



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

To Taxpayers:

This form includes major changes enacted by the 2010 Session of the General Assembly to the taxes administered by the Sales and Use Tax Division. The 2010 Tax Law Changes will be available on the Department's website, www.ncdor.gov and will contain more detailed explanations of legislative changes. This form also includes rate changes authorized by the 2007 General Assembly that are effective in 2010. 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. Part I reflects changes to sales and use tax rates; Part II reflects other legislative changes; and Part III reflects administrative reminders. The items in Part I and Part II are cited in order of effective date.

PART I: RATE CHANGES

Effective July 1, 2010

Exemption for Fuel and Electricity Sold to Manufacturers

Fuel and electricity sold to a manufacturer for use in connection with the operation of a manufacturing facility are exempt from sales and use tax.

Exemption for Fuel and Electricity Sold to Farmers

Fuel sold to a farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals is exempt from sales and use tax. Electricity sold to a farmer to be used for any farming purposes other than preparing food, heating dwellings, and other household purposes is exempt from sales and use tax. Electricity sold to a farmer for preparing food, heating dwellings, and other household purposes remains subject to the 3% rate of sales tax.

Effective October 1, 2010

Change in Local Rates

The local rate of tax will be 2% in all counties except Alexander, Catawba, Cumberland, Haywood, Hertford, Lee, Martin, New Hanover, Onslow, Pitt, Randolph, Rowan, Sampson, Surry and Wilkes Counties, where the local rate will be 2.25%. Mecklenburg County continues to have an additional 0.5% Public Transportation rate for a total local rate of 2.50%. The combined State and local rate will be 7.75% in eighty-four counties, 8% in Alexander, Catawba, Cumberland, Haywood, Hertford, Lee, Martin, New Hanover, Onslow, Pitt, Randolph, Rowan, Sampson, Surry and Wilkes Counties and 8.25% in Mecklenburg County. The "combined general rate" that applies to sales of telecommunications and ancillary services, video programming, and spirituous liquor other than mixed beverages does not change and remains at 8%.

Effective July 1, 2011

Scheduled Decrease of State General Rate

Currently, the general State tax rate is 5.75%. The temporary 1% general State rate increase enacted by the 2009 General Assembly is scheduled to expire on June 30, 2011, resulting in a general State tax rate of 4.75%. As a result, the "combined general rate" that applies to sales of telecommunications and ancillary services, video programming, and spirituous liquor other than mixed beverages is scheduled to decrease from 8% to 7%.

PART II: OTHER LEGISLATIVE CHANGES

Effective July 1, 2009

Wood Chippers

G.S. 105-164.13(4g) is a new exemption for a sale of a wood chipper that meets all of the following requirements: a. It is designed to be towed by a motor vehicle. b. It is assigned a 17-digit vehicle identification number by the National Highway Transportation Safety Association. c. It is sold to a person who purchases a motor vehicle in this State (North Carolina) that is to be registered in another state and who uses the purchased motor vehicle to tow the wood chipper to the state in which the purchased motor vehicle is to be registered. The exemption was enacted with a retroactive date for sales made on or after July 1, 2009.

Effective July 1, 2010

Definitions

G.S. 105-164.3(6a) is added and defines "**Development tier**" as "The classification assigned to an area pursuant to G.S. 143B-437.08."

G.S. 105-164.3(8e) is amended and defines "**Eligible Internet datacenter**" as "A datacenter that satisfies each of the following conditions: a. The facility is used primarily or is to be used primarily by a business engaged in software publishing included in industry 511210 of NAICS or an Internet activity included in industry 519130 of NAICS. b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility. c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three area or a development tier one or two area pursuant to G.S. 105-129.3 or G.S. 143B-437.08, regardless of any subsequent change in county enterprise or development tier status. d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars (\$250,000,000) in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within five years after the commencement of construction of the facility."

G.S. 105-164.3(23a) is amended and defines "**NAICS**" as "The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2007."

Economic Incentive Refunds

G.S. 105-164.14A was added to combine all of the economic incentive refunds into a more concise organization in the general statutes. The due dates of all refunds in this section are standardized to be due six months after the end of the State's fiscal year, and refunds applied for after the due dates are barred. The period covered by the first refund claim filed by a Major Recycling Facility on or after July 1, 2010 should include tax paid on purchases since the Major Recycling Facility's last fiscal year end but before July 1, 2010. The first refund claim filed by a Major Recycling Facility within six months of the State's June 2010 fiscal year end may be for a period less than twelve months. There are no changes to the due dates for the remaining refunds covered in this section. There is no substantive change to the Passenger Air Carrier refund provisions previously found in G.S. 105-164.14(a1). The Low Enterprise or Development Tier Machinery refund provisions previously found in G.S. 105-164.14(h) have been changed to only allow refunds to businesses listed in G.S. 105-129.83(a) in a development tier one area. There is no substantive change to the Motorsports Team or Sanctioning Body refund provisions previously found in G.S. 105-164.14(l). The Professional Motorsports Team refund provisions previously found in G.S. 105-164.14(m) have been amended to add a repeal date of January 1, 2014. The Analytical Services Business refund provisions previously found in G.S. 105-164.14(n) have been amended to add a repeal date of January 1, 2013. The Railroad Intermodal Facility refund provisions previously found in G.S. 105-164.14(o) have been amended to add a repeal date of January 1, 2038.

Certain Industrial Facilities Refunds

G.S. 105-164.14B was added to combine all of the industrial facility refunds into a more concise organization in the general statutes. There are no substantive changes to the refund provisions previously found in G.S. 105-164.14(j) for certain facilities in the following industries: air courier services, aircraft manufacturing, bioprocessing, financial services, securities operations, and related systems development, motor vehicle manufacturing, pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines, semiconductor manufacturing, and

solar electricity generating material manufacturing. Computer manufacturing is not included as an eligible industry in this new refund section.

Datacenter Machinery and Equipment Privilege Tax

G.S.105-187.51C is amended to add subsection (a1), which lists requirements the Secretary of Commerce must certify before a datacenter is eligible for the 1% privilege tax imposed on certain datacenter machinery and equipment. As a result, subsection (a) is amended to delete the reference to an eligible datacenter as defined in G.S. 105-164.3(8e) and adds a reference to subsection (a1). Subsection (a2) is added to reference a second datacenter and sets out the requirements for qualifying for the 1% privilege tax. Subsection (a3) is added to indicate contractors and subcontractors of the datacenters as being eligible to purchase qualifying machinery and equipment at the 1% privilege tax. Subsection (b) is amended to state that the tax does not apply to equipment and machinery of an eligible Internet datacenter that is exempt from sales tax under G.S. 105-164.13(55). Subsection (d) is amended to extend the sunset of this section to July 1, 2015.

Effective October 1, 2010

Filing Frequency Threshold Change

G.S. 105-164.16(b1) and (b2) are amended to change the threshold requirements for the monthly and monthly with prepayment filing frequencies. Monthly filers are filers who are consistently liable for at least \$100 but less than \$15,000 a month in State and local sales and use taxes. Monthly with prepayment filers are filers who are consistently liable for at least \$15,000 a month in State and local sales and use taxes. The Department has sent notices to each taxpayer that is affected by this threshold change.

Effective January 1, 2011

Tax on Facilitator Fee for Accommodations

G.S. 105-164.4(a)(3) is amended as follows: "A tax at the general rate applies to the gross receipts derived from the rental of an accommodation. The tax does not apply to a private residence or cottage that is rented for fewer than 15 days in a calendar year or to an accommodation rented to the same person for a period of 90 or more continuous days. Gross receipts derived from the rental of an accommodation include the sales price of the rental of the accommodation. The sales price of the rental of an accommodation is determined as if the rental were a rental of tangible personal property. The sales price of the rental of an accommodation marketed by a facilitator includes charges designated as facilitation fees and any other charges necessary to complete the rental. A person who provides an accommodation that is offered for rent is considered a retailer under this Article. A facilitator must report to the retailer with whom it has a contract the sales price a consumer pays to the facilitator for an accommodation rental marketed by the facilitator. A retailer must notify a facilitator when an accommodation rental marketed by the facilitator is completed and, within three business days of receiving the notice, the facilitator must send the retailer the portion of the sales price the facilitator owes the retailer and the tax due on the sales price. A facilitator that does not send the retailer the tax due on the sales price is liable for the amount of tax the facilitator fails to send. A facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a facilitator. The requirements imposed by this subdivision on a retailer and a facilitator are considered terms of the contract between the retailer and the facilitator. A person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax imposed by this subdivision. The liability of a rental agent for the tax imposed by this subdivision relieves the provider of the accommodation from liability. A rental agent includes a real estate broker, as defined in G.S. 93A-2. The following definitions apply in this subdivision: a. Accommodation. – A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual. b. Facilitator. – A person who is not a rental agent and who contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer for the accommodation." The rental of an accommodation is sourced to the location of the accommodation.

Production Company

G.S. 105-187.51(a)(1) is amended to exclude a production company from qualifying for the 1% privilege tax levied on the purchase of mill machinery or mill machinery parts or accessories. Purchases made by motion picture and film production companies will be subject to the general State and local tax rates.

PART III: OTHER ADMINISTRATIVE REMINDERS

Form E-500, Sales and Use Tax Return, Electronic File and Pay

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.ncdor.gov, and select "Electronic Services," "Businesses" section.

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

A retailer engaged in business in this State is required to collect the applicable county tax on all 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 the county in which the business is located. If the property is shipped 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). If a retailer collects county tax for more than one county, the retailer 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.ncdor.gov, and through the online filing options.

Paying Assessments

To pay an assessment a Taxpayer may use the following payment methods: a. Credit/debit card or bank draft on the Department's website, www.ncdor.gov, by selecting "Electronic Services." b. Credit/debit card or bank draft by calling toll-free 1-877-252-3252. c. Check or money order with the lower portion of the notice mailed to P.O. Box 25000, Raleigh, N.C. 27640-0002.

Monthly with Prepayment Filers

Effective May 1, 2010, taxpayers that have a monthly with prepayment filing frequency are mandated by the Secretary to electronically file Form E-500, Sales and Use Tax Return. A link to the E-500 Sales and Use web service is available by selecting "Electronic Services," "Businesses" section, on the Department's website, www.ncdor.gov. The monthly with prepayment filers are reminded they are required to make **two** payments when paying by ACH credit or ACH debit (touchtone, voice, or PC Software) as follows: **one payment for the balance of the current period and a separate payment for the prepayment of the next reporting period.** Taxpayers with a monthly with prepayment filing frequency will not be mailed coupon booklets by the Department for the periods October 2010 through September 2011.

Use Tax on Purchases

Businesses are reminded to report use tax on purchases of taxable tangible personal property, services, or digital property for storage, use or consumption in North Carolina from vendors that do not charge North Carolina sales or use tax. Effective January 1, 2010, the following digital property is subject to tax: (1) An audio work, (2) An audiovisual work, (3) A book, a magazine, a newspaper, a newsletter, a report, or another publication, and (4) A photograph or greeting card. The tax applies regardless of whether the purchaser of the item has the right to use the digital good permanently or to use it without making continued payments. The use tax rate is the same as the sales tax rate noted in Part I, Change in Local Rates.

Quarterly Filers

A taxpayer who is consistently liable for less than one hundred dollars (\$100.00) a month in State and local sales and use taxes should file one return and remit one payment covering the calendar quarter by the last day of the month following the end of the quarter. Taxpayers who file quarterly should not file a separate return or make a separate payment for each month in the calendar quarter.

Frequently asked questions with responses and additional information can be found on the Department's website at www.ncdor.gov. 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. Effective January 2010, the Department adopted a private letter ruling policy. 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 for requesting a private letter ruling found on the Department's website at the following address www.ncdor.gov/documents/written-determinations-and-letters-general-applicability.