

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS85044-RBxz-8* (01/23)

Short Title: Streamlined Sales Tax Changes. (Public)

Sponsors: Senators Kerr, Clodfelter, Dalton, Hartsell, and Hoyle.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE SALES TAX DEFINITIONS TO COMPLY WITH THE
3 STREAMLINED SALES TAX AGREEMENT AND TO MAKE OTHER SALES
4 TAX CHANGES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 105-164.3 reads as rewritten:

7 "§ 105-164.3. Definitions.

8 The following definitions apply in this Article:

9 (1) Ancillary service. – A service associated with or incidental to the
10 provision of a telecommunications service. The term includes detailed
11 communications billing, directory assistance, vertical service, and
12 voice mail service. A vertical service is a service, such as call
13 forwarding, caller ID, three-way calling, and conference bridging, that
14 allows a customer to identify a caller or manage multiple calls and call
15 connections.

16 (1b) Bundled transaction. – A retail sale of two or more distinct and
17 identifiable products, at least one of which is taxable and one of which
18 is exempt, for one non-itemized price. Products are not sold for one
19 non-itemized price if an invoice or another sales document made
20 available to the purchaser separately identifies the price of each
21 product. A bundled transaction does not include the retail sale of any
22 of the following:

23 a. A product and any packaging item that accompanies the product
24 and is exempt under G.S. 105-164.13(23).

25 b. A sale of two or more products whose combined price varies, or
26 is negotiable, depending on the products the purchaser selects.

- 1 c. A sale of a product accompanied by a transfer of another
2 product with no additional consideration.
- 3 d. A product and the delivery or installation of the product.
- 4 e. A product and any service necessary to complete the sale.
- 5 (1a)(1d) Business. – Includes any activity engaged in by any person or
6 caused to be engaged in by him with the object of gain, profit, benefit
7 or advantage, either direct or indirect. The term "business" shall not be
8 construed in this Article to include occasional and isolated sales or
9 transactions by a person who does not hold himself out as engaged in
10 business.
- 11 (1b)(1f) Cable service. – The one-way transmission to subscribers of video
12 programming or other programming service and any subscriber
13 interaction required to select or use the service.
- 14 ...
- 15 (12) Gross sales. – The sum total of the sales price of all retail sales of
16 tangible personal property ~~as defined herein, whether for cash or credit~~
17 ~~without allowance for cash discount and without any deduction on~~
18 ~~account of the cost of the property sold, the cost of materials used,~~
19 ~~labor or service costs, interest paid or any other expenses whatsoever~~
20 ~~and without any deductions of any kind or character except as~~
21 ~~provided in this Article.~~ and services.
- 22 ...
- 23 (37) Sales price. – The total amount or consideration for which tangible
24 personal property or services are sold, leased, or rented. The
25 consideration may be in the form of cash, credit, property, or services.
26 The sales price must be valued in money, regardless of whether it is
27 received in money.
- 28 a. The term includes all of the following:
- 29 1. The retailer's cost of the property sold.
- 30 2. The cost of materials used, labor or service costs,
31 interest, losses, all costs of transportation to the retailer,
32 all taxes imposed on the retailer, and any other expense
33 of the retailer.
- 34 3. Charges by the retailer for any services necessary to
35 complete the sale.
- 36 4. Delivery charges.
- 37 5. Installation charges.
- 38 6. ~~The value of exempt personal property given to the~~
39 ~~consumer when taxable and exempt personal property~~
40 ~~are bundled together and sold by the retailer as a single~~
41 ~~product or piece of merchandise.~~
- 42 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, including cash, term, or coupons, that are not reimbursed~~ 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.

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended ~~in November 2005~~ as of December 14, 2006."

SECTION 2. G.S. 105-164.4D, as enacted by Section 5 of S.L. 2006-151,

reads as rewritten:

"§ 105-164.4D. Bundled services.transactions.

~~When a taxable service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:~~

(1) ~~If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all the services in the bundle compared to the bundled price of the services.~~

(2) ~~If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service.~~

Tax applies to the sales price of a bundled transaction unless the bundled transaction includes a service and the retailer determines an allocated price for each product in the

1 bundled transaction based on a reasonable allocation of revenue that is supported by the
2 retailer's business records kept in the ordinary course of business. In this circumstance,
3 the tax applies to the allocated price of each taxable product in the bundled transaction."

4 **SECTION 3.** G.S. 105-164.12B reads as rewritten:

5 "**§ 105-164.12B. Tangible personal property ~~bundled~~ sold below cost with**
6 **conditional service contract.**

7 (a) ~~Bundled Transaction Defined.~~ — A ~~bundled transaction is a transaction in~~
8 ~~which all of the following conditions are met:~~

9 (1) ~~A seller transfers an item of tangible personal property to a consumer~~
10 ~~on the condition that the consumer enter into an agreement to purchase~~
11 ~~services on an ongoing basis for a minimum period of at least six~~
12 ~~months.~~

13 (2) ~~The agreement requires the consumer to pay a cancellation fee to the~~
14 ~~service provider if the consumer cancels the contract for services~~
15 ~~within the minimum period.~~

16 (3) ~~For the item transferred, the seller:~~

17 a. ~~Does not charge the consumer; or~~

18 b. ~~Charges the consumer a price that, after any discount or rebate~~
19 ~~the seller gives the consumer, is below the purchase price the~~
20 ~~seller paid for the item.~~

21 (b) ~~Bundled Transaction Is a Sale; Sales Price.~~ — If a seller transfers an item of
22 ~~tangible personal property as part of a bundled transaction, a sale has occurred, and the~~
23 ~~sales price of the item is presumed to be the retail price at which the item would sell if~~
24 ~~no agreement for services were entered into. Part of this price may be paid by the~~
25 ~~consumer at the time of the transfer; the remainder of the price is considered paid as part~~
26 ~~of the price to be paid for the services contracted for. Sales tax is due on any part of the~~
27 ~~price paid by the consumer at the time of the transfer.~~

28 (c) ~~No Additional Sales Tax if Services Taxed.~~ — If the services for which the
29 ~~consumer was required to contract are subject to services taxes at a combined rate equal~~
30 ~~to or greater than the combined State and local general rate of sales and use tax, then no~~
31 ~~additional sales tax is due on the transfer. However, if the consumer cancels the contract~~
32 ~~for services before the expiration of the minimum period, sales tax applies to the~~
33 ~~cancellation fee paid by the consumer.~~

34 (d) ~~Additional Sales Tax if Services Not Taxed.~~ — If the services for which the
35 ~~consumer was required to contract are not subject to services taxes at a combined rate~~
36 ~~equal to or greater than the combined State and local general rate of sales and use tax,~~
37 ~~then sales tax is due at the time of the transfer on the remainder of the sales price not~~
38 ~~paid at that time.~~

39 (e) ~~Services Taxes Defined.~~ — For the purpose of this section, the term "services
40 ~~taxes" means any combination of State franchise tax on gross receipts, State sales tax, or~~
41 ~~local sales tax levied on the sale of or gross receipts from the services.~~

42 (f) ~~Determination of Purchase Price.~~ — For the purpose of this section, the
43 ~~purchase price a seller paid for an item is presumed to be no greater than the price the~~

1 seller paid for the same model within 12 months before the bundled transaction, as
2 shown on the seller's invoices.

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

5 (1) A seller transfers an item of tangible personal property to a consumer
6 on the condition that the consumer enter into an agreement to purchase
7 services on an ongoing basis for a minimum period of at least six
8 months.

9 (2) The agreement requires the consumer to pay a cancellation fee to the
10 seller if the consumer cancels the services within the minimum period.

11 (3) For the item transferred, the seller charges the consumer a price that,
12 after any price reduction the seller gives the consumer, is below the
13 purchase price the seller paid for the item. The seller's purchase price
14 is presumed to be no greater than the price the seller paid, as shown on
15 the seller's purchase invoice, for the same item within 12 months
16 before the seller transferred the item to the consumer.

17 (b) Tax. – If a seller transfers an item of tangible personal property as part of a
18 conditional service contract, a sale has occurred. The sales price of the item is presumed
19 to be the retail price at which the item would sell in the absence of the conditional
20 service contract. Sales tax is due at the time of the transfer on the following:

21 (1) Any part of the presumed sales price the consumer pays at that time, if
22 the service in the contract is taxable at the combined general rate.

23 (2) The presumed sales price, if the service in the contract is not taxable at
24 the combined general rate."

25 **SECTION 4.** G.S. 105-164.13(9) reads as rewritten:

26 **"§ 105-164.13. Retail sales and use tax.**

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

30 Agricultural Group.

31 ...

32 (9) ~~Sales of boats, Boats,~~ Boats, fuel oil, lubricating oils, machinery, equipment,
33 nets, rigging, paints, parts, accessories, and supplies sold to persons
34 any of the following:

35 a. The holder of a standard commercial fishing license issued
36 under G.S. 113-168.2 for principal use by them principally in
37 commercial fishing operations within the meaning of
38 G.S. 113-168, except when the property is for use by persons
39 principally to take fish for recreation or personal use or
40 consumption operations.

41 b. The holder of a shellfish license issued under G.S. 113-169.2
42 for principal use in commercial shellfishing operations.

1 c. The operator of a for hire boat, as defined in G.S. 113-174, for
2 principal use in the commercial use of the boat. As used in this
3 subdivision, "fish" is defined as in G.S. 113-129(7)."

4 **SECTION 5.** G.S. 105-164.42L reads as rewritten:

5 **"§ 105-164.42L. Databases on taxing jurisdictions.**

6 The Secretary may develop databases that provide information on the boundaries of
7 taxing jurisdictions and the tax rates applicable to those taxing jurisdictions. A ~~seller~~
8 ~~that~~ person who relies on the information provided in these databases is not liable for
9 underpayments of tax attributable to erroneous information provided by the Secretary in
10 those databases."

11 **SECTION 6.** This act becomes effective October 1, 2007.