

Chapter 8. TRADE AND BUSINESSES

ARTICLE I. DEFINITIONS AND CONSTRUCTION

SECTION 8-1. Definitions.

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined below shall have the meaning indicated when used in this chapter.

- (a) "Business" includes any trade, occupation, profession or other activity engaged in by any person or caused to be engaged in by him/her with the object of gain, profit, benefit, or advantage, either direct or indirect, except that the term business does not include occasional and isolated sales or transactions by a person who does not hold him/herself out as engaged in business.
- (b) A person conducts a business "within the Town" when he/she maintains a business location within the Town of Vanceboro or when, either personally or through agents, he/she:
 - (1) solicits business within the Town; or
 - (2) picks up or delivers goods or services within the Town.

SECTION 8-2. Construction of this Chapter.

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

ARTICLE II. LEVY OF TAX

SECTION 8-3. License and Payment of Tax Required.

An annual privilege license tax is hereby levied on each business conducted within the Town limits in the amounts established by state statutes and this ordinance. Any person engaged in business shall be responsible for making certain that the applicable license tax is paid. A person conducts a business when he/she engages in one or more of the acts of business taxed under this ordinance. He/she conducts business within the Town if he/she

maintains a business location within the Town or if, either personally or through agents, solicits business within the Town limits, or picks up or delivers goods or services within the Town limits. It is the duty of each person to determine whether the business conducted is taxed under this ordinance, and if so, whether that tax has been paid for the current tax year.

Subject to Section 8-4, no person may conduct any business within the Town without having paid the tax required by this chapter or without a valid privilege license issued pursuant to this chapter.

SECTION 8-4. Exemptions.

- (a) If an individual conducts a business as a partner in a partnership or as an officer or employee of a corporation or as an employee or member of any other business entity, that individual is not required to obtain a privilege license or pay a privilege license tax. However, the partnership, corporation, or other business entity must obtain the license and pay the tax unless exempted by this section.
- (b) Non-profit organizations for religious, educational, civic, patriotic, charitable, or fraternal purposes shall be exempt from obtaining a privilege license or paying any privilege license tax levied by this chapter.
- (c) Blind persons and persons who serve in the United States Armed Forces or the Merchant Marine are exempt from obtaining a privilege license or paying any privilege license tax levied by this chapter to the extent provided by NCGS 105-249 and 105-249.1.
- (d) Those businesses exempted under North Carolina law from paying a privilege license tax are exempt from obtaining a privilege license or paying a privilege license tax in the Town of Vanceboro.

SECTIONS. 8-5--8-7. Reserved.

ARTICLE III. LICENSES

SECTION. 8-8. Period of License.

- (a) Unless otherwise provided in this chapter, a license issued pursuant to this chapter is valid for that twelve-month period beginning July 1st and ending June 30th. The tax is due July 1st of each year.
- (b) If for any reason a licensee discontinues his/her business during a license year, he/she is not entitled to a refund.

- (c) A license issued under this chapter shall be posted in a conspicuous place at the regular place of business. If there is no regular place of business, the license shall be kept where it may be inspected by Town officials. If a machine or other item of personal property is licensed, the license shall be affixed to the machine or item.
- (f) If the Town Clerk/Finance Officer has reason to believe that a person is conducting business in the Town in violation of this ordinance, the Town Clerk/Finance Officer may conduct an investigation to determine the person's tax liability.

SECTION 8-9. Application.

- (a) Every person desiring to obtain a license, or renew a license, for the privilege of doing business within the Town shall make an application in writing on the form provided by the Town for this purpose.
- (b) The application, which shall be submitted on forms provided by the Town Clerk/Finance Officer, shall contain:
 - (1) The name of the applicant and whether he/she or it is an individual, partnership, corporation, or some other entity;
 - (2) The nature of the business, including the duration the business intends to operate;
 - (3) Where the business is conducted;
 - (4) An address to which notices and statements may be mailed.
 - (5) Whether the business is one regulated by a state occupational licensing board subject to NCGS 93B, and if so, the serial numbers of the state licenses held by all those who are part of the applicant's business;
 - (6) Any other information the Town Clerk/Finance Officer determines to be necessary to issue the privilege license in accordance with this chapter.
- (c) Any person who willfully makes a false statement on a license application shall be guilty of a misdemeanor.
- (d) Businesses in the Town shall comply with the Town's request for information regarding the suppliers and vendors who pick up or deliver goods or services, or solicit business within the Town limits.

SECTION 8-10. Separate Businesses; Multiple Businesses.

- (a) A separate license is required and a separate tax must be paid for each separate place of business operated by the same person. This applies even if the person is engaged in the same business at two or more locations within the Town.
- (b) If two (2) or more separate taxable businesses are operated at the same location by the same owner, the Town Clerk/Finance Officer may issue one (1) privilege license upon the payment of the total amount of taxes due for all the businesses.

SECTION 8-11. Reasons for Refusal or Revocation of a License.

- (a) The Town Clerk/Finance Officer shall refuse to issue a license or shall revoke a license for any of the following reasons:
 - (1) The applicant misrepresents a fact relevant to the amount of tax due or his/her qualifications for a license.
 - (2) The applicant refuses to provide information necessary to compute the amount of tax due.
- (b) Before revoking a license, the Town Clerk/Finance Officer shall give the licensee written notice of the grounds for revocation. The licensee may within ten (10) days after the day on which the notice is served request a conference with the Town Clerk/Finance Officer in writing. The request shall specify the reasons why the license should not be revoked. The Town Clerk/Finance Officer 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 Town Clerk/Finance Officer shall revoke the license. If the licensee requests a conference, the license may not be revoked until after the conference.

SECTION 8-12. Unqualified Applicants; Right to a Conference.

After receipt of the completed application, if the Town Clerk/Finance Officer believes that a reason exists for refusing a license under Section 8-11, he/she shall refuse to accept payment of the tax and shall not issue the license. At the applicant's request, the Town Clerk/Finance Officer shall give him/her a written statement of the reasons for refusing the license per Section 8-19. The applicant may, within ten (10) days after the day the statement is received, request a conference to discuss the refusal. In his/her request the applicant shall specify why his/her application for a license should not be refused. The Town Clerk/Finance Officer shall arrange the conference within a reasonable time, not to exceed thirty (30) days.

The applicant may reapply for a license. 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 Town Clerk/Finance Officer shall issue the license pursuant to Section 8-13.

SECTION 8-13. Town Clerk/Finance Officer to Issue License; Payment of Tax a Prerequisite.

After receipt of the completed application, if the Town Clerk/Finance Officer believes that no reason exists for refusal of a license under Section 8-11, he/she shall determine the amount of tax due and notify the applicant of the amount. The Town Clerk/Finance Officer shall not issue a license until the tax is paid.

SECTION 8-14. Amount of Tax Disputed.

If disputes arise over the amount the Town Clerk/Finance Officer determines to be due, the applicant may either refuse to pay and request a conference 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 Town Clerk/Finance Officer shall arrange a conference within a reasonable time, not to exceed thirty (30) days. The Town council may revise this ordinance for clarification purposes and to address any omissions in order to provide fair and equitable treatment of all applicants. If the revision results in a change in the interpretation of the ordinance that adversely affects current license holders, the license holders so affected may make a written request for a refund.

SECTION 8-15. 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 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 Town Clerk/Finance Officer shall keep a copy of each license issued.

SECTION 8-16. Assignments.

- (a) A license may be assigned if:
 - (1) A business licensed under this chapter 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.
- (b) Unless defined in section (a), each license issued under this chapter is a personal privilege and is not assignable.

SECTION 8-17. Changes in the Business Conducted by Licensee During Tax Year.

- (a) A licensee or his/her assignee shall report a change in the information contained in the license application to the Town Clerk/Finance Officer within ten (10) days after the change occurs. If information shown on the license itself is affected

thereby, the licensee or his/her assignee shall surrender the license to the Town Clerk/Finance Officer when reporting the change.

- (b) If there are no reasons for revoking the license under Section 8-11 and the change results in the imposition of a separate or additional tax, the Town Clerk/Finance Officer shall reissue a license reflecting the change upon payment of the separate or additional tax.
- (c) If there are no reasons for revoking the license under Section 8-11 and the change does not result in an imposition of a separate or additional tax, the Town Clerk/Finance Officer shall reissue a license reflecting the change upon payment of a fee of \$5.00.
- (d) If there is reason for revoking the license under Section 8-11., the Town Clerk/Finance Officer shall refuse to reissue a license and shall instead begin proceedings to revoke the license.
- (e) If a business with a valid privilege license is relocated within the Town, the license which has been issued shall be valid for the remainder of the license year at the new location. The person relocating the business shall inform the Town Clerk/Finance Officer of the change of address.
- (f) In the event a license is lost or destroyed, the licensee must provide satisfactory proof to the Town Clerk/Finance Officer who will furnish a duplicate for a fee of \$5.00.

SECTION 8-18. Record of Conferences.

The Town Clerk/Finance Officer shall maintain for three (3) years a record of each conference held pursuant to 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. A copy of this record shall be served upon the applicant or licensee per Section 8-19. After three (3) years the Town Clerk/Finance Officer shall dispose of the record pursuant to NCGS 121-5.

SECTION 8-19. Providing Notice to an Applicant or Licensee.

Whenever this chapter requires the Town Clerk/Finance Officer to give a written statement or notice to an applicant or a licensee, he/she may do so in any one of three ways:

- (1) By personally delivering the statement or notice to the applicant or licensee.
- (2) By mailing the statement or notice by regular first class mail, or registered or certified mail, return receipt requested, to the address specified for that purpose in the license application.

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

SECTION 8-20. Reserved.

ARTICLE IV. LICENSE TAXES

SECTION 8-21. Schedule of Taxes.

The Schedule of Taxes shall be maintained by the Town Clerk/Finance Officer. Changes to the Schedule of Taxes shall be made by Town Board during regularly scheduled session.

SECTION 8-22. Levying A Tax On Gross Receipts Derived From Retail Short-Term Lease Or Rental Of Vehicles.

Section 8-22.1. Definitions. In addition to the common meanings of words, the following definitions shall be applicable herein:

- (a) "Customer" shall mean any person that leases or rents heavy equipment on a short-term basis.
- (b) "Town Clerk/Finance Officer" shall refer to that individual appointed pursuant to (G.S. § 159-24) (the provisions of the municipal charter) to serve as Town Clerk/Finance Officer (or other reasonably descriptive title as provided in G.S. § 159-24) for the Town of Vanceboro and any other person authorized to carry out the duties and functions of such individual.
- (c) "General Statutes" shall refer to the North Carolina General Statutes and any reference to a particular section thereof shall include the same as may be from time to time amended, modified, supplemented, revised or superseded.
- (d) "Gross receipts" shall mean the amount that is or would be 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. Taxes collected hereunder are not subject to the tax herein imposed and are not included in gross receipts.
- (e) "Heavy equipment" shall mean earthmoving, construction, or industrial equipment that is mobile, weighs at least 1,500 pounds, and is either:

- (i) A self-propelled vehicle that is not designed to be driven on a highway; or
- (ii) Industrial lift equipment, industrial material handling equipment, industrial electrical generation equipment, or a similar piece of industrial equipment.

The term includes an attachment for heavy equipment, regardless of the weight of the attachment. [G.S. § 160A-215.2(a)(1)]

(f) "Lease or rental" shall mean a transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. The term does not include any of the following:

- (i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.
- (ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100.00) or one percent (1%) of the total required payments.
- (iii) The providing of tangible property along with an operator for a fixed or indeterminate period of time if the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or set up the tangible personal property. [G.S. § 105-164.3(17)]

(g) "Long-term lease or rental" shall mean a lease or rental made under a written agreement to lease or rent property to the same person for a period of at least three hundred sixty-five (365) continuous days. [G.S. § 105-187.1(3)]

(h) "Person" shall mean any individual, trustee, executor, other fiduciary, corporation, unincorporated association, partnership, sole proprietorship, company, firm, or other legal entity.

(i) "Short-term lease or rental" shall mean any lease or rental that is not a long-term lease or rental. [G.S. § 160A-215.2(a)(2) and G.S. § 105-187.1(7)]

(j) "Taxpayer" means any person liable for the taxes imposed by this Resolution.

Section 8-22.2. Levy of Tax. A tax is hereby imposed and levied in an amount equal to eight tenths percent (0.8%)² of the gross receipts derived from the short-term lease or rental of heavy equipment at retail. This tax on gross receipts is in addition to the privilege taxes authorized by G.S. § 160A-211. [G.S. § 160A-215.2(b)]

Section 8-22.3. Collection of the Tax. Every person whose principal business is the short-term lease or rental of heavy equipment at retail shall collect at the time of the

lease or rental, or at the time of the payment of the consideration therefore, the tax herein levied. A person is not considered to be in the short-term lease or rental business if the majority of the person's lease and rental gross receipts are derived from leases and rentals to a person who is a related person as defined under G.S. § 105-163.010. The tax so collected shall be placed in a segregated account, and thereafter remitted to the Town Clerk/Finance Officer in accordance with the provisions of this Resolution. The taxpayer shall include a provision in each retail short-term lease or rental agreement, or other documentation evidencing the transaction, stating that the percentage amount enacted by this Resolution of the total lease or rental price, excluding sales tax, is being charged as a tax on gross receipts. The amount of the tax shall be stated separately from the lease or rental and shown separately on the taxpayer's records. The tax shall be paid by the customer to the taxpayer as trustee for and on account of the Town of Vanceboro. The taxpayer shall be liable for the collection thereof and for its payment to the Town Clerk/Finance Officer and the taxpayer's failure to charge or to collect said tax from the customer shall not affect such liability. [G.S. § 160A-215.2(b)]

Section 8-22.4. Report and Payment of Tax. Taxes levied under this Resolution are due and payable when a return is required to be filed. Every taxpayer shall, within the time specified, submit a return to the Town Clerk/Finance Officer on the form prescribed by the Town Clerk/Finance Officer. A return must be signed by the taxpayer or the taxpayer's agent. Returns of taxpayers are due to the Town Clerk/Finance Officer for each calendar quarter on or before the last day of the month following the end of the quarter in which the tax accrues. As provided in G.S. § 160A-208.1, a return shall not be considered a public record and information contained in a return may be disclosed only in accordance therewith. [G.S. § 160A-215.2(c)]

Section 8-22.5. Taxpayer to Keep Records. The taxpayer shall keep and preserve suitable records of the gross receipts received by such taxpayer in the conduct of business and such other books or accounts as may be necessary to determine the amount of the tax for which such taxpayer is liable under the provisions of this Resolution. It shall be the duty of the taxpayer to keep and preserve for a period of three years all such records of gross receipts and other books and accounts described. All records, books and accounts herein described shall be open for examination at all reasonable hours during the day by the Town Clerk/Finance Officer or the Town Clerk/Finance Officer's duly authorized agent.

Section 8-22.6. Town Clerk/Finance Officer to Provide Forms. The Town Clerk/Finance Officer shall design, prepare, print and make available to all taxpayers operating within the municipal boundaries of the Town of Vanceboro forms and instructions for filing returns to insure a full collection of and an accounting for taxes due. The failure of any taxpayer to obtain or receive forms shall not relieve such taxpayer from the payment of the tax at the time and in the manner provided.

Section 8-22.7. Situs. Gross receipts from the short-term lease or rental of heavy equipment are subject to the tax imposed by this Resolution if the place of business from

SECTION 8-28. Duty to Post License

A licensee shall post his/her license or licenses conspicuously in the place of business licensed. If he/she has no regular place of business, the license must be kept where it may be inspected at all times by the proper Town officials. If a machine is licensed, the license shall be affixed to the machine.

SECTION 8-29. Notice of Deficiency

- (a) If the Town Clerk/Finance Officer 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, he/she shall give the person written notice of the deficiency, pursuant to Section 8-19. 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/she fails to respond as specified. 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. If the person fails to request a conference, the deficiency becomes final.

SECTION 8-30. Enforcement

The Town Clerk/Finance Officer may use any of the following methods to collect a deficiency:

- (a) The remedies of levy, sale, attachment and garnishment in accordance with N.C.G.S. 160A-207; or
- (b) The remedy of levy and sale of real and personal property of the taxpayer in accordance with N.C.G.S. 105-109(d).
- (c) Costs related to the use of collection remedies shall be added to the amount of the tax due from the tax payer. This will include, but is not limited to, any actual attorney fees and court fees incurred in adjudicating these remedies, as well as a \$50.00 processing fee for each levy, sale, attachment and garnishment.
- (d) Criminal remedies. The following shall be deemed to be expressly incorporated by reference within each section of this chapter. A violation of this section or any part thereof, shall constitute a misdemeanor and shall subject the offender to a fine of not more than \$500.00 or imprisonment of not more than 30 days. 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 chapter.
- (e) Equitable remedies. In addition to the criminal remedies set forth in subsection (c) of this section and in compliance with N.C.G.S. 160A-175(d), the Town may

seek an injunction against a person who conducts business in violation of this chapter.

Each day that violation of Section 8-3 or 8-28 exists after the person has been notified of the violation shall constitute a separate and distinct offense.

This ordinance shall become effective March 15, 2010.

Adopted this 1st day of March, 2010.



E. RENEE IPOCK
TOWN CLERK



CHAD E. BRAXTON
MAYOR

