

**North Carolina Department of Revenue
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Raleigh, North Carolina 27640-0001**

To Registered Taxpayers:

This document reflects major changes enacted by the 2009 Session of the General Assembly to the taxes administered by the Sales and Use Tax Division. This document does not have all of the legislative changes made by the 2009 Session of the General Assembly. A complete listing and more detailed explanations of the legislative changes will be available in the 2009 Tax Law Changes on the Department's website. The document includes rate changes authorized by the 2007 General Assembly that are effective in 2009 or 2010. Legislative changes supersede any information previously set forth in Sales and Use Tax Administrative Rules or Technical Bulletins 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 other administrative reminders. The items in each Part are cited in order of effective date.

PART I: RATE CHANGES***Effective September 1, 2009*****Temporary Increase of State General Rate**

The general State tax rate increased from 4.5% to 5.5%. The increase is scheduled to expire on July 1, 2011. As a result of this increase, the combined State and local sales and use tax changes to 7.75% in ninety-one counties, 8% in Alexander, Catawba, Cumberland, Haywood, Martin, Pitt, Sampson, and Surry 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 increases from 7% to 8%.

Effective October 1, 2009**Change in State and Local Rates**

The general State rate of tax increases from 5.5% to 5.75%. The third one-half cent local tax previously reduced to a quarter cent (0.25%) under Article 44 will decrease to zero. These changes occur as the State continues assuming Medicaid responsibilities for the counties. Therefore, the total local county rate of tax will be 2% in all counties except Alexander, Catawba, Cumberland, Haywood, Martin, Pitt, Sampson, and Surry where the county rate will be 2.25% and Mecklenburg County continues to have an additional 0.5% Public Transportation rate. The combined State and local rate will continue to be 7.75% in ninety-one counties, 8% in Alexander, Catawba, Cumberland, Haywood, Martin, Pitt, Sampson, and Surry 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 as a result of the simultaneous changes in the State and local rates and remains at 8%.

Effective July 1, 2010**Decrease in Tax Rate for Electricity Sold to Manufacturers and Farmers**

The rate of tax on the sale of electricity to a manufacturer for use in connection with the operation of the industries or plants and to a farmer to be used for any farming purposes other than preparing food, heating dwellings, and other household purposes is reduced from 0.8% to zero.

Decrease in Rate for Manufacturing Fuel

The privilege tax imposed on a manufacturing industry or plant that purchases fuel, other than electricity or piped natural gas, to operate the industry or plant is reduced from 0.3% to zero.

PART II: OTHER LEGISLATIVE CHANGES***Effective July 1, 2008*****Nonprofit Entities**

G.S. 105-164.14(b)(2a) was enacted to provide for a refund of sales and use tax to "An organization that is exempt from income tax under the Code and is one of the following:" a volunteer fire department or a volunteer emergency medical services squad. This amendment applies to purchases made on or after July 1, 2008.

Effective August 5, 2009

Reliance on Written Advice

G.S. 105-164.11 was amended by adding a new subsection to read: “A seller who requests specific written advice from the Secretary and who collects and remits sales or use tax in accordance with the written advice the Secretary gives the seller is not liable to a purchaser for any overcollected sales or use tax that was collected in accordance with the written advice.” G.S. 105-164.11(a) governs when a seller may obtain a refund for overcollected tax.

Effective August 7, 2009

Definitions

G.S. 105-164.3(1e) is added and defines “**Audio work**” as “A series of musical, spoken, or other sounds, including a ringtone.”

G.S. 105-164.3(1g) is added and defines “**Audiovisual work**” as “A series of related images and any sounds accompanying the images that impart an impression of motion when shown in succession.”

G.S. 105-164.3(7a) is added and defines “**Digital code**” as “A code that gives a purchaser of the code a right to receive an item by electronic delivery or electronic access. A digital code may be obtained by an electronic means or by a tangible means. A digital code does not include a gift certificate or a gift card.”

G.S. 105-164.3(14a) is added and defines “**Information service**” as “A service that generates, acquires, stores, processes, or retrieves data and information and delivers it electronically to or allows electronic access by a consumer whose primary purpose for using the service is to obtain the processed data or information.”

G.S. 105-164.3(33c) is added and defines “**Remote sale**” as “A sale of tangible personal property or digital property ordered by mail, by telephone, via the Internet, or by another similar method, to a purchaser who is in this State at the time the order is remitted, from a retailer who receives the order in another state and delivers the property or causes it to be delivered to a person in this State. It is presumed that a resident of this State who remits an order was in this State at the time the order was remitted.”

G.S. 105.3(35) is amended and defines “**Retailer**” as “A person engaged in the business of any of the following: (a) Making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property, digital property, or services for storage, use, or consumption in this State. When the Secretary finds it necessary for the efficient administration of this Article to regard any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these dealers, distributors, consignors, supervisors, employers, or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers, or persons as ‘retailers’ for the purpose of this Article. (b) Delivering, erecting, installing, or applying tangible personal property for use in this State, regardless of whether the property is permanently affixed to real property or other tangible personal property. (c) Making a remote sale, if one of the conditions listed in G.S. 105-164.8 (b) is met.”

G.S. 105-164.3(35c) is added and defines “**Ringtone**” as “A digitized sound file that is downloaded onto a device and that may be used to alert the user of the device with respect to a communication.”

Nexus Clarification for Click Throughs

G.S. 105-164.8(b) provides that a retailer who makes a mail order sale is engaged in business in this State and is subject to the sales and use tax if at least one of the conditions in (b)(1) through (b)(8) are met. G.S. 105-164.8(b)(3) codifies the principle announced by the United States Supreme Court in *Scripto v. Carson* that a state may require tax collection by a remote retailer that had contacts with 10 independent contractors in the state who solicited orders for products on its behalf. G.S. 105-164.8(b)(3) requires a retailer who makes a mail order sale to collect the sales tax if: “The retailer has representatives in this State who solicit business or transact business on behalf of the retailer, whether the mail order sales thus subject to taxation by this State result from or are related in any way to such solicitation or transaction of business.”

The clarifying amendments to G.S. 105-164.8(b) modernize the terminology of the statute by replacing “mail order sales” with “remote sales.” The clarification rewrites G.S. 105-164.8(b)(3) as follows: “The retailer solicits or transacts

business in this State by employees, independent contractors, agents, or other representatives, whether the remote sales thus subject to taxation by this State result from or are related in any other way to the solicitation or transaction of business.” The clarification also adds the following bright line presumption: “A retailer is presumed to be soliciting or transacting business by an independent contractor, agent, or other representative if the retailer enters into an agreement with a resident of this State under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet Web site or otherwise, to the retailer. This presumption applies only if the cumulative gross receipts from sales by the retailer to purchasers in this State who are referred to the retailer by all residents with this type of agreement with the retailer is in excess of ten thousand dollars (\$10,000) during the preceding four quarterly periods. This presumption may be rebutted by proof that the resident with whom the retailer has an agreement did not engage in any solicitation in the State on behalf of the seller that would satisfy the nexus requirement of the United States Constitution during the four quarterly periods in question.”

Nonresident Retailer Purchasing Advertising

G.S. 105-164.8(b)(5) as amended states in part, “A nonresident retailer who purchases advertising to be delivered by television, by radio, in print, on the Internet, or by any other medium is not considered to be engaged in business in this State based **solely** on the purchase of advertising.”

Record Keeping Requirements

G.S. 105-164.22 is rewritten to consolidate record-keeping requirements, inspection authority, and the effect of failure to keep records. Retailers and wholesale merchants must keep records that establish tax liability for a period of three years and the Department may inspect these records at any reasonable time during the day. A retailer’s records must include records of the retailer’s gross income, gross sales, net taxable sales, and all items purchased for resale. Failure of a retailer to keep records that establish that a sale is exempt subjects the retailer to liability for tax on the sale. A wholesaler merchant’s records must include a bill of sale for each customer that contains the name and address of the purchaser, the date of the purchase, the item purchased, and the price at which the wholesale merchant sold the item. Failure of a wholesale merchant to keep these records for the sale of an item subjects the wholesale merchant to liability for tax at the rate that applies to the retail sale of the item.

Requirement and Application

G.S. 105-164.29(a) as amended states in part, “Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration.”

Incorrect Returns

G.S. 105-164.32 is rewritten as follows: “If a retailer, a wholesale merchant, or a consumer fails to file a return and pay the tax due under this Article or files a grossly incorrect, false or fraudulent return, the Secretary must estimate the tax due and assess the retailer, wholesale merchant, or consumer based on the estimate.”

Effective August 27, 2009

County Authority to Levy a 0.5% or 0.25% Transit Tax

Article 43 of Chapter 105 of the General Statutes has been rewritten to provide for regional transportation authorities and counties to levy local government sales and use taxes for public transportation. As rewritten a regional transportation authority consisting of Durham, Orange and Wake Counties and a regional transportation authority consisting of Forsyth and Guilford Counties have the authority to levy a 0.5% transit county tax subject to specific procedures. The remaining ninety-four counties have the authority to levy a 0.25% transit county tax subject to specific procedures. Mecklenburg County levies a 0.5% transit tax which was enacted in 1999. The Department will notify taxpayers if any regional transportation authority or additional county levies the transit tax.

Effective October 1, 2009

Exemption for Aircraft Simulators

G.S. 105-164.13(45c) is a new exemption for aircraft simulators sold to a company for flight crew training and maintenance training. G.S. 105-164.13(45) has been amended to delete reference for the exemption of aircraft simulators for flight crew training when sold to an interstate passenger air carrier for use at its hub.

Effective January 1, 2010

Digital Property Taxed at the Combined State and Applicable Local Rates

G.S. 105-164.4(a)(6b) is a new subdivision that imposes the combined State and applicable local tax rate on digital property that is delivered or accessed electronically, is not considered tangible personal property, and would be taxable under G.S. 105-164.4(a) if sold in a tangible medium. 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 tax does not apply to a service that is taxed under another subdivision of G.S. 105-164.4(a) or to an information service. The following 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.

Magazines Sold Door to Door

G.S. 105-164.13(28) is amended to eliminate the exemption of door to door sales of magazines by magazine vendors. As a result of this amendment, magazine subscriptions will be subject to the combined State and applicable local tax rate.

Computer Software

G.S. 105-164.13(43a) is amended to eliminate the exemption of computer software delivered electronically or by load and leave. As amended, the exemption will apply to computer software that meets any of the following descriptions: (1) Designed to run on an enterprise server operating system, (2) Sold to a person who operates a datacenter and is used within the datacenter, (3) Sold to a person who provides cable service, telecommunications service, or video programming and is used to provide ancillary service, cable service, Internet access service, telecommunications service, or video programming.

Computer Software or Digital Property Exemption

G.S. 105-164.13(43b) is a new exemption for computer software or digital property that becomes a component part of other computer software or digital property that is offered for sale or of a service that is offered for sale.

PART III: OTHER ADMINISTRATIVE REMINDERS

Form E-543 No Longer Required

Form E-543, Schedule of State Sales Tax by City, is no longer required to be filed with Form E-500, Sales and Use Tax Return beginning with the October 2009 filing period.

Reporting Sales and Use Taxes for Simultaneous State and Local Rate Changes

G.S. 105-164.16(e) provides that, when the State and local sales and use tax rates change on the same date because one increases and the other decreases but the "combined general rate" does not change, special rules apply for taxes payable on the gross receipts from certain periodic payments. For tangible personal property leased for a definite period of time where the agreement was entered into prior to the effective date of the rate changes, the sales and use taxes payable on the gross receipts from lease or rental payments received after the effective date of the changes are to be reported at the "new" or "changed" rates. Sales and use taxes payable on the gross receipts from installment sale payments received after the effective date of the changes by a taxpayer who reports the installment sale on a cash basis are reportable in accordance with the "new" or "changed" rates. For instance, when the simultaneous State rate increase and local rate decrease occurs October 1, 2009, tax on lease/rental payments and installment sale payments will be reported using the rates in effect October 1, 2009 rather than the rates in effect prior to the simultaneous changes.

Monthly with Prepayment Filers

Taxpayers who are required to make a prepayment for the next period when filing Form E-500, Sales and Use Tax Return, are reminded they are also 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 prepayment of the next reporting period.** The Department's online filing and payment system automatically creates two payments and routes the two payments to the appropriate periods.

Frequently asked questions with responses can be found on the Department's website at www.dorn.com. 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.