



**Sales and Use Tax Division
North Carolina Department of Revenue
Post Office Box 25000
Raleigh, North Carolina 27640-0001
www.dornc.com**

**IMPORTANT NOTICE: FREQUENTLY ASKED QUESTIONS FOR
NURSERYMEN, GREENHOUSE OPERATORS, AND LANDSCAPERS**

G.S. 105-164.4(a) provides that "[a] privilege tax is imposed on . . . the retailer's net taxable sales or gross receipts . . ." G.S. 105-164.3(24) provides that "net taxable sales" are "[t]he gross retail sales of the business . . . after deducting exempt sales and nontaxable sales." G.S. 105-164.4(a)(1) provides that the general State (4.75%) and applicable local sales tax (2.00%, 2.25% or 2.50%) applies to the sales price of each item or article of tangible personal property that is sold at retail, unless the item is specifically exempt from the tax or subject to a reduced rate of sales tax. G.S. 105-164.3(34) provides that the term "retail sale or sale at retail" shall mean "[t]he sale, lease, or rental for any purpose other than for resale, sublease, or subrent." G.S. 105-164.3(52) provides that the term "wholesale sale" shall mean "[a] sale of tangible personal property, digital property, or a service for the purpose of resale The term does not include a sale to a user or consumer not for resale"

General Questions and Answers

The following questions and answers are provided to offer guidance to persons engaged in business as nurserymen, greenhouse operators, and landscapers. The North Carolina Sales and Use Tax Technical Bulletins ("Technical Bulletins") may provide additional information or clarification. Section 9-1 D.1. of the Technical Bulletins states that "nurserymen and greenhouse operators are considered to be farmers." For purposes of the following questions and answers, G.S. 105-228.90(b)(5), provides in part, a "person" is "[a]n individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit."

For persons engaged in business as nurserymen or greenhouse operators, what is a producer for sales and use tax purposes?

Section 9-1 E.1. of the Technical Bulletins provides that persons "are selling primarily as producers when the total dollar sales volume of their produced farm products in the original state regularly exceeds 50% of the total dollar sales volume of their purchased products and their produced products."

Can persons engaged in business as nurserymen or greenhouse operators be considered the "producers" of a plant originally purchased from other producers?

Section 9-1 D.3. of the Technical Bulletins provides that "[n]ursery stock which is not sold during the season in which it was purchased by the nurserymen, greenhouse operators . . . but is retained until the

next season and growth is added thereto by virtue of such retention is considered to be a product of the farm and is exempt from sales and use taxes when sold by such nurserymen, greenhouse operators . . . **who are not selling primarily as retail merchants.**" Sales of nursery stock by nurserymen and greenhouse operators that operate primarily as retail merchants are subject to the general State and applicable local sales tax.

Is a person engaged in business as a nurseryman or greenhouse operator that grows a plant from seed planted by that person required to collect sales tax on the sale of the plant produced from the seed?

It depends on whether the person is primarily engaged in business as a "producer" or as a "retail merchant." G.S. 105-164.13(4b) provides an exemption from sales and use taxes for "[p]roducts of a farm sold in their original state by the producer of the products if the producer is not primarily a retail merchant" If the person is selling primarily as a producer, the sale of the plant produced from the seed is exempt from sales and use tax, provided the person maintains separate records to substantiate the gross receipts from sales of produced products. If the person is selling primarily as a retail merchant, the sale of the plant produced from the seed is taxable along with all other sales by the retail merchant as provided in Section 9-1 E.2. of the Technical Bulletins.

What constitutes "retail merchants" for persons engaged in business as nurserymen and greenhouse operators?

*Section 9-1 E.2. of the Technical Bulletins provides that persons "are selling primarily in their capacity as **retail merchants** when their total dollar sales volume of purchased products regularly exceeds 50% of the total dollar sales volume of their purchased and produced products."*

If the majority of sales by a person engaged in business as a nurseryman or greenhouse operator are plants that were purchased for resale by the nurseryman or greenhouse operator, is sales tax due on the plants sold by the nurseryman or greenhouse operator to customers?

Yes. A retail merchant is liable for collecting and remitting the general State and applicable local sales tax on all retail sales of plants unless specific sales are statutorily exempt from tax.

Are wholesale sales (sales for resale) of nursery and greenhouse products by nurserymen and greenhouse operators subject to sales tax?

Sales of nursery stock and other tangible personal property purchased for resale are exempt from tax when sold as long as the purchaser provides a Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, the Streamlined Sales Tax Agreement Certificate of Exemption (SST Form F0003), or the information required on the forms to the seller.

When is a seller relieved of the liability for collecting sales tax on a wholesale sale?

Section 52-5 A. of the Technical Bulletins provides that, "[f]or a sale for resale, a seller is relieved of liability for any additional tax that is subsequently determined to be due when the seller secures a sales and use tax registration number from a purchaser at the time of the sale If a paper certificate is provided, it must be signed by the purchaser. The Department shall relieve a seller of the tax otherwise applicable if it obtains a blanket exemption certificate for a purchaser with which the seller has a

recurring business relationship." A recurring business relationship exists when a period of no more than twelve months elapses between sales transactions. **This relief from liability does not apply:**

- To a seller who fraudulently fails to collect tax;
- To a seller who solicits purchasers to participate in the unlawful claim of an exemption; and
- To a seller who 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 actually received by the purchaser at a location operated by the seller in the State and;
 - The Department's Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, clearly and affirmatively indicates (graying out exemption reason types on the form and posted on the state's web site) that the claimed exemption is not available in this State.

Are sales for resale by a person engaged in business as a nurseryman or greenhouse operator who is selling primarily as a producer exempt from sales tax?

Yes. Sales of produced nursery stock in its original state by the producer who is selling primarily as a producer (see definition of producer discussed previously) for resale are exempt from sales and use tax. The seller is not required to obtain exemption certificates from customers in conjunction with such sales. However, the seller is required to maintain records and documentation to identify the items are sales of produced products.

When is a seller relieved of the liability for collecting sales tax on exempt sales other than wholesale sales?

Section 52-5 A. of the Technical Bulletins states "[w]hen a customer makes a qualifying purchase as indicated on the Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, and furnishes a properly completed Certificate of Exemption or the information required on the form to a seller at the time of the sale, the seller is relieved of the liability for any additional tax that is subsequently determined to be due, and the purchaser has assumed liability for the tax. If the seller obtains a fully completed exemption certificate or captures the relevant data elements within 90 days subsequent to the date of sale, the Department shall relieve a seller of the tax otherwise applicable. In the absence of proper documentation to support an exemption from tax, the seller will be held liable for any additional tax determined to be due." Section 52 has more information regarding Certificates of Exemption. Also, as noted in the prior question, sales of produced nursery stock in its original state by the producer who is selling primarily as a producer are not subject to tax and such sales are not required to be supported by certificates of exemption obtained from purchasers.

What is a performance contract?

Section 31-1 A. of the Technical Bulletins states in part, "[i]n order to establish if a transaction constitutes a performance contract, the tenor of the agreement is for the contractor to perform a job, retaining the right to control the means, the method, and the manner of accomplishing the desired

result. A performance contract does not provide for a sale of specific items; rather, the contractor agrees to furnish the necessary materials, labor, and expertise to accomplish the job. With a performance contract, responsibility for the job and title to the materials purchased by the contractor remain with the contractor until the job is completed and accepted by the purchaser/owner. The contractor is liable for accidents or injury at the job site and loss or damage due to vandalism, neglect, theft, and fire.”

An example of a performance contract may be a transaction in which a contractor enters into a contract with a customer to install a complete landscaping project designed by a third party landscaping architect. The contract provides for the installation of an irrigation system, building raised flower beds, installation of shrubs, mulch, and installation of a sidewalk. The contractor bills the customer for a lump sum and does not list the specific items (number of shrubs, listing of irrigation equipment) transferred from the contractor to the customer at the completion of the job.

Another example of a performance contract may be a transaction in which a landscaper agrees to landscape a designated area for a customer. The transaction includes creation of a landscape plan, grading, movement of soil with heavy equipment, construction of a retaining wall and solid walkways, and installation of a drainage system. The landscaper bills the customer one amount and the invoice issued to the customer does not itemize the tangible personal property used by the landscaper.

Are materials used in conjunction with performance contracts entered into by landscape contractors and others subject to sales and use tax?

Landscape contractors and others who enter into performance or construction contracts are liable for payment of the general State and applicable local sales or use tax on taxable tangible personal property purchased for use in fulfilling such contracts with their customers. The tax should be paid directly to vendors who are registered to collect and remit North Carolina sales and use tax. If taxable items are purchased from out-of-State vendors who are not registered to collect and remit the general State and applicable local use tax due in this State, the contractor is liable for accruing and remitting the tax due directly to this Department. The sales and use tax paid by the contractor should not be itemized separately on the invoice given to the customer but, instead, should be included, along with any other costs, as an element in the total contract price. Purchases by landscape contractors of products of the forests, mines, and farm in their original state from producers of the products, who are not primarily engaged in business as retail merchants, are not subject to sales or use tax.

Is the charge by a retail merchant for planting shrubs and plants in conjunction with the sale of the shrubs and plants subject to sales and use tax?

G.S. 105-164.13(49) exempts from sales and use tax “[i]nSTALLATION charges when the charges are separately stated on an invoice or similar billing document given to the purchaser at the time of sale.” If the retail merchant charges one amount for the sale and installation of plants and shrubs, the entire sales price is subject to sales tax without any deduction for the installation charges.

If a nurseryman only sells trees grown from seed planted by the nurseryman, is the charge for planting the tree sold to a customer subject to sales and use tax?

This nurseryman is a producer that sells exclusively as a producer of products grown by the nurseryman. The sale of the tree grown by the producer is exempt from tax; therefore, the installation charge to plant the tree is exempt from sales and use tax.

Are rentals of equipment for use by nurserymen, greenhouse operators, landscape contractors, or others subject to sales tax?

The lease or rental of equipment for use in conducting a business is subject to the general State and applicable local sales tax. Sales tax should be paid directly to the rental firms from whom the equipment is leased or rented unless the equipment qualifies for a statutory exemption. For example, a rental of farm machinery by a nurseryman, greenhouse operator, or farmer for use in the planting, cultivating, or harvesting of plants is exempt from tax per G.S. 105-164.13(1)b.

Are purchases of sand, gravel, pine straw, bark, and similar items, whether in bulk or bagged, subject to sales tax?

Purchases of sand, gravel, pine straw, bark, and similar items by a person for the purpose of resale are exempt from tax when the person provides a Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, the Streamlined Sales Tax Agreement Certificate of Exemption (SST Form F0003), or provides the information required and noted in Section 52-5 A. of the Technical Bulletins.

Sales of tree bark, sand, gravel, and pine straw produced by a person selling primarily as a producer, are exempt from sales and use tax and the producer must be able to document that such sales are exempt from tax.

Sales by a retail merchant of tree bark, sand, gravel, and pine straw who purchased the items for resale from the producer are subject to sales and use tax when resold unless the purchaser issues an exemption certificate or unless another statutory exemption applies to the transaction.

Are shrubs and trees sold by persons engaged in the business as “retail merchants” in North Carolina and shipped to the purchaser outside of North Carolina subject to North Carolina sales tax?

Section 42-1 A. of the Technical Bulletins provides that sales within the State of tangible personal property which the seller delivers to the purchaser at a point outside the State, or which the seller delivers to a common carrier or to the mails for transportation and delivery to the purchaser at a point outside the State, are not subject to the general State and applicable local sales tax, provided the property is not returned to a point within this State and the seller furnishes acceptable proof of transportation to a point outside the State.

Are shrubs and trees sold by “retail merchants” in North Carolina and shipped to the purchaser inside of North Carolina subject to North Carolina sales tax?

Section 42-1 D. of the Technical Bulletins provides that sales of tangible personal property delivered in this State to the purchaser or his agent, if such agent is not a carrier, are subject to the general State tax and applicable local sales or use tax, notwithstanding that the purchaser may subsequently transport, or employ someone else to transport, the property out of this State. Shrubs and trees sold in their original state by the producers of the products selling primarily as producers are exempt from sales tax when shipped to the purchaser inside of North Carolina.

What is use tax?

G.S. 105-164.6(a) provides that the use tax is an excise tax due on purchases, leases, and rentals of tangible personal property and certain digital property purchased, leased or rented for storage, use, or consumption in North Carolina. Use tax is also due on taxable services sourced to North Carolina. A credit is allowed for sales tax due and paid to this State or another state. Person engaged in business should report any use tax due on purchases to the Department on Form E-500, Sales and Use Tax Return. Exemptions in G.S. 105-164.13 apply to certain purchases.

Is tax due on items purchased by persons engaged in business as nurserymen, greenhouse operators, and landscapers?

*Purchases of taxable tangible personal property by nurserymen, greenhouse operators, and landscapers for use in this State in the operation of their businesses and not for the purpose of resale are subject to the general State and applicable local sales or use tax, **unless** the items are statutorily exempt from tax. Point of sale systems and display racks are examples of items subject to tax at the State and applicable local rates of sales and use tax.*

Specific Items Purchased by Nurserymen, Greenhouse Operators, and Similar Persons Engaged in Business

G.S. 105-164.28A authorizes the Department to issue an agricultural exemption number to nurserymen and greenhouse operators to purchase qualifying items without payment of sales and use tax. See the [Frequently Asked Questions](#) for more information on how to apply for an exemption number. The agricultural exemption number issued by the Department should be entered on Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, to purchase qualifying tangible personal property exempt from sales or use tax.

The following questions and responses are related to specific purchases by nurserymen, greenhouse operators, and similar persons engaged in business as nurserymen and greenhouse operators. For additional information, see Sections 8, 9, and 10 of the Technical Bulletins.

Are purchases by nurserymen and greenhouse operators of farm machinery, attachments and repair parts for farm machinery, and lubricants applied to farm machinery, for the purpose of planting, cultivating, or harvesting of farm crops subject to sales and use tax?

G.S. 105-164.13(1)b. exempts from sales or use tax “[f]arm machinery, attachment and repair parts for farm machinery and lubricants applied to farm machinery” when sold to nurserymen and greenhouse operators for use in the planting, cultivating, or harvesting of farm crops. “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.” See Section 8 of the Technical Bulletins for examples of farm machinery.

Are containers, such as pots, purchased by nurserymen or greenhouse operators and used for the purpose of planting, cultivating, or harvesting of farm crops or for use in the packaging and transporting of products produced by the nurserymen or greenhouse operators for sale, subject to sales and use tax?

G.S. 105-164.13(1a)a. exempts from sales or use tax a container used for planting, cultivating, harvesting, or curing of farm crops or in packaging and transporting product for sale produced by nurserymen and greenhouse operators.

Are purchases by nurserymen or greenhouse operators of commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, and potting soil subject to sales and use tax?

G.S. 105-164.13(1)a. exempts from sales and use tax “[c]ommercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, and potting soil . . . and seeds” when sold to a nurseryman or a greenhouse operator for use in the planting, cultivating, harvesting, or curing of farm crops (plants). For more information, refer to Section 8 of the Technical Bulletins.

Are sales and purchases of insecticides, herbicides, fungicides, rodenticides, pesticides, plant growth inhibitors, regulators, or stimulators, purchased for use on plants held or produced for commercial purposes, subject to sales and use tax?

G.S. 105-164.13(2a)b. and d. exempt from sales or use tax insecticides, herbicides, fungicides, rodenticides, pesticides, plant growth inhibitors, regulators, or stimulators when purchased for use on plants held or produced for commercial purposes. Section 10 of the Technical Bulletins provides the following definitions:

- “Insecticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects.
- “Fungicide” means any substance or mixture of substances intended for preventing, repelling, or mitigating any fungi or plant disease.
- “Herbicide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.
- “Rodenticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents.
- “Pesticide” means any substance used to kill rats, mites, insects, fungi, and bacteria.

Are purchases of seeds, bulbs, and small plants (transplants, i.e., tomato and pepper) by persons engaged in business as nurserymen or greenhouse operators, subject to sales and use tax?

G.S. 105-164.13(1)a. exempts from sales and use tax purchases of seeds when purchased by persons engaged in business as nurserymen or greenhouse operators, provided such seed is for use by the persons in the planting of crops (trees, shrubs, etc.). Section 10-1 A. of the Technical Bulletins defines “seeds” as, “seeds in their generally accepted sense and includes flower seed, sets, tubers, roots, tobacco plants, tomato plants, pepper plants, potato plants, and other small plants that are raised in beds or hothouses for transplanting. The term ‘seeds’ shall not include potted plants, trees, shrubs, cut flowers and other larger plants.”

Are fuel purchases by persons engaged in business as nurserymen or greenhouse operators subject to sales and use tax?

G.S. 105-164.13(1)d. exempts from sales and use tax purchases of fuel by persons engaged in business as nurserymen or greenhouse operators, provided such fuel is for use in the planting,

cultivating, harvesting, or curing of farm crops. Other purchases of fuel by such persons may be subject to sales and use tax at the general State and applicable local rate of tax. Fuel includes, but is not limited to, bottled gas, coal, coke, fuel oil, oxygen, acetylene, hydrogen, and liquefied petroleum gas.

Are the gross receipts derived from sales of electricity to persons engaged in business as nurserymen or greenhouse operators subject to sales and use tax?

G.S. 105-164.13(1b) exempts from sales and use tax the gross receipts derived from electricity sold to persons engaged in business as nurserymen or greenhouse operators provided the electricity is for farming purposes, "other than preparing food, heating dwellings, and other household purposes." The gross receipts derived from electricity measured through a single meter and used for farming purposes and also for preparing food, heating dwellings, and other household purposes, do not qualify for the exemption; therefore, such gross receipts are subject to sales tax at the three percent (3%) State sales tax rate, pursuant to G.S. 105-164.4(a)(4a)

Are all items or components related to a greenhouse structure or contents within a structure subject to sales and use tax when sold to a person engaged in business as a nurseryman or greenhouse operator?

The following items are exempt from sales and use tax when sold to a person engaged in business as a nurseryman or greenhouse operator:

- Sidecurtain material for automatic rollup (automatic temperature sensor controlled winch)
- Heaters and heater components
- Fans and fan components
- Clipping systems
- Seeding systems
- Floatbed recirculation system
- Growing trays

The following items are subject to the general State and applicable local sales and use tax rates:

- Metal framework components for greenhouse structure
- Plastic covering for the tops
- Floatbed film/plastic
- Fastening hardware (i.e. nuts, carriage bolts, etc.) attached to structure
- Sidewall components
- Sidecurtain material for manual rollup (raised and lowered by crank handle or mechanical winch)
- Endwall coverings (i.e. plastic, fiberglass, polygal)
- Metal extrusion systems for holding plastic down
- Carts and tables
- Tray cleaning chemicals
- Glazing materials
- Shade fabric, ground cover, and landscape cloth

Questions about this notice can be directed to the Taxpayer Assistance and Collection Center at telephone number 1-877-252-3052 (toll-free) or in writing to the Taxpayer Assistance Division, North Carolina Department of Revenue, PO Box 25000, Raleigh, N.C. 27640-0001.