

**North Carolina Department of Revenue
Post Office Box 25000
Raleigh, North Carolina 27640-0001**

To Registered Taxpayers:

Part I of this document lists changes made by the 2004 General Assembly to the taxes administered by the Sales and Use Tax Division. Legislative changes supersede any information previously set forth in Sales and Use Tax Administrative Rules or Technical Bulletins relating to any subject matter of the legislation. The changes are cited in order of effective date. Part II of this document contains information relating to the sales and use tax forms.

I. Legislative Changes

Effective January 1, 2004

Refunds to Industrial Facilities

G.S. 105-164.14(j)(2) was rewritten to provide that, in order to qualify for a refund under this statute, the owner of the eligible facility must invest the required amount of private funds to construct a facility in this State. For purposes of the refund, the term "construct" may include acquiring and improving land for the facility and equipping the facility. The required amount of the investment is \$50,000,000 if the facility is located in an enterprise tier one, two, or three area. For all other facilities, the required amount of the investment is \$100,000,000.

Effective June 25, 2004

Notice Period for Sales and Use Tax Refunds

G.S. 105-164.11 was amended to add provisions requiring that a seller be provided with notice and a sixty-day period to respond to a request for a refund of over-collected sales or use taxes before a purchaser may bring a cause of action against the seller.

Effective July 1, 2004

Refunds to Industrial Facilities

G.S. 105-164.14(j)(1) was rewritten to clarify that the refund provision applies only to building materials, building supplies, fixtures, and equipment installed in the construction of the facility and not for subsequent repair, renovation, or equipment replacement.

G.S. 105-164.14(j)(3) was rewritten to add four industries to the list of industries eligible to receive refunds. The new industries, all of which are defined in the statute, are aircraft manufacturing, computer manufacturing, motor vehicle manufacturing, and semiconductor manufacturing. The refund provision for the four new industries is effective for sales made on or after July 1, 2004 and is repealed effective for sales made on or after July 1, 2009.

Effective July 18, 2004

Local Sales and Use Tax for Beach Nourishment

New Article 45, Local Government Sales and Use Tax for Beach Nourishment, authorizes coastal counties to levy an additional 1% local tax. The board of commissioners of a county may, by resolution, levy the additional 1% local sales and use tax. It will expire eight years after the effective date of its levy. The proceeds of the tax can be used only for beach nourishment along the North Carolina shorelines and connecting inlets. In the event any counties decide to levy the additional 1% local tax, notification of the levy and the effective date of the additional tax will be mailed to taxpayers and will be available on the Department's website at www.dor.state.nc.us.

Gaston County Local Tax Rate Change

Gaston County has the authority to impose an additional .5% local sales and use tax if approved by the voters. The election must be held November 2, 2004, and, if approved, the additional tax will expire eight years after the effective date of its levy. The proceeds of the tax can be used only for economic development projects and tourism projects. In the event Gaston County levies the additional .5% local tax, notification of the levy and the effective date of the additional tax will be mailed to taxpayers and will be available on the Department's website.

Effective August 2, 2004

Definitions

G.S. 105-164.3(28), which defines "prepared food," was rewritten to make a technical change to the introductory sentence. There was no change in the application of tax.

G.S. 105-164.3(37), which defines "sales price," was rewritten to clarify that credit for a trade-in is included in the term. This does not represent a change in the treatment of credits for trade-ins for sales and use tax purposes; such credits have been and continue to be subject to the applicable tax.

Sourcing Principles

G.S. 105-164.4B(a)(3) was rewritten to correct one of the provisions for sourcing of local tax where the delivery address is unknown. If the seller of a product does not know the address where a product is received, the sale is sourced to the first known

of the following locations: the purchaser's business or home address; the purchaser's billing address or, for prepaid mobile telephone calling service, the location associated with the mobile telephone number; or the address from which the product was shipped.

Effective October 1, 2004

Definitions

G.S. 105-164.3(14c) was added and defines "interstate air business" as "an interstate air courier, an interstate freight air carrier, or an interstate passenger air carrier."

G.S. 105-164.3(15b) was added and defines "interstate freight air carrier" as "a person whose primary business is scheduled freight air transportation, as defined in the North American Industry Classification System adopted by the United States Office of Management and Budget, in interstate commerce."

Exemptions

G.S. 105-164.13(1) was rewritten to add plastic mulch and plant bed covers to the list of items that are exempt when sold to a farmer for agricultural purposes.

G.S. 105-164.13(45a) is a new exemption for sales to an interstate air business of tangible personal property that becomes a component part of or is dispensed as a lubricant into commercial aircraft during their maintenance, repair, or overhaul. For the purpose of this exemption, the term "commercial aircraft" includes only aircraft that have a certified maximum take-off weight of more than 12,500 pounds and are regularly used to carry for compensation passengers, commercial freight, or individually addressed letters and packages.

G.S. 105-164.13(49a) is a new exemption for delivery charges for delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser.

G.S. 105-164.13(53) is a new exemption for sales to a professional land surveyor of tangible personal property on which custom aerial survey data is stored in digital form or is depicted in graphic form. Data is custom if it was created to the specifications of the professional land surveyor purchasing the property. A professional land surveyor is a person licensed as a surveyor under Chapter 89C of the General Statutes.

Electricity Used by Manufacturers

The State rates of 2.25% and 2% that were to become effective July 1, 2005 were repealed. These two rates and the 0.17% rate were based on the megawatt-hour volume of qualified electricity received by the manufacturer. The 0.17% rate remains in effect until October 1, 2007. However, it applies only to sales of electricity to an aluminum smelting facility for use in the operation of that facility that is measured by a separate meter or measuring device; the quantity of electricity

received is no longer a determinative factor. All other sales of electricity to manufacturers are subject to the 2.83% State rate when used in the operation of the facilities and measured by a separate meter or device.

Effective July 1, 2005

Exemption for Free Distribution Periodicals

G.S. 105-164.13(39) was reenacted and rewritten to exempt sales of paper, ink, and other tangible personal property to commercial printers and commercial publishers for use as ingredients or component parts of free distribution periodicals and sales by printers of free distribution periodicals to the publishers of these periodicals. For the purpose of this exemption, the term “free distribution periodical” is defined as “a publication that is published on a periodic basis monthly or more frequently, is provided without charge to the recipient, and is distributed in any manner other than by mail.”

II. Forms Changes

Several changes have been made to the sales and use tax forms as a result of legislation enacted by the 2004 General Assembly. On Form E-500, Sales and Use Tax Return, the line for the 2% county tax has been deleted. However, a line remains for reporting sales of food that are exempt from the State tax and subject only to the 2% food rate. There is a new line for 1% Additional County Rate that will be used if any counties levy the 1% tax for beach nourishment. The .5% line for Mecklenburg County transportation tax has been renamed “.5% Additional County Rate” and will be used to report the Mecklenburg County Transit Tax and the additional Gaston County tax if that tax is imposed.

Form E-536, Schedule of County Sales and Use Tax, has also been revised. The column for 2% County Sales Tax has been deleted. A column has been added for reporting the additional 1% local tax for beach nourishment, and a line has been added for reporting the additional .5% local tax for Gaston County in the event either of those levies become effective. Payment booklets for the period October 1, 2004 through September 30, 2005 will contain the revised Form E-500; all returns filed for periods beginning October 1, 2004 must be submitted using the new forms.

Frequently asked questions with responses can be found on the Department’s website at www.dor.state.nc.us. If you have questions about the information in this document or about sales and use tax, you may contact the Taxpayer Assistance Call Center at 1-877-252-3052 (toll-free) or write to the Taxpayer Assistance Division, North Carolina Department of Revenue, Post Office Box 25000, Raleigh, North Carolina 27640-0001.