



## 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 enacted by the 2019 and 2020 Sessions 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). 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 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.

The Revisor of Statutes is authorized to renumber the subdivisions of N.C. Gen. Stat. § 105-164.3 to ensure that the subdivisions are listed in alphabetical order and in a manner that reduces the current use of alphanumeric designations, to make conforming changes, and to reserve sufficient space to accommodate future additions to the statutory section. All definitions in N.C. Gen. Stat. § 105-164.3 that have not yet been numbered by the Revisor of Statutes are marked with a pound sign (#).

As of October 1, 2020, 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-two (52) counties; 7.00% in Alexander, Anson, Ashe, Bertie, Buncombe, Cabarrus, Catawba, Chatham, Cherokee, Clay, Cumberland, Davidson, Duplin, Edgecombe, Forsyth, Gaston, Graham, Greene, Halifax, Harnett, Haywood, Hertford, Jackson, Jones, Lee, Lincoln, Madison, 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 retroactively to October 1, 2019, and applies to sales and purchases occurring on or after such date*

**Additional Digital Goods** – N.C. Gen. Stat. § 105-164.3(#) is added and defines "additional digital goods" as "[a]ll of the following if transferred electronically:

- a. A magazine, a newspaper, a newsletter, a report, or another publication.
- b. A photograph.
- c. A greeting card."

**Certain Digital Property** – N.C. Gen. Stat. § 105-164.3(23) is amended and provides "certain digital property" is "[s]pecified digital products and additional digital goods. The term does not include an information service or an educational service."

**Digital Audio Work** – N.C. Gen. Stat. § 105-164.3(7) is amended and provides a "digital audio work" is "[a] work that results from the fixation of a series of musical, spoken, or other sounds, including a ringtone, that is transferred electronically."

**Digital Audiovisual Work** – N.C. Gen. Stat. § 105-164.3(9) is amended and provides a "digital audiovisual work" is "[a] series of related images, that when shown in succession, impart an impression of motion, together with accompanying sounds, if any, and that is transferred electronically."

**Digital Book** – N.C. Gen. Stat. § 105-164.3(#) is added and defines a “digital book” as “[a] work that is generally recognized in the ordinary and usual sense as a book that is transferred electronically.”

**Educational Service** – N.C. Gen. Stat. § 105-164.3(58) is added and defines “educational service” as “[t]he delivery of instruction or training, whether provided in real time, on demand, or at another set time, by or on behalf of a qualifying educational entity where at least one of the following conditions applies:

- a. The instruction or training is part of the curriculum for an enrolled student.
- b. The instruction or training is encompassed within the institution's accreditation or prepares an enrolled student for gainful employment in a recognized occupation.
- c. The participant is evaluated by an instructor. ‘Evaluated by an instructor’ does not include being graded by, scored by, or evaluated by a computer program or an interactive, automated method.
- d. The participant is connected to the presenter or instructor via the Internet or other networks, allowing the participant to provide, receive, or discuss information through live interaction, contemporaneous with the presentation.”

**Qualifying Educational Entity** – N.C. Gen. Stat. § 105-164.3(170) is added and defines “qualifying educational entity” as “[a]n entity listed in this subdivision. For purposes of this definition, references to the United States Code mean the United States Code as enacted as of January 1, 2020. The entities are:

- a. An elementary or secondary school, as defined in 20 U.S.C. § 7801.
- b. An institution of higher education, as defined in 20 U.S.C. § 1002.”

**Specified Digital Products** – N.C. Gen. Stat. § 105-164.3(#) is added and defines “specified digital products” as “[d]igital audio works, digital audiovisual works, and digital books.”

**Transferred Electronically** – N.C. Gen. Stat. § 105-164.3(#) is added and defines “transferred electronically” as “[o]btained by the purchaser by means other than tangible storage media and includes delivered or accessed electronically.”

### ***Effective February 1, 2020***

Form E-505 (9-19) was published prior to Senate Bill 557 becoming Session Law 2019-246 on November 8, 2019. Session Law 2019-246 included a multitude of sales and use tax changes. A complete listing of these changes is located in the 2019 Tax Law Changes document located at: <https://www.ncdor.gov/news/press-releases/2020/01/29/2019-tax-law-change-book-published>.

**Accommodation Facilitator** – N.C. Gen. Stat. § 105-164.3(#) was added and defines an “accommodation facilitator” as “[a] person that contracts, either directly or indirectly, with a provider of an accommodation to perform, either directly or indirectly, one or more of the activities listed in this subdivision. The term includes a real estate broker as defined in [N.C. Gen. Stat. §] 93A-2. The activities are:

- a. Market the accommodation and accept payment or collect credit card or other payment information for the rental of the accommodation.
- b. List the accommodation for rental on a forum, platform, or other application for a fee or other consideration.”

**Accommodation Rentals** – N.C. Gen. Stat. § 105-164.4F was amended and sets forth the conditions under which a person is considered the retailer of an accommodation rental.

**Entertainment Activity** – N.C. Gen. Stat. § 105-164.4G was amended and sets forth the conditions under which a person is considered the retailer of an admission charge to certain entertainment activities.

**Marketplace** – N.C. Gen. Stat. § 105-164.3(#) was added and defines a “marketplace” as “[a] physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items, the delivery of or first use of which is sourced to this State.”

**Marketplace-Facilitated Sale** – N.C. Gen. Stat. § 105-164.3(#) was added and defines “marketplace-facilitated sale” as “[t]he sale of an item by a marketplace facilitator on behalf of a marketplace seller that occurs through a marketplace.”

**Marketplace-Facilitated Sales** – N.C. Gen. Stat. § 105-164.4J was added and provides the following:

- “(a) Scope. – This section applies to a marketplace facilitator that makes sales, including all marketplace-facilitated sales for all marketplace sellers, sourced to this State for the previous or the current calendar year that meet either of the following:
- (1) Gross sales in excess of one hundred thousand dollars (\$100,000).
  - (2) Two hundred or more separate transactions.

- (b) **Payment of Tax.** – A marketplace facilitator that meets the threshold in subsection (a) of this section is considered the retailer of each marketplace-facilitated sale it makes and is liable for collecting and remitting the sales and use tax on all such sales. A marketplace facilitator is required to comply with the same requirements and procedures as all other retailers registered or who are required to be registered to collect and remit sales and use tax in this State. A marketplace facilitator is required to collect and remit sales tax as required by this section regardless of whether a marketplace seller for whom it makes a marketplace-facilitated sale meets any of the following conditions:
- (1) Has a physical presence in this State.
  - (2) Is required to be registered to collect and remit sales and use tax in this State.
  - (3) Would have been required to collect and remit sales and use tax in this State had the sale not been made through a marketplace.
  - (4) Would not have been required to collect and remit sales and use tax in this State had the sale not been made through a marketplace.
- (c) **Report.** – A marketplace facilitator must provide or make available to each marketplace seller the information listed in this subsection with respect to marketplace-facilitated sales that are made on behalf of the marketplace seller and that are sourced to this State. The information may be provided in any format and shall be provided or made available no later than 10 days after the end of each calendar month. The required information to be provided or made available to each marketplace seller is as follows:
- (1) Gross sales.
  - (2) The number of separate transactions.
- (d) **Liability Relief.** – The Department shall not assess a marketplace facilitator for failure to collect the correct amount of tax due if the marketplace facilitator can demonstrate to the Secretary's satisfaction that all of the circumstances listed in this subsection apply. This subsection does not apply with regard to a marketplace-facilitated sale for which the marketplace facilitator is the marketplace seller or if the marketplace facilitator and the marketplace seller are affiliates. If a marketplace facilitator is not assessed for tax due under this section, the marketplace seller is liable for the tax due under this section provided the marketplace seller is engaged in business in this State. The circumstances that a marketplace facilitator must demonstrate are as follows:
- (1) The failure to collect the correct amount of tax was due to incorrect information given to the marketplace facilitator by the marketplace seller.
  - (2) The marketplace facilitator did not receive specific written advice from the Secretary for the transaction at issue.
- (e) **Refund of Tax.** – If a purchaser receives a refund on any portion of the sales price from a marketplace facilitator who collected and remitted the tax on the retail sale, the provisions of [N.C. Gen. Stat. §] 105-164.11A(a) apply.
- (f) **Class Actions.** – No class action may be brought against a marketplace facilitator in any court of this State on behalf of customers arising from or in any way related to an overpayment of sales or use tax collected on facilitated sales by a marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection affects a customer's right to seek a refund as provided under [N.C. Gen. Stat. §] 105-164.11.
- (g) **Agreements.** – Nothing in this section shall be construed to interfere with the ability of a marketplace facilitator and a marketplace seller to enter into an agreement with each other regarding the fulfillment of the requirements of this Article, except that an agreement may not require a marketplace seller to collect and remit sales and use tax on marketplace-facilitated sales.
- (h) **Use Tax Obligation.** – Nothing in this section affects the obligation of any purchaser to remit use tax for any taxable transaction for which a marketplace facilitator does not collect and remit sales or use tax.
- (i) **Limitation.** – This section does not apply to an accommodation facilitator, an admission facilitator, or a service contract facilitator whose collection and remittance requirements are set out in [N.C. Gen. Stat. §§] 105-164.4F, 105-164.4G, and 105-164.4I, respectively."

**Marketplace Facilitator** – N.C. Gen. Stat. § 105-164.3(#) was added and defines a "marketplace facilitator" as "[a] person that, directly or indirectly and whether through one or more affiliates, does both of the following:

- a. Lists or otherwise makes available for sale a marketplace seller's items through a marketplace owned or operated by the marketplace facilitator.
- b. Does one or more of the following:
  1. Collects the sales price or purchase price of a marketplace seller's items or otherwise processes payment.
  2. Makes payment processing services available to purchasers for the sale of a marketplace seller's items."

**Marketplace Seller** – N.C. Gen. Stat. § 105-164.3(#) was added and defines a "marketplace seller" as "[a] person that sells or offers to sell items through a marketplace regardless of any of the following:

- a. Whether the person has a physical presence in this State.
- b. Whether the person is registered as a retailer in this State.
- c. Whether the person would have been required to collect and remit sales and use tax had the sales not been made through a marketplace.

- d. Whether the person would not have been required to collect and remit sales and use tax had the sales not been made through a marketplace.”

**Service Contracts** – N.C. Gen. Stat. § 105-164.4I was amended and sets forth the conditions under which a person is considered the retailer of a service contract or the renewal of a service contract, respectively.

**Effective July 1, 2020**

**Livestock** – N.C. Gen. Stat. § 105-164.3(#) is added and defines “livestock” as “[c]attle, sheep, goats, swine, horses, and mules.”

**Marketplace-Facilitated Sales** – N.C. Gen. Stat. § 105-164.4J is amended further and provides the following:

- “(a) Scope. – This section applies to a marketplace facilitator engaged in business in this State.
- (b) Payment of Tax. – A marketplace facilitator subject to this section is considered the retailer of each marketplace-facilitated sale it makes and is liable for collecting and remitting the sales and use tax on all such sales. A marketplace facilitator is required to comply with the same requirements and procedures as all other retailers registered or who are required to be registered to collect and remit sales and use tax in this State. A marketplace facilitator is required to collect and remit sales tax as required by this section regardless of whether a marketplace seller for whom it makes a marketplace-facilitated sale meets any of the following conditions:  
...

**PART II: SALES AND USE TAX EXEMPTIONS**

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

**Certain Digital Property Occurring Contemporaneously with Nontaxable Service** – N.C. Gen. Stat. § 105-164.13(73) is added and provides an exemption from sales and use tax for “[s]ales of a digital audio work or digital audiovisual work that consists of nontaxable service content when the electronic transfer of the digital audio work or digital audiovisual work occurs contemporaneously with the provision of the nontaxable service in real time.”

**Qualifying Education Expense** – N.C. Gen. Stat. § 105-164.13(72) is added and provides an exemption from sales and use tax for “[s]ales of a digital audio work or a digital audiovisual work that is a qualifying education expense under [N.C. Gen. Stat. §] 115C-595(a)(3) to the operator of a home school as defined in [N.C. Gen. Stat. §] 115C-563.”

**Effective July 1, 2020**

**Animals** – N.C. Gen. Stat. § 105-164.13E(a)(7) is amended and provides an exemption from sales and use tax when purchased by a qualifying or conditional farmer and used by the qualifying or conditional farmer primarily in farming operations.

- “Any of the following animals:
- a. Baby chicks and poults.
  - b. Livestock.”

**PART III: OTHER MISCELLANEOUS CHANGES**

**Effective June 30, 2020 and applies to assessments not barred by the statute of limitations prior to such date**

**Failure to Pay Trust Taxes** – N.C. Gen. Stat. § 105-241.8(b)(2a) is added and provides “[i]f a taxpayer, as a trustee, collects taxes on behalf of the State, but fails to remit all the taxes held in trust when due, the period for proposing an assessment is the later of the following:

- a. Ten years after the due date of the return.
- b. Ten years after the taxpayer filed the return.”

**Effective July 1, 2020 and applies to sales occurring on or after such date**

**Provisions for Local Meals Taxes** – N.C. Gen. Stat. §§ 153A-154.1 and 160A-214.1 are amended and provide a retailer required to remit the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax on the sale of prepared food and beverages to the North Carolina Department of Revenue is also required to remit the local meals tax on prepared food and beverages to the taxing county or city as applicable on and after the effective date of the levy of the local meals tax.