

## **CHAPTER 113: ITINERANT MERCHANTS, PEDDLERS OR HAWKERS**

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## **GENERAL PROVISIONS**

### **§ 113.01 DEFINITIONS.**

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BUSINESS.** Each trade occupation, profession, business and franchise taxed under this chapter.

**DOOR-TO-DOOR RESIDENTIAL SALESMAN.** A merchant who travels from door to door in a residential area or to a private home with the intent to sell an inventory of goods, who has the goods on his person or offers the goods for delivery at a later date by the merchant's designee.

**HAWKER.** A person who offers for sale any goods by calling out in the street.

**ITINERANT MERCHANT.** A merchant, other than a merchant with an established retail store in the town, who transports an inventory of goods to a building and displays the goods for sale and sells the goods at retail or offers the goods for sale at retail.

**PEDDLER.** A person who travels from place to place with an inventory of goods, who has the goods at retail or offers the goods for sale at retail, and who delivers the identical goods he carries with him.

**PERSON.** Any individual, trustee, executor, other fiduciary, corporation, unincorporated association, partnership, sole proprietorship, company, firm or other legal entity.

(Ord. 1989-5, passed 6-12-89)

### **§ 113.02 PURPOSE; CONSTRUCTION OF PROVISIONS.**

This chapter is enacted for revenue purposes only. Therefore, it should be construed to require payment of maximum tax permitted under its terms. In addition, issuance of a license pursuant to this chapter does not excuse a licensee from compliance with any other applicable ordinance or statute. This chapter does not prevent the town from imposing license taxes on additional businesses, from increasing or decreasing the amount of any license tax or from regulating any business taxed.

(Ord. 1989-5, passed 6-12-89)

### **§ 113.03 CERTAIN BUSINESS ACTIVITIES PROHIBITED WITHIN TOWN.**

Door-to-door residential salesmen and hawkers are prohibited from operating within the town's corporate limits.

(Ord. 1989-5, passed 6-12-89)

**LEVY OF TAX**

**§ 113.10 TAX TO BE LEVIED FOR EVERY BUSINESS.**

An annual privilege license tax is hereby levied on each business conducted within the town listed in this chapter in the amounts set forth in those sections.  
(Ord. 1989 5, passed 6-12-89)

**§ 113.11 WHO MUST PAY TAX.**

Each person who conducts a business within the town is subject to this chapter. A person conducts business when he engages in one act of business taxed under this chapter. He conducts the business within the town if he maintains a business location within the town; or it, either personally or through agents, he:

(A) Solicits business within the town limits; or

(B) Picks up or delivers goods or delivers services within the town limits.  
(Ord. 1989-5, passed 6-12-89)

**§ 113.12 PERIOD OF LICENSE; DUE DATE.**

Annual licenses. Unless the section of this chapter levying the privilege license tax applicable to a particular business provides otherwise, a license issued pursuant to this chapter is good for the 12-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.  
(Ord. 1989-5, passed 6-12-89)

**§ 113.13 REFUNDS.**

It, for any reason, a licensee discontinues his business during the license year, he is not entitled to a refund.  
(Ord. 1989-5, passed 6-12-89)

**§ 113.14 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 chapter.

(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 chapter.

(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 chapter to the extent provided by G.S. '§ 105-249 and 105-249.1.

(D) *Must obtain license.* A person exempt from paying a privilege license tax levied by this chapter nevertheless shall obtain a license from the Tax Collector. The license shall state that the licensee is exempt from paying the privilege license tax.

(E) *Peddler's tax.* The following persons and firms are exempt from the peddler's tax:

- (1) Sellers of farm or nursery products they produced;
- (2) Sellers of crafts or goods they or their household produced;
- (3) Nonprofit charitable, educational, religious, scientific or civic organizations;
- (4) Sellers of printed material, wood for fuel, ice, seafood, meat, poultry, livestock, eggs, dairy products, bread, cakes or pies;
- (5) Licensed automobile dealers;
- (6) Those who locate at a farmer's market;
- (7) Those who are part of the State Fair or an agricultural fair licensed by the Commissioner of Agriculture;
- (8) Those who sell goods at an auction conducted by an auctioneer licensed in compliance with G.S. § 85B.
- (9) Those who maintain a fixed permanent location from which they make at least 90% of their sales; and
- (10) Those who comply with G.S. '§ 25A-38 through 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).  
(Ord. 1989-5, passed 6-12-89)

## ***LICENSES***

### **§ 113.20 APPLICATION FOR LICENSE.**

A person shall apply to the Tax Collector for each license required by this chapter no

fewer than 30 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 he or it 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 to which may be mailed notices and statements required by this chapter.

(E) Whether the business is one regulated by a state occupational licensing board subject to G.S. § 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.

(Ord. 1989-5, pad 6-12-89)

#### **§ 113.21 REFUSAL OR REVOCATION OF 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 qualifications.

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

(Ord. 1989-5, passed 6-12-89)

#### **§ 113.22 UNQUALIFIED APPLICANTS; RIGHT TO CONFERENCE.**

After receipt of the completed application, if the Tax Collector believes that a reason exists for refusing a license under § 113.21 of this chapter, he shall refuse to accept payment of the tax and shall not issue the license. At the applicant's request, the Tax Collector shall, pursuant to § 113.41 of this chapter, give him a written statement of the reason for refusing the license. The applicant may, within ten days after the day he receives this statement, request a conference to discuss the refusal. In this request he shall specify why his 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, the Tax Collector shall issue the license pursuant to § 113.26 of this chapter.

(Ord. 1989-5, passed 6-12-89)

**§ 113.23 TAX COLLECTOR TO ISSUE LICENSE; PAYMENT OF TAX A PREREQUISITE.**

After receipt of the completed application, if the Tax Collector believes that no reason exists for refusal of a license under § 113.21 of this chapter, he 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.

(Ord. 1989-5, passed 6-12-89)

**§ 113.24 DISPUTES OVER AMOUNT OF TAX DUE.**

If the applicant disputes the amount the Tax Collector determines to be due, he may either refuse to pay and request a conference with the Tax Collector to discuss the determination or pay the tax amount and request a conference to discuss his right for a refund. If a conference is requested, the Tax Collector shall arrange it within a reasonable time.

(Ord. 1989-5, passed 6-12-89)

**§ 113.25 REVOCATION.**

(A) The Tax Collector shall revoke a license if a reason exists to revoke it as set forth in §113.21 of this chapter. Before the Tax Collector may revoke a license, he shall give the licensee written notice of the grounds for revocation, pursuant to § 113.31 of this chapter. 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 it within a reasonable time.

(B) 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.

(C) 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 pursuant to §113.23 of this chapter.

(Ord. 1989-5, passed 6-12-89)

**§ 113.26 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. The Tax Collector shall keep a copy of each license issued.

(Ord. 1989-5, passed 6-12-89)

**§ 113.27 ASSIGNMENTS.**

A license may be assigned if a business licensed under this chapter and carried on at the fixed place is sold as a unit to any person, and the purchaser is to carry on the same business at the same place. Such a change shall be reported to the Tax Collector pursuant to §113.46 of this chapter. Otherwise, each license issued under this chapter is a personal privilege and is not assignable.

(Ord. 1989-5, passed 6-12-89)

**§ 113.28 CHANGES IN BUSINESS CONDUCTED BY LICENSEE DURING TAX YEAR.**

A licensee or his 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 thereby, the licensee or his 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 §113.21 of this chapter 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 the additional tax.

(B) *Changes not affecting the amount of tax due.* If there are no reasons for revoking the license under §113.21 of this chapter 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.

(C) *Changes requiring refusal of a license.* If there is reason for revoking the license under §113.21 of this chapter, the Tax Collector shall refuse to reissue a license and instead shall begin proceedings to revoke the license pursuant to §113.25 of this chapter.

(Ord. 1989-5, passed 6-12-89)

**§ 113.29 TAX COLLECTOR TO FURNISH DUPLICATES.**

Upon satisfactory proof that a license has been lost or destroyed, the Tax Collector shall furnish a duplicate.

(Ord. 1989-5, passed 6-12-89)

**§ 113.30 RECORD OF CONFERENCES.**

The Tax Collector shall maintain for three years a record of each conference held pursuant to this subchapter. 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 pursuant to G.S. §

121-5.  
(Ord. 1989-5, passed 6-12-89)

**§ 113.31 WHEN APPLICANT OR LICENSEE NEEDS TO BE NOTIFIED.**

Whenever this chapter requires the Tax Collector to give a written statement or notice to an applicant or licensee, he may either:

(A) Personally deliver the statement or notice to the applicant or licensee;

(B) Mail the statement or notice by registered or certified mail, return receipt requested, to the address specified for the purpose in the license application; or

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

(Ord. 1989-5, passed 6-12-89)

***ENFORCEMENT AND COLLECTION; FEES***

**§ 113.40 DUTY TO DETERMINE WHETHER TAX DUE.**

Each person has the duty to determine whether the business he conducts is taxed under this chapter and, if so, whether that tax has been paid for the current tax year.

(Ord. 1989-5, passed 6-12-89)

**§ 113.41 INVESTIGATION BY TAX COLLECTOR.**

If the Tax Collector has reason to believe that a person is conducting a business in the town in violation of this chapter, he shall conduct an investigation to determine the person's tax liability from the information available to him.

(Ord. 1989-5, passed 6-12-89)

**§ 113.42 RECORDS AND BOOKS TO BE KEPT.**

Each person who conducts a business taxed under this chapter shall keep all records and books needed to compute his tax liability. If a person fails to keep books and records as required, the Tax Collector shall make his own determination of that person's tax liability from the information available to him.

(Ord. 1989-5, passed 6-12-89)

**§ 113.43 INSPECTIONS.**

Each person who conducts business in the town shall permit the Tax Collector to

inspect his business premises during normal business hours to determine the nature and amount of business transacted.  
(Ord. 1989-5, passed 6-12-89)

**§ 113.44 LICENSE TO BE POSTED.**

A licensee shall post his license conspicuously in the place of business licensed. If he has no regular place of business, the license must be kept where it may be inspected at all times by the proper town officials.  
(Ord. 1989-5, passed 6-12-89)

**§ 113.45 FEES FOR ITINERANT MERCHANTS AND PEDDLERS.**

(A) The fee for itinerant merchants shall be \$100 per annum.

(B) The fee for peddlers of farm products only shall be \$25; for peddlers on foot, \$10; and for peddlers with vehicles, \$25. All fees shall be paid per annum.  
(Ord. 1989-5, passed 6-12-89)

**§ 113.46 NOTICE OF DEFICIENCY; COLLECTION.**

(A) *Notice of deficiency.* If the Tax Collector determines that a person has not paid the full amount of tax due under this chapter, either for the current license year or for a prior license year, he shall give the person written notice of the deficiency, pursuant to § 113.31 of this chapter. The notice of deficiency shall specify: The total amount of tax due; the section of this chapter 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 deficiency; and the consequences to the person if he fails to respond as specified.

(B) *Request for 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:

(1) The tax due already has been paid;

(2) The Tax Collector miscalculated the amount of tax due;

(3) The Tax Collector based his calculation on incorrect or insufficient information concerning either the nature or amount of business conducted;

(4) The Tax Collector based his determination on an erroneous interpretation of a section of this chapter that establishes a category of business subject to a particular tax.

(C) Deficiency to become final. If the taxpayer fails to request a conference under

division (B) above, the deficiency shall become final and the Tax Collector shall proceed to collect the deficiency.

(D) Conference held. If the taxpayer requests a conference, the Tax Collector shall not proceed to collect the deficiency until he hears the taxpayer's objection and determines that the deficiency should become final. The Tax Collector shall maintain a record of each conference held for three years pursuant to division (B) above. The record shall contain the name of the taxpayer, the date of the conference, and a brief statement of the issues discussed and the results of the discussion. After three years, the Tax Collector shall dispose of the record pursuant to G.S. §121-5.

(E) Collection of a deficiency.

(1) The Tax Collector may use any of the following methods to collect a deficiency:

(a) Criminal prosecution in accordance with §113.99 of this chapter.

(b) Equitable relief in accordance with §113.47.

(c) The remedies of the levy and sale, and attachment and garnishment, in accordance with G.S. §160A-207.

(d) The remedies of levy and sale of real and personal property of the taxpayer within the town in accordance with provisions of G.S. §105-109.

(2) Any person who commences or continues to conduct business taxed under this chapter without payment of the tax is liable for the additional tax of 5% each 30 days, imposed by G.S. §105-109.

(Ord. 1989-5, passed 6-12-89)

### **§ 113.47 EQUITABLE REMEDIES.**

In addition to criminal remedies set forth in §113.99, and pursuant to G.S. §160A-175(d), the town may seek an injunction against any person who conducts a business in violation of this chapter.

(Ord. 1989-5, passed 6-12-89)

### **§ 113.99 PENALTY.**

Conducting business within this town without having paid the privilege license tax imposed by this chapter or without posting a license pursuant to §113.44 of this chapter is a misdemeanor, punishable as provided in G.S. §105-109. Each day that a person conducts business in violation of this chapter is a separate offense. Payment of a fine

imposed in criminal proceedings pursuant to this section does not relieve a person of his liability for taxes imposed under this chapter.  
(Ord. 1989-5, passed 6-12-89)