

### § 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 services.
  - 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. An addition or alteration to real property that is permanently affixed or installed to real property and is not an activity listed in subdivision (33I) of this section as repair, maintenance, and installation services.
- (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 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 repair, maintenance, and installation services for real property that are 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 or gross receipts of a retailer or another person 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) **(Effective until January 1, 2020)** 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. [The conditions are as follows:]
- 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.
- (30b) **(Effective January 1, 2020)** Property management contract. – A written contract to manage one or more of the activities listed in this subdivision that are related to real property used for business, educational, commercial, or income-producing purposes. The activity may include the lease or rental of the property on behalf of the owner, other than the lease or rental of an accommodation taxable under G.S. 105-164.4(a)(3). The term does not include a contract for repair, maintenance, and installation services for real property. The activities that may be performed under a property management contract are as follows:
- a. Hiring and supervising employees for the property.
  - b. Providing a person to manage the property.
  - c. Receiving and applying revenues received from tenants of the property.
  - d. Arranging for services from third parties in order to comply with the landlord's obligations under a lease or rental agreement or to comply with facility-related needs of the property's occupants. The activity may include supplemental repair, maintenance, and installation services to complement taxable services provided by third-party vendors if no additional fee is imposed under the contract for that supplemental service.
  - e. Incurring and paying expenses derived from the operation of the real property.
  - f. Handling administrative affairs for the real property.
- (30d) **(Effective January 1, 2020)** 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. [The conditions are as follows:]
- 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 or will satisfy 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 or will provide health insurance for all of its full-time employees as long as the datacenter operates. The datacenter provides health insurance if it pays or will pay 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 service that is included in repair, maintenance, and installation services. The term does not include a transaction where the true purpose is repair, maintenance, and installation services no matter that another service included in repair, maintenance, and installation services 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 or digital property. 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 repair, maintenance, and installation services. The term does not include an installation defined as a capital improvement under

- subdivision (2c)d. of this section and substantiated as a capital improvement under G.S. 105-164.4H(a1).
- e. To inspect or monitor property or install, apply, or connect tangible personal property or digital property on a motor vehicle or adjust a motor vehicle.
- (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 applies to 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. The amount of any credit for trade-in is not a reduction of the sales price.
    - 8. The amount of any 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 services 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 service included in repair, maintenance, or installation services, 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 3, 2018.
- (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 a sale of tangible personal property, digital property, or a service in the regular course of business.
- (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); 2018-5, s. 38.5(a), (b), (x).)