



Sales and Use Tax Division
North Carolina Department of Revenue
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IMPORTANT NOTICE: PREPAID MEAL PLANS

N.C. Gen. Stat. § 105-164.4(a)(12) provides that the 4.75% general State and applicable local and transit rates of sales and use tax apply to the sales price of or gross receipts derived from a prepaid meal plan sold or billed on or after July 1, 2014. A bundle that includes a prepaid meal plan is taxable in accordance with N.C. Gen. Stat. § 105-164.4D. The statutes referenced below also apply to prepaid meal plans sold or billed on or after July 1, 2014 and include any relevant legislative changes enacted as of June 20, 2014.

Definition

N.C. Gen. Stat. § 105-164.3(27a) defines the term “prepaid meal plan” as “[a] plan offered by an institution of higher education that meets all of the following requirements:

- a. Entitles a person to food or prepared food.
- b. Must be billed or paid for in advance.
- c. Provides for predetermined units or unlimited access to food or prepared food but does not include a dollar value that declines with use.”

Sourcing

N.C. Gen. Stat. § 105-164.4B(g) provides that the gross receipts derived from a prepaid meal plan are sourced to the location where the food or prepared food is available to be consumed by the person.

Bundled Transactions

N.C. Gen. Stat. § 105-164.4D(a) is amended to include two new subsections. The sales and use tax applies to the sales price of a bundled transaction unless one of the following applies:

- (4) *Prepaid meal plan*. The bundle includes a prepaid meal plan and a dollar value that declines with use. **In this circumstance, sales and use tax applies to the allocated price of the prepaid meal plan.** The sales and use tax applies to items purchased with the dollar value that declines with use as the dollar value is presented for payment, as applicable.
- (5) *Tuition, room, and meals*. The bundle includes tuition, room, and meals offered by an institution of higher education. **In this circumstance, sales and use tax applies to the allocated price of the meals.** The institution determines the allocated price for meals based on a reasonable allocation of revenue that is supported by the institution’s business records kept in the ordinary course of business.

Where a retailer includes the gross receipts from prepaid meal plans in a bundle, the retailer may display a statement indicating the gross receipts includes the sales and use tax on the allocated price of the meals. The retailer is encouraged to include such statement in its marketing material and on any invoice or billing issued for the gross receipts derived from a prepaid meal plan.

Exemptions

N.C. Gen. Stat. § 105-164.13(63) is added to provide for the exemption from sales and use tax on the sale at retail and the use, storage, and consumption in this State of food and prepared food to be provided to a person entitled to the food and prepared under a prepaid meal plan subject to tax under N.C. Gen. Stat. § 105-164.4(a)(12). A retailer of prepaid meal plans shall furnish to its vendors as the vendor's authority for not collecting the sales and use tax Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, or other information or documentation as provided in N.C. Gen. Stat. § 105-164.28. A vendor that fails to obtain and retain such documentation is liable for sales and use tax on the sales price of such items.

Reporting Option

N.C. Gen. Stat. § 105-164.16A is added to provide a retailer (institution of higher education) that offers prepaid meal plans an optional collection and reporting method by which the sales and use tax on the gross receipts from prepaid meal plans will be remitted to the Department. When the retailer enters into an agreement with a food service contractor by which the food service contractor agrees to provide food or prepared food under a prepaid meal plan, and the food service contractor with whom the retailer contracts is also a retailer within the meaning of N.C. Gen. Stat. § 105-164.3(35), the retailer may include in the agreement that the food service contractor is liable for collecting and remitting the sales and use tax due on the gross receipts derived from the prepaid meal plan on behalf of the retailer.

Where such agreement executed between the retailer and the food service contractor indicates the food service contractor is liable for the sales and use tax on prepaid meal plans, the food service contractor is liable for any underpayment of sales and use tax, provided that the retailer has not misrepresented the sales price of the prepaid meal plan to the contractor. The agreement must provide that the sales and use tax applies to the allocated sales price of the prepaid meal plan paid by or on behalf of the person entitled to the food or prepaid food under the plan and not the amount charged by the food service contractor to the retailer under the agreement for the food and prepared food for the person.

A retailer who elects this option must report to the food service contractor with whom it has an agreement the gross receipts a person pays to the retailer for a prepaid meal plan. The retailer must send the food service contractor the sales and use tax due on the gross receipts derived from a prepaid meal plan. Where the agreement between the retailer and food service contractor provides that the food service contractor is liable for collecting and remitting the sales and use tax due on the gross receipts from prepaid meal plans, such tax is to be reported by the food service contractor along with any other sales and use tax liability of the food service contractor to the Department on its form E-500, Sales and Use Tax Return. In such instance, the food service contractor should maintain records that clearly document any sales and use tax remitted on the gross receipts from prepaid meal plans on behalf of the retailer (institution of higher education).

Other Resources

Sales and use tax on sales of prepared food sold to a college student attending an institution of higher education in this State was previously addressed in [Directive SD-13-1](#), issued on December 9, 2013. **To the extent that any information in that 2013 Directive conflicts with this Important Notice for prepaid meal plans sold or billed on or after July 1, 2014, the provisions contained in this Important Notice supersede.**

Assistance

Questions about this notice can be directed to the Taxpayer Assistance and Collection Center at telephone number 1-877-252-3052 (toll-free).