

State of North Carolina

PRIVILEGE LICENSE TAX

**Reflecting Changes Made in the 2016 Regular Session
of the North Carolina General Assembly**

Issued by:

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June 2017

PREFACE

This publication supplements the information in the Administrative Rules but does not supersede the Administrative Rules. In addition, this bulletin does not cover all provisions of the law.

Taxpayers are cautioned that this publication is intended merely as a guide and that consideration must be given to all the facts and circumstances in applying this bulletin to particular situations. Taxpayers using this publication should be aware that additional changes may result from legislative action, court decisions, and rules adopted or amended under the Administrative Procedure Act, Chapter 150B of the General Statutes. To the extent there is any change to a statute, administrative rule, or new case law subsequent to the date of this publication, the provisions in this bulletin may be superseded or voided. Unless otherwise noted, this bulletin is intended to reflect changes made in the **2016 Regular Session** of the North Carolina General Assembly.

Revised June 2017

A. General Information

1. Scope and Nature (G.S. 105-33)

State privilege license taxes are imposed for the privilege of carrying on the business, exercising the privilege or doing the act named in Article 2 of the Revenue Laws of North Carolina. These taxes are in addition to any regulatory or qualification requirements to engage in the practice of a profession, business or trade.

2. License Required (G.S. 105-103, G.S. 105-109)

Before a person may engage in a business, trade or profession for which a license is required under this Article, the person must be licensed by the Department. A license must be displayed conspicuously at the location of the licensed business, trade, or profession. A required license should be applied for (Form B-202A) before beginning business. Licenses issued under G.S. 105-41 are personal privilege licenses and must be issued in the name of the individual.

3. Tax Year (G.S. 105-33)

The privilege license tax is an annual tax and is due by July 1 of each year. The license tax is not prorated; instead, the full amount of the license tax is due when a person begins to engage in an activity for which a license is required at any time during the fiscal year, July 1 – June 30. Licenses are renewable annually (Form B-202A) by July 1 and no grace period is allowed before penalty accrues.

4. Engaged in More than One Business (G.S. 105-105)

Where any person, firm, or corporation is engaged in more than one business, trade, employment, or profession that is subject to State license taxes under the provisions of this Article, such persons, firms, or corporations must pay the license tax prescribed in this Article for each separate business, trade, employment, or profession.

5. Penalty (G.S. 105-103, G.S. 105-109, G.S. 105-236)

It is unlawful to engage in business without obtaining a required privilege license. The penalty for failure to obtain a license is the greater of five dollars (\$5) or five percent (5%) of the amount prescribed for the license per month or fraction thereof from the time the amount is due until the amount is paid, up to a maximum not to exceed twenty-five percent (25). The penalty for failure to pay any tax when due is ten percent (10%) of the tax due.

The Secretary may collect a tax due under this Article in any manner allowed under Article 9 of Chapter 105. The penalty and provisions of this section for the collection of delinquent license taxes apply to taxes levied by counties, cities, and towns of the State under the authority of this Article, or any other provision of law, in the same manner and to the same extent as they apply to taxes levied by the State.

6. Effect of Change in Name of Firm (G.S. 105-106)

A firm, partnership, or corporation, will be regarded as continuing when the name of the firm, partnership, or corporation is changed, a new partner is taken in, or one or more

partners withdraw from the firm, if any one or more of the partners remain, or if there is change in ownership of less than a majority of the stock.

7. Liability Upon Transfer (G.S. 105-33(h))

A grantee, transferee, or purchaser of any business or property subject to the privilege taxes imposed in this Article must make diligent inquiry as to whether the State tax has been paid. If the business or property has been granted, sold, transferred, or conveyed to an innocent purchaser for value and without notice that the vendor owed or is liable for any of the State taxes imposed under this Article, the property, while in the possession of the innocent purchaser, is not subject to any lien for the taxes.

8. Property used in a Licensed Business not Exempt from Taxation (G.S. 105-108)

A State license, issued under any of the provisions of this Article shall not be construed to exempt from other forms of taxation the property employed in such licensed business, trade, employment, or profession.

B. Live Entertainment and Ticket Resales (G.S. 105-37.1). Privilege taxes imposed on gross admission receipts for live entertainment or ticket resales are repealed effective on or after January 1, 2014.

C. Motion Picture Shows (G.S. 105-38.1). Privilege taxes imposed on gross admission receipts for motion picture shows are repealed effective on or after January 1, 2014.

D. Amusements – Certain Exhibitions, Performances, and Entertainment Exempt from Tax (G.S. 105-40). Exemptions are repealed for amusements held on or after January 1, 2014.

E. Attorneys-at-Law and Other Professionals (G.S. 105-41)

Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars (\$50.00).

1. Professions and/or Businesses Requiring a Privilege License:

- 1) An attorney-at-law.
- 2) A physician, a veterinarian, a surgeon, an osteopath, a chiropractor, a chiropodist, a dentist, an ophthalmologist, an optician, an optometrist, or another person who practices a professional art of healing.

G.S. 90-236 states that “fitting glasses on the face” constitutes practicing as a dispensing optician. Therefore, dispensing opticians fitting frames to customers’ faces, and making adjustments thereto, are subject to optician’s privilege license tax. (17 NCAC 04B.0609)

A physical therapist who independently applies physical therapy for a reward is practicing the art of healing and is therefore subject to privilege license. (17 NCAC 04B.0610)

A psychologist who engages in the art of healing for a fee or reward is subject to privilege license. The psychologist license is not levied on the practice of psychology, as such, but on persons engaged in the art of healing which does include psychologists if they engage in such activity. (17 NCAC 04B.0614)

In addition to the regulatory license issued by the State Board of Medical Examiners, a practicing physician shall apply for and obtain from the Secretary of Revenue a statewide physician privilege license. Varying situations involving a physician and the applicability of the physician privilege license tax for these situations are as follows:

- A physician in private practice, either exclusively or partially, is subject to the physician privilege license tax;
 - A physician practicing his profession and compensated in part from a fund or “pool” derived in part or in full from fees charged for his services is subject to the physician privilege license tax notwithstanding the fact that some of his compensation may also come from appropriations, grants, business income (income from a “business” in the non-professional sense; for example, a physician employed by an industrial plant to attend its industrial employees at its plant), or other “non-fee” sources.
- 3) A professional engineer, as defined in G.S. 89C-3.
 - 4) A registered land surveyor, as defined in G.S. 89C-3.
 - 5) An architect, including any architect employed by another architect, who renders architectural services.
 - 6) A landscape architect, including any architect employed by another architect, who renders architectural services.
 - 7) A photographer, a canvasser for any photographer, or an agent of a photographer in transmitting photographs to be copied, enlarged, or colored. A licensed photographer having a located place of business in this State is liable for the license tax on each agent or solicitor employed by the photographer for soliciting business.
 - 8) A real estate broker or a real estate salesman, as defined in G.S. 93A-2. A real estate broker or a real estate salesman who is also a real estate appraiser is required to obtain only one license under this section to cover both activities.
 - 9) A real estate appraiser, as defined in G.S. 93E-1-4. A real estate appraiser who is also a real estate broker or a real estate salesman is required to obtain only one license under

this section to cover both activities.

- 10) A person who solicits or negotiates loans on real estate as agent for another for a commission, brokerage, or other compensation.
- 11) A mortician or embalmer licensed under G.S. 90-210.25.
- 12) A home inspector, as well as an associate home inspector, licensed under Article 9F of Chapter 143 of the General Statutes, the Home Inspector Licensure Act.
- 13) Public practice of accounting:

Every person engaged in the public practice of accounting as a principal, or as a manager of the business of public accountant, shall pay for such license fifty dollars (\$50.00), and in addition, shall pay a license tax of twelve dollars and fifty cents (\$12.50) for each person employed who is engaged in the capacity of supervising or handling the work of auditing, devising or installing systems of accounts.

A bookkeeper who acts as an independent contractor preparing tax returns for small business firms, as well as individuals, and charges for his services, is subject to accountant's privilege license, as such work requires training and skill in accounting. Also, an independent contractor who prepares income tax returns, other than the simplified individual returns, and charges for such work, is subject to accountant's privilege license. (17 NCAC 04B.0603)

G.S. 105-41 is purely a revenue measure and does not purport to be a regulatory measure. Certified public accountants have written into their statute a provision limiting the issuance of CPA privilege licenses to applicants who are duly licensed by their regulatory body, but this is not true with respect to other professions covered by G.S. 105-41, nor to accountants who are not certified public accountants as defined in said regulatory laws. (17 NCAC 04B.0604)

2. Persons Exempt from the Tax (G.S. 105-41(b))

The following persons are exempt from the tax:

- a. A person who is at least seventy-five (75) years old.
- b. A person practicing the professional art of healing for a fee or reward, if the person is an adherent of an established church or religious organization and confines the healing practice to prayer or spiritual means.
- c. A blind person engaging in a trade or profession as a sole proprietor. A "blind person" means any person who is totally blind or whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or where the widest diameter of visual field subtends an angle no greater than 20 degrees. This exemption shall not extend to any sole proprietor who permits more than one person other than the proprietor to

work regularly in connection with the trade or profession for remuneration or recompense of any kind, unless the other person in excess of one so remunerated is a blind person.

- d. A physician employed exclusively by the federal, state or local governments and not holding themselves out to the public and do not share in the fees paid are not required to pay the privilege license under G.S. 105-41 which would otherwise be imposed upon them. (17 NCAC 04B.0612)
- e. A physician practicing his profession but wholly compensated from appropriations, grants, business income (income from a “business” in the non-professional sense; for example, a physician employed by an industrial plant to attend its industrial employees at it plant), or from sources other than funds generated by fees charged for his services is not subject to the physician privilege license tax. (17 NCAC 04B.0611)
- f. A physician licensed by the State Board of Medical Examiners but not performing duties appropriate to his profession (for example, is the head of a State agency and has no medical practice) is not “practicing” and is not subject to the physician privilege license tax. (17 NCAC 04B.0611)
- g. A physical therapist who works only under the orders and direction of registered physicians and does not attempt to diagnose and independently apply physical therapy is not subject to privilege license under G.S. 105-41; however, persons who independently apply physical therapy for a reward are practicing the art of healing and are therefore subject to privilege license. (17 NCAC 04B.0610)
- h. A masseur or masseuse are not required to obtain a privilege license as persons "practicing any professional art of healing" under G.S. 105-41. (17 NCAC 04B.0608)
- i. A person employed by an architect as a draftsman only, and fees paid for his services are not for architectural services rendered is not subject to an architect's license. An architect employed by another architect, who renders architectural services, is subject to architect's license under G.S. 105-41. (17 NCAC 04B.0605)
- j. A person selling grave plots only, even though a deed is given, is exempt from real estate broker’s license. (17 NCAC 04B.0606)
- k. A land surveyor employed by a civil engineer who does not both survey the area and draw the description. (17 NCAC 04B.0607)

3. Licenses

Licenses issued under this section are issued as personal privilege licenses and shall not be issued in the name of a firm or corporation. If any person engages in more than one of the activities for which a privilege tax is levied by this section, the person is liable for a privilege tax with respect to each activity engaged in.

Counties and cities may not levy any license tax on the business or professions taxed under this section.

Obtaining a license required by this Article does not of itself authorize the practice of a profession, business, or trade for which a State qualification license is required.

F. Installment Paper Dealers (G.S. 105-83)

1. Basis for Taxation

Every person engaged in the business of dealing in, buying, or discounting installment paper, notes, bonds, contracts, or evidences of debt, for which at the time of or in connection with the execution of said instruments, a lien is reserved or taken upon personal property located in this State to secure the payment of such obligations, is subject to the installment paper dealers tax. The primary factors in determining liability are: (a) three party transactions, (b) obligations concerning personal property and (c) liens reserved upon personal property in this State to secure payment of such obligations.

Example: A motor vehicle dealer sells an automobile (personal property) and accepts a retail installment contract from the customer. A lien is reserved on the title of the vehicle. The dealer sells or assigns the retail installment contract to a third party. The purchaser of the retail installment contract from the dealer is liable for the installment paper dealers' tax.

2. Additional Tax and Reports (17 NCAC 04B.2903, 17 NCAC 04B.2904)

Form B-203, Installment Paper Dealer Tax Return, is used to remit the tax at the rate of .277 percent of the total face value of paper subject to the tax. Face value is the sum of the principal shown on the face of the paper plus accrued interest, excluding finance charges. The tax return, with remittance, is due no later than the twentieth day of January, April, July and October of each year.

3. Nonresident Engaged in Business (17 NCAC 04B.2905)

This tax is not imposed on the business of dealing in, buying and/or discounting installment paper which is engaged in exclusively in a foreign state. When any of the activity incidents to such business occurs in North Carolina, the tax applies. Such activities include the promotion and solicitation of such business by employees or agents within this State, whether or not the transfer of such paper is consummated in this State.

4. Liability for Direct Loans (17 NCAC 04B.2902)

A person who is engaged in the business of making direct loans (two party transactions) and also purchases installment paper (three party transactions) is subject to both the tax on installment paper dealers (G.S. 105-83) and the tax on loan agencies (G.S. 105-88).

G. Loan Agencies (G.S. 105-88)

1. Privilege Tax

An annual privilege tax of two hundred and fifty dollars (\$250.00) is levied on every person, firm, or corporation engaged in any of the following businesses for each location at which the business is conducted:

- The business of making loans or lending money, accepting liens on, or contracts of assignments of, salaries or wages, or any part thereof, or other security or evidence of debt for repayment of such loans in installment payment or otherwise.
- The business of check cashing regulated under Article 22 of Chapter 53 of the General Statutes.
- The business of pawnbroker regulated under Part 1 of Article 45 of Chapter 66 of the General Statutes.

2. Real Estate Loans – Loaning Own Funds

A person who, as agent, engages in the business of negotiating real estate loans using funds belonging to his loan correspondents is subject to real estate license under G.S. 105-41. A person making real estate loans in his own name with his own funds and selling those loans to insurance companies and other loan investment companies is subject to loan agency license under G.S. 105-88 unless meeting the exemption under subsection (b) of that section. A person engaging in both activities is subject to both licenses. (17 NCAC 04B.3301)

3. Real Estate Loans – Personal Property Collateral

A person who negotiates real estate loans for others and also includes as part of the collateral mortgages on automobiles or other personal property is subject to loan agency license under G.S. 105-88 and real estate license under G.S. 105-41. (17 NCAC 04B.3302)

4. Loan Statement Required

At the time of making any such loan, the person, or officer of the firm or corporation making the loan, must give to the borrower in writing in convenient form a statement showing the amount received by the borrower, the amount to be paid back by the borrower, the time in which the amount is to be paid, and the rate of interest and discount agreed upon. (G.S. 105-88(c))

5. Exempt Entities

This section does not apply to banks, industrial banks, trust companies, savings and loan associations, cooperative credit unions, the business of negotiating loans on real estate as described in G.S. 105-41, or insurance premium finance companies licensed under Article 35 of Chapter 58 of the General Statutes. (G.S. 105-88(b))

6. Noncompliance with G.S. 105-88

A loan made by a person who does not comply with this section is not collectible at law under G.S. 105-269.13.

H. Banks (G.S. 105-102.3) Effective July 1, 2016, N.C.G.S. 105-102.3, which imposed an annual privilege tax upon every bank or banking association, including each national banking association, that is operating in this State as a commercial bank, an industrial bank, a savings bank created other than under Chapter 54B or 54C of the General Statutes or the Home Owners' Loan Act of 1933 (12 U.S.C. §§ 1461-68), a trust company, or any combination of such facilities or services, and whether such bank or banking association, hereinafter to be referred to as a bank or banks, is organized, under the laws of the United States or the laws of North Carolina, in the corporate form or in some other form of business organization, is repealed pursuant to Session Law 2015-241. These banks are no longer required to file an annual report each year and remit the privilege tax to the Secretary.

I. Publishers of Newsprint Publications (G.S. 105-102.6) Effective October 22, 2015, N.C.G.S. 105-102.6, which provided incentives for the recycling of newsprint and magazines and for the use of newsprint containing recycled content, is repealed pursuant to Session Law 2015-286. Publishers are no longer required to apply to the Secretary for a newsprint publisher tax reporting number nor are they required to file an annual report each year of the newsprint tonnage consumed or recycled. The last filing period will be for the calendar year 2015 and Form, B-302, Publishers of Newsprint Publications Privilege Tax Return, will be due on or before January 31, 2016.