

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 558*

Short Title: Modernize Sales Tax Stat/Digital Products. (Public)

Sponsors: Representatives Weiss, Gibson (Primary Sponsors); Brubaker, Carney, Harrison, Hill, Insko, Lucas, Luebke, McGee, and Wainwright.

Referred to: Finance.

March 12, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO MODERNIZE THE SALES AND USE TAX STATUTES BY TREATING
3 MUSIC, MOVIES, BOOKS, AND COMPUTER SOFTWARE THAT ARE DELIVERED
4 ELECTRONICALLY THE SAME AS THOSE THAT ARE PURCHASED IN A
5 TANGIBLE MEDIUM AND BY REVISING THE "MAIL ORDER" SALES TAX
6 PROVISIONS TO INCLUDE SPECIFIC REFERENCES TO INTERNET SALES.

7 The General Assembly of North Carolina enacts:

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

9 "§ 105-164.3. Definitions.

10 The following definitions apply in this Article:

11 ...

12 (1b) Audio work. – A series of musical, spoken, or other sounds, including a
13 ringtone.

14 (1c) Audiovisual work. – A series of related images and any sounds
15 accompanying the images that impart an impression of motion when shown
16 in succession.

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

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

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

27 c. A sale of a product accompanied by a transfer of another product
28 with no additional consideration.

29 d. A product and the delivery or installation of the product.

30 e. A product and any service necessary to complete the sale.

31 ~~(1d)~~(1e) Business. – Includes any activity engaged in by any person or caused to be
32 engaged in by him with the object of gain, profit, benefit or advantage, either
33 direct or indirect. The term "business" shall not be construed in this Article
34 to include occasional and isolated sales or transactions by a person who does
35 not hold himself out as engaged in business.

36 ...



1 (7a) Digital code. – A code that gives a purchaser of the code a right to receive an
 2 item by electronic delivery or electronic access. A digital code may be
 3 obtained by an electronic means or by tangible means. A digital code does
 4 not include a gift certificate or a gift card.

5 ~~(7a)~~(7h) Direct mail. – Printed material delivered or distributed by the United States
 6 Postal Service or other delivery service to a mass audience or to addresses
 7 on a mailing list provided by the purchaser or at the direction of the
 8 purchaser when the cost of the items is not billed directly to the recipients.
 9 The term includes tangible personal property supplied directly or indirectly
 10 by the purchaser to the direct mail seller for inclusion in the package
 11 containing the printed material. The term does not include multiple items of
 12 printed material delivered to a single address.

13 ...
 14 ~~(17a)~~ ~~Load and leave.~~— ~~Delivery to the purchaser by use of a tangible storage~~
 15 ~~media where the tangible storage media is not physically transferred to the~~
 16 ~~purchaser.~~

17 ...
 18 (35f) Ringtone. – A digitized sound file that is downloaded onto a device and that
 19 may be used to alert the user of the device with respect to a communication.

20 "

21 **SECTION 2.** G.S. 105-164.4(a) reads as rewritten:

22 "(a) A privilege tax is imposed on a retailer at the following percentage rates of the
 23 retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and
 24 one-half percent (4.5%).

25 ...
 26 (6b) The general rate applies to the sales price of an item that is listed in this
 27 subdivision, is delivered or accessed electronically, and would be taxable
 28 under this Article if sold in a tangible medium. The retail sale of a digital
 29 code that is used to obtain any of the items taxed by this subdivision is
 30 considered a sale of that item. The tax applies regardless of whether the
 31 purchaser of the item has a right to redistribute it, to use it permanently, or to
 32 use it without making continued payments. The tax does not apply to an item
 33 that is taxed under another subdivision of this subsection or under
 34 G.S. 105-164.4C. A person who sells an item that is taxable under this
 35 subdivision is considered a retailer under this Article. The following items
 36 are subject to tax under this subdivision:

- 37 a. An audio work.
- 38 b. An audiovisual work.
- 39 c. A book.
- 40 d. Computer software.

41 "

42 **SECTION 3.(a)** G.S. 105-164.3(18) is recodified as G.S. 105-164.3(33g) and reads
 43 as rewritten:

44 "~~(18)~~(33g) ~~Mail order Remote sale.~~ – A sale of tangible personal property, ordered
 45 by mail, by telephone, computer link, via the Internet, or other similar
 46 method, to a purchaser who is in this State at the time the order is remitted,
 47 from a retailer who receives the order in another state and transports the
 48 property or causes it to be transported to a person in this State. It is presumed
 49 that a resident of this State who remits an order was in this State at the time
 50 the order was remitted."

51 **SECTION 3.(b)** The catch line of G.S. 105-164.8 reads as rewritten:

1 "§ 105-164.8. Retailer's obligation to collect tax; ~~mail-order-remote~~ sales subject to tax."

2 SECTION 3.(c) G.S. 105-164.8(b) reads as rewritten:

3 "(b) ~~Mail-Order-Remote~~ Sales. – A retailer who makes a ~~mail-order-remote~~ sale is
4 engaged in business in this State and is subject to the tax levied under this Article if at least one
5 of the following conditions is met:

- 6 (1) The retailer is a corporation engaged in business under the laws of this State
7 or a person domiciled in, a resident of, or a citizen of, this State.
- 8 (2) The retailer maintains retail establishments or offices in this State, whether
9 the ~~mail-order-remote~~ sales thus subject to taxation by this State result from
10 or are related in any other way to the activities of such establishments or
11 offices.
- 12 (3) ~~The retailer has representatives in this State who solicit business or transact~~
13 ~~business on behalf of the retailer, solicits or transacts business in this State~~
14 ~~by employees, independent contractors, agents, or other representatives~~
15 ~~whether the mail-order-remote sales thus subject to taxation by this State~~
16 ~~result from or are related in any other way to such the solicitation or~~
17 ~~transaction of business. A retailer is presumed to be soliciting or transacting~~
18 ~~business by an independent contractor, agent, or other representative if the~~
19 ~~retailer enters into an agreement with a resident of this State under which the~~
20 ~~resident, for a commission or other consideration, directly or indirectly refers~~
21 ~~potential customers, whether by a link on an Internet Web site or otherwise,~~
22 ~~to the retailer, if the cumulative gross receipts from sales by the retailer to~~
23 ~~purchasers in this State who are referred to the retailer by all residents with~~
24 ~~this type of agreement with the retailer is in excess of ten thousand dollars~~
25 ~~(\$10,000) during the preceding four quarterly periods. This presumption~~
26 ~~may be rebutted by proof that the resident with whom the retailer has an~~
27 ~~agreement did not engage in any solicitation in the State on behalf of the~~
28 ~~seller that would satisfy the nexus requirement of the United States~~
29 ~~Constitution during the four quarterly periods in question.~~
- 30 (4) Repealed by Session Laws 1991, c. 45, s. 16.
- 31 (5) The retailer, by purposefully or systematically exploiting the market
32 provided by this State by any media-assisted, media-facilitated, or
33 media-solicited means, including direct mail advertising, distribution of
34 catalogs, computer-assisted shopping, television, radio or other electronic
35 media, telephone solicitation, magazine or newspaper advertisements, or
36 other media, creates nexus with this State.
- 37 (6) Through compact or reciprocity with another jurisdiction of the United
38 States, that jurisdiction uses its taxing power and its jurisdiction over the
39 retailer in support of this State's taxing power.
- 40 (7) The retailer consents, expressly or by implication, to the imposition of the
41 tax imposed by this Article. For purposes of this subdivision, evidence that a
42 retailer engaged in the activity described in subdivision (5) shall be prima
43 facie evidence that the retailer consents to the imposition of the tax imposed
44 by this Article.
- 45 (8) The retailer is a holder of a wine shipper permit issued by the ABC
46 Commission pursuant to G.S. 18B-1001.1."

47 SECTION 4. G.S. 105-164.13(43a) is repealed.

48 SECTION 5. G.S. 105-467(a) is amended by adding a new subdivision to read:

49 "(8) The sales price of an audio work, audiovisual work, a book, and computer
50 software that is subject to the general rate of tax under
51 G.S. 105-164.4(a)(6b)."

1 **SECTION 6.** Section 4 of Chapter 1096 of the 1967 Session Laws, as amended,
2 reads as rewritten:

3 "Sec. 4. Scope of Sales Tax. The sales tax which may be imposed under this division after
4 the holding of a special election is limited to a tax at the rate of one per cent (1%) of: (1) the
5 sale price of those articles of tangible personal property now subject to the general rate of sales
6 tax imposed by the State under G.S. ~~105-164.4(a)(1) and (4b); 105-164.4(a)(1), (4b), and (6b);~~
7 (2) the gross receipts derived from the lease or rental of tangible personal property when the
8 lease or rental of the property is subject to the general rate of sales tax imposed by the State
9 under G.S. 105-164.4(a)(2); (3) the gross receipts derived from the rental of any room or
10 lodging furnished by any hotel, motel, inn, tourist camp or other similar public
11 accommodations now subject to the general rate of sales tax imposed by the State under G. S.
12 105-164.4(a)(3); (4) the gross receipts derived from services rendered by laundries, dry
13 cleaners, cleaning plants and similar type businesses now subject to the general rate of sales tax
14 imposed by the State under G.S. 105-164.4(a)(4); (5) The sales price of food and other items
15 that are not otherwise exempt from tax pursuant to G.S. 105-164.13 but are exempt from the
16 State sales and use tax pursuant to G.S. 105-164.13B; and (6) The sales price of prepaid
17 telephone calling service taxed as tangible personal property under G.S. 105-164.4(a)(4d). The
18 taxes authorized by this division do not apply to sales that are taxable by the State under
19 G.S. 105-164.4 but are not specifically listed in this section.

20 The exemptions and exclusions contained in G.S. 105-164.13 and the sales and use tax
21 holiday contained in G.S. 105-164.13C apply with equal force and like manner to the local
22 sales tax authorized to be imposed and levied under this division. The county shall have no
23 authority, with respect to the local sales and use tax imposed under this division, to change,
24 alter, add, or delete any exemptions or exclusions contained under G.S. 105-164.13.

25 The local sales tax authorized to be imposed and levied under the provisions of this division
26 shall be applicable to such retail sales, leases, rentals, rendering of services, furnishing of
27 lodging or accommodations and other taxable transactions which are made, furnished or
28 rendered by retailers whose place of business is located within the taxing county. The tax
29 imposed shall apply to the furnishing of rooms, lodging or other accommodations within the
30 county which are rented to transients. The sourcing principles in G.S. 105-164.4B apply in
31 determining whether the local sales tax applies to a transaction. Provided, however, no tax shall
32 be imposed where the tangible personal property sold is delivered by the retailer or his agent to
33 the purchaser at a point outside this State."

34 **SECTION 7.** Section 3 of this act is effective when it becomes law. The remainder
35 of this act becomes effective January 1, 2010, and applies to sales made on or after that date.