



## Sales and Use Tax Division

This form includes an overview of many changes to the taxes administered by the Sales and Use Tax Division that were primarily enacted by the 2019 Session of the General Assembly. The Department plans to publish notices on many of the topics addressed within this document on the Department's website, [www.ncdor.gov](http://www.ncdor.gov). As of the date of this publication, the North Carolina General Assembly remains in session so it is possible there may be additional changes to the taxes administered by the Sales and Use Tax Division. The Department recommends that taxpayers subscribe to the Department's Tax Updates Email List ("E-Alerts") at [www.ncdor.gov/file-pay/eservices/e-alerts](http://www.ncdor.gov/file-pay/eservices/e-alerts) to receive emails regarding information published by the Department.

The annual *Tax Law Changes* publication produced by the Department should be available by the end of the calendar year on the Department's website, [www.ncdor.gov](http://www.ncdor.gov), and will contain detailed explanations of the 2019 legislative changes. Legislative changes may supersede any information previously set forth in the Sales and Use Tax Administrative Rules, Bulletins, Notices, Directives, Private Letter Rulings, or other information published by the Department relating to any subject matter of the legislation.

As of October 1, 2019, the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax imposed on the sales price of or the gross receipts derived from the retail sale of tangible personal property, certain digital property, and certain services is 6.75% in fifty-six (56) counties; 7.00% in Alexander, Anson, Ashe, Buncombe, Cabarrus, Catawba, Cherokee, Clay, Cumberland, Davidson, Duplin, Edgecombe, Gaston, Graham, Greene, Halifax, Harnett, Haywood, Hertford, Jackson, Jones, Lee, Lincoln, Martin, Montgomery, Moore, New Hanover, Onslow, Pasquotank, Pitt, Randolph, Robeson, Rockingham, Rowan, Rutherford, Sampson, Stanly, Surry, Swain, and Wilkes Counties; 7.25% in Mecklenburg and Wake Counties; and 7.50% in Durham and Orange Counties.

The combined general rate of sales and use tax imposed on the sales price of or the gross receipts derived from telecommunications service and ancillary service, video programming, piped natural gas, electricity, antique spirituous liquor and spirituous liquor other than mixed beverages, and aviation gasoline and jet fuel continues to be 7.00% in all one hundred (100) counties.

## PART I: SALES TAX CHANGES

### ***Effective March 20, 2019***

**Remote Sales** – N.C. Gen. Stat. § 105-164.8(b)(9), is added and provides "[t]he retailer, with respect to remote sales into North Carolina for the previous or current calendar year, had one or more of the following:

- a. Gross sales in excess of one hundred thousand dollars (\$100,000).
- b. Two hundred or more separate transactions."

This amendment codifies [SD-18-6, Sales and Use Tax Collections on Remote Sales](#), published by the Department on August 7, 2018, following *South Dakota v. Wayfair, Inc., et al.*

### ***Effective July 26, 2019***

**Certain Digital Property** – N.C. Gen. Stat. § 105-164.3(2f) is added and defines "certain digital property" as "[a]n item listed in this subdivision that is delivered or accessed electronically is not considered tangible personal property and would be taxable under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] if sold in a tangible medium. The term does not include an information service. The items are:

- a. An audio work.
- b. An audiovisual work.
- c. A book, magazine, a newspaper, a newsletter, a report, or another publication.
- d. A photograph or a greeting card."

**Item** – N.C. Gen. Stat. § 105-164.3(16a) is added and defines “item” as “[t]angible personal property, certain digital property, or a service, unless the context requires otherwise.” Item as defined has been replaced throughout Article 5 of Chapter 105 of the North Carolina General Statutes as appropriate.

**Property Management Contract** – N.C. Gen. Stat. § 105-164.3(30b), effective January 1, 2020, is amended and defines “property management contract” as “[a] written contract obligating a person to provide five or more real property management services.”

**Real Property Management Services** – A definition of “real property management services” is added to N.C. Gen. Stat. § 105-164.3 and defined as “[a]ny of the following activities:

- a. Hiring and supervising employees for the real property.
- b. Providing a person to manage the real property.
- c. Receiving and applying revenues received from property owners or tenants of the real property.
- d. Providing repair, maintenance, and installation services to comply with obligations of a homeowners' association or a landlord under a lease, rental, or management agreement.
- e. Arranging for a third party to provide repair, maintenance, and installation services.
- f. Incurring and paying expenses for the management, repair, and maintenance of the real property.
- g. Handling administrative affairs for the real property.”

**Real Property Manager** – A definition of “real property manager” is added to N.C. Gen. Stat. § 105-164.3 and defined as “[a] person that provides real property management services pursuant to a property management contract.”

Note: Session Law 2019-169 provides the Revisor of the Statutes is authorized to renumber the subdivisions of N.C. Gen. Stat. § 105-164.3 but they have not yet been renumbered. Therefore, the subdivision for real property management services and real property manager are not shown above.

**Taxability of Services under a Property Management Contract** – N.C. Gen. Stat. § 105-164.4K is added, and subsection (a), provides “[r]epair, maintenance, and installation services taxable under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] and provided by a real property manager under a property management contract are *subject to sales and use tax in the following circumstances:*

- (1) Repair, maintenance, installation services provided by the real property manager for an additional charge.
- (2) The real property manager arranges for a third party to provide the repair, maintenance, and installation services and the real property manager imposes an additional contract amount or charge for the arranging of these services.
- (3) More than twenty-five percent (25%) of the time spent managing the real property for a billing or invoice period is attributable to repair, maintenance, and installation services taxable under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] and not excluded by . . . [N.C. Gen. Stat. § 105-164.4K(b)]. The tax applies to the sales price of or the gross receipts derived from the taxable repair, maintenance, and installation services portion of the property management contract. The real property manager must determine an allocated sales price for the repair, maintenance, and installation services portion of the property management contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. The charges for the taxable repair, maintenance, and installation services must be separately stated on the invoice or similar billing document given to the customer at the time of the sale.” [Emphasis added.]

**Property Management Contract Exclusions** – N.C. Gen. Stat. § 105-164.4K, is added, and subsection (b) provides “[t]he tax imposed by . . . Article [5 of Chapter 105 of the North Carolina General Statutes] does not apply to the following repair, maintenance, and installation services if the services are provided by the real property manager pursuant to a property management contract:

- (1) To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore the real property to working order or good condition.
- (2) To inspect or monitor the real property, including the normal operation of all systems that are part of the real property.”

**Recover Sales and Use Tax Paid** – N.C. Gen. Stat. § 105-164.11B, is amended and provides “[a] retailer who pays sales and use tax on an item that is separately stated on an invoice or similar billing document given to the retailer at the time of the sale and subsequently resells the item at retail, without the item being used by the retailer, may recover the sales or use tax originally paid to a seller as provided in this section. A retailer entitled to recover tax under this section may reduce taxable receipts by the taxable amount of the purchase price of the item resold for the period in which the retail sale occurs. A recovery of tax allowed under this section is not an overpayment of tax and, where such recovery is taken, a refund of the tax originally paid may not be requested from the seller pursuant to the authority under [N.C. Gen. Stat. §] 105-164.11. Any amount for tax recovered under this section in excess of tax due for a reporting period under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] is not subject to refund. Any tax recovered under this section may be carried forward to a subsequent reporting period and taken as an adjustment to taxable receipts. The records of the retailer must clearly reflect and support the adjustment to taxable receipts for the period in which the adjustment is made.”

**Effective for sales occurring on or after October 1, 2019**

**Certain Digital Property** – N.C. Gen. Stat. § 105-164.3(2f), is amended and provides “certain digital property” is “[a]n item listed in this subdivision that is delivered or accessed electronically and that is not considered tangible personal property. The term does not include an information service. The items are:

- a. An audio work.
- b. An audiovisual work.
- c. A book, magazine, a newspaper, a newsletter, a report, or another publication.
- d. A photograph or a greeting card.”

Note: This amended definition expands the imposition of sales and use tax on certain digital property by deleting the requirement that the certain digital property have a taxable, tangible corollary.

**PART II: MISCELLANEOUS SALES AND USE TAX EXEMPTIONS OR EXCEPTIONS**

**Effective July 26, 2019**

**Entertainment Activity Exceptions** – N.C. Gen. Stat. § 105-164.4G(e), is amended and clarifies the tax imposed in N.C. Gen. Stat. § 105-164.4G “does not apply to the following:

- ...
- (2) Tuition, registration fees, or charges to attend instructional seminars, conferences, or workshops for educational purposes, *notwithstanding that entertainment activity may be offered as an ancillary purpose of an event listed in this subdivision.*
- ...
- (6) An amount paid for the right to participate, other than to be a spectator, in the following activities:
    - a. Rock climbing, skating, skiing, snowboarding, sledding, zip lining, or other similar activities.
    - b. Instruction classes related to the *activities* included in sub-subdivision a. of this subdivision.
    - c. Riding on a carriage, boat, train, plane, horse, chairlift, or other similar rides.
    - d. Amusement rides, including a waterslide.” [Emphasis added.]

**Effective October 1, 2019, and applies to sales and purchases occurring on or after such date**

**Diaper** – N.C. Gen. Stat. § 105-164.3(6b) is added and defines “diaper” as “[a]n absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.”

**Incontinence Underpad** – N.C. Gen. Stat. § 105-164.3(14a) is added and defines “incontinence underpad” as “[a]n absorbent product, not worn on the body, designed to protect furniture or other tangible personal property from soiling or damage due to human incontinence.”

**Stone Cutting Equipment** – N.C. Gen. Stat. § 105-164.13(5p) is added and provides an exemption from sales and use tax for “[s]ales of equipment, or an attachment or repair part for equipment, which is used in cutting, shaping, polishing, and finishing rough cut slabs and blocks of natural and engineered stone and stone-like

products and sold to a company primarily engaged in the business of providing made-to-order countertops, walls, or tubs."

**Diapers and Incontinence Pads** – N.C. Gen. Stat. § 105-164.13(13d) is added and provides an exemption from sales and use tax for "[s]ales of diapers or incontinence underpads on prescription by an enrolled State Medicaid/Health Choice provider for use by beneficiaries of the State Medicaid program when the provider is reimbursed by the State Medicaid program or a Medicaid managed care organization, as defined in 42 U.S.C. § 1396b(m)."

**Car Washes** – N.C. Gen. Stat. § 105-164.13(61a) is amended and provides "[t]he sales price of or the gross receipts derived from the repair, maintenance, and installation services and service contracts listed in this subdivision are exempt from tax. Except as otherwise provided in this subdivision, property and services used to fulfill either a repair, maintenance, or installation service or a service contract exempt from tax under this subdivision are taxable. The list of repair, maintenance, and installation services and service contracts exempt from tax under this subdivision is as follows:

- ...
  - k. Self-service car wash or vacuum and limited-service vehicle wash. For purposes of this sub-subdivision, the following definitions apply:
    - 1. Limited-service vehicle wash. – The cleaning of a vehicle by mechanical means where the only activities performed by an employee include one or more of the following: (i) receiving payment for the transaction, (ii) guiding the vehicle into the entrance or exit of a conveyor, (iii) applying low-pressure spray of chemicals to the vehicle prior to the cleaning of the vehicle, or (iv) placing protective tape or covers on the vehicle prior to cleaning. The term does not include any activity whereby an employee physically touches the vehicle for the purpose of cleaning or restoring the vehicle, enters or cleans any part of the interior of the vehicle, or performs an activity on the vehicle other than one of those listed in this sub-sub-subdivision.
    - 2. Self-service vehicle wash or vacuum. – The cleaning of a vehicle by a customer without any cleaning or restoring activity performed by an employee."

### **PART III: MOTOR VEHICLE LEASE CHANGES**

#### ***Effective October 1, 2019***

**Long-term Lease or Rental** – N.C. Gen. Stat. § 105-187.1, is amended and N.C. Gen. Stat. § 105-187.1(a)(3) defines "long-term lease or rental" as "[a] lease or rental made under a written agreement to lease or rent one or more vehicles to the same person for a period of at least 365 continuous days and that is not a vehicle subscription."

**Limited Possession Commitment** – N.C. Gen. Stat. § 105-187.1(a)(3c) is added and defines "limited possession commitment" as "[l]ong-term lease or rental, short-term lease or rental, and vehicle subscriptions."

**Short-term Lease or Rental** – N.C. Gen. Stat. § 105-187.1, is amended and N.C. Gen. Stat. § 105-187.1(a)(7), defines "short-term lease or rental" as "[a] lease or rental of a motor vehicle or motor vehicles, including a vehicle sharing service, that is not a long-term lease or rental or a vehicle subscription."

**Vehicle Subscription** – N.C. Gen. Stat. § 105-187.1(a)(9) is added and defines "vehicle subscription" as "[a] written agreement that grants a person the right to use and exchange motor vehicles owned, directly or indirectly, by the person offering the agreement upon payment of a subscription fee, but it does not include a vehicle sharing service. The subscription fee must provide a person exclusive use of an agreed-upon number of motor vehicles at any given time during the full term of the subscription."

**Limited Possession Commitment Rate** – N.C. Gen. Stat. § 105-187.5(b) is amended and provides "[t]he applicable tax rates on the gross receipts from a limited possession commitment are as listed in this subsection. Gross receipts does not include the amount of any allowance given for a motor vehicle taken in trade as a partial payment on the limited possession commitment. The maximum tax in [N.C. Gen. Stat. §] 105-187.3(a1) on certain motor vehicles applies to a continuous limited possession commitment of such a motor vehicle to the same person. The applicable tax rates are as follows:" Short-term lease or rental - 8%, Vehicle Subscription - 5%, and Long-term lease or rental - 3%.