



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
CARVEL STATE BUILDING
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

DIVISION OF REVENUE
TECHNICAL INFORMATION MEMORANDUM 87-3

March 2, 1987

I. INTRODUCTION AND SUMMARY.

House Substitute No. 1 for House Bill No. 427, as amended by House Amendment No. 3 (65 Del. Laws ch. 391) amends Title 6 of the Delaware Code by adding a new Chapter 47 relating to transient retailers. In general, the law requires descriptive registration and bonding of transient retailers as well as their appointment of a registered agent. This Memorandum is intended to clarify certain aspects of the new statutes and to constitute the Regulations of the Department of Finance with regard to their interpretation and implementation.

The following summarizes the new provisions of 6 Del.C. ch. 47:

A. Licensing.

1. "Transient retailers," as defined in 6 Del. C. §4702(2), must secure a retailer's revenue license and comply with the provisions of Title 6, Delaware Code, Chapter 47, unless specifically exempted by the provisions of 6 Del. C. §4703, as discussed in (B) below.

2. "Transient retailer" is defined in 6 Del. C. §4702(2) as: "Any person, firm, or corporation, as principal or agent, or both which engages in, does or transacts any temporary or transient business in Delaware offering for sale or selling goods, wares, merchandise, food or beverages, and including those who, for the purpose of carrying on such business, hire, lease, use, or occupy any permanent or mobile building, structure, motor vehicle including trucks, or real estate for the exhibition by means of samples, lists or sale of such goods, wares, or merchandise."

For purposes of this chapter, the term "temporary or transient business" means "any exhibition and sale of goods, wares or merchandise which is carried on in any building, structure, motor vehicle or real estate for a period of less than six months in each year."

3. The license fee is \$50 per year, plus a fee of \$10 for each separate branch or business as provided in 30 Del. C. §2905(a). Accordingly, a transient retailer conducting business at several different locations at the same time must obtain a separate \$10 license for each location. This contrasts with pre-existing law, according to which transient retailers paid a license fee of \$10 to conduct business for a period of 10 days or less without any intention of becoming a permanent retailer.

B. Exemptions.

The provisions of Title 6, Delaware Code, Chapter 47 pertaining to transient retailers do not apply to:

1. Sales made to dealers by commercial travelers or selling agents in the usual course of business;
2. Bona fide sales of goods, wares or merchandise by sample, brochure, or catalogue for future delivery;
3. Any annual fair;
4. Any special event, taking place upon real property which is designed for and in the business of conducting such events where the transient merchant's goods, wares or merchandise are only displayed and sold on said property;
5. Any general sale, fair, auction or bazaar sponsored by an ecclesiastical society, religious corporation, public service or charitable organization;
6. Garage sales on premises devoted to residential use;
7. Sales of crafts or items made by hand when sold or offered for sale by the person making such crafts or handmade items;
8. Sales of local agricultural products. (See Section II below);
9. Sales resulting from prior invitation to the vendor by the owner or occupant of the residence.

Retailers may not exempt from the application of these provisions by temporarily associating themselves with a local dealer, auctioneer, trader or merchant or by conducting temporary or transient business in connection with or in the name of any local dealer auctioneer, trader or merchant.

C. Registration.

1. Transient retailers must register with the Division of Revenue by filing an application containing the following:
 - a. Name and permanent address of the applicant.
 - b. If the retailer is a corporation: date of incorporation and state of incorporation. Non-Delaware corporations must state the date on which they qualified to do business in Delaware.
 - c. Statement of type of business.
 - d. Description of types of merchandise to be sold.

e. Name and address of retailer's registered Delaware resident agent and office. This need not be, but may be, the same registered agent as specified to the Secretary of State for incorporation or qualification purposes. In the case of a sole proprietorship or partnership, the registered agent may be the proprietor or a partner, provided he or she is a Delaware resident.

f. Written agreement to serve in that capacity signed by the registered agent. An example of such an agreement is attached to this Memorandum. An agreement to serve as registered agent for purposes of incorporation or qualification alone does not suffice to meet this requirement.

D. Bond Requirement.

1. As a part of the licensing application, the retailer must deposit with the Division of Revenue either a surety bond issued by an authorized surety insurer or a cash bond. A cash bond may be established by remittance either in currency or check. The bond remittance should be made separately from any other payment made to the Division of Revenue. If the retailer has three or more employees or persons under contract performing employee-like services in Delaware, the amount of the bond required is \$1000. Where the foregoing is not the case, the required bond is to be in the following amount based upon the selling price (in the customary unit of sale) of the highest priced good offered for sale:

<u>Price of good</u>	<u>Bond Required</u>
Less than \$50	\$50
\$50 - \$99.99	\$100
\$100 - \$249.99	\$200
\$250 - \$499.99	\$500
\$500 or over	\$1000

This bond shall be for the purpose of securing payment of all taxes, interest, penalties, and/or fines due the State of Delaware from retailing activities within the State of Delaware.

E. Advertising.

1. All transient retailer advertisements must include the complete name of the transient retailer in a form easily comprehensible to the reader, listener, or viewer of the advertisement.

F. Penalties.

1. Any transient retailer who transacts business in violation of the requirements set forth in Title 6, Delaware Code, Chapter 47, (summarized in this Technical Information Memorandum) may be found guilty of a misdemeanor and upon conviction be subject to a fine of up to \$200, or imprisonment for up to 30 days, or both.

2. Any violation of the provisions of Title 6, Delaware Code, Chapter 47, will also constitute a deceptive trade practice under Title 6, Delaware Code, Chapter 25, Subchapter III, relating to consumer protection.

II. INTERPRETATIVE REGULATIONS AND DEFINITIONS.**A. Seasonal Retailer.**

The provisions of 47 Del. C. §4702(2) embrace within their definition of "transient retailer" all seasonal and/or summer transient retailers doing business at any location in Delaware for less than six months during any consecutive twelve month period.

B. Length of Retailing Activity.

Title 6, Delaware Code, §4702(3) defines "temporary or transient business" to mean:

"[A]ny exhibition and sale of goods, wares or merchandise which is carried on in any building, structure, motor vehicle or real estate for a period of less than six months in each year."

The six (6) month period referred to above is interpreted to mean any six month period, consecutive or non-consecutive, occurring within any twelve month period. Prior to the expiration of the six month period, whether a retailer is permanent or transient is judged according to the retailer's intention to engage in business for six months or longer. Indicia of that intention include, but are not limited to: (a) duration of lease; (b) agreements of employment with employees; (c) nature of business; (d) nature of facility housing the business, etc.

C. Local Agricultural Product Defined.

Title 6, Delaware Code, §4703(8) specifically exempts "local agricultural products" from the provisions of Chapter 47 of the Delaware Code. The term "local agricultural product" is interpreted to mean a product grown or raised in Delaware. Thus, any retail sale of agricultural products grown or raised in Delaware is specifically exempted from these requirements, but may be subject to the license and gross receipts tax requirements of Chapter 29.

D. Licensing Fees Proratable.

The yearly licensing fee for transacting a transient retailer business in this State will be prorated under 30 Del. C. §2121 according to the length of time for which the transient retailer is licensed during a given calendar year.

III. REQUESTS FOR FORMS OR ADDITIONAL INFORMATION.

For information concerning licenses, taxes, and fees covered by these Regulations, please contact the Division of Revenue Bureau of Public Service at (302) 571-3300.

For information regarding laws relating to consumer protection or deceptive trade practices, please contact the Delaware Division of Consumer Affairs at (302) 571-3250.

R. W. Chastant

Robert W. Chastant
Director of Revenue

WMR/RWC
Attachments #1 & #2

AGREEMENT TO SERVE AS REGISTERED AGENT

I, _____, a Delaware resident over the
age of 18, do hereby agree to serve as registered agent
for _____, a transient retailer.

My permanent address in the State of Delaware is:

I agree to discharge all the duties of a registered agent under Title 6, Delaware Code, chapter 47, including receipt and acceptance of any lawful process served upon me as agent for the aforesaid transient retailer and prompt notification of the transient retailer of such receipt.

Signature of Registered Agent

I, _____, do hereby appoint the
aforesaid to act as my registered agent under Title 6, Delaware
Code, chapter 47.

Signature of Transient Retailer

ATTACHMENT #1

TRANSIENT RETAILER BOND

DIVISION OF REVENUE
820 N. FRENCH STREET
WILMINGTON, DE 19899

BOND NO. _____

KNOW ALL MEN BY THESE PRESENTS, that we _____ as
Principal, and _____, a corporation duly
incorporated under the laws of the State of _____
as Surety, are held and firmly bound unto the State of Delaware in the
sum of _____ dollars (\$ _____),

lawful money of the United States of America for the payment of which,
well and truly to be made, we bind ourselves, our heirs, executors,
administrators, successors, and assigns, jointly and severally, firmly
by these presents:

SEALED WITH OUR SEALS AND DATE this ___ day of _____, 19__

WHEREAS, the above named Principal on the ___ day of _____,
19__ duly began operations within Delaware as a transient retailer and
may therefore be subject to certain liabilities to the State of
Delaware, Division of Revenue and Department of Labor and other
agencies and whereas this bond is undertaken to guarantee payment to
the State of Delaware of said liabilities.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if
the said Principal shall faithfully report and pay all State of
Delaware liabilities together with any penalties and interest thereon,
and shall honestly account for all money withheld as trustee for the
State of Delaware during such period, then this obligation shall be
void; otherwise, it shall remain in full force and effect until such
obligations are paid in full.

Signed, sealed and delivered
in the presence of

Witness

Principal

Indemnity Company

Attorney-in-Fact

TO BE FILLED IN BY PRINCIPAL

Retailer's Federal ID# _____