

Article 5.

Sales and Use Tax.

§ 105-164: Repealed by Session Laws 1957, c. 1340, s. 5.

Part 1. Title, Purpose and Definitions.

§ 105-164.1. Short title.

This Article shall be known as the "North Carolina Sales and Use Tax Act." (1957, c. 1340, s. 5; 1998-98, s. 47.)

§ 105-164.2. Purpose.

The taxes herein imposed shall be in addition to all other license, privilege or excise taxes and the taxes levied by this Article are to provide revenue for the support of the public school system of this State and for other necessary uses and purposes of the government and State of North Carolina. (1957, c. 1340, s. 5.)

§ 105-164.3. Definitions.

The following definitions apply in this Article:

- (1) Advertising and promotional direct mail. – Printed material that meets the definition of "direct mail" and the primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization. As used in this subdivision, "product" means tangible personal property, digital property, or a service.
- (1a) Analytical services. – Testing laboratories that are included in national industry 541380 of NAICS or medical laboratories that are included in national industry 621511 of NAICS.
- (1b) Ancillary service. – A service associated with or incidental to the provision of a telecommunications service. The term includes detailed communications billing, directory assistance, vertical service, and voice mail service. A vertical service is a service, such as call forwarding, caller ID, three-way calling, and conference bridging, that allows a customer to identify a caller or manage multiple calls and call connections.
- (1c) Reserved for future codification purposes.
- (1e) Reserved for future codification purposes.
- (1f) Audio work. – A series of musical, spoken, or other sounds, including a ringtone.
- (1g) Audiovisual work. – A series of related images and any sounds accompanying the images that impart an impression of motion when shown in succession.
- (1h) Aviation gasoline. – Defined in G.S. 105-449.60.
- (1i) Bundled transaction. – A retail sale of two or more distinct and identifiable products, at least one of which is taxable and one of which is exempt, for one nonitemized price. The term does not apply to real property and services to real property. Products are not sold for one nonitemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each product. A bundled transaction does not include the retail sale of any of the following:

- a. A product and any packaging item that accompanies the product and is exempt under G.S. 105-164.13(23).
  - b. A sale of two or more products whose combined price varies, or is negotiable, depending on the products the purchaser selects.
  - c. A sale of a product accompanied by a transfer of another product with no additional consideration.
  - d. A product and the delivery or installation of the product.
  - e. A product and any service necessary to complete the sale.
- (1j) Reserved for future codification purposes.
- (1k) Business. – An activity a person engages in or causes another to engage in with the object of gain, profit, benefit, or advantage, either direct or indirect. The term does not include an occasional and isolated sale or transaction by a person who does not claim to be engaged in business.
- (1l) Reserved for future codification purposes.
- (1m) Cable service. – The one-way transmission to subscribers of video programming or other programming service and any subscriber interaction required to select or use the service.
- (2) Candy. – A preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces that do not require refrigeration. The term does not include any preparation that contains flour.
- (2c) Capital improvement. – One or more of the following:
- a. New construction, reconstruction, or remodeling.
  - b. Performance of work that requires the issuance of a permit under the State Building Code, other than repair or replacement of electrical components, gas logs, water heater, and similar individual items that are not part of new construction, reconstruction, or remodeling.
  - c. Installation of utilities on utility-owned land, right-of-way, or easement, notwithstanding that charges for such may be included in the gross receipts derived from services subject to the combined general rate under G.S. 105-164.4.
  - d. Installation of equipment or a fixture that is attached to real property and that meets one or more of the following conditions:
    - 1. Is capitalized and depreciated under Generally Accepted Accounting Principles or International Financial Reporting Standards.
    - 2. Is depreciated under the Code.
    - 3. Is expensed under Section 179 of the Code.
  - e. Painting or wallpapering of real property, except where painting or wallpapering is incidental to the repair, maintenance, and installation service.
  - f. Replacement or installation of a septic tank system, siding, roof, plumbing, electrical, commercial refrigeration, irrigation, sprinkler, or other similar system. The term does not include the repair, replacement, or installation of electrical or plumbing components,

- water heaters, gutters, and similar individual items that are not part of new construction, reconstruction, or remodeling.
- g. Replacement or installation of a heating or air conditioning unit or a heating, ventilation, or air conditioning system. The term does not include the repair, replacement, or installation of gas logs, water heaters, pool heaters, and similar individual items that are not part of new construction, reconstruction, or remodeling.
  - h. Replacement or installation of roads, driveways, parking lots, patios, decks, and sidewalks.
  - i. Services performed to resolve an issue that was part of a real property contract if the services are performed within six months of completion of the real property contract or, for new construction, within 12 months of the new structure being occupied for the first time.
  - j. Landscaping.
  - k. Addition or alteration to real property that is permanently affixed or installed to real property and is not an activity listed in subdivision (33l) of this section as a repair, maintenance, and installation service.
- (3) Clothing. – All human wearing apparel suitable for general use.
  - (4) Repealed by Session Laws 2016-5, s. 3.2(a), effective May 11, 2016.
  - (4a) Combined general rate. – The State's general rate of tax set in G.S. 105-164.4(a) plus the sum of the rates of the local sales and use taxes authorized by Subchapter VIII of this Chapter for every county in this State.
  - (4b) Computer. – An electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
  - (4c) Computer software. – A set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
  - (4d) Computer supply. – An item that is considered a "school computer supply" under the Streamlined Agreement.
  - (5) Consumer. – A person who stores, uses, or otherwise consumes in this State tangible personal property, digital property, or a service purchased or received from a retailer or supplier either within or without this State.
  - (5a) Reserved for future codification purposes.
  - (5b) Custom computer software. – Computer software that is not prewritten computer software. The term includes a user manual or other documentation that accompanies the sale of the software.
  - (5c) Datacenter. – A facility that provides infrastructure for hosting or data processing services and that has power and cooling systems that are created and maintained to be concurrently maintainable and to include redundant capacity components and multiple distribution paths serving the computer equipment at the facility. Although the facility must have multiple distribution paths serving the computer equipment, a single distribution path may serve the computer equipment at any one time. The following definitions apply in this subdivision:
    - a. Concurrently maintainable. – Capable of having any capacity component or distribution element serviced or repaired on a planned

- basis without interrupting or impeding the performance of the computer equipment.
- b. Multiple distribution paths. – A series of distribution paths configured to ensure that failure on one distribution path does not interrupt or impede other distribution paths.
  - c. Redundant capacity components. – Components beyond those required to support the computer equipment.
- (5d) Repealed by Session Laws 2009-451, s. 27A.3(d), effective January 1, 2010, and applicable to sales made on or after that date.
  - (6) Delivery charges. – Charges imposed by the retailer for preparation and delivery of personal property or services to a location designated by the consumer.
  - (6a) Development tier. – The classification assigned to an area pursuant to G.S. 143B-437.08.
  - (7) Dietary supplement. – A product that is intended to supplement the diet of humans and is required to be labeled as a dietary supplement under federal law, identifiable by the "Supplement Facts" box found on the label.
  - (7a) Digital code. – 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.
  - (7c) Direct mail. – Printed material delivered or distributed by the United States Postal Service or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. The term includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. The term does not include multiple items of printed material delivered to a single address.
  - (8) Direct-to-home satellite service. – Programming transmitted or broadcast by satellite directly to the subscribers' premises without the use of ground equipment or distribution equipment, except equipment at the subscribers' premises or the uplink process to the satellite.
  - (8a) Drug. – A compound, substance, or preparation or a component of one of these that meets any of the following descriptions and is not food, a dietary supplement, or an alcoholic beverage:
    - a. Is recognized in the United States Pharmacopoeia, Homeopathic Pharmacopoeia of the United States, or National Formulary.
    - b. Is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.
    - c. Is intended to affect the structure or function of the body.
  - (8b) Durable medical equipment. – Equipment that meets all of the conditions of this subdivision. The term includes repair and replacement parts for the equipment. The term does not include mobility enhancing equipment.
    - a. Can withstand repeated use.
    - b. Primarily and customarily used to serve a medical purpose.

- c. Generally not useful to a person in the absence of an illness or injury.
- d. Not worn in or on the body.
- (8c) Durable medical supplies. – Supplies related to use with durable medical equipment that are eligible to be covered under the Medicare or Medicaid program.
- (8d) Electronic. – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (8e) Eligible Internet datacenter. – 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.
- (8f) Eligible railroad intermodal facility. – Defined in G.S. 105-129.95.
- (8g) Repealed by Session Laws 2016-5, s. 3.2(a), effective May 11, 2016.
- (9) Engaged in business. – Any of the following:
  - a. Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room, warehouse or storage place, or other place of business for selling or delivering tangible personal property, digital property, or a service for storage, use, or consumption in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, sales representative, or solicitor operating in this State in the selling or delivering. The fact that any corporate retailer, agent, or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State is immaterial.
  - b. Maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property or digital property for the purpose of lease or rental.

- c. Making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met.
  - d. Shipping wine directly to a purchaser in this State as authorized by G.S. 18B-1001.1.
- (10) Food. – Substances that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. The substances may be in liquid, concentrated, solid, frozen, dried, or dehydrated form. The term does not include an alcoholic beverage, as defined in G.S. 105-113.68, or a tobacco product, as defined in G.S. 105-113.4.
- (11) Food sold through a vending machine. – Food dispensed from a machine or another mechanical device that accepts payment.
- (11d) Freestanding appliance. – A machine commonly thought of as an appliance operated by gas or electric current. Examples include installation of a dishwasher, washing machine, clothes dryer, refrigerator, freezer, microwave, and range, regardless of whether the range is slide-in or drop-in.
- (12) Gross sales. – The sum total of the sales price of all retail sales of tangible personal property, digital property, and services.
- (13) Hub. – Either of the following:
- a. An interstate air courier's hub is the interstate air courier's principal airport within the State for sorting and distributing letters and packages and from which the interstate air courier has, or expects to have upon completion of construction, no less than 150 departures a month under normal operating conditions.
  - b. An interstate passenger air carrier's hub is the airport in this State that meets both of the following conditions:
    - 1. The air carrier has allocated to the airport under G.S. 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.
    - 2. The majority of the air carrier's passengers boarding at the airport are connecting from other airports rather than originating at that airport.
- (14) In this (the) State. – Within the exterior limits of the State of North Carolina, including all territory within these limits owned by or ceded to the United States of America.
- (14a) Information service. – 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.
- (14c) Interstate air business. – An interstate air courier, an interstate freight air carrier, or an interstate passenger air carrier.
- (15) Interstate air courier. – A person whose primary business is the furnishing of air delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service.
- (15b) Interstate freight air carrier. – A person whose primary business is scheduled freight air transportation, as defined in the North American Industry

- Classification System adopted by the United States Office of Management and Budget, in interstate commerce.
- (16) Interstate passenger air carrier. – A person whose primary business is scheduled passenger air transportation, as defined in the North American Industry Classification System adopted by the United States Office of Management and Budget, in interstate commerce.
  - (16a) Reserved for future codification purposes.
  - (16b) Jet fuel. – Defined in G.S. 105-449.60.
  - (16e) Landscaping. A service that modifies the living elements of an area of land. Examples include the installation of trees, shrubs, or flowers on land; tree trimming; mowing; and the application of seed, mulch, pine straw, or fertilizer to an area of land. The term does not include services to trees, shrubs, flowers, and similar items in pots or in buildings.
  - (16f) Large fulfillment facility. – A facility that satisfies both of the following conditions:
    - a. The facility is used primarily for receiving, inventorying, sorting, repackaging, and distributing finished retail products for the purpose of fulfilling customer orders.
    - b. The Secretary of Commerce has certified that an investment of private funds of at least one hundred million dollars (\$100,000,000) has been or will be made in real and tangible personal property for the facility within five years after the date on which the first property investment is made and that the facility will achieve an employment level of at least 400 within five years after the date the facility is placed into service and maintain that minimum level of employment throughout its operation.
  - (17) Lease or rental. – A transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. The term does not include any of the following:
    - a. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.
    - b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100.00) or one percent (1%) of the total required payments.
    - c. The providing of tangible personal property along with an operator for a fixed or indeterminate period of time if the operator is necessary for the equipment to perform as designed. For the purpose of this sub-subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property.
  - (17a) Repealed by Session Laws 2009-451, s. 27A.3(d), effective January 1, 2010, and applicable to sales made on or after that date.
  - (18) Repealed by Session Laws 2009-451, s. 27A.3(g), effective August 7, 2009.
  - (19) Major recycling facility. – Defined in G.S. 105-129.25.

- (20) Manufactured home. – A structure that is designed to be used as a dwelling and is manufactured in accordance with the specifications for manufactured homes issued by the United States Department of Housing and Urban Development.
- a., b. Repealed by Session Laws 2003-400, s. 13, effective January 1, 2004, and applicable to sales of modular homes on and after that date.
- (20b) Mixed transaction contract. – A contract that includes both a real property contract for a capital improvement and a repair, maintenance, and installation service that is not related to the capital improvement.
- (21) Mobile telecommunications service. – A radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves and includes all of the following:
- a. Both one-way and two-way radio communication services.
- b. A mobile service that provides a regularly interacting group of base, mobile, portable, and associated control and relay stations for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation.
- c. Any service for which a federal license is required in a personal communications service.
- (21a) Mobility enhancing equipment. – Equipment that meets all of the conditions of this subdivision. The term includes repair and replacement parts for the equipment. The term does not include durable medical equipment.
- a. Primarily and customarily used to provide or increase the ability of an individual to move from one place to another.
- b. Appropriate for use either in a home or motor vehicle.
- c. Not generally used by a person with normal mobility.
- d. Not normally provided on a motor vehicle by a motor vehicle manufacturer.
- (21b) Modular home. – A factory-built structure that is designed to be used as a dwelling, is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, and bears a seal or label issued by the Department of Insurance pursuant to G.S. 143-139.1.
- (21c) Modular homebuilder. – A person who furnishes for consideration a modular home to a purchaser that will occupy the modular home. The purchaser can be a person that will lease or rent the unit as real property.
- (22) Moped. – As defined in G.S. 20-4.01(27)j.
- (23) Motor vehicle. – A vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:
- a. A moped.
- b. Special mobile equipment.
- c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11).
- d. A farm tractor or other implement of husbandry.
- e. A manufactured home, a mobile office, or a mobile classroom.



- f. Road construction or road maintenance machinery or equipment.
- (23a) Motor vehicle service contract. – A service contract for a motor vehicle or for one or more components, systems, or accessories for a motor vehicle when sold by a motor vehicle dealer, by a motor vehicle service agreement company, or by a motor vehicle dealer on behalf of a motor vehicle service agreement company. For purposes of this subdivision, the term "motor vehicle dealer" has the same meaning as defined in G.S. 20-286 and the term "motor vehicle service agreement company" is a person other than a motor vehicle dealer that is an obligor of a service contract for a motor vehicle or for one or more components, systems, or accessories for a motor vehicle and who is not an insurer.
- (23c) NAICS. – Defined in G.S. 105-228.90.
- (24) Net taxable sales. – The gross sales of the business of a retailer taxed under this Article after deducting exempt sales and nontaxable sales.
- (24a) New construction. – Construction of or site preparation for a permanent new building, structure, or fixture on land or an increase in the square footage of an existing building, structure, or fixture on land.
- (25) Nonresident retail or wholesale merchant. – A person who does not have a place of business in this State, is registered for sales and use tax purposes in a taxing jurisdiction outside the State, and is engaged in the business of acquiring, by purchase, consignment, or otherwise, tangible personal property or digital property and selling the property outside the State or in the business of providing a service.
- (25a) Operator. – A person provided with the lease or rental of tangible personal property or a motor vehicle to operate, drive, or maneuver the tangible personal property or motor vehicle and whose presence, skill, knowledge, and expertise are necessary to bring about a desired or appropriate effect. The person must do more than calibrate, test, analyze, research, probe, or monitor the tangible personal property or motor vehicle.
- (25b) Other direct mail. – Any direct mail that is not advertising and promotional mail regardless of whether advertising and promotional direct mail is included in the same mailing.
- (25c) Over-the-counter drug. – A drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The label includes either of the following:
- a. A "Drug Facts" panel.
  - b. A statement of its active ingredients with a list of those ingredients contained in the compound, substance, or preparation.
- (26) Person. – Defined in G.S. 105-228.90.
- (26a) Place of primary use. – The street address representative of where the use of a customer's telecommunications service primarily occurs. The street address must be the customer's residential street address or primary business street address. For mobile telecommunications service, the street address must be within the licensed service area of the service provider. If the customer who contracted with the telecommunications provider for the telecommunications

- service is not the end user of the service, the end user is considered the customer for the purpose of determining the place of primary use.
- (26b) Prepaid calling service. – A right that meets all of the following requirements:
    - a. Authorizes the exclusive purchase of telecommunications service.
    - b. Must be paid for in advance.
    - c. Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.
    - d. Is sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis.
  - (26c) Prepaid meal plan. – 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.
  - (27) Prepaid telephone calling service. – Prepaid calling service or prepaid wireless calling service.
  - (27a) Prepaid wireless calling service. – A right that meets all of the following requirements:
    - a. Authorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services.
    - b. Must be paid for in advance.
    - c. Is sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis.
  - (28) Prepared food. – Food that meets at least one of the conditions of this subdivision. Prepared food does not include food the retailer sliced, repackaged, or pasteurized but did not heat, mix, or sell with eating utensils.
    - a. It is sold in a heated state or it is heated by the retailer.
    - b. It consists of two or more foods mixed or combined by the retailer for sale as a single item. This sub-subdivision does not include foods containing raw eggs, fish, meat, or poultry that require cooking by the consumer as recommended by the Food and Drug Administration to prevent food borne illnesses.
    - c. It is sold with eating utensils provided by the retailer, such as plates, knives, forks, spoons, glasses, cups, napkins, and straws. A plate does not include a container or packaging used to transport the food.
  - (29) Prescription. – An order, formula, or recipe issued orally, in writing, electronically, or by another means of transmission by a physician, dentist, veterinarian, or another person licensed to prescribe drugs.
  - (29a) Prewritten computer software. – Computer software, including prewritten upgrades, that is not designed and developed by the author or another creator to the specifications of a specific purchaser. The term includes software designed and developed by the author or another creator to the specifications

- of a specific purchaser when it is sold to a person other than the specific purchaser.
- (30) Production company. – A person engaged in the business of making original motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes.
  - (30a) Professional motorsports racing team. – A racing team that satisfies all of the following conditions:
    - a. The team is operated for profit.
    - b. The team does not claim a deduction under section 183 of the Code.
    - c. The team competes in at least sixty-six percent (66%) of the races sponsored in a race series in a single season by a motorsports sanctioning body.
  - (30b) Prosthetic device. – A replacement, corrective, or supporting device worn on or in the body that meets one of the conditions of this subdivision. The term includes repair and replacement parts for the device.
    - a. Artificially replaces a missing portion of the body.
    - b. Prevents or corrects a physical deformity or malfunction.
    - c. Supports a weak or deformed portion of the body.
  - (31) Repealed by Session Laws 2017-39, s. 5, effective June 21, 2017.
  - (32) Purchase. – Acquired for consideration or consideration in exchange for a service, regardless of any of the following:
    - a. Whether the acquisition was effected by a transfer of title or possession, or both, or a license to use or consume.
    - b. Whether the transfer was absolute or conditional regardless of the means by which it was effected.
    - c. Whether the consideration is a price or rental in money or by way of exchange or barter.
  - (33) Purchase price. – The term has the same meaning as the term "sales price" when applied to an item subject to use tax.
  - (33a) Qualified aircraft. – An aircraft with a maximum take-off weight of more than 9,000 pounds but not in excess of 15,000 pounds.
  - (33b) Qualified jet engine. – An engine certified pursuant to Part 33 of Title 14 of the Code of Federal Regulations.
  - (33c) Qualifying datacenter. – A datacenter that satisfies each of the following conditions:
    - a. The datacenter certifies that it satisfies the wage standard for the development tier area or zone in which the datacenter is located. There is no wage standard for a development tier one area. If an urban progress zone or an agrarian growth zone is not in a development tier one area, then the wage standard for that zone is an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county in which the datacenter is located. The wage standard for a development tier two area or a development tier three area is an average weekly wage that is at least equal to one hundred ten percent (110%) of the lesser of

the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county in which the datacenter is located.

- b. The Secretary of Commerce has made a written determination that at least seventy-five million dollars (\$75,000,000) in private funds has been or will be invested by one or more owners, users, or tenants of the datacenter within five years of the date the owner, user, or tenant of the datacenter makes its first real or tangible property investment in the datacenter on or after January 1, 2012. Investments in real or tangible property in the datacenter made prior to January 1, 2012, may not be included in the investment required by this subdivision.
  - c. The datacenter certifies that it provides health insurance for all of its full-time employees. The datacenter provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.
- (33d) Real property. – Any one or more of the following:
- a. Land.
  - b. Building or structure on land.
  - c. Permanent fixture on land.
  - d. A manufactured home or a modular home on land.
- (33e) Real property contract. – A contract between a real property contractor and another person to perform a capital improvement to real property.
- (33f) Real property contractor. – A person that contracts to perform a real property contract in accordance with G.S. 105-164.4H. The term includes a general contractor, a subcontractor, or a builder for purposes of this Article.
- (33g) Reconstruction. – Rebuild or construct again a prior existing permanent building, structure, or fixture on land and may include a change in the square footage from the prior existing building, structure, or fixture on land.
- (33h) Related member. – Defined in G.S. 105-130.7A.
- (33i) Remodeling. – A transaction comprised of multiple services performed by one or more persons to restore, improve, alter, or update real property that may otherwise be subject to tax as repair, maintenance, and installation services if separately performed. The term includes a transaction where the internal structure or design of one or more rooms or areas within a room or building are substantially changed. The term does not include a single repair, maintenance, and installation service. The term does not include a transaction where the true purpose is a repair, maintenance, and installation service no matter that another repair, maintenance, and installation service is performed that is incidental to the true purpose of the transaction; examples include repair of sheetrock that includes applying paint, replacement of cabinets that includes installation of caulk or molding, and the installation of hardwood floors that includes installation of shoe molding.
- (33j) Remote sale. – 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.

- (33k) Renovation. – Same meaning as the term "remodeling."
- (33l) Repair, maintenance, and installation services. – The term includes the activities listed in this subdivision and applies to tangible personal property, motor vehicle, digital property, and real property. The term does not include services used to fulfill a real property contract taxed in accordance with G.S. 105-164.4H:
  - a. To keep or attempt to keep property or a motor vehicle in working order to avoid breakdown and prevent deterioration or repairs. Examples include to clean, wash, or polish property.
  - b. To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property or a motor vehicle to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.
  - c. To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore property or a motor vehicle to proper working order or good condition. The term includes activities that may lead to the issuance of an inspection report.
  - d. To install, apply, connect, adjust, or set into position tangible personal property, digital property, or a motor vehicle. The term includes floor refinishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like-kind item, such as replacing one or more windows, is a single repair, maintenance, and installation service. The term does not include an installation defined as a capital improvement under subdivision (2c)d. of this section.
  - e. To inspect or monitor property or a motor vehicle, but does not include security or similar monitoring services for real property.
- (34) Retail sale or sale at retail. – The sale, lease, or rental for any purpose other than for resale, sublease, or subrent.
- (34a) Repealed by Session Laws 2016-94, s. 38.5, effective January 1, 2017, and applicable to sales made on or after that date.
- (35) Retailer. – Any of the following persons:
  - a. A person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property, digital property for storage, use, or consumption in this State, or services sourced to 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. A person, other than a real property contractor, engaged in business of delivering, erecting, installing, or applying tangible personal property or digital property for use in this State.
  - c. A person engaged in business of making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met.
  - d. A person, other than a facilitator, required to collect the State tax levied under this Article or the local taxes levied under Subchapter VIII of this Chapter and under Chapter 1096 of the 1967 Session Laws.
- (35a) Retailer-contractor. – A person that acts as a retailer when it makes a sale at retail and as a real property contractor when it performs a real property contract.
- (35c) Ringtone. – 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.
- (36) Sale or selling. – The transfer for consideration of title, license to use or consume, or possession of tangible personal property or digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. The term includes the following:
- a. Fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work.
  - b. Furnishing or preparing tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared.
  - c. A transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the consideration.
  - d. A lease or rental.
  - e. Transfer of a digital code.
  - f. An accommodation.
  - g. A service contract.
  - h. Any other item subject to tax under this Article.
- (37) Sales price. – The total amount or consideration for which tangible personal property, digital property, or services are sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.
- a. The term includes all of the following:
    - 1. The retailer's cost of the property sold.

2. The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer.
  3. Charges by the retailer for any services necessary to complete the sale.
  4. Delivery charges.
  5. Installation charges.
  6. Repealed by Session Laws 2007-244, s. 1, effective October 1, 2007.
  7. Credit for trade-in.
  8. Discounts that are reimbursable by a third party and can be determined at the time of sale through any of the following:
    - I. Presentation by the consumer of a coupon or other documentation.
    - II. Identification of the consumer as a member of a group eligible for a discount.
    - III. The invoice the retailer gives the consumer.
- b. The term does not include any of the following:
1. Discounts that are not reimbursable by a third party, are allowed by the retailer, and are taken by a consumer on a sale.
  2. Interest, financing, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale, or a similar document given to the consumer.
  3. Any taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer.
- (37a) Satellite digital audio radio service. – A radio communication service in which audio programming is digitally transmitted by satellite to an earth-based receiver, whether directly or via a repeater station.
- (37b) Repealed by Session Laws 2016-5, s. 3.2(a), effective May 11, 2016.
- (37d) Repealed by Session Laws 2016-5, s. 3.2(a), effective May 11, 2016.
- (37g) **(Effective July 1, 2018)** Secondary metals recycler. – A person that gathers and obtains ferrous metals, nonferrous metals, and items that have served their original economic purpose and that converts them by processes, including sorting, cutting, classifying, cleaning, baling, wrapping, shredding, or shearing into a new or different product for sale consisting of prepared grades.
- (38) Secretary. – The Secretary of the North Carolina Department of Revenue.
- (38b) Service contract. – A contract where the obligor under the contract agrees to maintain, monitor, inspect, repair, or provide another service included in the definition of repair, maintenance, and installation service to digital property, tangible personal property, or real property for a period of time or some other defined measure. The term does not include a single repair, maintenance, or installation service, but does include a contract where the obligor may provide a service included in the definition of repair, maintenance, and installation services as a condition of the contract. The term includes a service contract for a pool, fish tank, or similar aquatic feature and a home warranty. Examples

- include a warranty agreement other than a manufacturer's warranty or dealer's warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair agreement, or a similar agreement or contract.
- (39) Repealed by Session Laws 2002-16, s. 3, effective August 1, 2002, and applicable to taxable services reflected on bills dated after August 1, 2002.
- (40) Soft drink. – A nonalcoholic beverage that contains natural or artificial sweeteners. The term does not include beverages that contain one or more of the following:
- a. Milk or milk products.
  - b. Soy, rice, or similar milk substitutes.
  - c. More than fifty percent (50%) vegetable or fruit juice.
- (41) Special mobile equipment. – Any of the following:
- a. A vehicle that has a permanently attached crane, mill, well-boring apparatus, ditch-digging apparatus, air compressor, electric welder, feed mixer, grinder, or other similar apparatus is driven on the highway only to get to and from a nonhighway job and is not designed or used primarily for the transportation of persons or property.
  - b. A vehicle that has permanently attached special equipment and is used only for parade purposes.
  - c. A vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.
  - d. A vehicle that has permanently attached playground equipment and is used only for playground purposes.
- (42) Repealed by Session Laws 2016-5, s. 3.2(a), effective May 11, 2016.
- (43) State agency. – A unit of the executive, legislative, or judicial branch of State government, such as a department, a commission, a board, a council, or The University of North Carolina. The term does not include a local board of education.
- (44) Storage. – The keeping or retention in this State for any purpose, except sale in the regular course of business, of tangible personal property or digital property for any period of time purchased from a person in business.
- (45) Repealed by Session Laws 2009-451, s. 27A.3(g), effective August 7, 2009.
- (45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of May 11, 2017.
- (46) Tangible personal property. – Personal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses. The term includes electricity, water, gas, steam, and prewritten computer software.
- (47) Taxpayer. – Any person liable for taxes under this Article.
- (48) Telecommunications service. – The electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as



voice-over Internet protocol or the Federal Communications Commission classifies it as enhanced or value added. The term does not include the following:

- a. An information service.
  - b. The sale, installation, maintenance, or repair of tangible personal property.
  - c. Directory advertising and other advertising.
  - d. Billing and collection services provided to a third party.
  - e. Internet access service.
  - f. Radio and television audio and video programming service, regardless of the medium of delivery, and the transmission, conveyance, or routing of the service by the programming service provider. The term includes cable service and audio and video programming service provided by a mobile telecommunications service provider.
  - g. Ancillary service.
  - h. Digital property that is delivered or accessed electronically, including an audio work, an audiovisual work, or any other item subject to tax under G.S. 105-164.4(a)(6b).
- (49) Use. – The exercise of any right, power, or dominion whatsoever over tangible personal property, digital property, or a service by the purchaser of the property or service. The term includes withdrawal from storage, distribution, installation, affixation to real or personal property, and exhaustion or consumption of the property or service by the owner or purchaser. The term does not include the following:
- a. A sale of property or a service in the regular course of business.
  - b. A purchaser's use of tangible personal property or digital property in any of the circumstances that would exclude the storage of the property from the definition of "storage" in subdivision (44) of this section.
- (50) Use tax. – The tax imposed by Part 2 of this Article.
- (50c) Video programming. – Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery.
- (51) Wholesale merchant. – A person engaged in the business of any of the following:
- a. Making wholesale sales.
  - b. Buying or manufacturing tangible personal property, digital property, or a service and selling it to a registered resident or nonresident retail or wholesale merchant for resale.
  - c. Manufacturing, producing, processing, or blending any articles of commerce and maintaining a store, warehouse, or any other place that is separate and apart from the place of manufacture or production for the sale or distribution of the articles, other than bakery products, to another for the purpose of resale.
- (52) Wholesale sale. – A sale of tangible personal property, digital property, or a service for the purpose of resale. The term includes a sale of digital property

for reproduction into digital or tangible personal property offered for sale. The term does not include a sale to a user or consumer not for resale or, in the case of digital property, not for reproduction and sale of the reproduced property. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 1213, s. 1; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; c. 1287, s. 8; 1975, c. 104; c. 275, s. 6; 1979, c. 48, s. 2; c. 71; c. 801, s. 72; 1983, c. 713, ss. 87, 88; 1983 (Reg. Sess., 1984), c. 1097, ss. 4, 5; 1985, c. 23; 1987, c. 27; c. 557, s. 3.1; c. 854, ss. 2, 3; 1987 (Reg. Sess., 1988), c. 1044, s. 3; c. 1096, ss. 1-3; 1989, c. 692, s. 3.2; 1989 (Reg. Sess., 1990), c. 813, s. 13; 1991, c. 45, s. 15; c. 79, ss. 1, 3; c. 689, s. 190.1(a); 1991 (Reg. Sess., 1992), c. 949, s. 3; 1993, c. 354, s. 16; c. 484, s. 1; c. 507, s. 1; 1995 (Reg. Sess., 1996), c. 649, s. 2; 1996, 2nd Ex. Sess., c. 14, ss. 13, 14; 1997-6, s. 7; 1997-370, s. 1; 1997-426, s. 4; 1998-22, s. 4; 1998-55, ss. 7, 13; 1998-98, ss. 13.1(a), 106; 1999-337, s. 28(a), (b); 1999-360, s. 6(a)-(c); 1999-438, s. 4; 2000-153, s. 4; 2000-173, s. 9; 2001-347, ss. 2.1-2.7; 2001-414, s. 14; 2001-424, s. 34.17(b); 2001-430, ss. 1, 2; 2001-476, s. 18(a); 2001-489, s. 3(a); 2002-16, ss. 1, 2, 3; 2002-170, s. 6; 2003-284, s. 45.2; 2003-400, ss. 13, 14; 2003-402, s. 12; 2004-124, s. 32B.3; 2004-170, ss. 18, 19; 2005-276, ss. 33.2, 33.3; 2006-33, s. 1; 2006-66, ss. 24.10(a), 24.17(a); 2006-151, s. 2; 2006-162, s. 5(a); 2006-168, ss. 4.1, 4.3; 2006-252, ss. 2.25(a), (a1), (c), 2.26; 2007-244, s. 1; 2007-323, ss. 31.14(a), 31.20(a), 31.23(b); 2008-107, s. 28.12(a); 2009-445, s. 11; 2009-451, s. 27A.3(d), (g); 2010-91, ss. 1, 2; 2010-166, s. 3.3; 2011-330, ss. 15(a), (b), 31(c); 2012-79, s. 2.7; 2013-316, s. 6(a); 2013-414, ss. 8, 23(a); 2014-3, ss. 4.1(a), 6.1(a), 7.1(a), 14.7; 2015-6, ss. 2.1(b), 2.10; 2015-241, s. 32.18(a); 2015-259, ss. 3(a), 6(a), 4.1(a), 4.2(a); 2015-268, s. 10.1(g); 2016-5, ss. 3.2(a), 3.2(b), 5.5(a); 2016-90, s. 13(h); 2016-92, s. 2.2; 2016-94, s. 38.5(d); 2017-39, s. 5; 2017-57, ss. 38.8(d), 38.9(a); 2017-102, s. 5.2(b); 2017-204, ss. 2.1, 2.9(i).)

## Part 2. Taxes Levied.

### **§ 105-164.4. Tax imposed on retailers and certain facilitators.**

(a) A privilege tax is imposed on a retailer engaged in business in the State at the percentage rates of the retailer's net taxable sales or gross receipts, listed in this subsection. The general rate of tax is four and three-quarters percent (4.75%). The percentage rates are as follows:

- (1) The general rate of tax applies to the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section. A sale of a freestanding appliance is a retail sale of tangible personal property. This subdivision does not apply to repair, maintenance, and installation services for real property; these services are taxable under subdivision (16) of this subsection.
- (1a) The general rate applies to the sales price of each of the following items sold at retail, including all accessories attached to the item when it is delivered to the purchaser:
  - a. A manufactured home.
  - b. A modular home. The sale of a modular home to a modular homebuilder is considered a retail sale, no matter that the modular

home may be used to fulfill a real property contract. A person who sells a modular home at retail is allowed a credit against the tax imposed by this subdivision for sales or use tax paid to another state on tangible personal property incorporated in the modular home. The retail sale of a modular home occurs when a modular home manufacturer sells a modular home to a modular homebuilder or directly to the end user of the modular home.

- c. An aircraft. The maximum tax is two thousand five hundred dollars (\$2,500) per article.
- d. A qualified jet engine.
- (1b) The rate of three percent (3%) applies to the sales price of each boat sold at retail, including all accessories attached to the boat when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars (\$1,500) per article.
- (1c), (1d) and (1e) Repealed by Session Laws 2005-276, s. 33.4(b), effective January 1, 2006.
- (1f) Repealed by Session Laws 2013-316, s. 4.1(c), effective July 1, 2014, and applicable to gross receipts billed on or after July 1, 2014.
  - a. Repealed by Session Laws 2007-397, s. 10(b), effective October 1, 2007, and applicable to sales occurring on or after that date.
  - b. Repealed by Session Laws 2006-66, s. 24.19(a), effective July 1, 2007, and applicable to sales made on or after that date.
  - c. Repealed by Session Laws 2007-397, s. 10(b), effective October 1, 2007, and applicable to sales occurring on or after that date.
- (1g) Repealed by Session Laws 2004-110, s. 6.1, effective October 1, 2004, and applicable to sales of electricity made on or after that date.
- (1h) Expired pursuant to Session Laws 2004-110, s. 6.4, effective for sales made on or after October 1, 2007.
- (1i) Repealed by Session Laws 2007-397, s. 10(a), effective October 1, 2007, and applicable to sales occurring on or after that date.
- (1j) Repealed by Session Laws 2007-397, s. 10(f), effective July 1, 2010, and applicable to sales occurring on or after that date.
- (2) The applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents property shall also collect the tax imposed by this section on the separate retail sale of the property.
- (3) The general rate applies to the gross receipts derived from the rental of an accommodation. These rentals are taxed in accordance with G.S. 105-164.4F.
- (4) Every person engaged in the business of operating a dry cleaning, pressing, or hat-blocking establishment, a laundry, or any similar business, engaged in the business of renting clean linen or towels or wearing apparel, or any similar business, or engaged in the business of soliciting cleaning, pressing, hat

blocking, laundering or linen rental business for any of these businesses, is considered a retailer under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from services rendered in engaging in any of the occupations or businesses named in this subdivision. The tax imposed by this subdivision does not apply to receipts derived from coin, token, or card-operated washing machines, extractors, and dryers. The tax imposed by this subdivision does not apply to gross receipts derived from services performed for resale by a retailer that pays the tax on the total gross receipts derived from the services.

- (4a) Repealed by Session Laws 2013-316, s. 4.1(c), effective July 1, 2014, and applicable to gross receipts billed on or after July 1, 2014.
- (4b) A person who sells tangible personal property at a specialty market or other event, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the specialty market or other event. The term "specialty market" has the same meaning as defined in G.S. 66-250.
- (4c) The combined general rate applies to the gross receipts derived from providing telecommunications service and ancillary service. A person who provides telecommunications service or ancillary service is considered a retailer under this Article. These services are taxed in accordance with G.S. 105-164.4C.
- (4d) The general rate applies to the gross receipts derived from the sale or recharge of prepaid telephone calling service. The tax applies regardless of whether tangible personal property, such as a card or a telephone, is transferred. The tax applies to a service that is sold in conjunction with prepaid wireless calling service. Prepaid telephone calling service is taxable at the point of sale instead of at the point of use and is sourced in accordance with G.S. 105-164.4B. Prepaid telephone calling service taxed under this subdivision is not subject to tax as a telecommunications service.
- (5) Repealed by Session Laws 1998-212, s. 29A.1(a), effective May 1, 1999.
- (6) The combined general rate applies to the gross receipts derived from providing video programming to a subscriber in this State. A cable service provider, a direct-to-home satellite service provider, and any other person engaged in the business of providing video programming is considered a retailer under this Article.
- (6a) The general rate applies to the gross receipts derived from providing satellite digital audio radio service. For services received by a mobile or portable station, the service is sourced to the subscriber's business or home address. A person engaged in the business of providing satellite digital audio radio service is a retailer under this Article.
- (6b) The general rate applies to the sales price of digital property that is sold at retail and that is listed in this subdivision, is delivered or accessed electronically, is not considered tangible personal property, and would be taxable under this Article if sold in a tangible medium. The tax applies regardless of whether the purchaser of the item has a right to use it

permanently or to use it without making continued payments. The tax does not apply to a service that is taxed under another subdivision of this subsection or to an information service. The following property is subject to tax under this subdivision:

- a. An audio work.
  - b. An audiovisual work.
  - c. A book, a magazine, a newspaper, a newsletter, a report, or another publication.
  - d. A photograph or a greeting card.
- (7) The combined general rate applies to the sales price of antique spirituous liquor and spirituous liquor other than mixed beverages. As used in this subdivision, the terms "antique spirituous liquor", "spirituous liquor", and "mixed beverage" have the meanings provided in G.S. 18B-101.
  - (8) Repealed by Session Laws 2015-259, s. 4.2(b), effective October 1, 2015, and applicable to sales made on or after that date.
  - (9) The combined general rate applies to the gross receipts derived from sales of electricity and piped natural gas.
  - (10) The general rate of tax applies to the gross receipts derived from an admission charge to an entertainment activity. Gross receipts derived from an admission charge to an entertainment activity are taxable in accordance with G.S. 105-164.4G.
  - (11) The general rate of tax applies to the sales price of or the gross receipts derived from a service contract. A service contract is taxed in accordance with G.S. 105-164.4I.
  - (12) The general rate of tax applies to the sales price of or gross receipts derived from a prepaid meal plan. A bundle that includes a prepaid meal plan is taxable in accordance with G.S. 105-164.4D.
  - (13) Repealed by Session Laws 2017-204, s. 2.2. For effective date and applicability, see Editor's note.
  - (14), (14a) Expired pursuant to Session Laws 2014-39, s. 1(e), effective July 1, 2015.
  - (15) The combined general rate applies to the gross receipts derived from the sale of aviation gasoline and jet fuel.
  - (16) The general rate applies to the sales price of or the gross receipts derived from repair, maintenance, and installation services and generally includes any tangible personal property or digital property that becomes a part of or is applied to a purchaser's property. A mixed transaction contract and a real property contract are taxed in accordance with G.S. 105-164.4H.

(b) The tax levied in this section shall be collected from the retailer and paid by him at the time and in the manner as hereinafter provided. A person engaging in business as a retailer shall pay the tax required on the net taxable sales of the business at the rates specified when proper books are kept showing separately the gross proceeds of taxable and nontaxable sales of items subject to tax under subsection (a) of this section in a form that may be accurately and conveniently checked by the Secretary or the Secretary's duly authorized agent. If the records are not kept separately, the tax shall be paid on the gross sales of the business and the exemptions and exclusions provided by this Article are not allowed. The tax levied in this section is in

addition to all other taxes whether levied in the form of excise, license, privilege, or other taxes. The requirements of this subsection apply to facilitators liable for tax under this Article.

(c) Certificate of Registration. – Before a person may engage in business as a retailer or a wholesale merchant in this State, the person must obtain a certificate of registration from the Department in accordance with G.S. 105-164.29. A facilitator that is liable for tax under this Article must obtain a certificate of registration from the Department in accordance with G.S. 105-164.29. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 826, s. 2; 1963, c. 1169, ss. 3, 11; 1967, c. 1110, s. 6; c. 1116; 1969, c. 1075, s. 5; 1971, c. 887, s. 1; 1973, c. 476, s. 193; c. 1287, s. 8; 1975, c. 752; 1977, c. 903; 1977, 2nd Sess., c. 1218; 1979, c. 17, s. 1; c. 22; c. 48, s. 1; c. 527, s. 1; c. 801, s. 73; 1981, c. 984, ss. 1, 2; 1981 (Reg. Sess., 1982), cc. 1207, 1273; 1983, c. 510; c. 713, ss. 89, 93; c. 805, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1065, ss. 1, 2, 4; c. 1097, ss. 6, 13; 1985, c. 704; 1985 (Reg. Sess., 1986), c. 925; c. 1005; 1987, c. 557, ss. 4, 5; c. 800, ss. 2, 3; c. 854, s. 1; 1987 (Reg. Sess., 1988), c. 1044, s. 4; 1989, c. 692, ss. 3.1, 3.3, 8.4(8); c. 770, s. 74.4; 1989 (Reg. Sess., 1990), c. 813, ss. 14, 15; 1991, c. 598, s. 5; c. 689, s. 311; c. 690, s. 1; 1993, c. 372, s. 1; c. 484, s. 2; 1995, c. 17, s. 6; c. 477, s. 1; 1996, 2nd Ex. Sess., c. 13, ss. 1.1, 9.1, 9.2; 1997-475, s. 1.1; 1998-22, s. 5; 1998-55, ss. 8, 14; 1998-98, ss. 13.2, 48(a), (b); 1998-121, ss. 3, 5; 1998-197, s. 1; 1998-212, s. 29A.1(a); 1999-337, ss. 29, 30; 1999-360, ss. 3(a), (b); 1999-438, s. 1; 2000-140, s. 67(a); 2001-424, ss. 34.13(a), 34.17(a), 34.23(b), 34.25(a); 2001-430, ss. 3, 4, 5; 2001-476, ss. 17(b)-(d), (f); 2001-487, ss. 67(b), 122(a)-(c); 2002-16, s. 4; 2003-284, s. 38.1; 2003-400, s. 15; 2004-110, ss. 6.1, 6.2, 6.3; 2005-144, s. 9.1; 2005-276, ss. 33.1, 33.4(a), (b); 2006-33, ss. 2, 11; 2006-66, ss. 24.1(a), (b), (c), 24.19(a), (b); 2006-151, s. 3; 2007-145, s. 9(a); 2007-323, ss. 31.2(a), (b), 31.16.3(h), 31.16.4(g); 2007-397, ss. 10(a)-(f); 2009-451, ss. 27A.2(b), (e); 2010-31, s. 31.6(a); 2010-123, s. 10.2; 2011-330, s. 16; 2013-316, ss. 3.1(a), 4.1(c), (e), 5(b), 6(b); 2013-414, ss. 9, 40; 2014-3, ss. 4.1(b), 5.1(a), (f), 6.1(b), 7.1(b), 8.1(a), 14.8; 2014-39, s. 1(a); 2015-6, s. 2.1(b); 2015-98, s. 1(h); 2015-241, s. 32.18(b); 2015-259, ss. 4.1(b), 4.2(b); 2016-92, s. 2.3; 2016-94, s. 38.5(e); 2017-204, s. 2.2.)

**§ 105-164.4A:** Repealed by Session Laws 2005-276, s. 33.5, effective January 1, 2006.

**§ 105-164.4B. Sourcing principles.**

(a) General Principles. – The following principles apply in determining where to source the sale of a product. Except as otherwise provided in this section, a service is sourced where the purchaser can potentially first make use of the service. These principles apply regardless of the nature of the product, except as otherwise noted in this section:

- (1) When a purchaser receives a product at a business location of the seller, the sale is sourced to that business location.
- (2) When a purchaser or purchaser's donee receives a product at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser or the purchaser's donee receives the product.
- (3) When subdivisions (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

- (4) When subdivisions (1), (2), and (3) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
  - (5) When subdivisions (1), (2), (3), and (4) of this subsection do not apply, including the circumstance in which the seller is without sufficient information to apply the rules, the location will be determined based on the following:
    - a. Address from which tangible personal property was shipped,
    - b. Address from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or
    - c. Address from which the service was provided.
- (b) Periodic Rental Payments. – When a lease or rental agreement requires recurring periodic payments, the payments are sourced as follows:
- (1) For leased or rented property, the first payment is sourced in accordance with the principles set out in subsection (a) of this section and each subsequent payment is sourced to the primary location of the leased or rented property for the period covered by the payment. This subdivision applies to all property except a motor vehicle, an aircraft, transportation equipment, and a utility company railway car.
  - (2) For leased or rented property that is a motor vehicle or an aircraft but is not transportation equipment, all payments are sourced to the primary location of the leased or rented property for the period covered by the payment.
  - (3) For leased or rented property that is transportation equipment, all payments are sourced in accordance with the principles set out in subsection (a) of this section.
  - (4) For a railway car that is leased or rented by a utility company and would be transportation equipment if it were used in interstate commerce, all payments are sourced in accordance with the principles set out in subsection (a) of this section.
- (c) Transportation Equipment Defined. – As used in the section, the term "transportation equipment" means any of the following used to carry persons or property in interstate commerce: a locomotive, a railway car, a commercial motor vehicle as defined in G.S. 20-4.01, or an aircraft. The term includes a container designed for use on the equipment and a component part of the equipment.
- (d) Exceptions. – This section does not apply to the following:
- (1) Telecommunications services. – Telecommunications services are sourced in accordance with G.S. 105-164.4C.
  - (2) Direct mail. – Direct mail is sourced in accordance with G.S. 105-164.4E.
  - (3) Florist wire sale. – A florist wire sale is sourced to the business location of the florist that takes an order for the sale. A "florist wire sale" is a sale in which a retail florist takes a customer's order and transmits the order to another retail florist to be filled and delivered.

(e) Accommodations. – The rental of an accommodation, as defined in G.S. 105-164.4F, is sourced to the location of the accommodation.

(f) Digital Property. – A purchaser receives digital property when the purchaser takes possession of the property or makes first use of the property, whichever comes first.

(g) Prepaid Meal Plan. – 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.

(h) Admissions. – The gross receipts derived from an admission charge, as defined in G.S. 105-164.4G, are sourced in accordance with G.S. 105-164.4G. (2001-347, s. 2.9; 2002-16, s. 5; 2003-284, s. 45.3; 2004-170, s. 20; 2006-33, s. 3; 2006-66, s. 24.13(a); 2008-187, s. 42; 2009-445, s. 12; 2010-31, s. 31.6(b); 2010-123, s. 10.2; 2011-330, s. 29; 2012-79, s. 2.8; 2013-414, s. 23(b); 2014-3, ss. 4.1(c), 5.1(b); 2016-5, s. 3.3; 2017-204, s. 2.3.)

### **§ 105-164.4C. Telecommunications service and ancillary service.**

(a) General. – The gross receipts derived from providing telecommunications service or ancillary service in this State are taxed at the rate set in G.S. 105-164.4(a)(4c). Telecommunications service is provided in this State if the service is sourced to this State under the sourcing principles set out in subsections (a1) and (a2) of this section. Ancillary service is provided in this State if the telecommunications service to which it is ancillary is provided in this State. The definitions and provisions of the federal Mobile Telecommunications Sourcing Act apply to the sourcing and taxation of mobile telecommunications services.

(a1) General Sourcing Principles. – The following general sourcing principles apply to telecommunications services. If a service falls within one of the exceptions set out in subsection (a2) of this section, the service is sourced in accordance with the exception instead of the general principle.

- (1) Flat rate. – A telecommunications service that is not sold on a call-by-call basis is sourced to this State if the place of primary use is in this State.
- (2) General call-by-call. – A telecommunications service that is sold on a call-by-call basis and is not a postpaid calling service is sourced to this State in the following circumstances:
  - a. The call both originates and terminates in this State.
  - b. The call either originates or terminates in this State and the telecommunications equipment from which the call originates or terminates and to which the call is charged is located in this State. This applies regardless of where the call is billed or paid.
- (3) Postpaid. – A postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system or, if the system used to transport the signal is not the seller's system, by information the seller receives from its service provider.

(a2) Sourcing Exceptions. – The following telecommunications services and products are sourced in accordance with the principles set out in this subsection:

- (1) Mobile. – Mobile telecommunications service is sourced to the place of primary use, unless the service is prepaid wireless calling service or is air-to-ground radiotelephone service. Air-to-ground radiotelephone service is a postpaid calling service that is offered by an aircraft common carrier to passengers on its aircraft and enables a telephone call to be made from the aircraft. The sourcing principle in this subdivision applies to a service or



product provided as an adjunct to mobile telecommunications service if the charge for the service or product is included within the term "charges for mobile telecommunications services" under the federal Mobile Telecommunications Sourcing Act.

- (2) Prepaid. – Prepaid telephone calling service is sourced in accordance with G.S. 105-164.4B.
  - (3) Private. – Private telecommunications service is sourced in accordance with subsection (e) of this section.
- (b) Repealed by Session Laws 2006-33, s. 4, effective January 1, 2007.
- (c) (1) through (10) Repealed by Session Laws 2006-33, s. 4, effective January 1, 2007.  
(11) Repealed by Session Laws 2005-276, s. 33.7, effective October 1, 2005.  
(12) through (16) Repealed by Session Laws 2006-33, s. 4, effective January 1, 2007.
- (d) Recodified as G.S. 105-164.4D by Session Laws 2006-151, s. 4, effective January 1, 2007.
- (e) Private Line. – The gross receipts derived from private telecommunications service are sourced as follows:
- (1) If all the customer's channel termination points are located in this State, the service is sourced to this State.
  - (2) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel termination points, the charge for each channel termination point located in this State is sourced to this State.
  - (3) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel mileage, the following applies:
    - a. A charge for a channel segment between two channel termination points located in this State is sourced to this State.
    - b. Fifty percent (50%) of a charge for a channel segment between a channel termination point located in this State and a channel termination point located in another state is sourced to this State.
  - (4) If all the customer's channel termination points are not located in this State and the service is not billed on the basis of channel termination points or channel mileage, a percentage of the charge for the service is sourced to this State. The percentage is determined by dividing the number of channel termination points in this State by the total number of channel termination points.
- (f) Call Center Cap. – The gross receipts tax on telecommunications service that originates outside this State, terminates in this State, and is provided to a call center that has a direct pay permit issued by the Department under G.S. 105-164.27A may not exceed fifty thousand dollars (\$50,000) a calendar year. This cap applies separately to each legal entity.
- (g) Credit. – A taxpayer who pays a tax legally imposed by another state on a telecommunications service taxable under this section is allowed a credit against the tax imposed in this section.
- (h) Definitions. – The following definitions apply in this section:
- (1) Ancillary service. – Defined in G.S. 105-164.3.
  - (1a) Call-by-call basis. – A method of charging for a telecommunications service whereby the price of the service is measured by individual calls.
  - (2) Call center. – Defined in G.S. 105-164.27A.

- (3) Mobile telecommunications service. – Defined in G.S. 105-164.3.
- (4) Place of primary use. – Defined in G.S. 105-164.3.
- (5) Postpaid calling service. – A telecommunications service that is charged on a call-by-call basis and is obtained by making payment at the time of the call either through the use of a credit or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the requirements of a prepaid telephone calling service, except the exclusive use requirement.
- (6) Prepaid telephone calling service. – Defined in G.S. 105-164.3.
- (7) Private telecommunications service. – Telecommunications service that entitles a subscriber of the service to exclusive or priority use of a communications channel or group of channels.
- (8) Telecommunications service. – Defined in G.S. 105-164.3. (2001-430, s. 6; 2001-487, ss. 67(a), (c), 69(b); 2002-16, s 10; 2002-16, ss. 6, 7, 8, 9, 11, 14; 2003-416, s. 16(a); 2005-276, ss. 33.6, 33.7; 2006-33, s. 4; 2006-151, s. 4; 2011-330, s. 17; 2013-414, s. 41.)

**§ 105-164.4D. Bundled transactions.**

(a) Tax Application. – Tax applies to the sales price of a bundled transaction unless one of the following applies:

- (1) Fifty percent (50%) test. – All of the products in the bundle are tangible personal property, the bundle includes one or more of the exempt products listed in this subdivision, and the price of the taxable products in the bundle does not exceed fifty percent (50%) of the price of the bundle:
  - a. Food exempt under G.S. 105-164.13B.
  - b. A drug exempt under G.S. 105-164.13(13).
  - c. Medical devices, equipment, or supplies exempt under G.S. 105-164.13(12).
- (2) Allocation. – The bundle includes a service, and the retailer determines an allocated price for each product in the bundle based on a reasonable allocation of revenue that is supported by the retailer's business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of each taxable product in the bundle.
- (3) Ten percent (10%) test. – The price of the taxable products in the bundle does not exceed ten percent (10%) of the price of the bundle, and no other subdivision in this subsection applies.
- (4) Prepaid meal plan. – The bundle includes a prepaid meal plan and a dollar value that declines with use. In this circumstance, tax applies to the allocated price of the prepaid meal plan. The tax applies to items purchased with the dollar value that declines with use as the dollar value is presented for payment.
- (5) Tuition, room, and meals. – The bundle includes tuition, room, and meals offered by an institution of higher education. In this circumstance, 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.

- (6) Repealed by Session Laws 2017-204, s. 2.5(a). For effective date and applicability, see editor's note.

(b) **Determining Threshold.** – A retailer of a bundled transaction subject to this section may use either the retailer's purchase price or the retailer's sales price to determine if the transaction meets the fifty percent (50%) test or the ten percent (10%) test set out in subdivisions (a)(1) and (a)(3) of this section. A retailer may not use a combination of purchase price and sales price to make this determination. If a bundled transaction subject to subdivision (a)(3) of this section includes a service contract, the retailer must use the full term of the contract in determining whether the transaction meets the threshold set in the subdivision. (2006-151, ss. 4, 5; 2007-244, s. 2; 2014-3, s. 4.1(d); 2016-5, s. 3.7(a); 2016-94, s. 38.5(f); 2017-204, s. 2.5(a).)

#### **§ 105-164.4E. Direct Mail.**

(a) **Advertising and Promotional Direct Mail.** – The following sourcing principles apply to advertising and promotional direct mail.

- (1) To the location where the direct mail is delivered if it is purchased pursuant to a direct pay permit issued under G.S. 105-164.27A(a1), or if it is purchased with an exemption certificate claiming direct mail and bearing the direct mail permit number issued under G.S. 105-164.27A(a1).
- (2) To the location where the direct mail is delivered if the purchaser provides the seller with information to show the jurisdictions to which the direct mail is to be delivered.
- (3) To the location from which the direct mail was shipped if subdivision (1) or (2) of this subsection does not apply.

(b) **Other Direct Mail.** – The following sourcing principles apply to other direct mail:

- (1) To the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.
- (2) To the jurisdictions where the direct mail is delivered if it is purchased pursuant to a direct pay permit issued under G.S. 105-164.27A(a1), or if it is purchased with an exemption certificate claiming direct mail and bearing the direct mail permit number issued under G.S. 105-164.27A(a1).

(c) **Relief From Liability.** – In the absence of bad faith, a seller is relieved of:

- (1) All obligations to collect, pay, or remit any tax on any direct mail transaction where the purchaser issues a direct pay permit issued under G.S. 105-164.27A(a1), or if it is purchased with an exemption certificate claiming direct mail and bearing the direct mail permit number issued under G.S. 105-164.27A(a1).
- (2) Further obligation to collect any additional tax on the sale of advertising and promotional direct mail where the seller sourced the sale according to delivery information provided by the purchaser. (2013-414, s. 23(c).)

#### **§ 105-164.4F. Accommodation rentals.**

(a) **Definition.** – The following definitions apply in this section:

- (1) Accommodation. – A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.
- (2) 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.
- (3) Rental agent. – The term includes a real estate broker, as defined in G.S. 93A-2.

(b) Tax. – The gross receipts derived from the rental of an accommodation are taxed at the general rate set in G.S. 105-164.4. 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.

(c) Facilitator Transactions. – 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 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 no later than 10 days after the end of each calendar month. 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 section on a retailer and a facilitator are considered terms of the contract between the retailer and the facilitator.

(d) Rental Agent. – 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 section. The liability of a rental agent for the tax imposed by this section relieves the provider of the accommodation from liability.

(e) Exemptions. – The tax imposed by this section does not apply to the following:

- (1) A private residence, cottage, or similar accommodation that is rented for fewer than 15 days in a calendar year other than a private residence, cottage, or similar accommodation listed with a real estate broker or agent.
- (2) An accommodation supplied to the same person for a period of 90 or more continuous days.
- (3) An accommodation arranged or provided to a person by a school, camp, or similar entity where a tuition or fee is charged to the person for enrollment in the school, camp, or similar entity. (2014-3, s. 8.1(b).)

#### **§ 105-164.4G. Entertainment activity.**

(a) Definition. – The following definitions apply in this section:

- (1) Admission charge. – Gross receipts derived for the right to attend an entertainment activity. The term includes a charge for a single ticket, a multi-occasion ticket, a seasonal pass, and an annual pass; a membership fee that provides for admission; a cover charge; a surcharge; a convenience fee, a

processing fee, a facility charge, a facilitation fee, or similar charge; or any other charges included in gross receipts derived from admission.

- (2) Amenity. – A feature that increases the value or attractiveness of an entertainment activity that allows a person access to items that are not subject to tax under this Article and that are not available with the purchase of admission to the same event without the feature. The term includes parking privileges, special entrances, access to areas other than general admission, mascot visits, and merchandise discounts. The term does not include any charge for food, prepared food, and alcoholic beverages subject to tax under this Article.
- (3) Entertainment activity. – An activity listed in this subdivision:
  - a. A live performance or other live event of any kind, the purpose of which is for entertainment.
  - b. A movie, motion picture, or film.
  - c. A museum, a cultural site, a garden, an exhibit, a show, or a similar attraction.
  - d. A guided tour at any of the activities listed in sub-subdivision c. of this subdivision.
- (4) Facilitator. – A person who accepts payment of an admission charge to an entertainment activity and who is not the operator of the venue where the entertainment activity occurs.

(b) Tax. – The gross receipts derived from an admission charge to an entertainment activity are taxed at the general rate set in G.S. 105-164.4. The tax is due and payable by the retailer in accordance with G.S. 105-164.16. For purposes of the tax imposed by this section, the retailer is the applicable person listed below:

- (1) The operator of the venue where the entertainment activity occurs, unless the retailer and the facilitator have a contract between them allowing for dual remittance, as provided in subsection (d) of this section.
- (2) The person that provides the entertainment and that receives admission charges directly from a purchaser.
- (3) A person other than a person listed in subdivision (1) or (2) of this subsection that receives gross receipts derived from an admission charge sold at retail.

(c) Facilitator. – A facilitator must report to the retailer with whom it has a contract the admission charge a consumer pays to the facilitator for an entertainment activity. The facilitator must send the retailer the portion of the gross receipts the facilitator owes the retailer and the tax due on the gross receipts derived from an admission charge no later than 10 days after the end of each calendar month. A facilitator that does not send the retailer the tax due on the gross receipts derived from an admission charge is liable for the amount of tax the facilitator fails to send to the retailer. 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 subsection on a retailer and a facilitator are considered terms of the contract between the retailer and the facilitator.

(d) Dual Remittance. – The tax due on the gross receipts derived from an admission charge may be partially reported and remitted to the operator of the venue for remittance to the

Department and partially reported and remitted by the facilitator directly to the Department. The portion of the tax not reported and remitted to the operator of the venue must be reported and remitted directly by the facilitator to the Department. A facilitator that elects to remit tax under the dual remittance option is required to obtain a certificate of registration in accordance with G.S. 105-164.29. A facilitator is subject to the provisions of Article 9 of this Chapter.

(e) Exceptions. – The tax imposed by this section does not apply to the following:

- (1) An amount paid for the right to participate in sporting activities. Examples of these types of charges include bowling fees, golf green fees, and gym memberships.
- (2) Tuition, registration fees, or charges to attend instructional seminars, conferences, or workshops for educational purposes.
- (3) A political contribution.
- (4) A charge for lifetime seat rights, lease, or rental of a suite or box for an entertainment activity, provided the charge is separately stated on an invoice or similar billing document given to the purchaser at the time of sale.
- (5) An amount paid solely for transportation.

(f) Exemptions. – The sale at retail and the use, storage, or consumption in this State of the following gross receipts derived from an admission charge to an entertainment activity are specifically exempt from the tax imposed by this Article:

- (1) The portion of a membership charge that is deductible as a charitable contribution under section 170 of the Code.
- (2) A donation that is deductible as a charitable contribution under section 170 of the Code.
- (3) Charges for an amenity. If charges for amenities are separately stated on a billing document given to the purchaser at the time of the sale, then the tax does not apply to the separately stated charges for amenities. If charges for amenities are not separately stated on the billing document given to the purchaser at the time of the sale, then the transaction is a bundled transaction and taxed in accordance with G.S. 105-164.4D except that G.S. 105-164.4D(a)(3) does not apply.
- (4) An event that is sponsored by an elementary or secondary school. For purposes of this exemption, the term "school" is an entity regulated under Chapter 115C of the General Statutes.
- (5) An event sponsored solely by a nonprofit entity that is exempt from tax under Article 4 of this Chapter if all of the following conditions are met:
  - a. The entire proceeds of the activity are used exclusively for the entity's nonprofit purposes.
  - b. The entity does not declare dividends, receive profits, or pay salary or other compensation to any members or individuals.
  - c. The entity does not compensate any person for participating in the event, performing in the event, placing in the event, or producing the event. For purposes of this subdivision, the term "compensate" means any remuneration included in a person's gross income as defined in section 61 of the Code.
- (6) An event sponsored by a farmer that takes place on farmland and is related to farming activities, such as a corn maze or a tutorial on raising crops or

animals. For purposes of this exemption, a farmer is a person who holds a qualifying farmer sales tax exemption certificate and farmland is land that is enrolled in the present-use value program under G.S. 105-277.3.

(g) Sourcing. – An admission charge to an entertainment activity is sourced to the location where admission to the entertainment activity may be gained by a person. When the location where admission may be gained is not known at the time of the receipt of the gross receipts for an admission charge, the sourcing principles in G.S. 105-164.4B(a) apply. (2014-3, s. 5.1(c); 2015-6, s. 2.11; 2016-5, s. 3.4; 2017-204, s. 2.10(a).)

#### **§ 105-164.4H. Real property contract.**

(a) Applicability. – A real property contractor is the consumer of the tangible personal property or digital property that the real property contractor purchases, installs, or applies for others to fulfill a real property contract and that becomes part of real property or used to fulfill the contract. A retailer engaged in business in the State shall collect tax on the sales price of the tangible personal property, digital property, or service sold at retail to a real property contractor unless a statutory exemption in G.S. 105-164.13 or G.S. 105-164.13E applies. Where a real property contractor purchases tangible personal property or digital property for storage, use, or consumption in this State, or a service sourced to this State, and the tax due is not paid at the time of purchase, the provisions of G.S. 105-164.6 apply except as provided in subsection (b) of this section.

(a1) Substantiation. – Generally, services to real property are retail sales of or the gross receipts derived from, repair, maintenance, and installation services and subject to tax in accordance with G.S. 105-164.4(a)(16), unless a person substantiates that a transaction is subject to tax as a real property contract in accordance with subsection (a) of this section, subject to tax as a mixed transaction in accordance with subsection (d) of this section, or the transaction is not subject to tax. A person may substantiate that a transaction is a real property contract or a mixed transaction by records that establish the transaction is a real property contract or by receipt of an affidavit of capital improvement. The receipt of an affidavit of capital improvement, absent fraud or other egregious activities, establishes that the subcontractor or other person receiving the affidavit should treat the transaction as a capital improvement, and the transaction is subject to tax in accordance with subsection (a) of this section. A person that issues an affidavit of capital improvement is liable for any additional tax due on the transaction, in excess of tax paid on related purchases under subsection (a) of this section, if it is determined that the transaction is not a capital improvement but rather the transaction is subject to tax as a retail sale. A person who receives an affidavit of capital improvement from another person, absent fraud or other egregious activities, is not liable for any additional tax on the gross receipts from the transaction if it is determined that the transaction is not a capital improvement.

The Secretary may establish guidelines for transactions where an affidavit of capital improvement is not required, but rather a person may establish by records that such transactions are subject to tax in accordance with subsection (a) of this section.

(b) Retailer-Contractor. – This section applies to a retailer-contractor as follows:

(1) Acting as a real property contractor. – A retailer-contractor acts as a real property contractor when it contracts to perform a real property contract. A retailer-contractor that purchases tangible personal property or digital property to be installed or applied to real property to fulfill the contract may purchase those items exempt from tax under a certificate of exemption pursuant to

G.S. 105-164.28 provided the retailer-contractor also purchases inventory items or services from the seller for resale. When the property is withdrawn from inventory and installed or applied to real property, use tax must be accrued and paid on the retailer-contractor's purchase price of the property. Property that the retailer-contractor withdraws from inventory for use that does not become part of real property is also subject to the tax imposed by this Article.

(2) Acting as a retailer. – A retailer-contractor is acting as a retailer when it makes a sale at retail.

(b1) Repealed by Session Laws 2017-204, s. 2.4(a). For effective date and applicability, see Editor's note.

(c) Erroneous Collection if Separately Stated. – An invoice or other documentation issued to a person by a real property contractor shall not separately state any amount for tax for a real property contract. Any amount for tax separately stated on an invoice or other documentation given to a person by a real property contractor is an erroneous collection and must be remitted to the Secretary.

(d) Mixed Transaction Contract. – A mixed transaction contract is taxable as follows:

(1) If the allocated sales price of the taxable repair, maintenance, and installation services included in the contract is less than or equal to twenty-five percent (25%) of the contract price, then the repair, maintenance, and installation services portion of the contract, and the tangible personal property, digital property, or service used to perform those services, are taxable as a real property contract in accordance with this section.

(2) If the allocated sales price of the taxable repair, maintenance, and installation services included in the contract is greater than twenty-five percent (25%) of the contract price, then sales and use tax applies to the sales price of or the gross receipts derived from the taxable repair, maintenance, and installation services portion of the contract. The person must determine an allocated price for the taxable repair, maintenance, and installation services in the contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. Any purchase of tangible personal property or digital property to fulfill the real property contract is taxed in accordance with this section.

(e) Repealed by Session Laws 2017-204, s. 2.4(a). For effective date and applicability, see Editor's note. (2014-3, s. 7.1(c); 2015-6, s. 2.1(b); 2016-5, s. 3.5; 2016-94, ss. 38.5(c), (g); 2016-123, ss. 11.2, 11.3(b), 11.4(a), 11.5; 2017-204, ss. 2.4(a), (b).)

#### **§ 105-164.4I. Service contracts.**

(a) Tax. – The sales price of or the gross receipts derived from a service contract or the renewal of a service contract sold at retail is subject to the general rate of tax set in G.S. 105-164.4 and is sourced in accordance with the sourcing principles in G.S. 105-164.4B. The retailer of a service contract is required to collect the tax due at the time of the retail sale of the contract and is liable for payment of the tax. The tax is due and payable in accordance with G.S. 105-164.16.

The retailer of a service contract is the applicable person listed below:



- (1) When a service contract is sold at retail to a purchaser by the obligor under the contract, the obligor is the retailer.
- (2) When a service contract is sold at retail to a purchaser by a facilitator on behalf of the obligor under the contract, the facilitator is the retailer unless the provisions of subdivision (3) of this subsection apply.
- (3) When a service contract is sold at retail to a purchaser by a facilitator on behalf of the obligor under the contract and there is an agreement between the facilitator and the obligor that states the obligor will be liable for the payment of the tax, the obligor is the retailer. The facilitator must send the retailer the tax due on the sales price of or gross receipts derived from the service contract no later than 10 days after the end of each calendar month. A facilitator that does not send the retailer the tax due on the sales price or gross receipts 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 agreement between the retailer and the facilitator.

(a1) **Mixed Service Contract.** – A service contract for real property that includes two or more services, one of which is subject to tax under this Article and one of which is not subject to tax under this Article, is taxable in accordance with this subsection. Tax applies to the sales price of or gross receipts derived from a mixed service contract unless one of the following applies:

- (1) **Allocation.** – The person determines an allocated price for the taxable portion of the service contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of the taxable portion of the service contract.
- (2) **Ten percent (10%) test.** – The allocated price of the taxable portion of the service contract does not exceed ten percent (10%) of the price of the contract.

(b) Repealed by Session Laws 2017-204, s. 2.5(a). For effective date and applicability, see editor's note.

(c) **Exceptions.** – The tax imposed by this section does not apply to any of the following:

- (1) A security or similar monitoring contract for real property.
- (2) A contract to provide a certified operator for a wastewater system.

(d) **Basis of Reporting.** – A retailer who sells or derives gross receipts from a service contract must report those sales on an accrual basis of accounting, notwithstanding that the retailer reports tax on the cash basis for other sales at retail. The tax on the sales price of or the gross receipts derived from a service contract is due at the time of the retail sale, notwithstanding any portion that may be financed. If the sales price of or the gross receipts derived from the service contract is financed in whole or in part, the financed amount of the sales price of or the gross receipts derived from the service contract included in each payment is exempt from sales tax if the amount is separately stated in the contract and on the billing statement or other documentation provided to the purchaser at the time of the sale.

(e) Definition. – For purposes of this section, the term "facilitator" means a person who contracts with the obligor of the service contract to market the service contract and accepts payment from the purchaser for the service contract. (2014-3, s. 6.1(c); 2015-241, s. 32.18(c); 2015-259, ss. 4.2(c), 5(a), 6(c); 2016-5, s. 3.24(a); 2016-94, s. 38.5(h); 2017-57, s. 38.8(b); 2017-204, ss. 2.5(a), (b).)

**§ 105-164.5:** Repealed by Session Laws 1998-121, s. 2, as amended by Session Laws 1998-217, s. 59.

**§ 105-164.5A: Repealed by Session Laws 1961, c. 1213, s. 3.**

**§ 105-164.6. Complementary use tax.**

(a) Tax. – An excise tax at the applicable rate set in G.S. 105-164.4 is imposed on the products listed below. The applicable rate is the rate and maximum tax, if any, that would apply to the sale of the product. A product is subject to tax under this section only if it is subject to tax under G.S. 105-164.4.

- (1) Tangible personal property or digital property purchased inside or outside this State for storage, use, or consumption in this State. This subdivision includes property that becomes part of a building or another structure.
- (2) Tangible personal property or digital property leased or rented inside or outside this State for storage, use, or consumption in this State.
- (3) Services sourced to this State.

(b) Liability. – The tax imposed by this section is payable by the person who purchases, leases, or rents tangible personal property or digital property or who purchases a service. If the property purchased becomes a part of real property in the State, the real property contractor, the retailer-contractor, the subcontractor, the lessee, and the owner are jointly and severally liable for the tax, except as provided in G.S. 105-164.4H(a) regarding receipt of an affidavit of capital improvement. The liability of a real property contractor, a retailer-contractor, a subcontractor, a lessee, or an owner who did not purchase the property is satisfied by receipt of an affidavit from the purchaser certifying that the tax has been paid.

(c) Credit. – A credit is allowed against the tax imposed by this section for the following:

- (1) The amount of sales or use tax paid on the item to this State, provided the tax is stated and charged separately on the invoice or other document of the retailer given to the purchaser at the time of the sale, except as otherwise provided in G.S. 105-164.7, or provided the retailer remitted the tax subsequent to the sale and the purchaser obtains such documentation. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.
- (2) The amount of sales or use tax due and paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina.

(d), (e) Repealed by Session Laws 2005-276, s. 33.8, effective October 1, 2005.

(f) Registration. – A person must obtain a certificate of registration in accordance with G.S. 105-164.29 under any of the following circumstances:

(1) Before the person engages in business in this State selling or delivering tangible personal property, digital property, or a service for storage, use, or consumption in this State.

(2) If the person is a facilitator that is liable for tax under this Article.

(g) Repealed by Session Laws 1995, c. 7, s. 1. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 826, s. 2; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; 1979, c. 17, s. 2; c. 48, ss. 3, 4; c. 179, s. 3; c. 527, s. 2; 1979, 2nd Sess., c. 1100, s. 1; c. 1175; 1981, cc. 18, 65; 1983, c. 713, s. 90; 1983 (Reg. Sess., 1984), c. 1065, s. 3; 1989, c. 692, s. 3.4; 1991, c. 689, s. 312; c. 690, s. 3; 1995, c. 7, s. 1; c. 17, s. 7; 1998-121, s. 4; 1999-438, s. 1.1; 2001-414, s. 15; 2003-416, ss. 17, 24(a); 2005-276, s. 33.8; 2006-162, s. 6; 2009-451, s. 27A.3(h); 2011-330, s. 25(a); 2013-414, s. 10; 2014-3, s. 14.9(a); 2017-39, s. 6; 2017-204, s. 2.4(c).)

### **§ 105-164.6A. Voluntary collection of use tax by sellers.**

(a) Voluntary Collection Agreements. – The Secretary may enter into agreements with sellers pursuant to which the seller agrees to collect and remit on behalf of its customers State and local use taxes due on items of tangible personal property, digital property, or services the seller sells. For the purpose of this section, a seller is a person who is engaged in the business of selling tangible personal property, digital property, or services for use in this State and who does not have sufficient nexus with this State to be required to collect use tax on the sales.

(b) Mandatory Provisions. – The agreements must contain the following provisions:

(1) The seller is not liable for use tax not paid to it by a customer.

(2) A customer's payment of a use tax to the seller relieves the customer of liability for the use tax.

(3) The seller must remit all use taxes it collects from customers on or before the due date specified in the agreement, which may not be later than 31 days after the end of a quarter or other collection period. The collection period cannot be more often than annually if the seller's State and local tax collections are less than one thousand dollars (\$1,000) in a calendar year.

(4) A seller who fails to remit use taxes collected on behalf of its customers by the due date specified in the agreement is subject to the interest and penalties provided in Article 9 of this Chapter with respect to the taxes to the same extent as if the seller were a retailer and were required to collect use taxes under this Article.

(c) Optional Provisions. – The agreements may contain the following provisions:

(1) The seller will collect the use tax only on items that are subject to the general rate of tax.

(2) The seller will collect local use taxes only to the extent they are at the same rate in every unit of local government in the State.

(3) The seller will remit the tax and file reports in the form prescribed by the Secretary.

(4) Other provisions establishing the types of transactions on which the seller will collect tax and prescribing administrative procedures and requirements. (1996, 2nd Ex. Sess., c. 14, s. 11; 2000-120, s. 4; 2003-284, s. 45.4; 2009-451, s. 27A.3(i).)

### **§ 105-164.7. Retailer or facilitator to collect sales tax from purchaser as trustee for State.**

The sales tax imposed by this Article is intended to be passed on to the purchaser of a taxable item and borne by the purchaser instead of by the retailer. A retailer must collect the tax due on an item when the item is sold at retail. The requirements of this section apply to facilitators liable for tax under this Article. The tax is a debt from the purchaser to the retailer until paid and is recoverable at law by the retailer in the same manner as other debts. A retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser of a taxable item. The tax must be stated and charged separately on the invoices or other documents of the retailer given to the purchaser at the time of the sale except for either of the following:

- (1) Vending machine sales.
- (2) Where a retailer displays a statement indicating the sales price includes the tax. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 2000-19, s. 1.3; 2006-162, s. 7; 2009-451, s. 27A.3(j); 2012-79, s. 2.9; 2016-92, s. 2.4.)

**§ 105-164.8. Retailer's obligation to collect tax; remote sales subject to tax.**

(a) Obligation. – A retailer is required to collect the tax imposed by this Article notwithstanding any of the following:

- (1) That the purchaser's order or the contract of sale is delivered, mailed, or otherwise transmitted by the purchaser to the retailer at a point outside this State as a result of solicitation by the retailer through the medium of a catalogue or other written advertisement.
- (2) That the purchaser's order or the contract of sale is made or closed by acceptance or approval outside this State, or before any tangible personal property or digital property that is part of the order or contract enters this State.
- (3) That the purchaser's order or the contract of sale provides that the property shall be or is in fact procured or manufactured at a point outside this State and shipped directly to the purchaser from the point of origin.
- (4) That the property is mailed to the purchaser in this State or a point outside this State or delivered to a carrier outside this State f.o.b. or otherwise and directed to the purchaser in this State regardless of whether the cost of transportation is paid by the retailer or by the purchaser.
- (5) That the property is delivered directly to the purchaser at a point outside this State.
- (6) Any combination in whole or in part of any two or more of the foregoing statements of fact, if it is intended that the property purchased be brought to this State for storage, use, or consumption in this State.

(b) Remote Sales. – A retailer who makes a remote sale is engaged in business in this State and is subject to the tax levied under this Article if at least one of the following conditions is met:

- (1) The retailer is a corporation engaged in business under the laws of this State or a person domiciled in, a resident of, or a citizen of, this State.
- (2) The retailer maintains retail establishments or offices in this State, whether the remote sales thus subject to taxation by this State result from or are related in any other way to the activities of the establishments or offices.
- (3) 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. 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.

- (4) Repealed by Session Laws 1991, c. 45, s. 16.
- (5) The retailer, by purposefully or systematically exploiting the market provided by this State by any media-assisted, media-facilitated, or media-solicited means, including direct mail advertising, distribution of catalogs, computer-assisted shopping, television, radio or other electronic media, telephone solicitation, magazine or newspaper advertisements, or other media, creates nexus with this State. 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 the advertising.
- (6) Through compact or reciprocity with another jurisdiction of the United States, that jurisdiction uses its taxing power and its jurisdiction over the retailer in support of this State's taxing power.
- (7) The retailer consents, expressly or by implication, to the imposition of the tax imposed by this Article. For purposes of this subdivision, evidence that a retailer engaged in the activity described in subdivision (5) is prima facie evidence that the retailer consents to the imposition of the tax imposed by this Article.
- (8) The retailer is a holder of a wine shipper permit issued by the ABC Commission pursuant to G.S. 18B-1001.1.

(c) Local Tax. – A retailer who is required to collect the tax imposed by this Article must collect a local use tax on a transaction if a local sales tax does not apply to the transaction. The sourcing principles in G.S. 105-164.4B determine whether a local sales tax or a local use tax applies to a transaction. A "local sales tax" is a tax imposed under Chapter 1096 of the 1967 Session Laws or by Subchapter VIII of this Chapter, and a local use tax is a use tax imposed under that act or Subchapter. (1957, c. 1340, s. 5; 1987 (Reg. Sess., 1988), c. 1096, s. 4; 1991, c. 45, s. 16; 2001-347, s. 2.10; 2003-402, s. 13; 2003-416, s. 24(b), (c); 2009-451, s. 27A.3(a).)

#### **§ 105-164.9. Advertisement to absorb tax unlawful.**

Any retailer who shall by any character or public advertisement offer to absorb the tax levied in this Article or in any manner directly or indirectly advertise that the tax herein imposed is not

considered an element in the price to the purchaser shall be guilty of a Class 1 misdemeanor. Any violations of the provisions of this section reported to the Secretary shall be reported by him to the Attorney General of the State to the end that such violations may be brought to the attention of the solicitor of the court of the county or district whose duty it is to prosecute misdemeanors in the jurisdiction. It shall be the duty of such solicitor to investigate such alleged violations and if he finds that this section has been violated prosecute such violators in accordance with the law. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1993, c. 539, s. 704; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 105-164.10. Retail tax calculation.**

For the convenience of the retailer in collecting the tax due under this Article, the Secretary must prescribe tables that compute the tax due on sales. The Secretary must issue a separate table for each rate of tax that may apply to a sale. A retailer is not required to collect tax due under this Article based on a bracket system.

In computing tax due under this Article, the tax computation must be carried to the third decimal place and must round up to the next cent whenever the third decimal place is greater than four. A person liable for tax under this Article may elect to compute the tax due on a transaction on an item or invoice basis and the rounding rule is applied to the aggregate tax due. (1957, c. 1340, s. 5; 1961, c. 826, s. 2; 1973, c. 476, s. 193; 1991, c. 689, s. 313; 2013-316, s. 5(e); 2014-3, s. 5.1(f); 2017-204, s. 2.9(h).)

**§ 105-164.11. Excessive and erroneous collections.**

(a) Remittance of Overcollections to Secretary. – When tax is collected for any period on a taxable sale in excess of the total amount that should have been collected or is collected on an exempt or nontaxable sale, the total amount collected must be remitted to the Secretary. If the Secretary determines that the seller overcollected the sales tax on a transaction, the Secretary shall take only one of the actions listed in this subsection. This subsection shall be construed with other provisions of this Article and given effect so as to result in the payment to the Secretary of the total amount collected as tax if it is in excess of the amount that should have been collected.

- (1) If the Secretary determines that the seller overcollected tax on a transaction, the Secretary may allow a refund of the tax. The Secretary may allow the refund only if the seller gives the purchaser credit for or a refund of the overcollected tax. The Secretary shall not refund the overcollected tax to the seller if the seller has elected to offset a use tax liability on a related transaction with the overcollected sales tax under subdivision (2) of this subsection.
- (2) If the Secretary determines that a seller who overcollected sales tax on a transaction is instead liable for a use tax on a related transaction, the Secretary may allow the seller to offset the use tax liability with the overcollected sales tax. The Secretary shall not allow an offset if the seller has elected to receive a refund of the overcollected tax under subdivision (1) of this subsection. The decision by a seller to receive an offset of tax liability rather than a refund of the overcollected tax does not affect the liability of the seller to the purchaser for the overcollected tax.

(3) If neither subdivision (1) nor (2) of this subsection applies, the Secretary shall retain the total amount collected on the transaction.

(b) Refund Procedures First Remedy. – The first course of remedy available to purchasers seeking a refund of over-collected sales or use taxes from the seller are the customer refund procedures provided in this Chapter or otherwise provided by administrative rule, bulletin, or directive on the law issued by the Secretary.

(c) Cause of Action Against Seller. – A cause of action against the seller for over-collected sales or uses taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had 60 days to respond. The notice to the seller must contain the information necessary to determine the validity of the request.

(d) Presumption of Reasonable Business Practice. – In connection with a purchaser's request from the seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice if, in the collection of sales and use taxes, the seller uses either a provider or a system, including a proprietary system, that is certified by the State and the seller has remitted to the State all taxes collected less any deductions, credits, or collection allowances.

(e) Reliance on Written Advice. – 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. Subsection (a) of this section governs when a seller may obtain a refund for overcollected tax. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 826, s. 2; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 1007, s. 4; 2004-22, s. 1; 2009-413, s. 1; 2011-293, s. 1.)

#### **§ 105-164.11A. Refund of tax paid on rescinded sale or cancellation of service.**

(a) Refund. – A retailer is allowed a refund of sales tax remitted on a rescinded sale or cancelled service. A sale is rescinded when the purchaser returns an item to the retailer and receives a refund, in whole or in part, of the sales price paid, including a refund of the pro rata amount of the sales tax based on the taxable amount of the sales price refunded. A service is cancelled when the service is terminated and the purchaser receives a refund, in whole or in part, of the sales price paid, including a refund of the pro rata amount of the sales tax paid based on the taxable amount of the sales price refunded. A retailer entitled to a refund under this section may reduce taxable receipts by the taxable amount of the refund for the period in which the refund occurs or may request a refund of an overpayment as provided in G.S. 105-241.7, provided the tax has been refunded to the purchaser. The records of the retailer must clearly reflect and support the claim for refund for an overpayment of tax or adjustment to taxable receipts for the period in which the refund occurs.

(b) Service Contract. – When a service contract is cancelled and a purchaser receives a refund, in whole or in part, of the sales price paid for the service contract, the purchaser may receive a refund of the pro rata amount of the sales tax paid based on the taxable amount of the sales price refunded as provided in this subsection:

(1) Refund from retailer. – If the purchaser receives a refund on any portion of the sales price for a service contract purchased from the retailer required to remit the tax on the retail sale of the service contract, then the provisions of subsection (a) of this section apply.

(2) Refund application. – If the purchaser receives a refund on any portion of the sales price for a service contract from a person other than the retailer required

to remit the tax on the retail sale of the service contract, then the amount refunded to the purchaser by the person does not have to include the sales tax on the taxable amount of the refund. If the amount refunded to the purchaser by the person does not include the sales tax paid, then the purchaser may apply to the Department for a refund of the pro rata amount of the tax paid based on the taxable amount of the service contract refunded to the purchaser. The application for a refund by a purchaser must be made on a form prescribed by the Secretary, supported by documentation on the taxable amount of the service contract refunded to the purchaser from the person who refunded that amount, and filed within 30 days after the purchaser receives a refund. An application for a refund filed by the purchaser after the due date is barred. Taxes for which a refund is allowed directly to the purchaser for sales tax paid on a service contract are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21. (2014-3, s. 6.1(d).)

§ 105-164.12: Repealed by Session Laws 2001-347, s. 2.11.

**§ 105-164.12A. Electric golf cart and battery charger considered a single article.**

The sale of an electric golf cart and a battery charger that is not physically attached to the golf cart is considered the sale of a single article of tangible personal property in imposing tax under this Article if the battery charger is designed to recharge the golf cart and is sold to the purchaser of the golf cart when the golf cart is sold. (1985 (Reg. Sess., 1986), c. 901.)

**§ 105-164.12B. Tangible personal property sold below cost with conditional contract.**

(a) Conditional Contract Defined. – A conditional contract is a contract in which all of the following conditions are met:

- (1) A seller transfers an item of tangible personal property to a consumer on the condition that the consumer enter into an agreement to purchase services on an ongoing basis for a minimum period of at least six months.
- (2) The agreement requires the consumer to pay a cancellation fee to the seller if the consumer cancels the contract for services within the minimum period.
- (3) For the item transferred, the seller charges the consumer a price that, after any price reduction the seller gives the consumer, is below the purchase price the seller paid for the item. The seller's purchase price is presumed to be no greater than the price the seller paid, as shown on the seller's purchase invoice, for the same item within 12 months before the seller entered into the conditional contract.

(b) Tax. – If a seller transfers an item of tangible personal property as part of a conditional contract, a sale has occurred. The sales price of the item is presumed to be the retail price at which the item would sell in the absence of the conditional contract. Sales tax at the general rate under G.S. 105-164.4(a) is due at the time of the transfer on the following:

- (1) Any part of the presumed sales price the consumer pays at that time, if the service in the contract is taxable at the combined general rate.
- (2) The presumed sales price, if the service in the contract is not taxable at the combined general rate.



- (3) The percentage of the presumed sales price that is equal to the percentage of the service in the contract that is not taxable at the combined general rate, if any part of the service in the contract is not taxable at the combined general rate.

(c)-(f). Repealed by Session Laws 2007-244, s. 3, effective October 1, 2007. (1996, 2nd Ex. Sess., c. 13, s. 5.1; 2001-414, ss. 16, 17; 2006-151, s. 6; 2007-244, s. 3; 2016-5, s. 3.8(a).)

**§ 105-164.12C. Items given away by merchants.**

If a retailer engaged in the business of selling prepared food and drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, for the purpose of this Article, the property given away is considered sold along with the property sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property. (2012-79, s. 2.10(a).)

Part 3. Exemptions and Exclusions.

**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

Agricultural Group.

- (1) Repealed by Session Laws 2013-316, s. 3.3(b), effective July 1, 2014, and applicable to sales made on or after that date.
- (1a), (1b) Repealed by Session Laws 2013-316, s. 3.3(b), effective July 1, 2014, and applicable to sales made on or after that date.
- (2) Repealed by Session Laws 2001, c. 514, s. 1, effective February 1, 2002.
- (2a) Repealed by Session Laws 2013-316, s. 3.3(b), effective July 1, 2014, and applicable to sales made on or after that date.
- (2b) Tangible personal property, digital property, and services for a farmer may be exempt as provided in G.S. 105-164.13E.
- (3) Products of forests and mines in their original or unmanufactured state when such sales are made by the producer in the capacity of producer.
- (4) Cotton, tobacco, peanuts or other farm products sold to manufacturers for further manufacturing or processing.
- (4a) Repealed by Session Laws 2013-316, s. 3.3(b), effective July 1, 2014, and applicable to sales made on or after that date.
- (4b) Products of a farm sold in their original state by the producer of the products if the producer is not primarily a retail merchant and ice used to preserve agriculture, aquaculture and commercial fishery products until the products are sold at retail.
- (4c), (4d) Repealed by Session Laws 2013-316, s. 3.3(b), effective July 1, 2014, and applicable to sales made on or after that date.
- (4e) Repealed by Session Laws 2006-162, s. 8(b), effective July 24, 2006.

- (4f) Sales of the following to a person who is engaged in the commercial logging business:
  - a. Logging machinery. – Logging machinery is machinery used to harvest raw forest products for transport to first market.
  - b. Attachments and repair parts for logging machinery.
  - c. Lubricants applied to logging machinery.
  - d. Fuel used to operate logging machinery.
- Industrial Group.
- (4g) 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 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.
- (5) Manufactured products produced and sold by manufacturers or producers to other manufacturers, producers, or registered retailers or wholesale merchants, for the purpose of resale except as modified by G.S. 105-164.3(51). This exemption does not extend to or include retail sales to users or consumers not for resale.
- (5a) **(Repealed effective July 1, 2018)** Products that are subject to tax under Article 5F of this Chapter.
- (5b) Sales to a telephone company regularly engaged in providing telecommunications service to subscribers on a commercial basis of central office equipment, switchboard equipment, private branch exchange equipment, terminal equipment other than public pay telephone terminal equipment, and parts and accessories attached to the equipment.
- (5c) Sales of towers, broadcasting equipment, and parts and accessories attached to the equipment to a radio or television company licensed by the Federal Communications Commission.
- (5d) Sales of broadcasting equipment and parts and accessories attached to the equipment to a cable service provider. For the purposes of this subdivision, "broadcasting equipment" does not include cable.
- (5e) **(Effective July 1, 2018)** Sales of mill machinery or mill machinery parts or accessories to any of the following:
  - a. A manufacturing industry or plant. A manufacturing industry or plant does not include (i) a delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of foods prepared by it for consumption on or off its premises or (ii) a production company.
  - b. A contractor or subcontractor if the purchase is for use in the performance of a contract with a manufacturing industry or plant.
  - c. A subcontractor if the purchase is for use in the performance of a contract with a general contractor that has a contract with a manufacturing industry or plant.

- (5f) **(Effective July 1, 2018)** Sales to a major recycling facility of any of the following tangible personal property for use in connection with the facility:
  - a. Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.
  - b. Port and dock facilities.
  - c. Rail equipment.
  - d. Material handling equipment.
- (5g) **(Effective July 1, 2018)** Sales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:
  - a. Is sold to a company primarily engaged at the establishment in research and development activities in the physical, engineering, and life sciences included in industry group 54171 of NAICS.
  - b. Is capitalized by the company for tax purposes under the Code.
  - c. Is used by the company at the establishment in the research and development of tangible personal property.
- (5h) **(Effective July 1, 2018)** Sales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:
  - a. Is sold to a company primarily engaged at the establishment in software publishing activities included in industry group 5112 of NAICS.
  - b. Is capitalized by the company for tax purposes under the Code.
  - c. Is used by the company at the establishment in the research and development of tangible personal property.
- (5i) **(Effective July 1, 2018)** Sales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:
  - a. Is sold to a company primarily engaged at the establishment in industrial machinery refurbishing activities included in industry group 811310 of NAICS.
  - b. Is capitalized by the company for tax purposes under the Code.
  - c. Is used by the company at the establishment in repairing or refurbishing tangible personal property.
- (5j) **(Effective July 1, 2018)** Sales of the following to a company located at a ports facility for waterborne commerce:
  - a. Machinery and equipment that is used at the facility to unload or to facilitate the unloading or processing of bulk cargo to make it suitable for delivery to and use by manufacturing facilities.
  - b. Parts, accessories, or attachments used to maintain, repair, replace, upgrade, improve, or otherwise modify such machinery and equipment.
- (5k) **(Effective July 1, 2018)** Sales of the following to a secondary metals recycler:
  - a. Equipment, or an attachment or repair part for equipment, that (i) is capitalized by the person for tax purposes under the Code, (ii) is used by the person in the secondary metals recycling process, and (iii) is not a motor vehicle or an attachment or repair part for a motor vehicle.
  - b. Fuel, piped natural gas, or electricity for use at the person's facility at which the primary activity is secondary metals recycling.

- (5l) **(Effective July 1, 2018)** Sales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:
  - a. Is sold to a company primarily engaged at the establishment in processing tangible personal property for the purpose of extracting precious metals, as defined in G.S. 66-406, to determine the value for potential purchase.
  - b. Is capitalized by the company for tax purposes under the Code.
  - c. Is used by the company in the process described in this subdivision.
- (5m) **(Effective July 1, 2018)** Sales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:
  - a. Is sold to a company that is engaged in the fabrication of metal work and that has annual gross receipts, including the gross receipts of all related persons, as defined in G.S. 105-163.010, from the fabrication of metal work of at least eight million dollars (\$8,000,000).
  - b. Is capitalized by the company for tax purposes under the Code.
  - c. Is used by the company at the establishment in the fabrication or manufacture of metal products or used by the company to create equipment for the fabrication or manufacture of metal products.
- (5n) **(Effective July 1, 2018)** Sales of repair or replacement parts for a ready-mix concrete mill, regardless of whether the mill is freestanding or affixed to a motor vehicle, to a company that primarily sells ready-mix concrete.
- (5o) Sales of equipment, or an accessory, an attachment, or a repair part for equipment, that meets all of the following requirements:
  - a. Is sold to a large fulfillment facility.
  - b. Is used at the facility in the distribution process, which includes receiving, inventorying, sorting, repackaging, or distributing finished retail products.
  - c. Is not electricity.

If the level of investment or employment required by G.S. 105-164.3(16f)b. is not timely made, achieved, or maintained, then the exemption provided under this subdivision is forfeited. If the exemption is forfeited due to a failure to timely make the required investment or to timely achieve the minimum required employment level, then the exemption provided under this subdivision is forfeited on all purchases. If the exemption is forfeited due to a failure to maintain the minimum required employment level once that level has been achieved, then the exemption provided under this subdivision is forfeited for those purchases occurring on or after the date the taxpayer fails to maintain the minimum required employment level. A taxpayer that forfeits an exemption under this subdivision is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. Interest is computed from the date the sales or use tax would otherwise have been due. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

- (6) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1068, s. 1.
- (7) Sales of products of waters in their original or unmanufactured state when such sales are made by the producer in the capacity of producer. Fish and seafoods are likewise exempt when sold by the fisherman in that capacity.
- (8) Sales to a manufacturer of tangible personal property that enters into or becomes an ingredient or component part of tangible personal property that is manufactured. This exemption does not apply to sales of electricity.
- (8a) Sales to a small power production facility, as defined in 16 U.S.C. § 796(17)(A), of fuel and piped natural gas used by the facility to generate electricity.
- (9) Boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories, and supplies sold to any of the following:
  - a. The holder of a standard commercial fishing license issued under G.S. 113-168.2 for principal use in commercial fishing operations.
  - b. The holder of a shellfish license issued under G.S. 113-169.2 for principal use in commercial shellfishing operations.
  - c. The operator of a for-hire boat, as defined in G.S. 113-174, for principal use in the commercial use of the boat.
- (10) Sales of the following to commercial laundries or to pressing and dry cleaning establishments:
  - a. Articles or materials used for the identification of garments being laundered or dry cleaned, wrapping paper, bags, hangers, starch, soaps, detergents, cleaning fluids and other compounds or chemicals applied directly to the garments in the direct performance of the laundering or the pressing and cleaning service.
  - b. Laundry and dry-cleaning machinery, parts and accessories attached to the machinery, and lubricants applied to the machinery.
  - c. Fuel and piped natural gas used in the direct performance of the laundering or the pressing and cleaning service. The exemption does not apply to electricity.

Motor Fuels Group.
- (10a) Sales of the following to a major recycling facility:
  - a. Lubricants and other additives for motor vehicles or machinery and equipment used at the facility.
  - b. Materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.
  - c. Electricity used at the facility.
- (10b) Recodified as G.S. 105-164.13(10a)c. by Session Laws 2005-276, s. 33.9, effective January 1, 2006.
- (11) Any of the following fuel:
  - a. Motor fuel, as taxed in Article 36C of this Chapter, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105A or G.S. 105-449.107.

- b. Alternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under G.S. 105-449.107.
- (11a) Sales of diesel fuel to railroad companies for use in rolling stock other than motor vehicles. The definitions in G.S. 105-333 apply in this subdivision.
- (11b) **(Expires January 1, 2020)** Sales of aviation gasoline and jet fuel to an interstate air business for use in a commercial aircraft. For purposes of this subdivision, the term "commercial aircraft" has the same meaning as defined in subdivision (45a) of this section. This exemption also applies to aviation gasoline and jet fuel purchased for use in a commercial aircraft in interstate or foreign commerce by a person whose primary business is scheduled passenger air transportation. This subdivision expires January 1, 2020.

Medical Group.

- (12) Sales of any of the following items:
  - a. Prosthetic devices for human use.
  - b. Mobility enhancing equipment sold on a prescription.
  - c. Durable medical equipment sold on prescription.
  - d. Durable medical supplies sold on prescription.
  - e. Human blood, including whole, plasma, and derivatives.
  - f. Human tissue, eyes, DNA, or an organ.
- (13) All of the following drugs, including their packaging materials and any instructions or information about the drugs included in the package with them:
  - a. Drugs required by federal law to be dispensed only on prescription.
  - b. Over-the-counter drugs sold on prescription.
  - c. Insulin.
- (13a) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 16.
- (13b) Repealed by Session Laws 1999, c. 438, s. 7, effective October 1, 1999.
- (13c) Repealed by Session Laws 2013-316, s. 3.2(a), effective January 1, 2014, and applicable to sales made on or after that date.

Printed Materials Group.

- (14) Public school books on the adopted list, the selling price of which is fixed by State contract.
- (14a) Recodified as subdivision (33a) by Session Laws 2000-120, s. 5, effective July 14, 2000.

Transactions Group.

- (15) Accounts of purchasers, representing taxable sales, on which the tax imposed by this Article has been paid, that are found to be worthless and actually charged off for income tax purposes may, at corresponding periods, be deducted from gross sales. In the case of a municipality that sells electricity, the account may be deducted if it meets all the conditions for charge-off that would apply if the municipality were subject to income tax. Any accounts deducted pursuant to this subdivision must be added to gross sales if afterwards collected.
- (16) Sales of an article repossessed by the vendor if tax was paid on the sales price of the article.

Exempt Status Group.

- (17) Sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State.

Unclassified Group.

- (18) Repealed by Session Laws 2005-276, s. 33.9, effective January 1, 2006.
- (19) Repealed by Session Laws 1991, c. 618, s. 1.
- (20) Sales by blind merchants operating under supervision of the Department of Health and Human Services.
- (21) The lease or rental of motion picture films used for exhibition purposes where the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to said business of the lessee.
- (22) The lease or rental of films, motion picture films, transcriptions and recordings to radio stations and television stations operating under a certificate from the Federal Communications Commission.
- (22a) Sales of audiovisual masters made or used by a production company in making visual and audio images for first generation reproduction. For the purpose of this subdivision, an "audiovisual master" is an audio or video film, tape, or disk or another audio or video storage device from which all other copies are made.
- (23) Sales of the following packaging items:
- a. Wrapping paper, labels, wrapping twine, paper, cloth, plastic bags, cartons, packages and containers, cores, cones or spools, wooden boxes, baskets, coops and barrels, including paper cups, napkins and drinking straws and like articles sold to manufacturers, producers and retailers, when such materials are used for packaging, shipment or delivery of tangible personal property which is sold either at wholesale or retail and when such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer.
  - b. A container that is used as packaging by the owner of the container or another person to enclose tangible personal property for delivery to a purchaser of the property and is required to be returned to its owner for reuse.
- (24) Sales of fuel and other items of tangible personal property for use or consumption by or on ocean-going vessels which ply the high seas in interstate or foreign commerce in the transport of freight and/or passengers for hire exclusively, when delivered to an officer or agent of such vessel for the use of such vessel; provided, however, that sales of fuel and other items of tangible personal property made to officers, agents, members of the crew or passengers of such vessels for their personal use shall not be exempted from payment of the sales tax.
- (25) Sales by merchants on the Cherokee Indian Reservation when such merchants are authorized to do business on the Reservation and are paying the tribal gross receipts levy to the Tribal Council.

- (26) Food and prepared food sold within the school building during the regular school day. For purposes of this exemption, the term "school" is an entity regulated under Chapter 115C of the General Statutes.
- (26a) Food and prepared food sold not for profit by a public school cafeteria to a child care center that participates in the Child and Adult Care Food Program of the Department of Health and Human Services.
- (26b) Food, prepared food, soft drinks, candy, and other items of tangible personal property sold not for profit for or at an event that is sponsored by an elementary or secondary school when the net proceeds of the sales will be given or contributed to the school or to a nonprofit charitable organization, one of whose purposes is to serve as a conduit through which the net proceeds will flow to the school. For purposes of this exemption, the term "school" is an entity regulated under Chapter 115C of the General Statutes.
- (27) Repealed by Session Laws 2013-316, s. 3.2(a), effective January 1, 2014, and applicable to sales made on or after that date.
- (27a) Repealed by Session Laws 2013-316, s. 3.4(a), effective July 1, 2014, and applicable to purchases made on or after that date.
- (28) Repealed by Session Laws 2013-316, s. 3.2(a), effective January 1, 2014, and applicable to sales made on or after that date.
- (29) Repealed by Session Laws 2005-435, s. 30, effective September 27, 2005.
- (29a) Repealed by Session Laws 1995 (Regular Session, 1996), c. 646, s. 5.
- (30) Repealed by Session Laws 2014-3, s. 8.3(a), effective October 1, 2014, and applicable to sales made on or after that date.
- (31) Sales of meals not for profit to elderly and incapacitated persons by charitable or religious organizations not operated for profit which are entitled to the refunds provided by G.S. 105-164.14(b), when such meals are delivered to the purchasers at their places of abode.
- (31a) Food and prepared food sold by a church or religious organization not operated for profit when the proceeds of the sales are actually used for religious activities.
- (31b) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 16.
- (32) Sales of motor vehicles, the sale of a motor vehicle body to be mounted on a motor vehicle chassis when a certificate of title has not been issued for the chassis, and the sale of a motor vehicle body mounted on a motor vehicle chassis that temporarily enters the State so the manufacturer of the body can mount the body on the chassis. For purposes of this subdivision, a park model RV, as defined in G.S. 105-187.1, is a motor vehicle.
- (33) Tangible personal property purchased solely for the purpose of export to a foreign country for exclusive use or consumption in that or some other foreign country, either in the direct performance or rendition of professional or commercial services, or in the direct conduct or operation of a trade or business, all of which purposes are actually consummated, or purchased by the government of a foreign country for export which purpose is actually consummated. "Export" shall include the acts of possessing and marshalling such property, by either the seller or the purchaser, for transportation to a foreign country, but shall not include devoting such property to any other use



in North Carolina or the United States. "Foreign country" shall not include any territory or possession of the United States.

In order to qualify for this exemption, an affidavit of export indicating compliance with the terms and conditions of this exemption, as prescribed by the Secretary of Revenue, must be submitted by the purchaser to the seller, and retained by the seller to evidence qualification for the exemption.

If the purposes qualifying the property for exemption are not consummated, the purchaser shall be liable for the tax which was avoided by the execution of the aforesaid affidavit as well as for applicable penalties and interest and the affidavit shall contain express provision that the purchaser has recognized and assumed such liability.

The principal purpose of this exemption is to encourage the flow of commerce through North Carolina ports that is now moving through out-of-state ports. However, it is not intended that property acquired for personal use or consumption by the purchaser, including gifts, shall be exempt hereunder.

- (33a) Tangible personal property sold by a retailer to a purchaser inside or outside this State, when the property is delivered by the retailer in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this State and the purchaser does not subsequently use the property in this State. This exemption includes printed material sold by a retailer to a purchaser inside or outside this State when the printed material is delivered directly to a mailing house, to a common carrier, or to the United States Postal Service for delivery to a mailing house in this State that will preaddress and presort the material and deliver it to a common carrier or to the United States Postal Service for delivery to recipients outside this State designated by the purchaser.
- (34) Repealed by Session Laws 2016-5, s. 3.9(a), effective January 1, 2017, and applicable to sales made on or after that date.
- (35) Sales by a nonprofit civic, charitable, educational, scientific, literary, or fraternal organization when all of the conditions listed in this subdivision are met. This exemption does not apply to gross receipts derived from an admission charge to an entertainment activity.
  - a. The sales are conducted only upon an annual basis for the purpose of raising funds for the organization's activities.
  - b. The proceeds of the sale are actually used for the organization's activities.
  - c. The products sold are delivered to the purchaser within 60 days after the first solicitation of any sale made during the organization's annual sales period.
- (36) Advertising supplements and any other printed matter ultimately to be distributed with or as part of a newspaper.
- (37) Repealed by Session Laws 2001-424, s. 34.23(a), effective December 1, 2001, and applicable to sales made on or after that date.
- (38) Food and other items lawfully purchased under the Food Stamp Program, 7 U.S.C. § 2011, and supplemental foods lawfully purchased with a food

instrument issued under the Special Supplemental Nutrition Program, 42 U.S.C. § 1786, and supplemental foods purchased for direct distribution by the Special Supplemental Nutrition Program.

- (39) Sales of paper, ink, and other tangible personal property to commercial printers and commercial publishers for use as ingredients or component parts of free distribution periodicals and sales by printers of free distribution periodicals to the publishers of these periodicals. As used in this subdivision, the term "free distribution periodical" means a publication that is continuously published on a periodic basis monthly or more frequently, is provided without charge to the recipient, and is distributed in any manner other than by mail.
- (40) Sales to the Department of Transportation.
- (41) Sales of mobile classrooms to local boards of education or to local boards of trustees of community colleges.
- (42) Tangible personal property that is purchased by a retailer for resale or is manufactured or purchased by a wholesale merchant for resale and then withdrawn from inventory and donated by the retailer or wholesale merchant to either a governmental entity or a nonprofit organization, contributions to which are deductible as charitable contributions for federal income tax purposes.
- (43) Custom computer software. Custom computer software and the portion of prewritten computer software that is modified or enhanced if the modification or enhancement is designed and developed to the specifications of a specific purchaser and the charges for the modification or enhancement are separately stated on the invoice or similar billing document given to the purchaser at the time of the sale.
- (43a) Computer software that meets any of the following descriptions:
  - a. It is purchased to run on an enterprise server operating system. The exemption includes a purchase or license of computer software for high-volume, simultaneous use on multiple computers that is housed or maintained on an enterprise server or end users' computers. The exemption includes software designed to run a computer system, an operating program, or application software.
  - b. It is sold to a person who operates a datacenter and is used within the datacenter.
  - c. It is 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.
- (43b) 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.
- (44) Repealed by Session Laws 2013-316, s. 4.1(d), effective July 1, 2014, and applicable to gross receipts billed on or after that date.
- (45) Sales of aircraft lubricants, aircraft repair parts, and aircraft accessories to an interstate passenger air carrier for use at its hub.

- (45a) Sales to an interstate air business of tangible personal property that becomes a component part of or is dispensed as a lubricant into commercial aircraft during its maintenance, repair, or overhaul. For the purpose of this subdivision, commercial aircraft includes only aircraft that has a certified maximum take-off weight of more than 12,500 pounds and is regularly used to carry for compensation passengers, commercial freight, or individually addressed letters and packages.
- (45b) Sales of the following items to an interstate air courier for use at its hub:
  - a. Aircraft lubricants, aircraft repair parts, and aircraft accessories.
  - b. Materials handling equipment, racking systems, and related parts and accessories for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility.
- (45c) Sales of aircraft simulators to a company for flight crew training and maintenance training.
- (45d) Parts and accessories for use in the repair or maintenance of a qualified aircraft or a qualified jet engine.
- (46) Sales of electricity by a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes.
- (47) An amount charged as a deposit on a beverage container that is returnable to the vendor for reuse when the amount is refundable or creditable to the vendee, whether or not the deposit is separately charged.
- (48) An amount charged as a deposit on an aeronautic, automotive, industrial, marine, or farm replacement part that is returnable to the vendor for rebuilding or remanufacturing when the amount is refundable or creditable to the vendee, whether or not the deposit is separately charged. This exemption does not include tires or batteries.
- (49) **(Repealed effective March 1, 2016 – see notes)** Installation charges when the charges are separately stated on an invoice or similar billing document given to the purchaser at the time of sale.
- (49a) Delivery charges for delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser at the time of sale.
- (50) Fifty percent (50%) of the sales price of tangible personal property sold through a coin-operated vending machine, other than tobacco and newspapers.
- (51) Water delivered by or through main lines or pipes for either commercial or domestic use or consumption.
- (52) Items subject to sales and use tax under G.S. 105-164.4, other than electricity, telecommunications service, and ancillary service as defined in G.S. 105-164.3, if all of the following conditions are met:
  - a. The items are purchased by a State agency for its own use and in accordance with G.S. 105-164.29A.
  - b. The items are purchased pursuant to a valid purchase order issued by the State agency that contains the exemption number of the agency and a description of the property purchased, or the items purchased are

- paid for with a State-issued check, electronic deposit, credit card, procurement card, or credit account of the State agency.
- c. For all purchases other than by an agency-issued purchase order, the agency must provide to or have on file with the retailer the agency's exemption number.
- (53) Sales to a professional land surveyor of tangible personal property on which custom aerial survey data is stored in digital form or is depicted in graphic form. Data is custom if it was created to the specifications of the professional land surveyor purchasing the property. A professional land surveyor is a person licensed as a surveyor under Chapter 89C of the General Statutes.
- (54) The following telecommunications services and charges:
- a. Telecommunications service that is a component part of or is integrated into a telecommunications service that is resold. This exemption does not apply to service purchased by a pay telephone provider who uses the service to provide pay telephone service. Examples of services that are resold include carrier charges for access to an intrastate or interstate interexchange network, interconnection charges paid by a provider of mobile telecommunications service, and charges for the sale of unbundled network elements. An unbundled network element is a network element, as defined in 47 U.S.C. § 153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3).
  - b. Pay telephone service.
  - c. 911 charges imposed under G.S. 143B-1403 and remitted to the 911 Fund under that section.
  - d. Charges for telecommunications service made by a hotel, motel, or another entity whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the charges are incidental to the occupancy of the entity's accommodations.
  - e. Telecommunications service purchased or provided by a State agency or a unit of local government for the State Network or another data network owned or leased by the State or unit of local government.
- (55) Sales of electricity for use at an eligible Internet datacenter and eligible business property to be located and used at an eligible Internet datacenter. As used in this subdivision, "eligible business property" is property that is capitalized for tax purposes under the Code and is used either:
- a. For the provision of a service included in the business of the primary user of the datacenter, including equipment cooling systems for managing the performance of the property.
  - b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.
  - c. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(8e)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the

level of investment required by G.S. 105-164.3(8e)d. is timely made but any specific eligible business property is not located and used at an eligible Internet datacenter, then the exemption provided for such eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any portion of the electricity is not used at an eligible Internet datacenter, then the exemption provided for such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(8e)d., then interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the eligible business property or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

- (55a) Sales of electricity for use at a qualifying datacenter and datacenter support equipment to be located and used at the qualifying datacenter. As used in this subdivision, "datacenter support equipment" is property that is capitalized for tax purposes under the Code and is used for one of the following purposes:
- a. The provision of a service or function included in the business of an owner, user, or tenant of the datacenter.
  - b. The generation, transformation, transmission, distribution, or management of electricity, including exterior substations, generators, transformers, unit substations, uninterruptible power supply systems, batteries, power distribution units, remote power panels, and other capital equipment used for these purposes.
  - c. HVAC and mechanical systems, including chillers, cooling towers, air handlers, pumps, and other capital equipment used for these purposes.
  - d. Hardware and software for distributed and mainframe computers and servers, data storage devices, network connectivity equipment, and peripheral components and equipment.
  - e. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(33c) is not timely made, the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(33c) is timely made but any specific datacenter support equipment is not located and used at the qualifying datacenter, the exemption provided for such datacenter support equipment under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(33c) is timely made but any portion of electricity is not used at the qualifying datacenter, the exemption provided for such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited

exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(33c), interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the datacenter support equipment or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

- (56) Sales to the owner or lessee of an eligible railroad intermodal facility of intermodal cranes, intermodal hostler trucks, and railroad locomotives that reside on the premises of the facility and are used at the facility.
- (57) Fuel, electricity, and piped natural gas sold to a manufacturer for use in connection with the operation of a manufacturing facility. The exemption does not apply to the following:
  - a. Electricity used at a facility at which the primary activity is not manufacturing.
  - b. Fuel or piped natural gas that is used solely for comfort heating at a manufacturing facility where there is no use of fuel or piped natural gas in a manufacturing process.
- (57a) **(Repealed effective July 1, 2018)** Fuel, piped natural gas, and electricity sold to a person subject to tax on certain tangible personal property pursuant to G.S. 105-187.51B(a)(6) for use in recycling at its facility at which the primary activity is recycling.
- (58) Tangible personal property purchased with a client assistance debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality.
- (59) Interior design services provided in conjunction with the sale of tangible personal property.
- (60) Gross receipts derived from an admission charge to an entertainment activity are exempt as provided in G.S. 105-164.4G.
- (61) A motor vehicle service contract.
- (61a) The 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:
  - a. An item exempt from tax under this Article. Property and services used to fulfill a service or contract exempt under this sub-subdivision are exempt from tax under this Article. This exemption does not apply to water for a pool, fish tank, or similar aquatic feature or to a motor vehicle, except as provided under subdivision (62a) of this section.

- b. A motor vehicle emissions and safety inspection fee imposed pursuant to G.S. 20-183.7, provided the fee is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale.
- c. Services performed for a person by a related member.
- d. Cleaning of real property, except where the service constitutes a part of the gross receipts derived from the rental of an accommodation subject to tax under G.S. 105-164.4 or for a pool, fish tank, or other similar aquatic feature. Examples of cleaning of real property include custodial services, window washing, mold remediation services, carpet cleaning, removal of debris from gutters, removal of dust and other pollutants from ductwork, and power washing other than for a pool.
- e. Services on roads, driveways, parking lots, and sidewalks.
- f. Removal of waste, trash, debris, grease, snow, and other similar items from property, other than a motor vehicle. The exemption applies to household and commercial trash collection and removal services. The exemption applies to the removal of septage from property, including motor vehicles, but does not include removal of septage from portable toilets.
- g. The following inspections:
  1. An inspection performed where the results are included in a report for the sale or financing of real property.
  2. An inspection of the structural integrity of real property, provided the charge for the inspection is separately stated on the invoice or other documentation given to the purchaser at the time of the sale.
  3. An inspection to a system that is a capital improvement under G.S. 105-164.3(2c)f., provided the inspection is to fulfill a safety requirement and provided the charge for the inspection is separately stated on the invoice or other documentation given to the purchaser at the time of the sale.
- h. Alteration and repair of clothing, except where the service constitutes a part of the gross receipts derived from the rental of clothing subject to tax under G.S. 105-164.4 or for alteration and repair of belts and shoes.
- i. Pest control service. For purposes of this exemption, the term "pest control service" means the application of pesticides to real property.
- j. Moving services. For purposes of this exemption, the term "moving services" means a service for hire to transport or relocate a person's existing belongings to or from any destination.
- k. Self-service car washes and vacuums.
- l. A transmission, distribution, or other network asset contained on utility-owned land, right-of-way, or easement.
- m. **(Effective until July 1, 2019)** A qualified aircraft or a qualified jet engine.
- m. **(Effective July 1, 2019)** Any of the following:
  1. A qualified aircraft.

2. A qualified jet engine.
  3. An aircraft with a gross take-off weight of more than 2,000 pounds.
- n. Funeral-related services, including services for the burial of remains. This exemption does not apply to the sale of tangible personal property, such as caskets, headstones, and monuments.
  - o. Services performed on an animal, such as hoof shoeing and microchipping a pet.
- (61b) Tangible personal property, digital property, and services purchased for resale under an exemption certificate in accordance with G.S. 105-164.28 or under a direct pay certificate in accordance with G.S. 105-164.27A.
- (61c) Installation charges that are a part of the sales price of tangible personal property purchased by a real property contractor to fulfill a real property contract for an item that is installed or applied to real property, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the real property contractor at the time of the sale. The exemption also applies to installation charges by a retailer-contractor when performing installation services for a real property contract. The exemption includes any labor costs provided by the real property contractor, including employees' wages, or labor purchased from a third party that would otherwise be included in the definition of "purchase price."
- (61d) Installation charges that are a part of the sales price of or gross receipts derived from repair, maintenance, and installation services or installation charges only purchased by a real property contractor to fulfill a real property contract, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the real property contractor at the time of the sale. The exemption also applies to installation charges by a retailer-contractor when performing a real property contract. The exemption includes any labor costs provided by the real property contractor, including employees' wages, or labor purchased from a third party that would otherwise be included in the definition of "purchase price."
- (62) An item or repair, maintenance, and installation services purchased or used to fulfill a service contract taxable under this Article if the purchaser of the contract is not charged for the item or services. This exemption does not apply to the purchase of tangible personal property or digital property used to fulfill a service contract for real property where the charge being covered would otherwise be subject to tax as a real property contract. For purposes of this exemption, the term "item" does not include a tool, equipment, supply, or similar tangible personal property that is not deemed to be a component or repair part of the tangible personal property, real property, or digital property for which a service contract is sold to a purchaser.
- (62a) A replacement item, a repair part, or repair, maintenance, and installation services to maintain or repair tangible personal property or a motor vehicle pursuant to a manufacturer's warranty or a dealer's warranty. For purposes of this subdivision, the following definitions apply:



- a. Dealer's warranty. – An explicit warranty the seller of an item extends to the purchaser of the item as part of the purchase price of the item.
  - b. Manufacturer's warranty. – An explicit warranty the manufacturer of an item extends to the purchaser of the item as part of the purchase price of the item.
- (62b) The amount of repair, maintenance, and installation services for a boat, an aircraft, or a qualified jet engine for which the purchaser elects for the seller to collect and remit the tax due under G.S. 105-164.27A(a3).
- (63) Food and prepared food to be provided to a person entitled to the food and prepared food under a prepaid meal plan subject to tax under G.S. 105-164.4(a)(12). This exemption applies to packaging items including wrapping paper, labels, plastic bags, cartons, packages and containers, paper cups, napkins and drinking straws, and like articles that meet all of the following requirements:
- a. Used for packaging, shipment, or delivery of the food and prepared food.
  - b. Constitute a part of the sale of the food and prepared food.
  - c. Delivered with the food and prepared food.
- (64) Fifty percent (50%) of the sales price of a modular home or a manufactured home, including all accessories attached when delivered to the purchaser.
- (65) **(Expires January 1, 2020)** This subdivision expires January 1, 2020. Sales of the following to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series:
- a. The sale, lease, or rental of an engine.
  - b. The sales price of or gross receipts derived from a service contract on, or repair, maintenance, and installation services for, a transmission, an engine, rear-end gears, and any other item that is purchased, leased, or rented and that is exempt from tax under this subdivision or that is allowed a sales tax refund under G.S. 105-164.14A(a)(5).
  - c. The gross receipts derived from an agreement to provide an engine to a professional motorsports racing team or related member of a team for use in competition in a sanctioned race series, where such agreement does not meet the definition of a "service contract" as defined in G.S. 105-164.3 but may meet the definition of the term "lease or rental" as defined in G.S. 105-164.3.
- (65a) **(Expires January 1, 2020)** An engine or a part to build or rebuild an engine for the purpose of providing an engine under an agreement to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series. This subdivision expires January 1, 2020.
- (66) Storage of a motor vehicle, provided the charge is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale.
- (67) Towing services, provided the charge is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale.

- (68) Sales of wastewater dispersal products approved by the Department of Health and Human Services under Article 11 of Chapter 130A of the General Statutes.
- (69) Sales of non-coin currency, investment metal bullion, and investment coins. For purposes of this subdivision, the following definitions apply:
- a. Investment coins. – Numismatic coins or other forms of money and legal tender manufactured of metal under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value of such coins.
  - b. Investment metal bullion. – Any elementary precious metal that has been put through a process of smelting or refining and that is in such state or condition that its value depends upon its content and not upon its form. The term does not include fabricated precious metal that has been processed or manufactured for one or more specific and customary industrial, professional, or artistic uses.
  - c. Non-coin currency. – Forms of money and legal tender manufactured of a material other than metal under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value of such currency. (1957, c. 1340, s. 5; 1959, c. 670; c. 1259, s. 5; 1961, c. 826, s. 2; cc. 1103, 1163; 1963, c. 1169, ss. 7-9; 1965, c. 1041; 1967, c. 756; 1969, c. 907; 1971, c. 990; 1973, c. 476, s. 143; c. 708, s. 1; cc. 1064, 1076; c. 1287, s. 8; 1975, 2nd Sess., c. 982; 1977, c. 771, s. 4; 1977, 2nd Sess., c. 1219, s. 43.6; 1979, c. 46, ss. 1, 2; c. 156, s. 1; c. 201; c. 625, ss. 1, 2; c. 801, ss. 74, 75; 1979, 2nd Sess., c. 1099, s. 1; 1981, cc. 14, 207, 982; 1983, c. 156; c. 570, s. 21; c. 713, ss. 91, 92; c. 873; c. 887; 1983 (Reg. Sess., 1984), c. 1071, s. 1; 1985, c. 114, s. 4; c. 555; c. 656, ss. 24, 25; 1985 (Reg. Sess., 1986), c. 953; c. 973; c. 982, s. 2; 1987, c. 800, s. 1; 1987 (Reg. Sess., 1988), c. 937; 1989, c. 692, ss. 3.5, 3.6; c. 748, s. 1; 1989 (Reg. Sess., 1990), c. 989; c. 1060; c. 1068, ss. 1, 2; 1991, c. 45, s. 17; c. 79, s. 2; c. 618, s. 1; c. 689, s. 314; 1991 (Reg. Sess., 1992), c. 931, ss. 1, 2; c. 935, s. 1; c. 940, s. 1; c. 949, s. 1; c. 1007, s. 44; 1993, c. 484, s. 3; c. 513, s. 11; 1993 (Reg. Sess., 1994), c. 739, s. 1; 1995, c. 390, s. 14; c. 451, s. 1; c. 477, ss. 2, 3; 1995 (Reg. Sess., 1996), c. 646, ss. 4, 5; c. 649, s. 1; 1996, 2nd Ex. Sess., c. 14, ss. 15, 16; 1997-369, s. 2; 1997-370, s. 2; 1997-397, s. 1; 1997-423, s. 3; 1997-443, s. 11A.118(a); 1997-456, s. 27; 1997-506, s. 36; 1997-521, s. 1; 1998-22, s. 6; 1998-55, ss. 9, 15; 1998-98, ss. 14, 14.1, 49, 107; 1998-146, s. 9; 1998-171, s. 10(a), (b); 1998-225, s. 4.3; 1999-337, s. 31; 1999-360, ss. 7(a)-(c); 1999-438, ss. 5-12; 2000-120, s. 5; 2000-153, s. 5; 2001-347, s. 2.12; 2001-424, s. 34.23(a); 2001-476, s. 17(e); 2001-509, s. 1; 2001-514, s. 1; 2002-184, s. 9; 2003-284, ss. 45.5, 45.5A; 2003-349, s. 11; 2003-416, ss. 18(a), 21; 2003-431, s. 1; 2004-124, ss. 32B.2, 32B.4; 2005-276, s. 33.9; 2005-435, ss. 30, 31; 2006-19, s. 1; 2006-33, s. 5; 2006-66, s. 24.17(b); 2006-162, ss. 8(a), 8(b); 2006-168, s. 4.2; 2006-252, s. 2.25(b); 2007-244, s. 4; 2007-323, s. 31.23(c); 2007-368, s. 1;

2007-383, s. 6; 2007-397, ss. 10(g), 10(h); 2007-491, s. 44(1)a; 2007-500, s. 1; 2007-527, ss. 10, 27; 2008-107, ss. 28.6(a), 28.20(a); 2009-451, ss. 27A.3(f), (k); 2009-511, s. 1; 2010-91, s. 3; 2010-147, s. 6.1; 2011-330, s. 18; 2012-79, s. 1.4; 2013-316, ss. 3.2(a), (b), 3.3(b), 3.4(a), 4.1(d), 5(c), 6(c); 2013-360, s. 7.4(e); 2013-414, ss. 11(a), 58(e); 2014-3, ss. 4.1(e), 5.1(d)-(f), 6.1(c), (f), 8.3(a), (b); 2014-100, s. 37.3(a); 2015-6, ss. 2.12, 2.23(a); 2015-241, ss. 7A.3, 32.18(d), (e); 2015-259, ss. 3(b), 4.1(c), 4.2(d), 5(b), (c), 6(b); 2015-261, s. 5(a), (b); 2016-5, ss. 3.9(a), (b), 3.11(a), 3.19(b), 3.23(a); 2016-92, ss. 2.1(a), 2.5; 2016-94, ss. 38.2(c), 38.5(i), (p); 2016-123, s. 11.1; 2017-57, ss. 38.8(a), (c), 38.9(b); 2017-102, s. 15.1; 2017-139, s. 1; 2017-181, s. 1; 2017-204, ss. 2.6, 2.9(a), 2.11(b), 2.12(a); 2017-212, s. 7.2(a).)

**§ 105-164.13A. Service charges on food, beverages, or prepared food.**

When a service charge is imposed on food, beverages, or prepared food, so much of the service charge that does not exceed twenty percent (20%) of the sales price is considered a tip and is specifically exempted from the tax imposed by this Article if it meets both of the following conditions:

- (1) Is separately stated in the price list, menu, or written proposal and also in the invoice or bill.
- (2) Is turned over to the personnel directly involved in the service of the food, beverages, or prepared food, in accordance with G.S. 95-25.6. (1979, c. 801, s. 76; 1979, 2nd Sess., c. 1101; 1999-438, s. 13; 2013-414, s. 11(b).)

**§ 105-164.13B. Food exempt from tax.**

(a) State Exemption. – Food is exempt from the taxes imposed by this Article unless the food is included in one of the subdivisions in this subsection. The following food items are subject to tax:

- (1) Repealed by Session Laws 2005-276, s. 33.10, effective October 1, 2005.
- (2) Dietary supplements.
- (3) Food sold through a vending machine.
- (4) Prepared food, other than bakery items sold without eating utensils by an artisan bakery. The term "bakery item" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas. An artisan bakery is a bakery that meets all of the following requirements:
  - a. It derives over eighty percent (80%) of its gross receipts from bakery items.
  - b. Its annual gross receipts, combined with the gross receipts of all related persons, do not exceed one million eight hundred thousand dollars (\$1,800,000). For purposes of this subdivision, the term "related person" means a person described in one of the relationships set forth in section 267(b) or 707(b) of the Code.
- (5) Soft drinks.
- (6) Repealed by Session Laws 2003-284, s. 45.6B, effective January 1, 2004.
- (7) Candy.

(b) Administration of Local Food Tax. – The Secretary must administer local sales and use taxes imposed on food as if they were imposed under this Article. This applies to local taxes on food imposed under Subchapter VIII of this Chapter and under Chapter 1096 of the 1967 Session Laws. (1998-212, s. 29A.1(b); 2001-347, s. 2.13; 2001-489, s. 3(b); 2003-284, ss. 45.6, 45.6A, 45.6B; 2003-416, s. 22; 2005-276, s. 33.10; 2008-107, s. 28.19(a); 2009-445, s. 42; 2015-6, s. 2.21.)

**§§ 105-164.13C, 105-164.13D:** Repealed by Session Laws 2013-316, s. 3.4(a), effective July 1, 2014, and applicable to purchases made on or after July 1, 2014.

**§ 105-164.13E. Exemption for farmers.**

(a) Exemption. – A qualifying farmer is a person who has an annual income from farming operations for the preceding taxable year of ten thousand dollars (\$10,000) or more or who has an average annual income from farming operations for the three preceding taxable years of ten thousand dollars (\$10,000) or more. For purposes of this section, the term "income from farming operations" means sales plus any other amounts treated as gross income under the Code from farming operations. A qualifying farmer includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. A qualifying farmer may apply to the Secretary for an exemption certificate number under G.S. 105-164.28A. The exemption certificate expires when a person fails to meet the income threshold for three consecutive taxable years or ceases to engage in farming operations, whichever comes first.

The following tangible personal property, digital property, and services are exempt from sales and use tax if purchased by a qualifying farmer and for use by the farmer in farming operations. For purposes of this section, an item is used by a farmer for farming operations if it is used for the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals:

- (1) Fuel, piped natural gas, and electricity that are measured by a separate meter or another separate device and used for a purpose other than preparing food, heating dwellings, and other household purposes.
- (2) Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, potting soil, baler twine, and seeds.
- (3) Farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery. The term "machinery" includes implements that have moving parts or are operated or drawn by an animal. The term does not include implements operated wholly by hand or motor vehicles required to be registered under Chapter 20 of the General Statutes.
- (4) A container used in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals or used in packaging and transporting the farmer's product for sale.
- (5) A grain, feed, or soybean storage facility and parts and accessories attached to the facility.
- (6) Any of the following substances when purchased for use on animals or plants, as appropriate, held or produced for commercial purposes. This exemption does not apply to any equipment or devices used to administer, release, apply, or otherwise dispense these substances:

- a. Remedies, vaccines, medications, litter materials, and feeds for animals.
  - b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.
  - c. Defoliants for use on cotton or other crops.
  - d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.
  - e. Semen.
- (7) Baby chicks and poultz sold for commercial poultry or egg production.
- (8) Any of the following items concerning the housing, raising, or feeding of animals:
- a. A commercially manufactured facility to be used for commercial purposes for housing, raising, or feeding animals or for housing equipment necessary for these commercial activities. The exemption also applies to commercially manufactured equipment, and parts and accessories for the equipment, used in the facility.
  - b. Building materials, supplies, fixtures, and equipment that become a part of and are used in the construction, repair, or improvement of an enclosure or a structure specifically designed, constructed, and used for housing, raising, or feeding animals or for housing equipment necessary for one of these commercial activities. The exemption also applies to commercially manufactured equipment, and parts and accessories for the equipment, used in the enclosure or a structure.
- (9) A bulk tobacco barn or rack, parts and accessories attached to the tobacco barn or rack, and any similar apparatus, part, or accessory used to cure or dry tobacco or another crop.
- (10) Repair, maintenance, and installation services.

(b) **(Effective for taxes imposed for taxable years beginning before July 1, 2017)**

Conditional Exemption. – A person who does not meet the definition of a qualifying farmer in subsection (a) of this section may apply to the Department for a conditional exemption certificate under G.S. 105-164.28A. A person with a conditional exemption certificate is allowed to purchase items exempt from sales and use tax to the same extent as a qualifying farmer under subsection (a) of this section. To receive a conditional exemption certificate under this subsection, the person must certify that the person intends to engage in farming operations, as that term is described in subsection (a) of this section, and that the person will timely file State and federal income tax returns that reflect income and expenses incurred from farming operations during the taxable years that the conditional exemption certificate applies.

A conditional exemption certificate issued under this subsection is valid for the taxable year in which the certificate is issued and the following two taxable years, provided the person to whom the certificate is issued is engaged in farming and provides copies of applicable State and federal income tax returns to the Department within 90 days following the due date of an income tax return for each taxable year covered by the conditional exemption certificate, including an extension of the due date granted by the Secretary under G.S. 105-263. A conditional exemption certificate issued under this subsection may not be extended or renewed beyond the original three-year period. The Department may not issue a conditional exemption certificate to a person who has had a conditional exemption certificate issued under this subsection during the prior 15 taxable years.

A person who purchases items with a conditional exemption certificate must maintain documentation of the items purchased and copies of State and federal income tax returns that reflect activities from farming operations for the period of time covered by the conditional exemption certificate for three years following the expiration of the conditional exemption certificate. The Secretary may require a person who has a conditional exemption certificate to provide any other information requested by the Secretary to verify the person met the conditions of this subsection. A person who fails to provide the information requested by the Secretary in a timely manner or who fails to meet the requirements of this subsection becomes liable for any taxes for which an exemption under this subsection was claimed. The taxes become due and payable at the expiration of the conditional exemption certificate, and interest accrues from the date of the original purchase. Additionally, where the person does not timely provide the information requested by the Secretary, the misuse of exemption certificate penalty in G.S. 105-236(a)(5a) applies to each seller identified by the Department from which the person made a purchase.

(b) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2017)** Conditional Exemption. – A person who does not meet the definition of a qualifying farmer in subsection (a) of this section may apply to the Department for a conditional exemption certificate under G.S. 105-164.28A. A person with a conditional exemption certificate is allowed to purchase items exempt from sales and use tax to the same extent as a qualifying farmer under subsection (a) of this section. To receive a conditional exemption certificate under this subsection, the person must certify that the person intends to engage in farming operations, as that term is described in subsection (a) of this section, and that the person will timely file State and federal income tax returns that reflect income and expenses incurred from farming operations during the taxable years that the conditional exemption certificate applies.

A conditional exemption certificate issued under this subsection is valid for the taxable year in which the certificate is issued and the following two taxable years, provided the person to whom the certificate is issued is engaged in farming and provides copies of applicable State and federal income tax returns to the Department within 90 days following the due date of an income tax return for each taxable year covered by the conditional exemption certificate, including an extension of the due date granted by the Secretary under G.S. 105-263. A conditional exemption certificate issued under this subsection may not be extended or renewed beyond the original three-year period; provided that a person may request a one-year extension of their conditional exemption certificate if the person satisfies all of the following conditions:

- (1) The person holds a conditional exemption certificate that is scheduled to expire within 30 days of an extension request.
- (2) The person suffers a weather-related disaster that prevents the person from becoming eligible for a qualifying exemption certificate.
- (3) The person provides the Department all of the following:
  - a. Documents showing that, but for the disaster, the person would have earned ten thousand (\$10,000) or more in gross sales for the year in which the disaster occurred.
  - b. Documentation of revenues and expenses relating to the damaged crop.
  - c. An affidavit from a county extension director or FSA county committee that the disaster occurred in the area of the county in which the person farms.

The Department may not issue a conditional exemption certificate to a person who has had a conditional exemption certificate issued under this subsection during the prior 15 taxable years.

A person who purchases items with a conditional exemption certificate must maintain documentation of the items purchased and copies of State and federal income tax returns that reflect activities from farming operations for the period of time covered by the conditional exemption certificate for three years following the expiration of the conditional exemption certificate. The Secretary may require a person who has a conditional exemption certificate to provide any other information requested by the Secretary to verify the person met the conditions of this subsection. A person who fails to provide the information requested by the Secretary in a timely manner or who fails to meet the requirements of this subsection becomes liable for any taxes for which an exemption under this subsection was claimed. The taxes become due and payable at the expiration of the conditional exemption certificate, and interest accrues from the date of the original purchase. Additionally, where the person does not timely provide the information requested by the Secretary, the misuse of exemption certificate penalty in G.S. 105-236(a)(5a) applies to each seller identified by the Department from which the person made a purchase.

(c) Contract with a Farmer. – A qualifying item listed in subdivisions (5), (8), and (9) of subsection (a) of this section purchased to fulfill a contract with a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate issued under G.S. 105-164.28A is exempt from sales and use tax to the same extent as if purchased directly by the person who holds the exemption certificate. A contractor that purchases one of the items allowed an exemption under this section must provide an exemption certificate to the retailer that includes the name of the qualifying farmer or conditional farmer exemption certificate holder and the qualifying farmer or conditional farmer exemption certificate number issued to that holder.

(d) Definition. – For purposes of this section, the term "taxable year" has the same meaning as defined in G.S. 105-153.3. (2013-316, s. 3.3(a); 2013-363, s. 11.4; 2014-3, s. 3.1(a); 2015-6, s. 2.13(a); 2016-5, s. 3.12(a); 2016-94, s. 38.5(j); 2017-108, s. 20(a).)

#### **§ 105-164.14. Certain refunds authorized.**

(a) Interstate Carriers. – An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives, and fuel, lubricants, repair parts, accessories, service contracts, and repair, maintenance, and installation services for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An "interstate carrier" is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

- (1) A list identifying the railway cars, locomotives, fuel, lubricants, repair parts, accessories, service contracts, and repair, maintenance, and installation services purchased by the applicant inside or outside this State during the refund period.
- (2) The purchase price of the items listed in subdivision (1) of this subsection.

- (3) The sales and use taxes paid in this State on the listed items.
- (4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period. Airplane miles are not in this State if the airplane does not depart or land in this State.
- (5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the mileage ratio. The numerator of the mileage ratio is the number of miles the applicant operated all motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period. The denominator of the mileage ratio is the number of miles the applicant operated all motor vehicles, railroad cars, locomotives, and airplanes both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period.

(a1) Repealed by Session Laws 2010-166, s. 1.17, effective July 1, 2010.

(a2) Utility Companies. – A utility company is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives and accessories for a railway car or locomotive the utility company operates. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

- (1) A list identifying the railway cars, locomotives, and accessories purchased by the applicant inside or outside this State during the refund period.
- (2) The purchase price of the items listed in subdivision (1) of this subsection.
- (3) The sales and use taxes paid in this State on the listed items.
- (4) The number of miles the applicant's railway cars and locomotives were operated both inside and outside this State during the refund period.
- (5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its railway cars and locomotives in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period.

(b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity is allowed a semiannual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal



property and services for use in carrying on the work of the nonprofit entity. Sales and use tax liability indirectly incurred by a nonprofit entity through reimbursement to an authorized person of the entity for the purchase of tangible personal property and services for use in carrying on the work of the nonprofit entity is considered a direct purchase by the entity. Sales and use tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the nonprofit entity. The refund allowed under this subsection does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15. The aggregate annual refund amount allowed an entity under this subsection for the State's fiscal year may not exceed thirty-one million seven hundred thousand dollars (\$31,700,000).

The refunds allowed under this subsection do not apply to an entity that is owned and controlled by the United States or to an entity that is owned or controlled by the State and is not listed in this subsection. A hospital that is not listed in this subsection is allowed a semiannual refund of sales and use taxes paid by it on over-the-counter drugs purchased for use in carrying out its work. The following nonprofit entities are allowed a refund under this subsection:

- (1) Hospitals not operated for profit, including hospitals and medical accommodations operated by an authority or other public hospital described in Article 2 of Chapter 131E of the General Statutes.
- (2) An organization that is exempt from income tax under section 501(c)(3) of the Code, other than an organization that is properly classified in any of the following major group areas of the National Taxonomy of Exempt Entities:
  - a. Community Improvement and Capacity Building.
  - b. Public and Societal Benefit.
  - c. Mutual and Membership Benefit.
- (2a) Volunteer fire departments and volunteer emergency medical services squads that are one or more of the following:
  - a. Exempt from income tax under the Code.
  - b. Financially accountable to a city as defined in G.S. 160A-1, a county, or a group of cities and counties.
- (2b) An organization that is a single member LLC that is disregarded for income tax purposes and satisfies all of the following conditions:
  - a. The owner of the LLC is an organization that is exempt from income tax under section 501(c)(3) of the Code.
  - b. The LLC is a nonprofit entity that would be eligible for an exemption under 501(c)(3) of the Code if it were not disregarded for income tax purposes.
  - c. The LLC is not an organization that would be properly classified in any of the major group areas of the National Taxonomy of Exempt Entities listed in subdivision (2) of this subsection.

- (3) Repealed by Session Laws 2008-107, s. 28.22(a), effective July 1, 2008, and applicable to purchases made on or after that date.
- (4) Qualified retirement facilities whose property is excluded from property tax under G.S. 105-278.6A.
- (5) A university affiliated nonprofit organization that procures, designs, constructs, or provides facilities to, or for use by, a constituent institution of The University of North Carolina. For purposes of this subdivision, a nonprofit organization includes an entity exempt from taxation as a disregarded entity of the nonprofit organization.

(c) Certain Governmental Entities. – A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. The refund allowed under this subsection does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

- (1) A county.
- (2) A city as defined in G.S. 160A-1.
- (2a) A consolidated city-county as defined in G.S. 160B-2.
- (2b), (2c) Repealed by Session Laws 2005-276, s. 7.51(a), effective July 1, 2005, and applicable to sales made on or after that date.
- (3) A metropolitan sewerage district or a metropolitan water district in this State.
- (4) A water and sewer authority created under Chapter 162A of the General Statutes.
- (5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.
- (6) A sanitary district.
- (7) A regional solid waste management authority created pursuant to G.S. 153A-421.
- (8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.
- (9) A district health department, or a public health authority created pursuant to Part 1A of Article 2 of Chapter 130A of the General Statutes.
- (10) A regional council of governments created pursuant to G.S. 160A-470.
- (11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.
- (12) A regional planning commission created pursuant to G.S. 153A-391.
- (13) A regional sports authority created pursuant to G.S. 160A-479.

- (14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.
  - (14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.
  - (15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.
  - (16) A local airport authority that was created pursuant to a local act of the General Assembly.
  - (17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to (i) provide fire protection, emergency services, or police protection or (ii) operate a public broadcasting television station.
  - (18) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.
  - (19) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.
  - (20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property or services that are eligible for refund under this subsection acquired by it through the expenditure of contract and grant funds.
  - (21) The University of North Carolina Health Care System.
  - (22) A regional natural gas district created pursuant to Article 28 of Chapter 160A of the General Statutes.
  - (23) A special district created under Article 43 of this Chapter.
  - (24) A public library created pursuant to an act of the General Assembly or established pursuant to G.S. 153A-270.
  - (25) A soil and water conservation district organized under Chapter 139 of the General Statutes.
  - (26) A district confinement facility created pursuant to G.S. 153A-219, including a local act modifying G.S. 153A-219.
- (d) Late Applications. – Refunds applied for more than three years after the due date are barred.
- (d1) Alcoholic Beverages. – The refunds authorized by this section do not apply to purchases of alcoholic beverages, as defined in G.S. 18B-101.
- (d2) A city subject to the provisions of G.S. 160A-340.5 is not allowed a refund of sales and use taxes paid by it under this Article for purchases related to the provision of communications service as defined in Article 16A of Chapter 160A of the General Statutes.
- (e) State Agencies. – The State is allowed quarterly refunds of local sales and use taxes paid indirectly by the State agency on building materials, supplies, fixtures, and equipment that become a part of or annexed to a building or structure that is owned or leased by the State agency and is being erected, altered, or repaired for use by the State agency. This subsection does not apply to a State agency that is ineligible for a sales and use tax exemption number under G.S. 105-164.29A(a).
- A person who pays local sales and use taxes on building materials or other tangible personal property for a State building project shall give the State agency for whose project the property was purchased a signed statement containing all of the following information:
- (1) The date the property was purchased.
  - (2) The type of property purchased.

- (3) The project for which the property was used.
- (4) If the property was purchased in this State, the county in which it was purchased.
- (5) If the property was not purchased in this State, the county in which the property was used.
- (6) The amount of sales and use taxes paid.

If the property was purchased in this State, the person shall attach a copy of the sales receipt to the statement. A State agency to whom a statement is submitted shall verify the accuracy of the statement.

Within 15 days after the end of each calendar quarter, every State agency shall file with the Secretary a written application for a refund of taxes to which this subsection applies paid by the agency during the quarter. The application shall contain all information required by the Secretary. The Secretary shall credit the local sales and use tax refunds directly to the General Fund.

- (f) through (h) Repealed by Session Laws 2010-166, s. 1.17, effective July 1, 2010.
- (i) Repealed by Session Laws 1999-360, s. 5, for taxes paid on or after January 1, 2008.
- (j) through (o) Repealed by Session Laws 2010-166, s. 1.17, effective July 1, 2010.
- (p) Not an Overpayment. – Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21. (1957, c. 1340, s. 5; 1961, c. 826, s. 2; 1963, cc. 169, 1134; 1965, c. 1006; 1967, c. 1110, s. 6; 1969, c. 1298, s. 1; 1971, cc. 89, 286; 1973, c. 476, s. 193; 1977, c. 895, s. 1; 1979, c. 47; c. 801, ss. 77, 79-82; 1983, c. 594, s. 1; c. 891, s. 13; 1983 (Reg. Sess., 1984), c. 1097, s. 7; 1985, cc. 431, 523; 1985 (Reg. Sess., 1986), c. 863, s. 5; 1987, c. 557, ss. 8, 9; c. 850, s. 16; 1987 (Reg. Sess., 1988), c. 1044, s. 5; 1989, c. 168, s. 5; c. 251; c. 780, s. 1.1; 1989 (Reg. Sess., 1990), c. 936, s. 4; 1991, c. 356, s. 1; c. 689, s. 190.1(b); 1991 (Reg. Sess., 1992), c. 814, s. 1; c. 917, s. 1; c. 1030, s. 25; 1995, c. 17, s. 8; c. 21, s. 1; c. 458, s. 7; c. 461, s. 13; c. 472, s. 1; 1995 (Reg. Sess., 1996), c. 646, s. 6; 1996, 2nd Ex. Sess., c. 18, s. 15.7(a); 1997-340, s. 1; 1997-393, s. 2; 1997-423, s. 1; 1997-426, s. 5; 1997-502, s. 3; 1998-55, ss. 16, 17; 1998-98, s. 15; 1998-212, ss. 29A.4(a), 29A.14(i), 29A.18(b); 1999-360, ss. 4, 5(a), (b), 9; 1999-438, s. 14; 2000-56, s. 9; 2000-140, s. 92.A(c); 2001-414, s. 1; 2001-474, s. 7; 2003-416, ss. 18(b)-(e), 23; 2003-431, ss. 2, 3; 2003-435, 2nd Ex. Sess., s. 4.1; 2004-110, s. 5.1; 2004-124, s. 32B.1; 2004-170, s. 21(a); 2004-204, 1st Ex. Sess., s. 3; 2005-276, ss. 7.27(a), 7.51(a), 33.12; 2005-429, s. 2.12; 2005-435, ss. 32(a), 33(a)-(c), 61, 61.1; 2006-33, s. 6; 2006-66, ss. 24.6(a), (b), (c), 24.10(b), 24.13(b), 24A.1(a); 2006-162, ss. 9, 27; 2006-168, s. 3.1; 2006-252, ss. 2.2, 2.3; 2007-323, ss. 31.10(a), 31.20(b), 31.23(d); 2007-345, s. 14.6(a); 2007-491, s. 44(1)a; 2008-107, ss. 28.22(a), 28.23(a), (b); 2008-118, s. 3.10(a); 2008-154, s. 1; 2009-233, s. 1; 2009-445, ss. 13, 14(a); 2009-527, s. 2(d); 2009-550, s. 4.1; 2010-31, s. 31.5(c), (d); 2010-91, s. 4; 2010-95, s. 4(a); 2010-166, s. 1.17; 2011-84, s. 1(b); 2011-330, s. 26(a); 2012-79, s. 2.11; 2013-316, s. 3.4(b); 2013-414, ss. 12, 42(a), 54(a); 2014-3, s. 8.2(a); 2014-20, s. 1; 2015-235, s. 1; 2016-5, s. 3.22(b); 2017-204, ss. 2.7(a), 2.9(b).)

**§ 105-164.14A. Economic incentive refunds.**

(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:

- (1) **(Repealed for purchases made on or after January 1, 2016)** Passenger air carrier. – An interstate passenger air carrier is allowed a refund of the sales

and use tax paid by it on fuel in excess of two million five hundred thousand dollars (\$2,500,000). The amount of sales and use tax paid does not include a refund allowed to the interstate passenger air carrier under G.S. 105-164.14(a). This subdivision is repealed for purchases made on or after January 1, 2016.

- (2) Major recycling facility. – An owner of a major recycling facility is allowed a refund of the sales and use tax paid by it on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner.
- (3) Repealed by Session Laws 2016-5, s. 3.14, effective May 11, 2016.
- (4) **(Repealed for purchases made on or after January 1, 2020)** Motorsports team or sanctioning body. – A professional motorsports racing team, a motorsports sanctioning body, or a related member of such a team or body is allowed a refund of the sales and use tax paid by it in this State on aviation gasoline or jet fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this subdivision, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. This subdivision is repealed for purchases made on or after January 1, 2020.
- (5) **(Repealed for purchases made on or after January 1, 2020)** Professional motorsports team. – A professional motorsports racing team or a related member of a team is allowed a refund of fifty percent (50%) of the sales and use tax paid by it in this State on tangible personal property, other than tires or accessories, that comprises any part of a professional motorsports vehicle. For purposes of this subdivision, "motorsports accessories" includes instrumentation, telemetry, consumables, and paint. This subdivision is repealed for purchases made on or after January 1, 2020.
- (6) **(Repealed for purchases made on or after January 1, 2014)** Analytical services business. – A taxpayer engaged in analytical services in this State is allowed a refund of sales and use tax paid by it. This subdivision is repealed for purchases made on or after January 1, 2014. The amount of the refund is the greater of the following:
  - a. Fifty percent (50%) of the eligible amount of sales and use tax paid by it on tangible personal property that is consumed or transformed in analytical service activities. The eligible amount of sales and use tax paid by the taxpayer in this State is the amount by which sales and use tax paid by the taxpayer in this State in the fiscal year exceed the amount paid by the taxpayer in this State in the 2006-2007 State fiscal year.
  - b. Fifty percent (50%) of the amount of sales and use tax paid by it in the fiscal year on medical reagents.
- (7) **(Repealed for purchases made on or after January 1, 2038)** Railroad intermodal facility. – The owner or lessee of an eligible railroad intermodal facility is allowed a refund of sales and use tax paid by it under this Article on

building materials, building supplies, fixtures, and equipment that become a part of the real property of the facility. Liability incurred indirectly by the owner or lessee of the facility for sales and use taxes on these items is considered tax paid by the owner or lessee. This subdivision is repealed for purchases made on or after January 1, 2038.

- (8) Transformative projects. – An owner or lessee of a business that is the recipient of a grant under the Job Development Investment Grant Program on or before June 30, 2019, for a transformative project as defined in G.S. 143B-437.51(9a) is allowed a refund of the sales and use tax paid by it on building materials, building supplies, fixtures, and equipment that become a part of the real property of the facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner.

(b) Administration. – A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(c) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by refund and by taxpayer:

- (1) The number of taxpayers claiming a refund allowed in this section.
- (2) The total amount of purchases with respect to which refunds were claimed.
- (3) The total cost to the General Fund of the refunds claimed.

(d) Not an Overpayment. – Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21. (2010-166, s. 1.18; 2011-330, ss. 15(c), 20(a), 26(b); 2012-36, s. 11(a); 2013-316, s. 3.5(a); 2015-259, s. 6(d); 2016-5, s. 3.14; 2017-39, s. 7; 2017-57, s. 38.9A(a).)

**§ 105-164.14B:** Repealed pursuant to former subsection (f) of this section, effective for sales made on or after January 1, 2014.

#### Part 4. Reporting and Payment.

**§ 105-164.15:** Repealed by Session Laws 2010-95, s. 13, effective July 17, 2010.

#### **§ 105-164.15A. Effective date of tax changes.**

(a) General Rate Items. – The effective date of a tax change for tangible personal property, digital property, or services taxable under this Article is administered as follows:

- (1) For a taxable item that is provided and billed on a monthly or other periodic basis:
  - a. A new tax or a tax rate increase applies to the first billing period that is at least 30 days after enactment and that starts on or after the effective date.
  - b. A tax repeal or a tax rate decrease applies to bills rendered on or after the effective date.
- (2) For a taxable item that is not billed on a monthly or other periodic basis, a tax change applies to amounts received for items provided on or after the effective date, except amounts received for items purchased to fulfill a real property

contract for a capital improvement entered into or awarded before the effective date or entered into or awarded pursuant to a bid made before the effective date.

(b) Combined Rate Items. – The effective date of a rate change for an item that is taxable under this Article at the combined general rate is administered as follows:

- (1) For a taxable item that is not billed on a monthly or other periodic basis, a tax change applies to amounts received for items provided on or after the effective date of a change in the State general rate of tax set in G.S. 105-164.4.
  - (1a) For a taxable item that is provided and billed on a monthly or other periodic basis:
    - a. A tax increase applies to the first billing period that is at least 30 days after enactment and that starts on or after the effective date.
    - b. A tax rate decrease applies to bills rendered on or after the effective date.
  - (2) For an increase in the authorization for local sales and use taxes, the date on which local sales and use taxes authorized by Subchapter VIII of this Chapter for every county become effective in the first county or group of counties to levy the authorized taxes.
  - (3) For a repeal in the authorization for local sales and use taxes, the effective date of the repeal. (2005-276, s. 33.13; 2006-162, s. 10; 2007-323, s. 31.17(c); 2009-451, s. 27A.3(l); 2011-330, s. 27; 2013-316, s. 3.2(c); 2016-92, s. 2.6; 2017-204, s. 2.4(d).)

#### **§ 105-164.16. Returns and payment of taxes.**

(a) General. – Sales and use taxes are payable when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the purchase price of tangible personal property, digital property, or services that were purchased or received during the reporting period and are subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed.

(b) Quarterly. – A taxpayer who is consistently liable for less than one hundred dollars (\$100.00) a month in State and local sales and use taxes must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.

(b1) Monthly. – A taxpayer who is consistently liable for at least one hundred dollars (\$100.00) but less than twenty thousand dollars (\$20,000) a month in State and local sales and use taxes must file a return and pay the taxes due on a monthly basis. A monthly return is due by the 20th day of the month following the calendar month covered by the return.

(b2) Prepayment. – A taxpayer who is consistently liable for at least twenty thousand dollars (\$20,000) a month in State and local sales and use taxes must make a monthly

prepayment of the next month's tax liability. The prepayment is due on the date a monthly return is due. The prepayment must equal at least sixty-five percent (65%) of any of the following:

- (1) The amount of tax due for the current month.
- (2) The amount of tax due for the same month in the preceding year.
- (3) The average monthly amount of tax due in the preceding calendar year.

(b3) Category. – The Secretary must monitor the amount of State and local sales and use taxes paid by a taxpayer or estimate the amount of taxes to be paid by a new taxpayer and must direct each taxpayer to pay tax and file returns as required by this section. In determining the amount of taxes due from a taxpayer, the Secretary must consider the total amount due from all places of business owned or operated by the same person as the amount due from that person. A taxpayer must file a return and pay tax in accordance with the Secretary's direction.

(c) Repealed by Session Laws 2001-427, s. 6(a), effective January 1, 2002, and applicable to taxes levied on or after that date.

(d) Use Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases the items listed in this subsection outside the State for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14. The items are:

- (1) Tangible personal property other than a boat or an aircraft.
- (2) Digital property.
- (3) A service.

(e) Simultaneous State and Local Changes. – When State and local sales and use tax rates change on the same date because one increases and the other decreases but the combined rate does not change, sales and use taxes payable on the following periodic payments are reportable in accordance with the changed State and local rates:

- (1) Lease or rental payments billed after the effective date of the changes.
- (2) Installment sale payments received after the effective date of the changes by a taxpayer who reports the installment sale on a cash basis. (1957, c. 1340, s. 5; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; 1979, c. 801, s. 83; 1983 (Reg. Sess., 1984), c. 1097, s. 14; 1985, c. 656, s. 26; 1985 (Reg. Sess., 1986), c. 1007; 1987, c. 557, s. 6; 1989 (Reg. Sess., 1990), c. 945, s. 1; 1991, c. 690, s. 4; 1993, c. 450, s. 7; 1997-77, s. 1; 1998-121, s. 1; 1999-341, s. 1; 2000-120, s. 11; 2001-347, s. 2.14; 2001-414, s. 18; 2001-427, s. 6(a); 2001-430, s. 7; 2002-184, ss. 10, 11; 2003-284, ss. 44.1, 45.8; 2003-416, s. 26; 2005-276, s. 33.24; 2006-162, s. 5(b); 2006-33, s. 9; 2007-527, ss. 11, 12; 2008-134, s. 11; 2009-451, s. 27A.3(b), (c), (m); 2010-31, s. 31.3(a)-(d); 2010-95, s. 42; 2011-330, s. 21.)

#### **§ 105-164.16A. Reporting option for prepaid meal plans.**

This section provides a retailer that offers a prepaid meal plan subject to the tax imposed by G.S. 105-164.4 with an option concerning the method by which the sales tax will be remitted to the Secretary and a return filed under G.S. 105-164.16. 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 under this Article, the retailer may include in the agreement that the food service contractor is liable for reporting and remitting the sales tax due on the gross receipts derived from the prepaid meal plan on behalf of the retailer. The agreement must provide that the 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 report the gross receipts on an accrual basis of accounting, as required under G.S. 105-164.20. The retailer must send the food service contractor the tax due on the gross receipts derived from a prepaid meal plan. Tax payments received by a food service contractor from a retailer are held in trust by the food service contractor for remittance to the Secretary. A food service contractor that receives a tax payment from a retailer must remit the amount received to the Secretary. A food service contractor is not liable for tax due but not received from a retailer. A retailer that does not send the food service contractor the tax due on the gross receipts derived from a prepaid meal plan is liable for the amount of tax the retailer fails to send to the food service contractor. (2014-3, s. 4.1(f); 2015-6, s. 2.14(a).)

**§§ 105-164.17 through 105-164.18: Repealed by Session Laws 1993, c. 450, ss. 8, 9.**

**§ 105-164.19. Extension of time for making returns and payment.**

The Secretary for good cause may extend the time for filing any return under the provisions of this Article and may grant additional time within which to file the return as he may deem proper, but the time for filing any return shall not be extended for more than 30 days after the regular due date of the return. If the time for filing a return is extended, interest accrues at the rate established pursuant to G.S. 105-241.21 from the time the return was due to be filed to the date of payment. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1977, c. 1114, s. 10; 1985, c. 656, s. 30; 2007-491, s. 44(1)a; 2013-414, s. 1(f).)

**§ 105-164.20. Cash or accrual basis of reporting.**

(a) **Basis Selected.** – Except as provided in subsection (b) of this section, a retailer may report sales on either the cash or accrual basis of accounting upon making application to the Secretary for permission to use the basis selected. Permission granted by the Secretary to report on a selected basis continues in effect until revoked by the Secretary or the taxpayer receives permission from the Secretary to change the basis selected.

(b) **Accrual Basis.** – For purposes of reporting and remitting sales tax under this Article, a retailer listed in this subsection must report the gross receipts it derives from the taxable transaction listed in this subsection on an accrual basis of accounting. The following retailers must report gross receipts as provided in this subsection:

- (1) A retailer who sells electricity, piped natural gas, or telecommunications service. A sale of electricity, piped natural gas, or telecommunications service is considered to accrue when the retailer bills its customer for the sale.
- (2) A retailer who derives gross receipts from a prepaid meal plan, notwithstanding that the retailer may report tax on the cash basis for other

sales at retail and notwithstanding that the revenue has not been recognized for accounting purposes.

- (3) A retailer who sells or derives gross receipts from a service contract, as provided in G.S. 105-164.4I(d). (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1983 (Reg. Sess., 1984), c. 1097, s. 15; 1998-22, s. 7; 2001-430, s. 8; 2015-6, s. 2.14(b).)

**§ 105-164.21. Repealed by Session Laws 1987, c. 622, s. 10.**

**§ 105-164.21A:** Repealed by Session Laws 2013-316, s. 4.1(a), effective July 1, 2014, and applicable to gross receipts billed on or after that date.

**§ 105-164.21B:** Repealed by Session Laws 2006-151, s. 9, effective January 1, 2007.

Part 5. Records Required to be Kept.

**§ 105-164.22. Record-keeping requirements, inspection authority, and effect of failure to keep records.**

Retailers, wholesale merchants, and consumers must keep records that establish their tax liability under this Article. The Secretary or a person designated by the Secretary 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 under this Article subjects the retailer to liability for tax on the sale.

A wholesale 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.

A consumer's records must include an invoice or other statement of the purchase price of an item the consumer purchased from outside the State. Failure of the consumer to keep these records subjects the consumer to liability for tax on the purchase price of the item, as determined by the Secretary. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1998-98, s. 51; 2009-451, s. 27A.3(n); 2016-5, s. 3.15.)

**§ 105-164.23:** Repealed by Session Laws 2009-451, s. 27A.3(o), effective August 7, 2009.

**§ 105-164.24:** Repealed by Session Laws 2009-451, s. 27A.3(o), effective August 7, 2009.

**§ 105-164.25:** Repealed by Session Laws 2009-451, s. 27A.3(o), effective August 7, 2009.

**§ 105-164.26. Presumption that sales are taxable.**

For the purpose of the proper administration of this Article and to prevent evasion of the retail sales tax, the following presumptions apply:

- (1) That all gross receipts of wholesale merchants and retailers are subject to the retail sales tax until the contrary is established by proper records as required in this Article.
- (2) That tangible personal property sold by a person for delivery in this State is sold for storage, use, or other consumption in this State.
- (3) That tangible personal property delivered outside this State and brought to this State by the purchaser is for storage, use, or consumption in this State.
- (4) That digital property sold for delivery or access in this State is sold for storage, use, or consumption in this State.
- (5) That a service purchased for receipt in this State is purchased for storage, use, or consumption in this State. (1957, c. 1340, s. 5; 1998-98, s. 108; 2009-451, s. 27A.3(p).)

**§ 105-164.27. Repealed by Session Laws 1961, c. 826, s. 2.**

**§ 105-164.27A. Direct pay permit.**

(a) General. – A general direct pay permit authorizes its holder to purchase certain tangible personal property, digital property, or service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A general direct pay permit may not be used for purposes identified in subsections (a1), (a2), (a3), or (b) of this section. A person who purchases an item under a direct pay permit issued under this subsection is liable for use tax due on the purchase. The tax is payable when the property is placed in use or the service is received. A direct pay permit issued under this subsection does not apply to taxes imposed under G.S. 105-164.4 on sales of electricity or the gross receipts derived from rentals of accommodations.

A person who purchases an item for storage, use, or consumption in this State whose tax status cannot be determined at the time of the purchase because of one of the reasons listed below may apply to the Secretary for a general direct pay permit:

- (1) The place of business where the item will be stored, used, or consumed is not known at the time of the purchase and a different tax consequence applies depending on where the item is used.
- (2) The manner in which the item will be stored, used, or consumed is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable.

(a1) Direct Mail. – A person who purchases direct mail may apply to the Secretary for a direct pay permit for the purchase of direct mail. A direct pay permit issued for direct mail does not apply to any purchase other than the purchase of direct mail. A person who purchases direct mail under a direct pay permit must file a return and pay the tax due monthly or quarterly to the Secretary.

(a2) Qualified Jet Engine. – A person who purchases a qualified jet engine may apply to the Secretary for a direct pay permit for the purchase of a qualified jet engine. A direct pay permit issued for a qualified jet engine does not apply to any purchase other than the purchase of a qualified jet engine. The maximum use tax on a qualified jet engine is two thousand five hundred dollars (\$2,500). A person who purchases a qualified jet engine under a direct pay permit must file a return and pay the tax due monthly to the Secretary.

(a3) Boat and Aircraft. – A direct pay permit issued under this subsection authorizes its holder to purchase tangible personal property, digital property, or repair, maintenance, and installation services for a boat, an aircraft, or a qualified jet engine without paying tax to the seller and authorizes the seller to not collect any tax on the item or services from the permit holder. A person who purchases the property or services under a direct pay permit must file a return and pay the tax due to the Secretary in accordance with G.S. 105-164.14. A permit holder is allowed a use tax exemption on one or more of the following: (i) the installation charges that are a part of the sales price of tangible personal property or digital property purchased by the permit holder for a boat, an aircraft, or a qualified jet engine, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the permit holder at the time of the sale and (ii) the sales price of or gross receipts derived from repair, maintenance, and installation services provided for a boat, an aircraft, or a qualified jet engine.

In lieu of purchasing under a direct pay permit pursuant to this subsection, a purchaser may elect to have the seller collect and remit the tax due on behalf of the purchaser. Where the purchaser elects for the seller to collect and remit the tax, an invoice given to the purchaser bearing the proper amount of tax on a retail transaction extinguishes the purchaser's liability for the tax on the transaction. Where a seller cannot or does not separately state installation charges that are a part of the sales price of tangible personal property or digital property for a boat, an aircraft, or a qualified jet engine on the invoice or other documentation given to the purchaser at the time of the sale, tax is due on the total purchase price.

The amount of the use tax exemption is the amount of the installation charges and sales price of or gross receipts derived from the repair, maintenance, and installation services that exceed twenty-five thousand dollars (\$25,000).

(b) Telecommunications Service. – A direct pay permit for telecommunications service authorizes its holder to purchase telecommunications service and ancillary service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A person who purchases these services under a direct pay permit must file a return and pay the tax due monthly or quarterly to the Secretary. A direct pay permit issued under this subsection does not apply to any tax other than the tax on telecommunications service and ancillary service.

A call center that purchases telecommunications service that originates outside this State and terminates in this State may apply to the Secretary for a direct pay permit for telecommunications service and ancillary service. A call center is a business that is primarily engaged in providing support services to customers by telephone to support products or services of the business. A business is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming.

(c) Application. – An application for a direct pay permit must be made on a form provided by the Secretary and contain the information required by the Secretary. The Secretary may grant the application if the Secretary finds that the applicant complies with the sales and use tax laws and that the applicant's compliance burden will be greatly reduced by use of the permit.

(d) Revocation. – A direct pay permit is valid until the holder returns it to the Secretary or the Secretary revokes it. The Secretary may revoke a direct pay permit if the holder of the permit does not file a sales and use tax return on time, does not pay sales and use tax on time, or otherwise fails to comply with the sales and use tax laws. (2000-120, s. 1; 2001-414, s. 20; 2001-430, s. 9; 2002-72, s. 18; 2003-284, s. 45.9; 2003-416, s. 16(b); 2006-33, s. 7; 2009-451, s.

27A.3(q); 2012-79, s. 2.12; 2013-414, s. 13; 2015-259, s. 4.2(e); 2016-94, s. 38.5(m); 2017-204, s. 2.11(a).)

**§ 105-164.28. Certificate of exemption.**

(a) Relief From Liability. – Except as provided in subsection (b) of this section, a seller is not liable for the tax otherwise applicable if the Secretary determines that a purchaser improperly claimed an exemption, or if the seller within 90 days of the sale meets the following requirements:

- (1) For a sale made in person, the seller obtains a certificate of exemption or a blanket certificate of exemption from a purchaser with which the seller has a recurring business relationship. If the purchaser provides a paper certificate, the certificate must be signed by the purchaser and state the purchaser's name, address, certificate of registration number, reason for exemption, and type of business. For purposes of this subdivision, a certificate received by fax is a paper certificate. If the purchaser does not provide a paper certificate, the seller must obtain and maintain the same information required had a certificate been provided by the purchaser.
- (2) Repealed by Session Laws 2013-414, s. 43(a), effective August 23, 2013.
- (3) For a sale made over the Internet or by other remote means, the seller obtains the purchaser's name, address, certificate of registration number, reason for exemption, and type of business and maintains this information in a retrievable format in its records. If a certificate of exemption is provided electronically for a remote sale, the requirements of subdivision (1) of this subsection apply except the electronic certificate is not required to be signed by the purchaser.
- (4) In the case of drop shipment sales, a third-party vendor obtains a certificate of exemption provided by its customer or any other acceptable information evidencing qualification for a resale exemption, regardless of whether the customer is registered to collect and remit sales and use tax in the State.

(b) Substantiation Request. – If the Secretary determines that a certificate of exemption or the required data elements obtained by the seller are incomplete, the Secretary may request substantiation from the seller. A seller is not required to verify that a certificate of registration number provided by a purchaser is correct. If a seller does one of the following within 120 days after a request for substantiation by the Secretary, the seller is not liable for the tax otherwise applicable:

- (1) Obtains a fully completed certificate of exemption from the purchaser provided in good faith. The certificate is provided in good faith if it claims an exemption that meets all of the following conditions:
  - a. It was statutorily available in this State on the date of the transaction.
  - b. It could be applicable to the item being purchased.
  - c. It is reasonable for the purchaser's type of business.
- (2) Obtains other information to establish the transaction was not subject to tax.

(c) Fraud. – The relief from liability under this section does not apply to a seller who does any of the following:

- (1) Fraudulently fails to collect tax.
- (2) Solicits purchasers to participate in the unlawful claim of an exemption.

- (3) Accepts an exemption certificate when the purchaser claims an entity-based exemption when the subject of the transaction sought to be covered by the exemption certificate is received by the purchaser at a location operated by the seller, and the claimed exemption is not available in this State.
- (4) Had knowledge or had reason to know at the time information was provided relating to the exemption claimed that the information was materially false.
- (5) Knowingly participated in activity intended to purposefully evade tax properly due on the transaction.

(d) Purchaser's Liability. – A purchaser who does not resell an item purchased under a certificate of exemption is liable for any tax subsequently determined to be due on the sale.

(e) Renewal of Information. – The Secretary may not require a seller to renew a blanket certificate of exemption or to update exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this section, a recurring business relationship exists when a period of no more than 12 months elapse between sales transactions. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 914, s. 1; 2000-120, s. 6; 2005-276, s. 33.15; 2009-451, s. 27A.3(r); 2011-330, s. 28; 2013-414, s. 43(a).)

#### **§ 105-164.28A. Other exemption certificates.**

(a) Authorization. – The Secretary may require a person who purchases an item that is exempt from tax or is subject to a preferential rate of tax depending on the status of the purchaser or the intended use of the item to obtain an exemption certificate from the Department to receive the exemption or preferential rate. The Department must issue a preferential rate or use-based exemption number to a person who qualifies for the exemption or preferential rate. A person who no longer qualifies for a preferential rate or use-based exemption number must notify the Secretary within 30 days to cancel the number.

An exemption certificate issued by the purchaser authorizes a retailer to sell an item to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale, as appropriate. A person who no longer qualifies for an exemption certificate must give notice to each seller that may rely on the exemption certificate on or before the next purchase. A person who purchases an item under an exemption certificate is liable for any tax due on the purchase if the Department determines that the person is not eligible for the exemption certificate or if the person purchased items that do not qualify for an exemption under the exemption certificate. The liability is relieved when the seller obtains the purchaser's name, address, type of business, reason for exemption, and exemption number in lieu of obtaining an exemption certificate.

(b) Scope. – This section does not apply to a direct pay permit or a certificate of exemption. G.S. 105-164.27A addresses a direct pay permit, and G.S. 105-164.28 addresses a certificate of exemption.

(c) Administration. – This section shall be administered in accordance with G.S. 105-164.28. Additionally, the provisions of this section may also apply to a conditional exemption certificate issued to a person in accordance with G.S. 105-164.13E. (2002-184, s. 12; 2009-451, s. 27A.3(s); 2013-414, s. 43(b); 2014-3, s. 3.1(b).)

#### **§ 105-164.29. Application for certificate of registration by wholesale merchants, retailers, and facilitators.**

(a) Requirement and Application. – Before a person may engage in business as a retailer or a wholesale merchant or when a facilitator is liable for tax under this Article, the person must obtain a certificate of registration. To obtain a certificate of registration, a person must register with the Department. A person who has more than one business is required to obtain only one certificate of registration for each legal entity to cover all operations of each business throughout the State. An application for registration must be signed as follows:

- (1) By the owner, if the owner is an individual.
- (2) By a manager, member, or company official, if the owner is a limited liability company.
- (2a) By a manager, member, or partner, if the owner is a partnership.
- (3) By an executive officer or some other person specifically authorized by the corporation to sign the application, if the owner is a corporation. If the application is signed by a person authorized to do so by the corporation, written evidence of the person's authority must be attached to the application.

(b) Issuance. – A certificate of registration is not assignable and is valid only for the person in whose name it is issued. A copy of the certificate of registration must be displayed at each place of business.

(c) Term. – A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a person who makes taxable sales or a person liable for tax under this Article becomes void if, for a period of 18 months, the person files no returns or files returns showing no sales. A certificate of registration issued to a seller that contracts with a certified service provider pursuant to G.S. 105-164.42I and that is a model one seller as defined in the Streamlined Agreement does not become void if the certified service provider files returns for the seller showing no sales for a period for which a certificate could become void under this subsection.

(d) Revocation. – The failure of a wholesale merchant or retailer to comply with this Article or G.S. 14-401.18 or the failure of a facilitator to comply with this Article is grounds for revocation of the person's certificate of registration. Before the Secretary revokes a person's certificate of registration, the Secretary must notify the person that the Secretary proposes to revoke the certificate of registration and that the proposed revocation will become final unless the person objects to the proposed revocation and files a request for a Departmental review within the time set in G.S. 105-241.11 for requesting a Departmental review of a proposed assessment. The notice must be sent in accordance with the methods authorized in G.S. 105-241.20. The procedures in Article 9 of this Chapter for review of a proposed assessment apply to the review of a proposed revocation.

(e) Definition. – For purposes of this section, the term "person" means a wholesale merchant, a retailer, or a facilitator. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1084; 1991, c. 690, s. 5; 1993, c. 354, s. 17; c. 539, s. 705; 1994, Ex. Sess., c. 24, s. 14(c); 1999-333, s. 8; 2000-140, s. 67(b); 2007-491, s. 19; 2009-451, s. 27A.3(t); 2014-3, s. 14.9(b); 2015-6, s. 2.15; 2017-39, s. 8.)

#### **§ 105-164.29A. State government exemption process.**

(a) (Effective until July 1, 2017) Application. – To be eligible for the exemption provided in G.S. 105-164.13(52), a State agency must obtain from the Department a sales tax exemption number. The application for exemption must be in the form required by the Secretary, be signed by the State agency's head, and contain any information required by the Secretary. The

Secretary must assign a sales tax exemption number to a State agency that submits a proper application.

(a) **(Effective July 1, 2017) Application.** – To be eligible for the exemption provided in G.S. 105-164.13(52), a State agency must obtain from the Department a sales tax exemption number. The application for exemption must be in the form required by the Secretary, be signed by the State agency's head, and contain any information required by the Secretary. The Secretary must assign a sales tax exemption number to a State agency that submits a proper application. This section does not apply to any of the following State agencies:

- (1) An occupational licensing board, as defined in G.S. 93B-1.
- (2) An entity listed in G.S. 105-164.14(c).

(b) **Liability.** – A State agency that does not use the items purchased with its exemption number must pay the tax that should have been paid on the items purchased, plus interest calculated from the date the tax would otherwise have been paid. (2003-431, s. 4; 2004-170, s. 22; 2016-5, s. 3.22(a).)

### **§ 105-164.29B. Information to counties and cities.**

The Secretary must give information on refunds of tax made under this Article to a designated county or city official within 30 days after the official makes a written request to the Secretary for the information. For a request made by a county official, the Secretary must give the official a list of each claimant that received a refund in the past 12 months of at least one thousand dollars (\$1,000) of tax paid to the county. For a request made by a city official, the Secretary must give the official a list of each claimant that received a refund in the past 12 months of at least one thousand dollars (\$1,000) of tax paid to all the counties in which the city is located. The list must include the name and address of each of these claimants and the amount of the refund received from each county covered by the request.

A claimant that has received a refund under this Article of tax paid to a county must give information on the refund to a designated official of the county or a city located in the county. The claimant must give the information to the county or city official within 30 days after the official makes a written request to the claimant for the information. For a request by a county or city official, the claimant must give the official a copy of the request for the refund and any supporting documentation requested by the official to verify the request. If a claimant determines that a refund it has received under this Article is incorrect, the claimant must file an amended request for a refund.

For purposes of this section, a designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the Board, and a designated city official is the mayor of the city or a city official designated in a resolution adopted by the city's governing board. Information given to a county or city official under this section is not a public record and may not be disclosed except as provided in G.S. 153A-148.1 or G.S. 160A-208.1. (2010-166, s. 1.20.)

## **Part 6. Examination of Records.**

### **§ 105-164.30. Secretary or agent may examine books, etc.**

For the purpose of enforcing the collection of the tax levied by this Article, the Secretary or his duly authorized agent is authorized to examine at all reasonable hours during the day the books, papers, records, documents or other data of all retailers or wholesale merchants bearing upon the correctness of any return or for the purpose of filing a return where none has been made



as required by this Article, and may require the attendance of any person and take his testimony with respect to any such matter, with power to administer oaths to such person or persons. If any person summoned as a witness fails to obey any summons to appear before the Secretary or his authorized agent, or refuses to testify or answer any material question or to produce any book, record, paper, or other data when required to do so, the Secretary or his authorized agent shall report the failure or refusal to the Attorney General or the district solicitor, who shall thereupon institute proceedings in the superior court of the county where the witness resides to compel obedience to any summons of the Secretary or his authorized agent. Officers who serve summonses or subpoenas, and witnesses attending, shall receive like compensation as officers and witnesses in the superior courts, to be paid from the proper appropriation for the administration of this Article.

In the event any retailer or wholesale merchant fails or refuses to permit the Secretary or his authorized agent to examine his books, papers, accounts, records, documents or other data, the Secretary may require the retailer or wholesale merchant to show cause before the superior court of the county in which said taxpayer resides or has its principal place of business as to why the books, records, papers, documents, or data should not be examined and the superior court shall have jurisdiction to enter an order requiring the production of all necessary books, records, papers, documents, or data and to punish for contempt any person who violates the order. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1998-98, s. 52; 2013-414, s. 1(g); 2016-5, s. 3.16.)

**§ 105-164.31:** Repealed by Session Laws 2009-451, s. 27A.3(o), effective August 7, 2009.

**§ 105-164.32. Incorrect returns; estimate.**

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 or false or fraudulent return, the Secretary must estimate the tax due and assess the retailer, wholesale merchant, or consumer based on the estimate. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 2001-414, s. 21; 2009-451, s. 27A.3(u).)

Part 7. Failure to Make Returns; Overpayments.

**§§ 105-164.33 through 105-164.34:** Repealed by Session Laws 1963, c. 1169, s. 3.

**§ 105-164.35:** Repealed by Session Laws 2013-414, s. 14, effective August 23, 2013.

**§ 105-164.36. Repealed by Session Laws 1959, c. 1259, s. 9.**

**§ 105-164.37. Bankruptcy, receivership, etc.**

If any taxpayer subject to the provisions of this Article goes into bankruptcy, receivership or turns over his stock of merchandise by voluntary transfer to creditors, the tax liability under this Article shall constitute a prior lien upon such stock of merchandise and shall become subject to levy under execution and it shall be the duty of the transferee in any such case to retain the amount of the tax due from the first sales of such stock of merchandise and pay the same to the Secretary. (1957, c. 1340, s. 5; 1973, c. 476, s. 193.)

**§ 105-164.38. Tax is a lien.**

(a) The tax imposed by this Article is a lien upon all personal property of any person who is required by this Article to obtain a certificate of registration to engage in business and who

stops engaging in the business by transferring the business, transferring the stock of goods of the business, or going out of business. A person who stops engaging in business must file the return required by this Article within 30 days after transferring the business, transferring the stock of goods of the business, or going out of business.

(b) Any person to whom the business or the stock of goods was transferred must withhold from the consideration paid for the business or stock of goods an amount sufficient to cover the taxes due until the person selling the business or stock of goods produces a statement from the Secretary showing that the taxes have been paid or that no taxes are due. If the person who buys a business or stock of goods fails to withhold an amount sufficient to cover the taxes and the taxes remain unpaid after the 30-day period allowed, the buyer is personally liable for the unpaid taxes to the extent of the greater of the following:

- (1) The consideration paid by the buyer for the business or the stock of goods.
- (2) The fair market value of the business or the stock of goods.

(c) Assessment. – The period of limitations for assessing liability against the buyer of a business or the stock of goods of a business and for enforcing the lien against the property expires one year after the end of the period of limitations for assessment against the person who sold the business or the stock of goods. Except as otherwise provided in this section, the assessment procedures in Article 9 of this Chapter apply to a person who buys a business or the stock of goods of a business to the same extent as if the person had incurred the original tax liability. (1957, c. 1340, s. 5; 1963, c. 1169, s. 3; 1973, c. 476, s. 193; 1991, c. 690, s. 6; 1991 (Reg. Sess., 1992), c. 949, s. 2; 2000-140, s. 67(c); 2007-491, s. 20.)

#### **§ 105-164.39. Attachment.**

In the event any retailer or wholesale merchant is delinquent in the payment of the tax herein provided for, the Secretary may give notice of the amount of such delinquency by registered mail to all persons having in their possession or under their control any credits or other personal property belonging to such retailer or wholesale merchant or owing any debts to such taxpayer at the time of the receipt by them of such notice and thereafter any person so notified shall neither transfer nor make any other disposition of such credits, other personal property or debts until the Secretary shall have consented to a transfer or disposition or until 30 days shall have elapsed from and after the receipt of such notice. All persons so notified must within five days after receipt of such notice advise the Secretary of any and all such credits, other personal property or debts in their possession, under their control or owing by them as the case may be. The remedy provided by this section shall be cumulative and optional and in addition to all other remedies now provided by law for the collection of taxes due the State. (1957, c. 1340, s. 5; 1973, c. 476, s. 193.)

#### **§ 105-164.40. Jeopardy assessment.**

If the Secretary is of the opinion that the collection of any tax or any amount of tax required to be collected and paid to the State under this Article will be jeopardized by delay, he shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy including interest and penalties. In the case of a tax for a current period, the Secretary may declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the

period declared terminated and such tax shall be immediately due and payable, whether or not the time otherwise allowed by law for filing a return and paying the tax has expired. Assessments provided for in this section shall be immediately due and payable and proceedings for the collection shall commence at once and if any such tax, penalty or interest is not paid upon demand of the Secretary, he shall forthwith cause a levy to be made on the property of the taxpayer or, in his discretion the Secretary may require the taxpayer to file such indemnity bond as in his judgment may be sufficient to protect the interest of the State. (1957, c. 1340, s. 5; 1973, c. 476, s. 193.)

**§ 105-164.41:** Repealed by Session Laws 2011-330, s. 38, effective June 27, 2011.

**§ 105-164.42: Repealed by Session Laws 1959, c. 1259, s. 9.**

Part 7A. Uniform Sales and Use Tax Administration Act.

**§ 105-164.42A. Short title.**

This Part is the "Uniform Sales and Use Tax Administration Act" and may be cited by that name. (2001-347, s. 1.3; 2005-276, s. 33.31.)

**§ 105-164.42B. Definitions.**

The following definitions apply in this Part:

- (1) Agreement. – Streamlined Agreement, as defined in G.S. 105-164.3.
- (2) Certified automated system. – Software certified jointly by the states that are signatories to the Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.
- (3) Certified service provider. – An agent certified jointly by the states that are signatories to the Agreement to perform all of the seller's sales tax functions.
- (4) Member state. – A state that has entered into the Agreement.
- (5) Person. – Defined in G.S. 105-228.90.
- (6) Sales tax. – The tax levied in G.S. 105-164.4.
- (7) Seller. – A person making sales, leases, or rentals of personal property or services.
- (8) State. – The term "this State" means the State of North Carolina. Otherwise, the term "state" means any state of the United States and the District of Columbia.
- (9) Use tax. – The tax levied in G.S. 105-164.6. (2001-347, s. 1.3; 2005-276, ss. 33.16, 33.31.)

**§ 105-164.42C. Authority to enter Agreement.**

The Secretary is authorized to enter into the Agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. The Secretary may act jointly with other member states to establish standards for certification of a certified service provider and a certified automated system and to establish performance standards for multistate sellers.

The Secretary is authorized to represent this State before the other member states. The Secretary may take any other actions reasonably required to implement this Part, including the

joint procurement with other member states of goods and services in furtherance of the Agreement. (2001-347, s. 1.3; 2005-276, s. 33.31.)

**§ 105-164.42D. Relationship to North Carolina law.**

No provision of the Agreement authorized by this Part invalidates or amends any provision of the law of this State. Adoption of the Agreement by this State does not amend or modify any law of this State. Implementation of a condition of the Agreement in this State must be made pursuant to an act of the General Assembly. (2001-347, s. 1.3; 2005-276, s. 33.31.)

**§ 105-164.42E. Agreement requirements.**

The Secretary may not enter into the Agreement unless the Agreement requires each state to abide by the following requirements:

- (1) Uniform state rate. – The Agreement must set restrictions to achieve more uniform state rates through the following:
  - a. Limiting the number of state rates.
  - b. Limiting maximums on the amount of state tax that is due on a transaction.
  - c. Limiting thresholds on the application of a state tax.
- (2) Uniform standards. – The Agreement must establish uniform standards for all of the following:
  - a. The sourcing of transactions to taxing jurisdictions.
  - b. The administration of exempt sales.
  - c. The allowances a seller can take for bad debts.
  - d. Sales and use tax returns and remittances.
- (3) Uniform definitions. – The Agreement must require states to develop and adopt uniform definitions of sales and use tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.
- (4) Central registration. – The Agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.
- (5) No nexus attribution. – The Agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.
- (6) Local sales and use taxes. – The Agreement must provide for reduction of the burdens of complying with local sales and use taxes through one or more of the following:
  - a. Restricting variances between the state and local tax bases.
  - b. Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions.
  - c. Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.

- d. Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.
- (7) Monetary allowances. – The Agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.
- (8) State compliance. – The Agreement must require each state to certify compliance with the terms of the Agreement before becoming a member and to maintain compliance, under the laws of the member state, with all provisions of the Agreement while a member.
- (9) Consumer privacy. – The Agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information. (2001-347, s. 1.3; 2005-276, s. 33.31.)

**§ 105-164.42F. Cooperating sovereigns.**

The Agreement authorized by this Part is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The Agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the laws of each member state. (2001-347, s. 1.3; 2005-276, s. 33.31.)

**§ 105-164.42G. Effect of Agreement.**

Entry of this State into the Agreement does not create a cause of action or a defense to an action. No person may challenge any action or inaction by a department, agency, or other instrumentality of this State, or a political subdivision of this State, on the ground that the action or inaction is inconsistent with the Agreement. No law of this State, or its application, may be declared invalid on the ground that the provision or application is inconsistent with the Agreement. (2001-347, s. 1.3; 2005-276, s. 33.31.)

**§ 105-164.42H. Certification of certified automated system and effect of certification.**

(a) Certification. – The Secretary may certify a software program as a certified automated system if the Secretary determines that the program correctly determines all of the following and that the software can generate reports and returns required by the Secretary:

- (1) The applicable combined State and local sales and use tax rate for a sale, based on the sourcing principles in G.S. 105-164.4B.
- (2) Whether or not an item is exempt from tax, based on a uniform product code or another method.
- (3) Repealed by Session Laws 2006-33, s. 12, effective June 1, 2006.
- (4) The amount of tax to be remitted for each taxpayer for a reporting period.
- (5) Any other issue necessary for the application or calculation of sales and use tax due.

(b) Liability. – A seller may choose to use a certified automated system in performing its sales tax administration functions. A seller that uses a certified automated system is liable for sales and use taxes due on transactions it processes using the certified automated system except for underpayments of tax attributable to errors in the functioning of the system. A person that provides a certified automated system is responsible for the proper functioning of that system

and is liable for underpayments of tax attributable to errors in the functioning of the system. (2000-120, s. 2; 2001-347, ss. 1.1, 1.3; 2005-276, s. 33.31; 2006-33, s. 12.)

**§ 105-164.42I. Contract with certified service provider and effect of contract.**

(a) Certification. – The Secretary may certify an entity as a certified service provider if the entity meets all of the following requirements:

- (1) The entity uses a certified automated system.
- (2) The entity has agreed to update its program upon notification by the Secretary.
- (3) The entity integrates its certified automated system with the system of a seller for whom the entity collects tax so that the tax due on a sale is determined at the time of the sale.
- (4) The entity remits the taxes it collects at the time and in the manner specified by the Secretary.
- (5) The entity agrees to file sales and use tax returns on behalf of the sellers for whom it collects tax.
- (6) The entity enters into a contract with the Secretary and agrees to comply with all the conditions of the contract.

(b) Contract. – The Secretary may contract or authorize in writing the Streamlined Sales Tax Governing Board to contract on behalf of the Secretary with a certified service provider for the collection and remittance of sales and use taxes. A certified service provider must file with the Secretary or the Streamlined Sales Tax Governing Board one of the following in the amount set by the Secretary: (i) a bond; (ii) an irrevocable letter of credit; or (iii) evidence of a certificate of deposit. A bond, irrevocable letter of credit, or certificate of deposit must be conditioned upon compliance with the contract, be payable to the State or the Streamlined Sales Tax Governing Board, and be in the form required by the Secretary or the Streamlined Sales Tax Governing Board. The amount a certified service provider charges under the contract is a cost of collecting the tax and is payable from the amount collected.

(c) Liability. – A seller may contract with a certified service provider to collect and remit sales and use taxes payable to the State on sales made by the seller. A certified service provider with whom a seller contracts is the agent of the seller. As the seller's agent, the certified service provider, rather than the seller, is liable for sales and use taxes due this State on all sales transactions the certified service provider processes for the seller unless the seller misrepresents the type of products it sells or commits fraud. A seller that misrepresents the type of products it sells or commits fraud is liable for taxes not collected as a result of the misrepresentation or fraud.

(d) Audit and Review. – In the absence of misrepresentation or fraud, a seller that contracts with a certified service provider is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The State may perform a system check of a seller and review a seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider. A certified service provider is subject to audit. (2000-120, s. 2; 2001-347, ss. 1.1, 1.3; 2005-276, s. 33.31; 2013-414, s. 44; 2016-5, s. 3.18.)

**§ 105-164.42J. Performance standard for multistate seller.**

The Secretary may establish a performance standard for a seller that is engaged in business in this State and at least 10 other states and has developed a proprietary system to determine the amount of sales and use taxes due on transactions. A seller that enters into an agreement with the Secretary that establishes a performance standard for that system is liable for the failure of the system to meet the performance standard. (2001-347, s. 1.3; 2005-276, s. 33.31.)

**§ 105-164.42K. Registration and effect of registration.**

Registration under the Agreement satisfies the registration requirements under this Article. A seller who registers under the Agreement within 12 months after the State becomes a member of the Agreement and who meets the following conditions is not subject to assessment for sales tax for any period before the effective date of the seller's registration:

- (1) The seller was not registered with the State during the 12-month period before the effective date of this State's participation in the Agreement.
- (2) When the seller registered, the seller had not received a letter from the Department notifying the seller of an audit.
- (3) The seller continues to be registered under the Agreement and to remit tax to the State for at least 36 months. (2005-276, s. 33.17.)

**§ 105-164.42L. Liability relief for erroneous information or insufficient notice by Department.**

(a) The Secretary may develop databases that provide information on the boundaries of taxing jurisdictions and the tax rates applicable to those taxing jurisdictions. A person who relies on the information provided in these databases is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in those databases until 10 business days after the date of notification by the Secretary.

(b) The Secretary may develop a taxability matrix that provides information on the taxability of certain items or certain tax administration practices. A person who relies on the information provided in the taxability matrix is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in the taxability matrix until 10 business days after the date of notification by the Secretary.

(c) A retailer is not liable for an underpayment of tax attributable to a rate change when the State fails to provide for at least 30 days between the enactment of the rate change and the effective date of the rate change if the conditions of this subsection are satisfied. However, if the State establishes the retailer fraudulently failed to collect tax at the new rate or solicited customers based on the immediately preceding effective rate, this liability relief does not apply. Both of the following conditions must be satisfied for liability relief:

- (1) The retailer collected tax at the immediately preceding rate.
- (2) The retailer's failure to collect at the newly effective rate does not extend beyond 30 days after the date of enactment of the new rate or the effective date applicable under G.S. 105-164.15A. (2005-276, s. 33.18; 2007-244, s. 5; 2013-414, s. 15; 2016-5, s. 3.17(a).)

Part 8. Administration and Enforcement.

**§ 105-164.43:** Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

**§ 105-164.43A. (Recodified effective August 8, 2001 – See note) Certification of tax collector software and tax collector.**

(a) Recodified as § 105-164.42H(a) by Session Laws 2001-347, s. 1.1, effective August 8, 2001. See note.

(b) Recodified as § 105-164.42I(a) by Session Laws 2001-347, s. 1.1, effective August 8, 2001. See note. (2000-120, s. 2; 2001-347, s. 1.1.)

**§ 105-164.43B. (Recodified effective August 8, 2001 – See note) Contract with Certified Sales Tax Collector.**

Recodified as § 105-164.42I(b) by Session Laws 2001-347, s. 1.1, effective August 8, 2001. See note. (2000-120, s. 2; 2001-347, s. 1.1.)

**§ 105-164.43C:** Repealed by Session Laws 2001-347, s. 1.2, effective August 8, 2001. See note.

**§ 105-164.43D. Applicable due date when due date falls on a weekend, holiday, or when the Federal Reserve Bank is closed.**

(a) Weekends and Holidays. – When the last day for doing an act required or permitted by this Article or Subchapter VIII of this Chapter falls on a Saturday, Sunday, or holiday, the act is considered to be done within the prescribed time limit if it is done on the next business day.

(b) Federal Reserve Bank Closure. – If the Federal Reserve Bank is closed on a due date that prohibits a person from making a payment by ACH debit or credit as required by this Article or Subchapter VIII of this Chapter, the payment is timely if made on the next day the Federal Reserve Bank is open. (2014-3, s. 14.10.)

**§ 105-164.44. Penalty and remedies of Article 9 applicable.**

All provisions not inconsistent with this Article in Article 9, entitled "General Administration – Penalties and Remedies" of Subchapter I of Chapter 105 of the General Statutes, including but not limited to, administration, auditing, making returns, promulgation of rules and regulations by the Secretary, additional taxes, assessment procedure, imposition and collection of taxes and the lien thereof, assessments, refunds and penalties are hereby made a part of this Article and shall be applicable thereto. (1957, c. 1340, s. 5; 1973, c. 476, s. 193.)

**§ 105-164.44A:** Repealed by Session Laws 1991, c. 45, s. 18.

**§ 105-164.44B:** Repealed by Session Laws 2011-145, s. 13.27(a), effective July 1, 2011.

**§ 105-164.44C:** Repealed by Session Laws 2001-424, s. 34.15(a)(1), as amended by Session Laws 2002-126, s. 30A.1, effective July 1, 2002.

**§ 105-164.44D:** Repealed by Session Laws 2015-241, s. 2.2(b), effective July 1, 2015.

**§ 105-164.44E. (Repealed effective July 1, 2020) Transfer to the Dry-Cleaning Solvent Cleanup Fund.**

(a) Transfer. – At the end of each quarter, the Secretary must transfer to the Dry-Cleaning Solvent Cleanup Fund established under G.S. 143-215.104C an amount equal to



fifteen percent (15%) of the net State sales and use taxes collected under G.S. 105-164.4(a)(4) during the previous fiscal year, as determined by the Secretary based on available data.

(b) Sunset. – This section is repealed effective July 1, 2020. (2000-19, s. 1.1; 2009-483, ss. 6, 8.)

**§ 105-164.44F. Distribution of part of telecommunications taxes to cities.**

(a) Amount. – The Secretary must distribute part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and ancillary service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the following percentages of the net proceeds of the taxes collected during the quarter:

- (1) Eighteen and seventy one hundredths percent (18.70%) minus two million six hundred twenty thousand nine hundred forty-eight dollars (\$2,620,948), must be distributed to cities in accordance with this section. The deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-20, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction."
- (2) Seven and seven tenths percent (7.7%) must be distributed to counties and cities as provided in G.S. 105-164.44I.

(b) Share of Cities Incorporated on or After January 1, 2001. – The share of a city incorporated on or after January 1, 2001, is its per capita share of the amount to be distributed to all cities incorporated on or after this date. This amount is the proportion of the total to be distributed under this section that is the same as the proportion of the population of cities incorporated on or after January 1, 2001, compared to the population of all cities. In making the distribution under this subsection, the Secretary must use the most recent annual population estimates certified to the Secretary by the State Budget Officer.

(c) Share of Cities Incorporated Before January 1, 2001. – The share of a city incorporated before January 1, 2001, is its proportionate share of the amount to be distributed to all cities incorporated before this date. A city's proportionate share for a quarter is based on the amount of telephone gross receipts franchise taxes attributed to the city under G.S. 105-116.1 for the same quarter that was the last quarter in which taxes were imposed on telephone companies under repealed G.S. 105-120. The amount to be distributed to all cities incorporated before January 1, 2001, is the amount determined under subsection (a) of this section, minus the amount distributed under subsection (b) of this section.

The following changes apply when a city incorporated before January 1, 2001, alters its corporate structure. When a change described in subdivision (2) or (3) occurs, the resulting cities are considered to be cities incorporated before January 1, 2001, and the distribution method set out in this subsection rather than the method set out in subsection (b) of this section applies:

- (1) If a city dissolves and is no longer incorporated, the proportional shares of the remaining cities incorporated before January 1, 2001, must be recalculated to adjust for the dissolution of that city.
- (2) If two or more cities merge or otherwise consolidate, their proportional shares are combined.
- (3) If a city divides into two or more cities, the proportional share of the city that divides is allocated among the new cities on a per capita basis.

(d) Share of Cities Served by a Telephone Membership Corporation. – The share of a city served by a telephone membership corporation, as described in Chapter 117 of the General Statutes, is computed as if the city was incorporated on or after January 1, 2001, under subsection (b) of this section. If a city is served by a telephone membership corporation and another provider, then its per capita share under this subsection applies only to the population of the area served by the telephone membership corporation.

(e) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:

- (1) It is eligible to receive funds under G.S. 136-41.2.
- (2) A majority of the mileage of its streets is open to the public.

(f) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution. (2001-424, s. 34.25(b); 2001-430, s. 10; 2001-487, s. 67(d); 2002-120, s. 4; 2004-203, s. 5(g); 2005-276, s. 33.19; 2005-435, s. 34(c); 2006-33, s. 8; 2006-66, ss. 24.1(d), (e), (f), (g); 2006-151, s. 7; 2007-145, s. 9(a); 2007-323, ss. 31.2(a), (b); 2009-451, s. 27A.2(c).)

**§ 105-164.44G:** Repealed by Session Laws 2013-316, s. 3.1(b), effective January 1, 2014, and applicable to sales made on or after that date.

**§ 105-164.44H. Transfer to State Public School Fund.**

Each fiscal year, the Secretary of Revenue shall transfer at the end of each quarter from the State sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes to the State Treasurer for the State Public School Fund, one-fourth of the amount transferred the preceding fiscal year plus or minus the percentage of that amount by which the total collection of State sales and use taxes increased or decreased during the preceding fiscal year. (2005-276, s. 7.51(b).)

**§ 105-164.44I. Distribution of part of sales tax on video programming service and telecommunications service to counties and cities.**

(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the revenue listed in this subsection. From this amount, the Secretary must first make the distribution required by subsection (b) of this section and then distribute the remainder in accordance with subsections (c) and (d) of this section. The revenue to be distributed under this section consists of the following:

- (1) The amount specified in G.S. 105-164.44F(a)(2).
- (2) Twenty three and six tenths percent (23.6%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.
- (3) Thirty-seven and one tenths percent (37.1%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service.

(b) Supplemental PEG Channel Support. – G.S. 105-164.44J sets out the requirements for receipt by a county or city of supplemental PEG channel support funds distributed under this subsection. The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of the share of each qualifying PEG channel certified by the city or county under G.S. 105-164.44J. The share of each certified PEG channel is the sum of four million dollars (\$4,000,000) and the amount of any funds returned to the Secretary in the prior fiscal year under G.S. 105-164.44J(d) divided by the number of PEG channels certified under G.S. 105-164.44J. A county or city may not receive PEG channel support under this subsection for more than three qualifying PEG channels.

For purposes of this subsection, the term "qualifying PEG channel" has the same meaning as in G.S. 105-164.44J.

(c) 2006-2007 Fiscal Year Distribution. – The share of a county or city is its proportionate share of the amount to be distributed to all counties and cities under this subsection. The proportionate share of a county or city is the base amount for the county or city compared to the base amount for all other counties and cities. The base amount of a county or city that did not impose a cable franchise tax under G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is two dollars (\$2.00) times the most recent annual population estimate for that county or city. The base amount of a county or city that imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. A county or city must make this certification by March 15, 2007. The certification must specify the amount of revenue that is derived from the cable franchise tax and the amount that is derived from the subscriber fee.

(c1) Revised Certification. – If a county or city determines that the amount of cable franchise tax it imposed during the first six months of the 2006-2007 fiscal year differs from the amount certified to the Secretary under subsection (c) of this section, the county or city may submit a new certification to the Secretary revising the amount. For distributions for quarters beginning on or after October 1, 2007, the Secretary must determine the proportionate share of a county or city based upon certifications submitted on or before October 1, 2007. For distributions for quarters beginning on or after April 1, 2008, the Secretary must determine the proportionate share of a county or city based upon certifications submitted on or before April 1, 2008. Certifications submitted after April 1, 2008, may not be used to adjust a county's or city's base amount under subsection (c) of this section.

(d) Subsequent Distributions. – For subsequent fiscal years, the Secretary must multiply the amount of a county's or city's share under this section for the preceding fiscal year by the percentage change in its population for that fiscal year and add the result to the county's or city's share for the preceding fiscal year to obtain the county's or city's adjusted amount. Each county's or city's proportionate share for that year is its adjusted amount compared to the sum of the adjusted amounts for all counties and cities.

(e) Use of Proceeds. – A county or city that imposed subscriber fees during the first six months of the 2006-2007 fiscal year must use a portion of the funds distributed to it each fiscal year under subsections (c) and (d) of this section for the operation and support of PEG channels. The amount of funds that must be used for PEG channel operation and support in fiscal year 2006-2007 is two times the amount of subscriber fee revenue the county or city certified to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. The amount of

funds that must be used for PEG channel operation and support in subsequent fiscal years is the same proportionate amount of the funds that were distributed under subsections (c) and (d) of this section and used for this purpose in fiscal year 2006-2007.

A county or city that used part of its franchise tax revenue in fiscal year 2005-2006 for the operation and support of PEG channels or a publicly owned and operated television station must use the funds distributed to it under subsections (c) and (d) of this section to continue the same level of support for the PEG channels and public stations. The remainder of the distribution may be used for any public purpose.

(f) Late Information. – A county or city that does not submit information that the Secretary needs to make a distribution by the date the information is due is excluded from the distribution. If the county or city later submits the required information, the Secretary must include the county or city in the distribution for the quarter that begins after the date the information is received.

(g) Population Determination. – In making population determinations under this section, the Secretary must use the most recent annual population estimates certified to the Secretary by the State Budget Officer. For purposes of the distributions made under this section, the population of a county is the population of its unincorporated areas plus the population of an ineligible city in the county, as determined under this section.

(h) City Changes. – The following changes apply when a city alters its corporate structure or incorporates:

- (1) If a city dissolves and is no longer incorporated, the proportional shares of the remaining counties and cities must be recalculated to adjust for the dissolution of that city.
- (2) If two or more cities merge or otherwise consolidate, their proportional shares are combined.
- (3) If a city divides into two or more cities, the proportional share of the city that divides is allocated among the new cities on a per capita basis.
- (4) If a city incorporates after January 1, 2007, and the incorporation is not addressed by subdivisions (2) or (3) of this subsection, the share of the county in which the new city is located is allocated between the county and the new city on a per capita basis.

(i) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:

- (1) It is eligible to receive funds under G.S. 136-41.2.
- (2) A majority of the mileage of its streets is open to the public.

(j) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution. (2006-151, s. 8; 2006-66, ss. 24.1(h), (i); 2007-145, s. 9(a); 2007-323, ss. 31.2(a), (b); 2007-527, s. 28; 2008-148, ss. 1, 2; 2009-451, s. 27A.2(d); 2010-158, s. 11(b); 2013-414, s. 45.)

#### **§ 105-164.44J. Supplemental PEG channel support.**

(a) Definitions. – The following definitions apply in this section:

- (1) Existing agreement. – Defined in G.S. 66-350.

- (2) PEG channel. – Defined in G.S. 66-350.
- (3) PEG channel operator. – An entity that does one or more of the following:
  - a. Produces programming for delivery on a PEG channel.
  - b. Provides facilities for the production of programming or playback of programming for delivery on a PEG channel.
- (4) Qualifying PEG channel. – A PEG channel that operates for at least 90 days during a fiscal year and that meets all of the following programming requirements:
  - a. It delivers at least eight hours of scheduled programming a day.
  - b. It delivers at least six hours and 45 minutes of scheduled, non-character-generated programming a day.
  - c. Its programming content does not repeat more than fifteen percent (15%) of the programming content on any other PEG channel provided to the same county or city.
- (5) Supplemental PEG channel support funds. – The amount distributed to a county or city under G.S. 105-164.44I(b).

(b) Certification. – A county or city must certify to the Secretary by July 15 of each year all of the qualifying PEG channels provided for its use during the preceding fiscal year by a cable service provider under either G.S. 66-357 or an existing agreement. A county or city may not certify more than three qualifying PEG channels. The certification must include all of the following:

- (1) An identification of each channel as a public, an education, or a government channel.
- (2) The name and signature of the PEG channel operator for each channel. If a qualifying PEG channel has more than one PEG channel operator, the county or city must include the name of each operator of the PEG channel. A PEG channel operator may be included on the certification of only one county or city for each type of PEG channel that it operates.
- (3) Any other information required by the Secretary.

(c) Use of Funds. – A county or city must use the supplemental PEG channel support funds distributed to it for the operation and support of each of the qualifying PEG channels it certifies by allocating the amount it receives equally among each of the qualifying PEG channels. A county or city must distribute the supplemental PEG channel support funds to the PEG channel operator of the qualifying PEG channel within 30 days of its receipt of the supplemental PEG channel support funds from the Department, or as specified in an interlocal agreement. If a qualifying PEG channel has more than one PEG channel operator, the county or city must distribute the amount allocated for that PEG channel equally to each PEG channel operator, or as specified in an interlocal agreement.

(d) Errors in Certification. – If a county or city determines that it certified a PEG channel in error, the county or city must submit a revised certification to the Secretary, and the county or city must return all supplemental PEG channel support funds distributed to it as a result of the error. The Secretary must add the funds returned to the total amount of supplemental PEG channel support funds to be allocated in the following fiscal year. (2008-148, s. 3; 2010-158, s. 11(c).)

**§ 105-164.44K. Distribution of part of tax on electricity to cities.**

(a) Distribution. – The Secretary must distribute to cities forty-four percent (44%) of the net proceeds of the tax collected under G.S. 105-164.4 on electricity, less the cost to the Department of administering the distribution. Each city's share of the amount to be distributed is its franchise tax share calculated under subsection (b) of this section plus its ad valorem share calculated under subsection (c) of this section. If the net proceeds of the tax allocated under this section are not sufficient to distribute the franchise tax share of each city under subsection (b) of this section, the proceeds shall be distributed to each city on a pro rata basis. The Secretary must make the distribution within 75 days after the end of each quarter.

(b) Franchise Tax Share. – The quarterly franchise tax share of a city is the total amount of electricity gross receipts franchise tax distributed to the city under repealed G.S. 105-116.1 or repealed provisions of G.S. 159B-27 for the same related quarter that was the last quarter in which taxes were imposed on electric power companies under repealed G.S. 105-116 or repealed provisions of G.S. 159B-27. The quarterly franchise tax share of a city includes adjustments made for the hold-harmless amounts under repealed G.S. 105-116. If the franchise tax share of a city, including the hold-harmless adjustments, is less than zero, then the amount is zero. The determination made by the Department with respect to a city's franchise tax share is final and is not subject to administrative or judicial review.

The franchise tax share of a city that has dissolved, merged with another city, or divided into two or more cities since it received a distribution under repealed G.S. 105-116.1 or repealed provisions of G.S. 159B-27 is adjusted as follows:

- (1) If a city dissolves and is no longer incorporated, the franchise tax share of the city is added to the amount distributed under subsection (c) of this section.
- (2) If two or more cities merge or otherwise consolidate, their franchise tax shares are combined.
- (3) If a city divides into two or more cities, the franchise tax share of the city that divides is allocated among the new cities in proportion to the total amount of ad valorem taxes levied by each on property having a tax situs in the city.

(c) Ad Valorem Share. – The ad valorem share of a city is its proportionate share of the amount that remains for distribution after determining each city's franchise tax share under subsection (b) of this section. The prohibitions in G.S. 105-472(d) on the receipt of funds by a city apply to the distribution under this subsection.

A city's proportionate share is the amount of ad valorem taxes it levies on property having a tax situs in the city compared to the ad valorem taxes levied by all cities on property having a tax situs in the cities. The ad valorem method set out in G.S. 105-472(b)(2) applies in determining the share of a city under this subsection based on ad valorem taxes, except that the amount of ad valorem taxes levied by a city does not include ad valorem taxes levied on behalf of a taxing district and collected by the city.

(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. The Governor may not reduce or withhold the distribution. (2013-316, s. 4.3(a); 2013-363, s. 11.2.)

#### **§ 105-164.44L. Distribution of part of tax on piped natural gas to cities.**

(a) **(Effective for quarters beginning before July 1, 2015)** Distribution. – The Secretary must distribute to cities twenty percent (20%) of the net proceeds of the tax collected under G.S. 105-164.4 on piped natural gas, less the cost to the Department of administering the

distribution. Each city's share of the amount to be distributed is its excise tax share calculated under subsection (b) of this section plus its ad valorem share calculated under subsection (c) of this section. If the net proceeds of the tax allocated under this section are not sufficient to distribute the excise tax share of each city under subsection (b) of this section, the proceeds shall be distributed to each city on a pro rata basis. The Secretary must make the distribution within 75 days after the end of each quarter.

(a) **(Effective for quarters beginning on or after July 1, 2015)** Distribution. – The Secretary must distribute to cities twenty percent (20%) of the net proceeds of the tax collected under G.S. 105-164.4 on piped natural gas, less the cost to the Department of administering the distribution. Each city's share of the amount to be distributed is its excise tax share calculated under subsection (b) of this section plus its ad valorem share calculated under subsection (c) of this section. A gas city will also receive an amount calculated under subsection (b1) of this section as part of its excise tax share. If the net proceeds of the tax allocated under this section are not sufficient to distribute the excise tax share of each city under subsection (b) of this section and the gas city share under subsection (b1) of this section, the proceeds shall be distributed to each city on a pro rata basis. The Secretary must make the distribution within 75 days after the end of each quarter.

(b) Excise Tax Share. – The quarterly excise tax share of a city is the amount of piped natural gas excise tax distributed to the city under repealed G.S. 105-187.44 for the same related quarter that was the last quarter in which taxes were imposed on piped natural gas under repealed Article 5E of this Chapter. The determination made by the Department with respect to a city's excise tax share is final and is not subject to administrative or judicial review.

The excise tax share of a city that has dissolved, merged with another city, or divided into two or more cities since it received a distribution under repealed G.S. 105-187.44 is adjusted as follows:

- (1) If a city dissolves and is no longer incorporated, the excise tax share of the city is added to the amount distributed under subsection (c) of this section.
- (2) If two or more cities merge or otherwise consolidate, their excise tax shares are combined.
- (3) If a city divides into two or more cities, the excise tax share of the city that divides is allocated among the new cities in proportion to the total amount of ad valorem taxes levied by each on property having a tax situs in the city.

(b1) **(Effective for quarters beginning on or after July 1, 2015)** Gas Cities. – In addition to the excise tax share calculated under subsection (b) of this section, a gas city shall receive as part of its excise tax share a distribution calculated under this subsection. The Secretary must determine the amount the gas city would have received under repealed G.S. 105-187.44 for the last year in which taxes were imposed under repealed Article 5E of this Chapter if piped natural gas consumed by the city or delivered by the city to a customer had not been exempt from tax under repealed G.S. 105-187.41(c)(1) and G.S. 105-187.41(c)(2), excluding any amount received under subsection (b) of this section, and divide that amount by four to calculate the quarterly distribution amount for a gas city under this subsection. A gas city must report the information required by the Secretary to make the distribution under this section in the form, manner, and time required by the Secretary. The determination made by the Department with respect to a gas city's share under this subsection is final and is not subject to administrative or judicial review. For purposes of this section, the term "gas city" is a city in this State that operated a piped natural

gas distribution system as of July 1, 1998. These cities are Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

(c) Ad Valorem Share. – The ad valorem share of a city is its proportionate share of the amount that remains for distribution after determining each city's excise tax share under subsection (b) of this section. Only cities that receive an excise tax share under subsection (b) of this section for any quarter of the year are eligible to receive an ad valorem share. The prohibitions in G.S. 105-472(d) on the receipt of funds by a city apply to the distribution under this subsection.

A city's proportionate share is the amount of ad valorem taxes it levies on property having a tax situs in the city compared to the ad valorem taxes levied by all cities on property having a tax situs in the cities. The ad valorem method set out in G.S. 105-472(b)(2) applies in determining the share of a city under this section based on ad valorem taxes, except that the amount of ad valorem taxes levied by a city does not include ad valorem taxes levied on behalf of a taxing district and collected by the city.

(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. The Governor may not reduce or withhold the distribution. (2013-316, s. 4.3(a); 2014-3, s. 14.13(e); 2014-39, ss. 1(b)-(d).)

#### **§ 105-164.44M. Transfer to Division of Aviation.**

The net proceeds of the tax collected on aviation gasoline and jet fuel under G.S. 105-164.4 must be transferred within 75 days after the end of each fiscal year to the Highway Fund. This amount is annually appropriated from the Highway Fund to the Division of Aviation of the Department of Transportation for prioritized capital improvements to general aviation airports for time-sensitive aviation capital improvement projects for economic development purposes. (2015-259, s. 4.1(d); 2017-57, s. 34.21(a).)

#### **DIVISION IX. LOCAL OPTION SALES AND USE TAXES.**

**§§ 105-164.45 through 105-164.58:** Repealed by Session Laws 1971, c. 77, s. 1.

**§§ 105-165 through 105-176.** Repealed by Session Laws 1957, c. 1340, s. 5.

**§§ 105-177 through 105-178.** Repealed by Session Laws 1951, c. 643, s.5.

**§ 105-179.** Repealed by Session Laws 1957, c. 1340, s. 5.

**§ 105-180.** Repealed by Session Laws 1951, c. 643, s. 5.

**§ 105-181.** Repealed by Session Laws 1957, c. 1340, s. 5.

**§ 105-182.** Repealed by Session Laws 1955, c. 1350, s. 19.

**§§ 105-183 through 105-187:** Repealed by Session Laws 1957, c. 1340, s. 5.