



DIRECTIVE

Subject: Bundled Transactions
Tax: Sales and Use Tax
Law: G.S. 105-164.3(1b) and G.S. 105-164.4D
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This Directive sets out information on the application of sales and use tax on bundled transactions effective October 1, 2007. A definition of a “bundled transaction” is enacted and specific taxation rules are set out for bundles of products that include taxable and exempt products.

Prior to October 1, 2007, the definition of “sales price” under G.S. 105-164.3(37) includes “the value of exempt personal property given to the consumer when taxable and exempt personal property are bundled together and sold by a retailer as a single product or piece of merchandise.” Under this provision, the entire charge for a bundle of products that includes taxable and exempt tangible personal property sold for one price is subject to sales and use tax. This provision is repealed effective October 1, 2007 in conjunction with the adoption of the new bundled transaction provisions.

The bundled transaction provisions primarily address products that contain taxable and non-taxable items that are packaged together and sold for a single price. A customer has no option except to purchase the items packaged together and to pay the price charged by the retailer. Examples of bundled transactions are gift baskets containing food and non-food items and medical kits containing exempt prescription drugs and taxable medical supplies.

Section I of the Directive sets out the applicable statutes. Sections II and III provide explanations of the provisions and set out examples of bundled and non-bundled transactions.

Section I. The Law

G.S. 105-164.3(1b) provides:

Bundled transaction. – A retail sale of two or more distinct and identifiable products, at least one of which is taxable and one of which is exempt, for one nonitemized price. Products are not sold for one nonitemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each

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product. A bundled transaction does not include the retail sale of any of the following:

- (a) A product and any packaging item that accompanies the product and is exempt under G.S. 105-164.13(23).
- (b) A sale of two or more products whose combined price varies, or is negotiable, depending on the products the purchaser selects.
- (c) A sale of a product accompanied by a transfer of another product with no additional consideration.
- (d) A product and the delivery or installation of the product.
- (e) A product and any service necessary to complete the sale.

G.S. 105-164.4D provides:

- (a) Tax Application. – Tax applies to the sales price of a bundled transaction unless one of the following applies:
 - (1) Fifty percent (50%) test. – All of the products in the bundle are tangible personal property, the bundle includes one or more of the exempt products listed in this subdivision, and the price of the taxable products in the bundle does not exceed fifty percent (50%) of the price of the bundle:
 - a. Food exempt under G.S. 105-164.13B.
 - b. A drug under G.S. 105-164.13(13)
 - c. Medical devices, equipment, or supplies exempt under G.S. 105-164.13(12).
 - (2) Allocation. – The bundle includes a service, and the retailer determines an allocated price for each product in the bundle based on a reasonable allocation of revenue that is supported by the retailer’s business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of each taxable product in the bundle.
 - (3) Ten percent (10%) test. – The price of the taxable products in the bundle does not exceed ten percent (10%) of the price of the bundle, and no other subdivision in the subsection applies.
- (b) Determining Threshold. – A retailer of a bundled transaction subject to this section may use either the retailer’s cost price or the retailer’s sales price to determine if the transaction meets the fifty percent (50%) or ten percent (10%) test set out in subdivisions (a)(1) and (a)(3) of this section. A retailer may not use a combination of cost price and sales price to make this determination. If a bundled transaction subject to subdivision (a)(3) of this section includes a service contract, the retailer must use the full term of the contract in determining whether the transaction meets the threshold set in the subdivision.

Section II. Exclusions from Bundled Transaction

- 1. True object exclusion – A transaction that otherwise meets the definition of a “bundled transaction” is not a “bundled transaction” if it is:
 - (a) The “retail sale” of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; or

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- (b) The “retail sale” of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service.

An example of this exclusion would be the preparation of a will by an attorney. The true object of the transaction is the providing of the attorney’s services and the tangible personal property is essential to the use of the service. The attorney is selling non-taxable services and is not making a sale of a bundled transaction. Sales or use tax is not due on the attorney’s charges for services; sales or use tax is due on the attorney’s purchases of tangible personal property used to fulfill the services.

2. Ten percent (10%) exclusion – For a bundled transaction that consists of tangible personal property other than food and exempt medical products, a bundle that contains ten percent (10%) or more of taxable items is subject to sales and use tax on the total amount charged for the bundled products. If a bundle consists of less than ten percent (10%) of taxable items, the charge for the bundle is not subject to sale or use tax and sales or use tax is not due on the purchase price of the taxable items included in the bundle.
3. Fifty percent (50%) exclusion
- (a) Food – For a bundled transaction that only includes tangible personal property and consists of more than fifty percent (50%) of food items that are exempt from State sales and use tax, the total charge for the bundle is subject to the 2% local tax on food.
- (b) Medical products – For a bundled transaction that only includes tangible personal property and consists of prescription drugs, prosthetic devices, mobility enhancing equipment sold on prescription, durable medical equipment sold on prescription, or durable medical supplies sold on prescription, the total charge for the bundle is exempt if the portion of the bundle attributable to exempt medical products exceeds fifty percent (50%).

Sales or use tax is not due on the purchase price of items included in the bundle that would otherwise be taxable when sold at retail.

4. Determination of threshold – In determining the percentages of products included in a bundle, a retailer may use either the cost price of products included in the bundle or the sales price of the products when sold separately. A retailer cannot use a combination of the cost price and sales price of products to make this determination.

Section III. Allocation Provisions

For a bundled transaction that includes services, a retailer is authorized to allocate a price to each product included in a bundle and collect tax on the price allocated to the taxable products. A retailer’s business records kept in the ordinary course of business must be maintained to support the allocation made.

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An example is a firm that provides taxable telecommunications services, taxable video programming services, and exempt Internet access services and offers all the services in a bundled transaction. The firm can allocate the portion of its services attributable to the taxable products and collect and remit tax on the amount of revenues allocated to the taxable services.

A second example is a resort that offers a bundled transaction consisting of taxable room accommodations, taxable meals, exempt golf course green fees, and exempt spa fees. The firm can allocate the portion of revenues attributable to the taxable products and collect and remit tax on the taxable portion.

Questions about this Directive may be directed to the Sales and Use Tax Division of the North Carolina Department of Revenue, P. O. Box 871, Raleigh, North Carolina 27602 or by telephone to (919) 733-2151.