

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1991

CHAPTER 914  
SENATE BILL 1015

AN ACT TO RELIEVE A SELLER WHO SELLS PROPERTY UNDER A CERTIFICATE OF RESALE OF THE BURDEN OF PROVING THAT THE SALE WAS FOR RESALE AND TO PROVIDE A PENALTY FOR A PURCHASER WHO MISUSES A CERTIFICATE OF RESALE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.28 reads as rewritten:

"§ 105-164.28. ~~Resale certificate.~~ Certificate of resale.

A seller who accepts a certificate of resale from a purchaser of tangible personal property has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:

- (1) The seller acted in good faith in accepting the certificate of resale.
- (2) The certificate is in the form required by the Secretary.
- (3) The certificate is signed by the purchaser, states the purchaser's name, address, and registration number, and describes the type of tangible personal property generally sold by the purchaser in the regular course of business.
- (4) The purchaser is licensed under this Article or under the law of another taxing jurisdiction.
- (5) The purchaser is engaged in the business of selling tangible personal property of the type sold.

A purchaser who does not resell property purchased under a certificate of resale is liable for any tax subsequently determined to be due on the sale. A seller of property sold under a certificate of resale is jointly liable with the purchaser of the property for any tax subsequently determined to be due on the sale only if the Secretary proves that the sale was a retail sale.

~~The burden of proof that a sale of tangible personal property is not a sale at retail is upon the wholesale merchant or retailer who makes the sale unless he takes from the purchaser a certificate to the effect that the property is for resale. With respect to sales for resale the certificate relieves the wholesale merchant from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the license provided for in this Article. The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the registration number issued to the purchaser and shall indicate the general character of the tangible personal property generally sold by the purchaser in the regular course of business. The certificate of resale shall be in such form as the Secretary shall prescribe.~~

~~It shall be the duty of every wholesale merchant selling tangible personal property to a retailer for resale to make reasonable and prudent inquiry concerning the type and character of the tangible personal property as it relates to the principal business of the retailer."~~

Sec. 2. G.S. 105-236 is amended by adding a new subdivision to read:

"(5a) Misuse of Certificate of Resale. – For misuse of a certificate of resale by a purchaser, the Secretary shall assess an additional tax, as a penalty, of two hundred fifty dollars (\$250.00)."

Sec. 3. This act is effective upon ratification and applies to sales made on or after that date.

In the General Assembly read three times and ratified this the 10th day of July, 1992.

James C. Gardner  
President of the Senate

Daniel Blue, Jr.  
Speaker of the House of Representatives