motor fuel, wholesale sale	
or distribution	105-99*
Production credit associations	105-102.1
Savings and loan associations	105-228.24(b)
Soft drinks: manufacture,	
production, bottling,	
and/or distribution	105-113.50A
Vending machines, including	
weighing machines	105-65.1*

\*Former Schedule B provision, now prohibited by G.S. 160A-211.

<sup>‡</sup>N.C. Gen. Stat. § 105-122 prohibits taxing the “franchise” of corporations, that is, the right to engage in business in the corporate form. It does not prohibit the levy of license taxes on corporations because of the business or businesses in which they engage, as for example, a tax on a corporation that operates a motel (N.C. Gen. Stat. § 105-61).

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### III. County License Taxes—Authorized by Law

#### Occupation, business, etc. G.S.

##### Alcoholic Beverage Businesses

Malt beverages, retail	105-113.78
Unfortified wines, retail	105-113.78
Fortified wines, retail	105-113.78

##### Amusements

Animal shows, e.g., circuses, menageries, wild west shows, dog and/or pony shows	105-37.1
Bagatelle tables and comparable amusements	105-102.5*
Billiard parlors and pool halls	105-102.5*
Bowling alleys	105-102.5*
Electronic video games	105-66.1*
Games of skill, e.g., shooting galleries and comparable amusements	105-102.5*
Juke boxes (music machines)	105-65*
Places for “game or play with or without name,” not otherwise taxed	105-102.5*
Riding devices, e.g., merry- go-rounds, hobby horses, switchback railways (roller coasters?), and similar amusements	105-102.5*
Swimming pools, skating rinks, and similar amusements	105-102.5*

##### Building/Trade Occupations

Automatic sprinkler systems, sale or installation	105-55*
Elevators, sale or installation	105-55*

##### Sale of Particular Products

Automotive equipment and supply dealers, wholesale	105-89*
Firearms dealers	105-80*
Motorcycle dealers	105-89.1*
Motor vehicle dealers	105-89*
Weapons dealers (e.g., bowie	

knives, dirks, daggers, and  
metallic knuckles) 105-80\*

Service Occupations and Businesses

Automotive service stations 105-89\*

Employment agents, domestic 105-90\*

Other Businesses and Occupations

Check cashing 105-88

Specialty market operators 105-53\*

Fortune-tellers 105-58\*

Itinerant merchants 105-53\*

Loan agencies 105-88

Pawnbrokers 105-88

Peddlers 105-53\*

\*Former Schedule B provision, now authorized by G.S. 153A-152.