



Sales and Use Tax Division

This form includes an overview of many changes primarily enacted by the 2018 Session of the General Assembly to the taxes administered by the Sales and Use Tax Division and changes of interpretation by the Secretary of Revenue. The annual *Tax Law Changes* publication produced by the Department should be available by the end of the calendar year on the Department's website, www.ncdor.gov, and will contain detailed explanations of the 2018 legislative changes. To receive information published by the Department by email, subscribe to the Department's Tax Updates Email List ("eAlerts") at www.ncdor.gov. Legislative changes may supersede any information previously set forth in the Sales and Use Tax Administrative Rules, Technical Bulletins, Notices, Directives, Private Letter Rulings, or other information published by the Department relating to any subject matter of the legislation.

As of October 1, 2018, the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax imposed on the sales price of or the gross receipts derived from the retail sale of tangible personal property, certain digital products, and certain services is 6.75% in sixty (60) counties; 7.00% in Alexander, Anson, Ashe, Buncombe, Cabarrus, Catawba, Cherokee, Clay, Cumberland, Davidson, Duplin, Edgecombe, Gaston, Greene, Halifax, Harnett, Haywood, Hertford, Jackson, Jones, Lee, Lincoln, Martin, Montgomery, New Hanover, Onslow, Pasquotank, Pitt, Randolph, Robeson, Rockingham, Rowan, Rutherford, Sampson, Surry, and Wilkes Counties; 7.25% in Mecklenburg and Wake Counties; and 7.50% in Durham and Orange Counties.

The combined general rate of sales and use tax imposed on the sales price of or the gross receipts derived from telecommunications service and ancillary service, video programming, piped natural gas, electricity, antique spirituous liquor and spirituous liquor other than mixed beverages, and aviation gasoline and jet fuel continues to be 7.00% in all one hundred (100) counties.

PART I: SALES TAX CHANGES

Effective for filing periods beginning on or after March 1, 2016 and ending prior to January 1, 2019

Sales Tax Base Expansion Protection Act – N.C. Gen. Stat. § 105-244.3(a), as amended, provides, "[t]he Department shall take no action to assess any tax due for a filing period beginning on or after March 1, 2016, and ending prior to January 1, 2019, if one or more of the conditions of this subsection apply and the retailer did not receive specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable periods. Except as otherwise provided, this subsection also applies to use tax liability imposed on a purchaser under [N.C. Gen. Stat. §] 105-164.6. The conditions are as follows:

...

- (8) A person failed to collect sales tax on the taxable portion of a mixed service contract that exceeds ten percent (10%) for a transaction on or after January 1, 2017, and prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed contract.
- (8a) A person failed to collect sales tax on the taxable portion of a mixed transaction contract that exceeds twenty-five percent (25%) for a transaction on or after January 1, 2017, and prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed transaction contract.
- (8b) A person failed to collect sales tax on the taxable portion of a bundled transaction that included a contract for two [or] more services, one of which was subject to tax and one of which was not subject to tax, for a transaction on or after March 1, 2016, and prior to January 1, 2017.

- ...
- (10) A person failed to collect sales tax on repair, maintenance, and installation services for tangible personal property, motor vehicles, and digital property."

The conditions shown above are new conditions or conditions that include substantive changes. Refer to the [Updated Important Notice: Sales Tax Base Expansion Protection Act](#) revised by the Department on September 10, 2018 and available on the Department's website for a complete list of conditions and the filing periods affected.

Effective June 12, 2018

Definition of Sales Price – N.C. Gen. Stat. § 105-164.3(37)a., as amended, clarifies that "[t]he amount of any credit for trade-in is not a reduction of the sales price."

Tax Imposed on Retailers and Certain Facilitators – N.C. Gen. Stat. § 105-164.4(a), as amended, merges the imposition of sales and use tax on sales of repair, maintenance, and installation services with the applicable impositions of sales and use tax on sales of tangible personal property, certain digital property, and services. This change alleviates the necessity of determining whether the imposition is on the sale of an item plus installation or on the sale of repair, maintenance, and installation services.

Sourcing of Prewritten Computer Software Renewal – N.C. Gen. Stat. § 105-164.4B(i), is added and provides that "[t]he gross receipts derived from the renewal of a service contract for prewritten software is generally sourced pursuant to [the general principles in N.C. Gen. Stat. § 105-164.4B(a)]. However, sourcing the renewal to an address where the purchaser received the underlying prewritten software does not constitute bad faith provided the seller has not received information from the purchaser that indicates a change in the location of the underlying software." Refer to the [Important Notice: Principles of Sourcing the Renewal of a Service Contract for Prewritten Computer Software](#) published by the Department on September 10, 2018 and available on the Department's website for additional information.

Refund Procedures First Remedy – N.C. Gen. Stat. § 105-164.11(b), as amended, clarifies that "[w]here a person recovers tax under [N.C. Gen. Stat. §] 105-164.11B, a refund or credit under this section is not allowed by the Secretary."

Recover Sales and Use Tax Paid – N.C. Gen. Stat. § 105-164.11B, is added and provides that "[a] retailer who pays sales and use tax on property or services and subsequently resells the property or services at retail, without the property or service being used by the retailer, may recover the sales or use tax originally paid to a seller as provided in this section. A retailer entitled to recover tax under this section may reduce taxable receipts by the taxable amount of the purchase price of the property or services resold for the period in which the retail sale occurs. A recovery of tax allowed under this section is not an overpayment of tax and, where such recovery is taken, a refund of the tax originally paid should not be requested pursuant to the authority under [N.C. Gen. Stat. §] 105-164.11. Any amount for tax recovered under this section in excess of tax due for a reporting period under [Article 5 of Chapter 105 of the North Carolina General Statutes] is not subject to refund. Any tax recovered under this section may be carried forward to a subsequent reporting period and taken as an adjustment to taxable receipts. The records of the retailer must clearly reflect and support the adjustment to taxable receipts for the period in which the adjustment is made." Refer to the [Important Notice: Retailer May Recover Certain Sales and Use Tax Paid](#) published by the Department on October 1, 2018 and available on the Department's website for additional information.

PART II: MISCELLANEOUS SALES AND USE TAX EXEMPTIONS OR EXCEPTIONS

Effective retroactively to July 1, 2014, for sales and purchases occurring on or after such date

Qualifying and Conditional Farmers – N.C. Gen. Stat. § 105-164.13E(a), as amended, clarifies that "[a] qualifying farmer includes a dairy operator, a poultry farmer, an egg producer, and a livestock farmer, a farmer

of crops, a farmer of an aquatic species, as defined in [N.C. Gen. Stat. §] 106-758, and a person who boards horses.”

N.C. Gen. Stat. § 105-164.13E(c1) is added and provides “[a] qualifying item listed in [N.C. Gen. Stat. § 105-164.13E(a)(6)] purchased to fulfill a service for a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate issued under [N.C. Gen. Stat. §] 105-164.28A is exempt from sales and use tax to the same extent as if purchased directly by the person who holds the exemption certificate. A person that purchases one of the items allowed an exemption under [N.C. Gen. Stat. § 105-164.13E(a)(6)] must provide an exemption certificate to the retailer that includes the name of the purchaser and an exemption number issued to the purchaser by the Department pursuant to [N.C. Gen. Stat. §] 105-164.28A. A person that purchases an item exempt from tax pursuant to [N.C. Gen. Stat. § 105-164.13E(a)(6)] must maintain records to substantiate that an item is used to provide a service for a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate.”

N.C. Gen. Stat. § 105-164.13E(a)(6) provides an exemption from sales and use tax for “[a]ny of the following substances when purchased for use on animals or plants, as appropriate, held or produced for commercial purposes. This exemption does not apply to any equipment or devices used to administer, release, apply, or otherwise dispense these substances:

- a. Remedies, vaccines, medications, litter materials, and feeds for animals.
- b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.
- c. Defoliant for use on cotton or other crops.
- d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.
- e. Semen.”

Refer to the [Important Notice: Qualifying Farmer and Conditional Farmer Exemption Expansion](#) published by the Department on September 6, 2018 and available on the Department’s website for additional information.

Effective June 12, 2018

Entertainment Activity Exceptions – N.C. Gen. Stat. § 105-164.4G(e), as amended, clarifies that the tax imposed in N.C. Gen. Stat. § 105-164.4G “does not apply to the following:

- (1) An amount paid solely for the right to participate, other than to be a spectator, in sporting activities. Examples of these types of charges include bowling fees, golf green fees, and gym memberships.
- (2) Tuition, registration fees, or charges to attend instructional seminars, conferences, or workshops for educational purposes.
- (3) A political contribution.
- (4) A charge for lifetime seat rights, lease, or rental of a suite or box for an entertainment activity, provided the charge is separately stated on an invoice or similar billing document given to the purchaser at the time of sale.
- (5) An amount paid solely for transportation.
- (6) An amount paid for the right to participate, other than to be a spectator, in the following activities:
 - a. Rock climbing, skating, skiing, snowboarding, sledding, zip lining, or other similar activities.
 - b. Instruction classes related to the items included in sub-subdivision a. of this subdivision.
 - c. Riding on a carriage, boat, train, plane, horse, chairlift, or other similar rides.
 - d. Amusement rides, including a waterslide.”

Refer to the [Important Notice: Spectators Subject to Sales and Use Tax for Admission Charges to Entertainment Activities](#) published by the Department on September 10, 2018 and available on the Department’s website for additional information.

Sales of Qualifying Mill Machinery, Mill Machinery Parts or Accessories – N.C. Gen. Stat. § 105-164.13(5e), as amended, clarifies that “the term ‘accessories’ does not include electricity.”

Drugs – N.C. Gen. Stat. § 105-164.13(13), as amended, clarifies the exemption from sales and use tax for “[a]ll of the drugs listed in [N.C. Gen. Stat. § 105 164.13(13)], including their packaging materials and any instructions or information about the drugs included in the package with them. This subdivision does not apply to pet food or feed for animals. The drugs exempt under this subdivision are as follows:

- a. Drugs required by federal law to be dispensed only on prescription.
- b. Over-the-counter drugs sold on prescription. This sub-subdivision does not apply to purchases of over-the-counter drugs by hospitals and other medical facilities for use and treatment of patients.
- c. Insulin.”

Bad Debts or Worthless Accounts – N.C. Gen. Stat. § 105-164.13(15), as amended, clarifies for purposes of this exemption from sales and use tax, “a worthless account of a purchaser is a ‘bad debt’ as allowed under section 166 of the Code. The amount calculated pursuant to section 166 of the Code must be adjusted to exclude financing charges or interest, sales or use taxes charged on the sales price, uncollectible amounts on property that remains in the possession of the seller until the full purchase price is paid, expenses incurred in attempting to collect any debt, and repossessed property.”

PART III: CHANGES OF INTERPRETATION

Effective September 1, 2018

Application of Tax Change to Certain Monthly or Other Periodic Lease or Rental Billings – Pursuant to Sales and Use Tax Directive SD-18-2, the Secretary changed the interpretation regarding persons who lease or rent tangible personal property or digital property by requiring the person to collect and remit the applicable rate(s) of sales and use tax on the gross receipts derived from leases or rentals in effect on the day of the billing, no matter that the lease or rental agreement was entered into prior to September 1, 2018, unless such lease receipts are otherwise exempt from sales and use tax. Refer to [Sales and Use Tax Directive SD-18-2](#) published by the Department on May 21, 2018 and available on the Department’s website for additional information.

Gift Wrap Charges and Services – Pursuant to Sales and Use Tax Directive SD-18-3, the Secretary changed the interpretation regarding the taxability of gift wrap charges in conjunction with the retail sale of tangible property, subsequent to the retail sale of tangible personal property, or a charge by another person for gift wrap services only. Any charge for gift wrap or gift wrap services sold at retail are subject to the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax. Refer to [Sales and Use Tax Directive SD-18-3](#) published by the Department on May 25, 2018 and available on the Department’s website for additional information.

Charges for Shop Supplies – Pursuant to Sales and Use Tax Directive SD-18-4, the Secretary changed the interpretation regarding the taxability of a separately stated charge made by a retailer for shop supplies in conjunction with the retail sale of tangible personal property. Separately stated charges for shop supplies are part of the retail sales price of tangible personal property sold, to repair a motor vehicle, tangible personal property, a boat, or other tangible item subject to the sales and use taxes imposed under N.C. Gen. Stat. §§ 105-164.4(a) and 105-164.6.

Any charge for shop supplies, whether separately stated or not, in connection with a retail sale of tangible personal property or repair, maintenance, and installation services is subject to the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax. Refer to [Sales and Use Tax Directive SD-18-4](#) published by the Department on May 25, 2018 and available on the Department’s website for additional information.

Photograph Tint or Color Charges – Pursuant to Sales and Use Tax Directive SD-18-5, the Secretary changed the interpretation regarding the taxability of charges by a retailer to tint or color a consumer’s photograph delivered by the consumer to the retailer. Any charge for services to tint or color a consumer’s tangible or digital photograph, whether provided by the consumer or not, is subject to tax as repair, maintenance, and installation services. The receipts from such services are subject to the 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax. Refer to [Sales and Use Tax Directive SD-18-5](#) published by the Department on May 25, 2018 and available on the Department’s website for additional information.