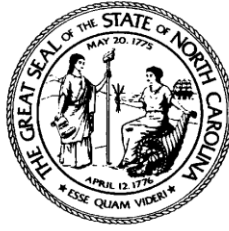

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DIRECTIVE

Subject: Gift Wrap Charges and Services
Tax: Sales and Use Tax
Law: N.C. Gen. Stat. §§ 105-164.4(a) and 105-164.4(a)(16)
Issued By: Sales and Use Tax Division
Date: May 25, 2018
Number: SD-18-3

This directive is issued under the authority granted the Secretary of Revenue pursuant to N.C. Gen. Stat. § 105-264 to address the application of sales and use tax to gift wrap charges and gift wrap services.

Changes of Interpretation

Pursuant to the authority granted in N.C. Gen. Stat. § 105-264(c), the Secretary changes the interpretation of 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. **Effective September 1, 2018**, 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.

Impositions

The sales price of each item or article of tangible personal property sold at retail and that is not subject to tax under another subdivision of N.C. Gen. Stat. § 105-164.4(a), is subject to the general State, applicable local, and applicable transit rates of sales and use tax.¹ If the tax due is not paid at the time of purchase, an excise tax is applicable, at the same rate, to the purchase price of the tangible property for storage, use, or consumption in the State.²

The sales price of or the gross receipts derived from repair, maintenance, and installation services sold at retail are subject to the general State, applicable local, and applicable transit rates of sales and use tax, and generally, include any tangible personal property that becomes a part of or is applied to a purchaser's property.³ If the tax due is not paid at the time of purchase, an excise

¹ N.C. Gen. Stat. §§ 105-164.3(34), (37), (46) and 105-164.4; Subchapter VIII of Chapter 105 of the North Carolina General Statutes; and Chapter 1096 of the 1967 Session Laws.

² N.C. Gen. Stat. § 105-164.6; Subchapter VIII of Chapter 105 of the North Carolina General Statutes; and Chapter 1096 of the 1967 Session Laws.

³ N.C. Gen. Stat. §§ 105-164.3(33/) and 105-164.4(a)(16); Subchapter VIII of Chapter 105 of the North Carolina General Statutes; and Chapter 1096 of the 1967 Session Laws.

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tax is applicable, at the same rate, to the purchase price of repair, maintenance, and installation services sourced to the State.

Definitions

The definitions contained in this section are defined in N.C. Gen. Stat. § 105-164.3, unless otherwise noted.

“Apply”⁴ – To put or spread onto a surface.

“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.

“Install”⁵ – To fix in position for use.

“Person”⁶ – “An 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. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter, of G.S. 55-16-22, of Article 81 of Chapter 106 of the General Statutes, or of Article 3 of Chapter 119 of the General Statutes.”

“Purchase price” – “The term has the same meaning as the term ‘sales price’ when applied to an item subject to use tax.”

“Repair, maintenance, and installation services” – The term is defined, in part, as “[t]o install, apply, connect, adjust, or set into position tangible personal property.”

“Retail sale or sale at retail” – “The sale, lease, or rental for any purpose other than for resale, sublease, or subrent.”

“Retailer” – The term is defined, in part, as “[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 . . . A person, other than a real property contractor, engaged in business of delivering, erecting, installing, or applying tangible personal property . . . for use in this State.”

“Sales price” – The term is defined, in part, as “[t]he 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.” The term includes the retailer’s cost of the property sold; 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; charges by the retailer for any services necessary to complete the sale, delivery charges, installation charges, credit for trade-in; and certain discounts that are reimbursable by a third party and can be determined at the time of the sale.

⁴ Directive SD-15-1.

⁵ Directive SD-15-1.

⁶ N.C. Gen. Stat. § 105-228.90(b)(5).

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“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.”

Gift Wrap Part of the Sales Price of an Item Sold

When a retailer or other person liable for sales and use tax, makes a retail sale of tangible personal property and gift wraps the property for no extra charge, the gift wrap components, including the paper, ribbon, bow, and other tangible personal property used by the retailer to wrap the property sold, are part of the sales price of the property sold. Gift wrap provided at no extra charge by the retailer is a part of the sales price of the tangible personal property sold whether the gift wrap of the property takes place at the point of delivery to the consumer or occurs at one of the retailer’s gift wrap stations subsequent the point of delivery.⁷

Purchases of Gift Wrap Supplies and Items

Gift wrap supplies and other tangible personal property that will be sold at retail as part of the sales price of tangible personal property or as repair, maintenance, and installation services (“gift wrap service”), should be purchased without payment of sales and use tax. To purchase such tangible personal property exempt from sales and use tax, a person should issue [Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption](#), to the seller as the seller’s authority to sell the tangible personal property exempt from sales and use tax. Alternatively, the data elements, as required by N.C. Gen. Stat. § 105-164.28(a) to substantiate an exemption, may be provided to the seller.

Sales or Use Tax Due on Certain Purchases

A person is liable for sales and use tax at the time of purchase on any tool, equipment, supply, or similar tangible personal property that is used to complete the gift wrap service but does not become a part of or is not applied to tangible personal property sold at retail or a customer’s property.

Additionally, where a person provides a gift wrap box, bow, tissue paper, or other similar item free of charge to a consumer, and the person does not wrap the item for the consumer, the person is liable for sales or use tax on the purchase price of the items given free to the consumer.⁸ Such items do not constitute a part of the sale, as the items are not used for packaging, shipment, or delivery of tangible personal property sold at retail.

Receipts from Certain Gift Wrap Services Exempt from Sales and Use Tax⁹

The sales price of or the gross receipts derived from gift wrap services by a nonprofit civic, charitable, educational, scientific, literary, or fraternal organization are specifically exempt from sales and use tax provided **all** of the following conditions are met:

- The sales are conducted only upon an annual basis for the purpose of raising funds for the organization’s activities.
- The proceeds of the sale are actually used for the organization’s activities.
- The products sold are delivered to the purchaser within 60 days after the first solicitation of any sale made during the organization’s annual sales period.

⁷ N.C. Gen. Stat. § 105-164.13(23).

⁸ N.C. Gen. Stat. § 105-164.12C.

⁹ N.C. Gen. Stat. § 105-164.13(35).

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Purchases of gift wrap supplies by such qualifying organization, provided all of the required conditions are met, 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. The exemption in N.C. Gen. Stat. § 105-164.13(61a) does not apply to such purchases. Where a sales tax is not paid at the time of purchase, the qualifying organization is liable for the use tax imposed under N.C. Gen. Stat. § 105-164.6.

To the extent that there is any change in the rate or amount of tax, change to a statute or regulation, or new case law subsequent to this directive, the provisions in this directive may be superseded or voided. To the extent that any provisions in any other notice, directive, technical bulletin, or published guidance issued prior to the date of this directive conflicts with this directive, the provisions contained in this directive supersede. Specifically, 17 NCAC 07B .3911, last amended effective November 1, 1994, will be submitted to the Rules Review Commission for repeal or amendment. Additionally, the technical bulletins will be modified to correspond with the changes of interpretation contained in this directive.