



**Sales and Use Tax Division
North Carolina Department of Revenue
Post Office Box 25000
Raleigh, North Carolina 27640-0001**

To Taxpayers:

This form includes changes enacted by the 2012 Session of the General Assembly to the taxes administered by the Sales and Use Tax Division. The 2012 Tax Law Changes publication issued by the Department will be available on the Department's website, www.dornc.com, and will contain more detailed explanations of legislative changes. Legislative changes supersede any information previously set forth in Sales and Use Tax Administrative Rules, Technical Bulletins, Notices, and Private Letter Rulings relating to any subject matter of the legislation. This form also includes information regarding rules adopted by the Streamlined Sales and Use Tax Governing Board, of which North Carolina is a Member State and is required to follow such rules.

Part I reflects information regarding changes to local sales and use tax rates; Part II reflects various technical, clarifying, and administrative legislative changes; Part III reflects Streamlined Sales and Use Tax information; and Part IV reflects administrative reminders.

All taxpayers are encouraged to electronically file Form E-500, Sales and Use Tax Return. To electronically file Form E-500, Sales and Use Tax Return, visit the Department's website, www.dornc.com, and select "Electronic Services," "Businesses" section.

PART I: RATE CHANGES

Effective January 1, 2012

The local rate of sales and use tax for Halifax County increased from 2.0% to 2.25%.

Effective April 1, 2012

The local rate of sales and use tax for Buncombe, Durham, Montgomery, and Orange Counties increased from 2.0% to 2.25%.

As of the date of publication of this form, the general State and local sales and use tax rate applicable to the sales price of tangible personal property, certain digital products, and certain services is 6.75% in seventy-six counties, 7% in Alexander, Buncombe, Cabarrus, Catawba, Cumberland, Duplin, Durham, Halifax, Haywood, Hertford, Lee, Martin, Montgomery, New Hanover, Onslow, Orange, Pitt, Randolph, Robeson, Rowan, Sampson, Surry and Wilkes Counties and 7.25% in Mecklenburg County. The Department will publish notification if any additional counties adopt the additional 0.25% local levy pursuant to Article 46.

Counties and transportation authorities may enact local government sales and use taxes for public transportation. Currently, Mecklenburg County is the only county that has adopted a local sales and use tax for public transportation. The Department will publish notification if any additional counties or transportation authorities adopt a local government sales and use tax for public transportation.

The "combined general rate" that applies to sales of telecommunications and ancillary services, video programming, and spirituous liquor other than mixed beverages remains at 7% for all one hundred (100) North Carolina counties.

PART II: OTHER LEGISLATIVE CHANGES

Effective June 20, 2012

Extension of Economic Incentive Refunds

Various economic incentive refunds originally scheduled to be repealed for purchases made on or after January 1, 2013, have been extended and are repealed for purchases made on or after January 1, 2014. These include: **Refunds for Passenger Air Carrier** (G.S. 105-164.14A(a)(1)); **Refunds for a Business in a Low-Tier Area** (G.S. 105-164.14A(a)(3)); **Refunds for Motorsports Team or Sanctioning Body** (G.S. 105-164.14A(a)(4)); **Refunds for Analytical Services Business** (G.S. 105-164.14A(a)(6)); and **Refunds for Certain Industrial Facilities** (G.S. 105-164.14B(f)).

Effective June 26, 2012, Except as Otherwise Noted

Over-the-Counter-Drug

G.S. 105-164.3(25a) is amended to conform to the Streamlined Sales and Use Tax Agreement. The definition of an over-the-counter drug is “[a] drug that contains a label that identifies the product as a drug as required by 21. C.F.R. § 201.66. The label includes either of the following: a. A ‘Drugs Facts’ panel. b. A statement of its active ingredients with a list of those ingredients contained in the compound, substance, or preparation.”

Prepaid Calling Service and Prepaid Wireless Calling Service

G.S. 105-164.3(26b) and G.S. 105-164.3(27a) are amended to add the word “predetermined” such that the statutes now reference “**predetermined** units or dollars whose number or dollar value declines with use and is known on a continuous basis.”

Sale or Selling

G.S. 105-164.3(36) is amended to define sale or selling as the “transfer for consideration of title, **license to use or consume**, or possession of tangible personal property or digital property or the performance for consideration of a service.” The definition was amended to include the phrase “license to use or consume” which is included in the definition of “purchase.”

General Sourcing Principles

G.S. 105-164.4B(a), as rewritten, conforms the State’s general principles for the sourcing of the sales of products to the sourcing requirements of the Streamlined Sales and Use Tax Agreement as amended December 19, 2011. Pursuant to the rewritten provisions of G.S. 105-164.4B(a), sourcing applies as follows regardless of the nature of the product with specific exceptions noted in the general statutes for periodic rental payments, transportation equipment, telecommunications services, direct mail, and florist wire sales:

1. When a purchaser receives a product at a business location of the seller, the sale is sourced to that business location.
2. When a purchaser or purchaser’s donee receives a product at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser or the purchaser’s donee receives the product.
3. When (1) and (2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller’s business when use of this address does not constitute bad faith.
4. When (1), (2), and (3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser’s payment instrument, if no other address is available, when use of this address does not constitute bad faith.
5. When (1), (2), (3), and (4) do not apply, including the circumstance in which the seller is without sufficient information to apply the rules, the location will be determined based on either (a) the address from which tangible personal property was shipped, (b) the address from which the digital good or the computer software delivered electronically was first available for transmission by the seller or (c) the address from which the service was provided.

Retailer to Collect Sales Tax from Purchaser as Trustee for State

G.S. 105-164.7 is amended to clarify when the sales tax must be stated and charged separately. The statute provides that sales tax is intended to be passed on to the purchaser of a taxable item and borne by the purchaser instead of by the retailer. A retailer must collect the tax due on an item when the item is sold at retail. The tax is a debt from the purchaser to the retailer until paid and is recoverable at law by the retailer in the same manner as other debts. A retailer is considered to act as a trustee on behalf of the State when it collects tax from the

purchaser of a taxable item. The tax must be stated and charged separately on the invoices or other documents of the retailer given to the purchaser at the time of the sale except for either of the following: (1) Vending machine sales; (2) Where a retailer displays a statement indicating the sales price includes the tax.

Items Given Away by Merchants

G.S. 105-164.12C is added to clarify that if a retailer engaged in the business of selling prepared food and drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, the property given away is considered sold along with the property sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property. **This clarifying change was enacted with a retroactive date of August 7, 2009.** It was at that time that statutory language pertaining to items given away by merchants was inadvertently removed from existing statutes with the intent to relocate it to another section within the sales and use tax law. Due to an oversight, this language was not added to a different section; however, there was no intent to remove the statutory language in its entirety.

Installation Charges

G.S. 105-164.13(49) is amended to clarify that installation charges are not subject to tax, when the charges are separately stated on an invoice **or similar billing document given to the purchaser** at the time of the sale.

Delivery Charges for Direct Mail

G.S. 105-164.13(49a) is amended to clarify that delivery charges for direct mail are not subject to tax if the charges are separately stated on an invoice or similar billing document given to the purchaser **at the time of sale.**

Refunds-Interstate Carriers

G.S. 105-164.14(a) is amended to clarify that, for airplanes operated both inside and outside of this State during a refund period, airplane miles are not considered in this State if the airplane does not depart or land in this State. Additionally, the numerator of the mileage ratio is the number of miles the applicant operated all motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period. The denominator of the mileage ratio is the number of miles the applicant operated all motor vehicles, railroad cars, locomotives, and airplanes both inside and outside this State during the refund period.

Effective July 1, 2013

Service Charge for Prepaid Wireless Telecommunications Service

Effective July 1, 2013, a 911 service charge is imposed on each retail purchase of prepaid wireless telecommunications service occurring in this State. Sellers of prepaid wireless telecommunications service shall collect the 911 service charge for prepaid wireless telecommunications service from the consumer on each retail transaction occurring in this State. The 911 service charge for prepaid wireless telecommunications service is in addition to the sales tax imposed on the sale or recharge of prepaid telephone calling service under G.S. 105-164.4(4d). Sellers may deduct and retain from the 911 service charges it collects from consumers and remits to the Department of Revenue an administrative allowance of five percent (5%). More information will be available on the Department's website regarding this imposition on or before April 1, 2013.

PART III: STREAMLINED SALES AND USE TAX

Food and Food Ingredients Definitions

Pursuant to G.S. 105-164.13B, "food" is exempt from State sales and use tax and subject to the 2% local sales and use tax rate. "Candy" is specifically excluded from the exemption under G.S. 105-164.13B(a)(7) for food and is subject to the general State and applicable local sales and use tax rate. Candy is defined as "a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces that do not require refrigeration. The term does not include any preparation that contains flour." The guidance issued by the Streamlined Sales Tax Governing Board by the adoption of Rule 327.8 defines, in greater detail, the terms preparation, bars, drops or pieces, flour, other ingredients or flavorings, sweeteners, and refrigeration. The rule also advises the candy definition is not intended to be applied to every type of food product sold, as many products, such as meat products, breakfast cereals, potato chips, and canned fruits and vegetables, are not commonly thought of as "candy." Additional information regarding the adopted rule will be available on the Department's website.

Sales Price – Employee Incentive Programs

The Streamlined Sales Tax Governing Board adopted Rule 327.7 that clarifies the treatment of employee incentive program points or credits which are redeemed by employees toward purchases of tangible personal property, certain digital products or certain services. In such a situation, a retailer may offer bonus points or credits to employees for exceeding certain quotas, meeting specific sales goals, or otherwise obtaining objectives set forth by management. When an employee uses such points or credits towards purchases of tangible personal property, certain digital products or certain services, whether in-store or via a catalog, website or other means, Rule 327.7 clarifies that the points or credits used or redeemed are included in the consideration received by the retailer on the sale and thus are part of the sales price subject to applicable sales and use tax. As an example, an employee redeeming \$50 in points towards the purchase of a \$200 item must pay tax on the full sales price of \$200. Pursuant to G.S. 105-164.3(37), the employee points or credits redeemed on a purchase of product would not constitute a discount taken by a consumer.

PART IV: OTHER ADMINISTRATIVE REMINDERS

Form E-536, Schedule of County Sales and Use Tax

A retailer engaged in business in this State is required to collect county tax on all applicable transactions. For an over-the-counter sale, the retailer's business location is where the sale is made, and county tax must be collected for each applicable county. If the property is delivered to the purchaser at a place other than the retailer's business location, county tax must be collected for the county to which the property is shipped (destination county) or as discussed previously under the topic General Sourcing Principles. Retailers that collect county tax for more than one county must complete Form E-536, Schedule of County Sales and Use Taxes, to properly report the county tax for each local jurisdiction. Form E-536 is available on the Department's website, www.dornc.com, and through the online filing options.

Use Tax on Purchases

Businesses are reminded to report use tax on the purchase price of taxable tangible personal property, certain services, and certain digital property purchased for storage, use or consumption in North Carolina from vendors that do not charge North Carolina sales or use tax. A credit is allowed against North Carolina State and local use tax due, for the amount of state and local sales or use tax due and paid to another state. The credit is allowed for state tax paid against State tax due and a separate credit is allowed for local tax paid against local tax due. If the amount of state tax paid to the other state is less than the amount of state use tax imposed by North Carolina, the difference is due and payable to North Carolina. If the amount of local tax paid to the other state is less than the amount of local use tax imposed in North Carolina, the difference is due and payable to North Carolina.

Exemption Administration

A purchaser of property for resale is required to issue Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, or provide information required on the form to a seller in order to exclude the sale from sales or use tax. When a purchaser makes a qualifying purchase, as indicated on Form E-595E, and furnishes such form, the seller is relieved of the liability for any additional tax that is subsequently determined to be due, and the purchaser has assumed liability for the tax. If the seller obtains a fully completed exemption certificate or captures the relevant data elements within 90 days subsequent to the date of sale, the Department shall relieve a seller of the tax otherwise applicable. If the seller has not obtained an exemption certificate or all relevant data elements at the time of the sale or within 90 days subsequent to the date of sale, the seller may, within 120 days subsequent to a request for substantiation by the Department, either: (1) obtain a fully completed exemption certificate from the purchaser; or (2) obtain other information establishing that the transaction was not subject to the tax. Upon substantiation the Department shall relieve the seller of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction.

Frequently asked questions with responses and additional information can be found on the Department's website at www.dornc.com. If you have questions about the information in this document or about sales and use tax, you may contact the Taxpayer Assistance and Collection 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. If a written response would require the Department to interpret the law in a manner not specifically addressed in a statute, regulation, or Departmental or IRS publication, the person requesting the written response must follow the procedure (and pay the required fee) for requesting a private letter ruling found on the Department's website at the following address: www.dornc.com/practitioner/plr_policy.pdf.