SECTION 21- TELECOMMUNICATIONS, TELEGRAPH AND CELLULAR TELEPHONE COMPANIES

21-1 TELECOMMUNICATIONS AND TELEGRAPH COMPANIES

A. **Prior to January 1, 2006,** sales to telecommunications and telegraph companies regularly engaged in providing telephone and telegraphic services to subscribers on a commercial basis of central office equipment, switchboard and private branch exchange equipment and prewritten computer programs used in providing telecommunications service to subscribers were subject to the 1% State rate of sales or use tax with a maximum tax of $80.00 per article. For the purpose of determining the items that may be properly included in the terms central office equipment, switchboard equipment and private branch exchange equipment, reference is made to Accounts 2124, 2211, 2212, 2220, 2231, 2232, 2311, and 2341 of Title 47 -- Telecommunication Chapter 1, Part 32, Uniform System of Accounts For Telecommunications Companies, of the Federal Communications Commission's rules and regulations which are hereby incorporated by reference. This Bulletin has no application to future changes in the Federal Communications Commission's rules and regulations until such changes are reviewed by the Secretary of Revenue to determine the application of tax to the tangible personal property affected by such changes.

B. **Effective January 1, 2006,** sales to a telephone company engaged in providing telephone service to subscribers on a commercial basis of the equipment listed in Paragraph A, and parts and accessories attached to the equipment, that were previously subject to the 1% State rate of tax with a maximum tax of $80.00 per article are exempt from tax. The exemption does not apply to sales to a telephone company of prewritten computer programs previously subject to the 1% rate of tax that are used in providing telephone service to subscribers; therefore, **effective January 1, 2006,** such sales are subject to the general rate of State tax and applicable local tax. In addition, sales of terminal equipment other than public pay telephone terminal equipment and parts and accessories attached to the equipment are exempt from sales and use tax. For the purpose of determining the items that may be properly included in the term **"terminal equipment other than public pay telephone terminal equipment,"** reference is made to Account 2362 of Title 47 -- Telecommunication Chapter 1, Part 32, Uniform System of Accounts For Telecommunications Companies, of the Federal Communications Commission's rules and regulations.

C. **Accounts 2211, 2212, 2220, 2231 and 2232; Central Office Equipment**

These accounts include switchboards and other equipment, instruments and apparatus necessary to the functions of central offices. **Prior to January 1, 2006,** sales to and purchases by the above-referred to telecommunications and telegraph companies of the items included in Central Office Equipment Accounts were subject to the 1% State rate of sales or use tax with a maximum tax of $80.00 per article, irrespective of whether the items are classified in the Uniform System of Accounts as capital expenditures or as maintenance expense. **Effective January 1, 2006,** the items in this paragraph that were previously subject to the 1% State rate of tax with a maximum tax of $80.00 per article are exempt from sales and use tax. Examples of items contained in Central Office Equipment Accounts 2211, 2212, 2220, 2231 and 2232 which were, and which continue to be, taxable at the general rate of State tax and any applicable local sales or use tax are:

1. aisle-lighting equipment attached to buildings;

2. minor building alterations when tangible personal property not properly termed central office equipment is affixed or attached to or in any manner becomes a part of a building or structure;

3. cable, other than that connecting central office units to each other or to distributing frames;

4. covers for transmission power apparatus;

5. desks and tables unless equipped with central office equipment when purchased;

6. foundations for engines and other equipment when part of building;

7. loading coils used outside central office, loud speaker equipment, operators' chairs;

8. platforms, rolling ladders, tarpaulins, ticket holders, toll ticket carriers;

9. water stills for battery service; and

10. tools and portable testing equipment regardless of where used.

D. Account 2124; General Purpose Computers

This account includes any computer system used to test, diagnose, maintain and control more than one type of telecommunications plant in addition to computers which are used to perform general administrative information processing activities. **Prior to January 1, 2006,** that equipment which is used for the testing, diagnosis, maintenance, or control of more than one type of central office equipment was taxable at the 1% State rate of sales or use tax with a maximum tax of $80.00 per article, whether classified under the Uniform System of Accounts as capital expenditures or as maintenance expense; however, all other equipment in this account was, and continues to be, subject to the general rate of State tax and any applicable local sales or use tax. **Effective January 1, 2006,** the items in this paragraph that were previously subject to the 1% State rate of tax with a maximum tax of $80.00 per article are exempt from sales and use tax.

E. Account 2311; Station Apparatus

This account includes private branch exchange equipment in addition to station apparatus. **Prior to January 1, 2006,** equipment which is properly included in the term private branch exchange equipment was taxable at the 1% State rate of sales or use tax subject to the $80.00 maximum tax per article, whether classified by the Uniform System of Accounts as capital expenditures or as maintenance expense; however, all other equipment in this account was subject to the general rate of State tax and any applicable local sales or use tax. Examples of items contained in Account 2311 which were, and which continue to be, taxable at the general rate of State tax and any applicable local sales or use tax are desk sets, hand sets, wall sets, mobile telephone equipment, backboards, battery boxes, booths, coil collectors, station wiring, protectors, arresters, ground rods, clamps, wire and similar associated equipment. **Effective January 1, 2006,** the items in this paragraph that were previously subject to the 1% State rate of tax with a maximum tax of $80.00 per article are exempt from sales and use tax.

F. Account 2341; Large Private Branch Exchange

This account contains equipment and apparatus necessary to the operation of the above named exchanges. **Prior to January 1, 2006,** the equipment and apparatus contained in this account which are properly included in the term private branch exchange equipment were subject to the 1% State rate of sales or use tax with a maximum tax of $80.00 per article, whether classified under the Uniform System of Accounts as capital expenditures or as maintenance expense, but did not include any tangible personal property which is station apparatus. Examples of items included in Account 2341 which were, and which continue to be, taxable at the general rate of State tax and any applicable local sales or use tax are operators' chairs and equipment. **Effective January 1, 2006,** the items in this paragraph that were previously subject to the 1% State rate of tax with a maximum tax of $80.00 per article are exempt from sales and use tax.

G. Account 2362; Other Terminal Equipment

This account includes the original cost of other non-CPE (customer premises equipment) terminal equipment not specifically provided for elsewhere and items such as specialized communications equipment provided to meet the needs of the disabled, over-voltage protection equipment, and multiplexing equipment to deliver multiple channels to customers. **Effective January 1, 2006,** sales of equipment in this account and parts and accessories attached to the equipment are exempt from sales and use tax when used in providing telephone service to subscribers on a commercial basis.

H. Telephone Companies - Purchases Subject to the General State Rate of Tax

All sales of tangible personal property to telephone and telegraph companies which is not properly included in the terms central office equipment, switchboard equipment, private branch exchange equipment or terminal equipment other than public pay telephone terminal equipment used in providing telephone services to their subscribers, as explained in this Bulletin, are subject to the general rate of State tax and any applicable local sales or use tax. This includes all canned or prewritten computer programs to be used for administrative purposes unless specifically exempt by statute; all equipment, materials, supplies and apparatus to be used for distribution purposes; all building materials, supplies, fixtures and equipment of every kind and description annexed to or in any manner becoming a part of a building or structure; apparatus or equipment chargeable to other accounts pursuant to the instructions set out in the notes appearing under Accounts 2124, 2211, 2212, 2220, 2231, 2232, 2311, 2341, and 2362 in Part 32, Uniform System of Accounts For Telecommunications Companies, of the Federal Communications Commission's telecommunication rules and regulations which are hereby incorporated by reference including subsequent amendments and revisions. These rules and regulations can be accessed at www.access.gpo.gov/nara/cfr/waisidx_06/47cfr32_06.html.

I. Telecommunications Service Prior to January 1, 2007

1. The gross receipts derived from providing telecommunications service in the State are subject to the 6% State sales tax. **(Effective October 1, 2005,** the gross receipts derived from providing telecommunications services are subject to the combined general rate of tax as defined in G.S. 105-164.3(4a).)

a. Gross receipts derived from telecommunications service include, but are not limited to, the following:

(1) Receipts from flat rate service, service provided on a call-by-call basis, mobile telecommunications service, and private telecommunications service.

(2) Charges for directory assistance, directory listing that is not yellow page classified listing, call forwarding, call waiting, three-way calling, caller ID, and other similar services. **(Effective October 1, 2005,** charges for voice mail are included in the gross receipts derived from providing telecommunications service.)

(3) Customer access line charges billed to subscribers for access to the intrastate or interstate inter-exchange network.

(4) Charges billed to a pay telephone provider who uses the telecommunications service to provide pay telephone service.

(5) Charges for reconnecting services to customers after services have been terminated for nonpayment and charges for disconnecting services.

b. Gross receipts derived from telecommunications service do not include the following:

(1) Charges for telecommunications services that are a component part of or are integrated into a telecommunications service that is resold. Examples of services that are resold include carrier charges for access to an intrastate or interstate exchange network, interconnection charges paid by a provider of mobile telecommunications service, and charges for the sale of unbundled network elements.

(2) Telecommunications services that are resold as part of a prepaid telephone calling service.

(3) 911 charges imposed under G.S. 62A-4 or G.S. 62A-3 and remitted to the Emergency Telephone System Fund under G.S. 62A-7 or the Wireless Fund under G.S. 62A-24.

(4) Allowable surcharges imposed to recoup assessments for the Universal Service Fund.

(5) Receipts of a pay telephone provider from the sale of pay telephone service.

(6) Charges for commercial, cable, mobile, broadcast, or satellite video or audio service unless the service provides two-way communication, other than the customer's interactive communication in connection with the customer's selection or use of the video or audio service.

(7) Paging service, unless the service provides two-way communication.

(8) Charges for telephone service made by a hotel, motel, or another entity whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the charges are incidental to the occupancy of the entity's accommodations.

(9) Receipts from the sale, installation, maintenance, or repair of tangible personal property.

(10) Directory advertising and yellow-page classified listings.

(11) Voice mail services. **(Effective October 1, 2005,** these services are included in the gross receipts derived from telecommunications service and are subject to the applicable tax.)

(12) Information services. – An information service is a service that can generate, acquire, store, transform, process, retrieve, use, or make available information through a communications service. Examples of an information service include an electronic publishing service and a web hosting service.

(13) Internet access service, electronic mail service, electronic bulletin board service, or similar on-line services.

(14) Billing and collection services.

(15) Charges for bad checks or late payments.

(16) Charges to a State agency or to a unit of local government for the North Carolina Information Highway and other data networks owned or leased by the State or unit of local government.

2. Definitions

travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the requirements of a prepaid calling service, except the exclusive use requirement.

k. **Prepaid Telephone Calling Service** - A right that meets all of the following requirements:

(1) Authorizes the exclusive purchase of telecommunications service.
(2) Must be paid for in advance.
(3) Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.
(4) Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.

l. **Private Telecommunications Service** – Telecommunications service that entitles a subscriber of the service to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

m. **Service Address** – The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

n. **Telecommunications Service** – The transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, optical, microwave, or other medium, regardless of the protocol used for the transmission, conveyance, or routing. The term includes mobile telecommunications service and vertical services. **Vertical services** are switched-based services offered in connection with a telecommunications service, such as call forwarding services, caller ID services, and three-way calling services.

3. Sourcing

a. **General Principles** – The following sourcing principles apply to telecommunications services unless the service falls under one of the exceptions set out in subsection b. of this section.

(1) **Flat Rate** – A telecommunications service that is not sold on a call-by-call basis is sourced to North Carolina if the place of primary use is in this State.

(2) **General Call-by-Call** – A telecommunications service that is sold on a call-by-call basis and is not a postpaid calling service sourced to North Carolina in the following circumstances:

(a) The call both originates and terminates in the State.

(b) The call either originates or terminates in the State and the telecommunications equipment from which the call originates or terminates and to which the call is charged is located in the State. This applies regardless of where the call is billed or paid.

(3) **Postpaid -** A postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system or, if the system used to transport the signal is not the seller's system, by information the seller receives from its service provider.

b. **Exceptions** – The following telecommunications services and products are sourced in accordance with the principles set out in this subsection:

(1) **Mobile** – Mobile telecommunications service is sourced to the place of primary use, unless the service is authorized by a prepaid telephone calling service or is air-to-ground radiotelephone service. Air-to-ground radiotelephone service is a postpaid calling service that is offered by an aircraft common carrier to passengers on its aircraft and enables a telephone call to be made from the aircraft. The sourcing principle in this subsection applies to a service provided as an adjunct to mobile telecommunications service if the charge for the service is included in the term **"charges for mobile telecommunications services"** under the federal Mobile Telecommunications Sourcing Act.

(2) **Prepaid** – Prepaid telephone calling service is sourced in the same manner as sales of tangible personal property as provided under G.S. 105-164.4B.

(3) **Private -** Private telecommunications service is sourced as follows:

(a) If all the customer's channel termination points are located in this State, the service is sourced to this State.

(b) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel termination points, the charge for each channel termination point located in this State is sourced to this State.

(c) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel mileage, the following applies:

(A) A charge for a channel segment between two channel termination points located in this State is sourced to this State.

(B) Fifty percent (50%) of a charge for a channel segment between a channel termination point located in this State and a channel termination point located in another state is sourced to this State.

(d) If all the customer's channel termination points are not located in this State and the service is not billed on the basis of channel termination points or channel mileage, a percentage of the charge for the service is sourced to this State. The percentage is determined by dividing the number of channel termination points in this State by the total number of channel termination points.

4. Bundled Services

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

a. If the telecommunications 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 a result of the 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.

b. If the telecommunications 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.

5. Call Center

A call center is a business that is primarily engaged in providing support service to customers by telephone to support products or services of the business. A business is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming calls.

The gross receipts tax on interstate telecommunications service that originates outside the State, terminates in the State, and is provided to a call center that has a direct pay permit issued by the Department may not exceed fifty thousand dollars ($50,000) in a calendar year. This cap applies separately to each legal entity.

A direct pay permit for telecommunications service may be issued by the Department that allows the holder to purchase telecommunications services without payment of the tax to the service provider. The direct pay permit holder is liable for payment of use tax on the purchase of telecommunication services directly to the Department.

A call center that purchases interstate telecommunications service that originates outside the State and terminates in the State may apply for a direct pay permit with the Sales and Use Tax Division and upon approval, a Direct Pay Permit for Telecommunications Service will be issued to the applicant. The permit holder must provide a copy of the permit to its telecommunications service providers as authority for the providers to not charge tax on telecommunications service. A direct pay permit issued to a call center cannot be used in connection with purchases other than telecommunications services.

6. Credit

A taxpayer who pays a tax legally imposed by another State on telecommunications services subject to sales tax is allowed a credit against the tax imposed.

7. The local sales tax is not applicable to those receipts from telecommunications services on which the State sales tax is imposed.

8. Sales of telecommunications services to the United States Government or any agency thereof are not subject to sales tax. In order to be a sale to the United States Government, the Government or agency involved must make the purchase of the services and pay directly to the vendor the purchase price of the services. Telecommunications service providers shall obtain a purchase requisition one time from each agency for their records.

9. Telecommunications providers or other vendors or lessors that sell or lease telecommunications equipment are liable for collecting and remitting the general rate of State tax and any applicable local sales or use tax on the amounts of such sales or leases.

10. Telecommunications service providers must report receipts from sales of telecommunications service on an accrual basis. The sale of the services is considered to occur when the company bills the customer for the sale and the tax shall be computed thereon. Such receipts must be reported on the **Utility and Liquor Sales and Use Tax Return, Form E-500E**. Telecommunications service providers are required to file returns and remit tax on the same basis as for remitting general sales and use taxes. If a telecommunications service provider's liability averages over $10,000 per month, tax is due to be paid on a semimonthly basis. The tax due for the first fifteen days is due on or before the 25th of a month and the tax due for the sixteenth to the end of the month is due by the 10th of the following month. A monthly return is due to be filed by the 20th of the month following sales. A taxpayer is not subject to interest on or penalties for an underpayment for a semimonthly payment period if the taxpayer timely pays at least 95% of the lesser of the following and includes the underpayment with the monthly return for those semimonthly payment periods:

a. The amount due for each semimonthly payment period.
b. The average semimonthly payment for the prior calendar year.

In determining the amount of tax due from a taxpayer for a reporting period, the Secretary shall consider the total amount due from all places of business owned and operated by the same person as the amount due from that person.

11. The franchise tax on local telecommunications services, the 3% sales tax on local telecommunications services and the 6½% sales tax imposed on toll and private telecommunications services that originate and terminate in the State are repealed effective January 1, 2002.

12. The sales tax on telecommunications service is not refundable under the provisions of G.S. 105-164.14(b) or (c).

J. Telecommunications Service Effective January 1, 2007

1. The gross receipts derived from providing telecommunications service and ancillary service in this State are subject to the combined general rate of tax as defined in G.S. 105-164.3(4a). Ancillary service is provided in this State if the telecommunications service to which it is ancillary is provided in this State.

a. Gross receipts derived from telecommunications service or ancillary service include, but are not limited to, the following:

(1) Receipts from flat rate service, service provided on a call-by-call basis, mobile telecommunications service, and private telecommunications service.

(2) Charges for directory assistance, directory listing that is not yellow page classified listing, call forwarding, call waiting, three-way calling, caller ID, voice mail, and other similar services.

(3) Customer access line charges billed to subscribers for access to the intrastate or interstate inter-exchange network.

(4) Charges billed to a pay telephone provider who uses the telecommunications service to provide pay telephone service.

(5) Charges for reconnecting services to customers after services have been terminated for nonpayment and charges for disconnecting services.

(6) Allowable surcharges imposed to recoup assessments for the Universal Service Fund.

(7) Paging service, both one-way and two-way.

b. Gross receipts derived from the following are not subject to tax either as a result of a specific exemption or as a result of the service being excluded from the definition of **"telecommunications service."**

(1) Charges for telecommunications services that are a component part of or are integrated into a telecommunications service that is resold. Examples of services that are resold include carrier charges for access to an intrastate or interstate exchange network, interconnection charges paid by a provider of mobile telecommunications service, and charges for the sale of unbundled network elements.

(2) Telecommunications services that are resold as part of a prepaid telephone calling service.

(3) 911 charges imposed under G.S. 62A-4 or G.S. 62A-3 and remitted to the Emergency Telephone System Fund under G.S. 62A-7 or the Wireless Fund under G.S. 62A-24.

(4) Receipts of a pay telephone provider from the sale of pay telephone service.

(5) Charges for commercial, cable, mobile, broadcast, or satellite video or audio service unless the service provides two-way communication, other than the customer's interactive communication in connection with the customer's selection or use of the video or audio service.

(6) Charges for telephone service made by a hotel, motel, or another entity whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the charges are incidental to the occupancy of the entity's accommodations.

(7) Receipts from the sale, installation, maintenance, or repair of tangible personal property.

(8) Directory advertising and yellow-page classified listings.

(9) Information services. – An information service is a service that can generate, acquire, store, transform, process, retrieve, use, or make available information through a communications service. Examples of an information service include an electronic publishing service and a web hosting service.

(10) Internet access service, electronic mail service, electronic bulletin board service, or similar on-line services.

(11) Billing and collection services.

(12) Charges for bad checks or late payments.

(13) Charges to a State agency or to a unit of local government for the North Carolina Information Highway and other data networks owned or leased by the State or unit of local government.

2. Definitions

a. **Air-to-Ground Radiotelephone Service** – A postpaid calling service that is offered by an aircraft common carrier to passengers on its aircraft and enables a telephone call to be made from the aircraft. The term **"radio service"** has the same meaning as in 47 CFR 22.99.

b. **Ancillary Service** – A service associated with or incidental to the provision of a telecommunications service. The term includes detailed communications billing, directory assistance, vertical service, and voice mail service. A vertical service is a service, such as call forwarding, called ID, three-way calling, and conference bridging, that allows a customer to identify a caller or manage multiple calls and call connections. [G.S. 105-164.3(01)]

c. **Call-by-Call Basis** – A method of charging for a telecommunications service whereby the price of the service is measured by individual calls. [G.S. 105-164.4C(h)(1a)]

d. **Call Center** – A business that is primarily engaged in providing support services to customers by telephone to support products or services of the business. A business is primarily engaged in providing support services by telephone if at least sixty percent of its calls are incoming. [G.S. 105-164.27A]

e. **Coin-Operated Telephone Service** - A **"telecommunications service"** paid for by inserting money into a telephone accepting direct deposits of money to operate.

f. **Communications Channel** – A physical or virtual path of communications over which signals are transmitted between or among customer channel termination plants.

g. **Customer** – The person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this service only applies for the purpose of sourcing sales of telecommunications services. **"Customer"** does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

h. **Customer Channel Termination Point** – The location where the customer either inputs or receives the communications.

i. **End User** – The person who utilizes the telecommunication service. In the case of an entity, **"end user"** means the individual who utilizes the service on behalf of the entity.

j. **Home Service Provider** – Defined in Section 124(5) of Public Law 105-252 (Mobile Telecommunications Sourcing Act).

k. **Mobile Telecommunications Service** – A radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves and includes all of the following:

(1) Both one-way and two-way radio communication services.

(2) A mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation.

(3) Any service for which a federal license is required in a personal communications service. [G.S. 105-164.3(21)]

l. **Pay Telephone Service** – A **"telecommunications service"** provided through any pay telephone.

m. **Place of Primary Use** – The street address representative of where the use of a customer's telecommunications service primarily occurs. The street address must be the customer's residential street address or primary business street address. For mobile telecommunications service, the street address must be within the licensed service area of the service provider. If the customer who contracted with the telecommunications provider for the telecommunications service is not the end user of the service, the end user is considered the customer for the purpose of determining the place of primary use. [G.S. 105-164.3(26a)]

n. **Postpaid Calling Service –** A telecommunications service that is charged on a call-by-call basis and is obtained by making payment at the time of the call either through use of a credit card or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the requirements of a prepaid calling service, except the exclusive use requirement. [G.S. 105-164.4C(h)(5)]

o. **Prepaid Telephone Calling Service –** Prepaid wireline calling service or prepaid wireless calling service. [G.S. 105-164.3(27)]

p. **Prepaid Wireline Calling Service** – A right that meets all of the following requirements:

(1) Authorizes the exclusive purchase of wireline telecommunications service.

(2) Must be paid for in advance.

(3) Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.

(4) Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis. [G.S. 105-164.3(27a)]

q. **Prepaid Wireless Calling Service** – A right that meets all of the following requirements:

(1) Authorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services.

(2) Must be paid for in advance.

(3) Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis. [G.S. 105-164.3(27b)]

r. **Private Telecommunications Service** – Telecommunications service that entitles a subscriber of the service to exclusive or priority use of a communications channel or group of channels. [G.S. 105-164.4C(h)(7)]

s. **Service Address** – The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. If this location is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. If this location is not known, service address means the location of the customer's place of primary use.

t. **Telecommunications Service** – The electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as voice-over Internet protocol or the Federal Communications Commission classifies it as enhanced or value added. The term does not include the following:

(1) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a customer whose primary purpose for using the service is to obtain the processed data or information.
(2) The sale, installation, maintenance, or repair of tangible personal property.
(3) Directory advertising and other advertising.
(4) Billing and collection services provided to a third party.
(5) Internet access service.
(6) Radio and television audio and video programming service, regardless of the medium of delivery, and the transmission, conveyance, or routing of the service by the programming service provider. The term includes cable service and audio and video programming service provided by a mobile telecommunications service provider.
(7) Ancillary service.
(8) A digital product delivered electronically, including software, music, a ring tone, video, and reading material. [G.S. 105-164.3(48)]

u. **Value-Added Non-Voice Data Service –** A service that otherwise meets the definition of **"telecommunications services"** in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

3. **Sourcing**

a. **General Principles** – The following sourcing principles apply to telecommunications services unless the service falls under one of the exceptions set out in subsection b. of this section.

(1) **Flat Rate** – A telecommunications service that is not sold on a call-by-call basis is sourced to North Carolina if the place of primary use is in this State.

(2) **General Call-by-Call** – A telecommunications service that is sold on a call-by-call basis and is not a postpaid calling service is sourced to North Carolina in the following circumstances:

(a) The call both originates and terminates in the State.
(b) The call either originates or terminates in the State and the telecommunications equipment from which the call originates or terminates and to which the call is charged is located in the State. This applies regardless of where the call is billed or paid.

(3) **Postpaid –** A postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system or, if the system used to transport the signal is not the seller's system, by information the seller receives from its service provider.

b. **Exceptions** – The following telecommunications services and products are sourced in accordance with the principles set out in this subsection:

(1) **Mobile** – Mobile telecommunications service is sourced to the place of primary use, unless the service is prepaid wireless calling service or is air-to-ground radiotelephone service. Air-to-ground radiotelephone service is a postpaid calling service that is offered by an aircraft common carrier to passengers on its aircraft and enables a telephone call to be made from the aircraft. This sourcing principle applies to a service provided as an adjunct to mobile telecommunications service if the charge for the service is included in the term **"charges for mobile telecommunications services"** under the federal Mobile Telecommunications Sourcing Act.

(2) **Prepaid** – Prepaid telephone calling service is sourced in the same manner as sales of tangible personal property as provided under G.S. 105-164.4B.

(3) **Private –** Private telecommunications service is sourced as follows:

(a) If all the customer's channel termination points are located in this State, the service is sourced to this State.
(b) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel termination points, the charge for each channel termination point located in this State is sourced to this State.
(d) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel mileage, the following applies:

(A) A charge for a channel segment between two channel termination points located in this State is sourced to this State.

(B) Fifty percent (50%) of a charge for a channel segment between a channel termination point located in this State and a channel termination point located in another state is sourced to this State.

(e) If all the customer's channel termination points are not located in this State and the service is not billed on the basis of channel termination points or channel mileage, a percentage of the charge for the service is sourced to this State. The percentage is determined by dividing the number of channel termination points in this State by the total number of channel termination points.

4. Bundled Services (Prior to October 1, 2007)

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

a. If the telecommunications 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 a result of the 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.

b. If the telecommunications 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.

Effective October 1, 2007, the above examples are considered **"bundled transactions."** For more information, refer to Sales and Use Tax Technical Bulletin 34-25.

5. Call Center

A call center is a business that is primarily engaged in providing support service to customers by telephone to support products or services of the business. A business is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming calls.

The gross receipts tax on interstate telecommunications service that originates outside the State, terminates in the State, and is provided to a call center that has a direct pay permit issued by the Department may not exceed fifty thousand dollars ($50,000) in a calendar year. This cap applies separately to each legal entity.

A direct pay permit for telecommunications service may be issued by the Department that allows the holder to purchase telecommunications services without payment of the tax to the service provider. The direct pay permit holder is liable for payment of use tax on the purchase of telecommunication services directly to the Department.

A call center that purchases interstate telecommunications service that originates outside the State and terminates in the State may apply for a direct pay permit with the

Sales and Use Tax Division and upon approval, a Direct Pay Permit for Telecommunications Service will be issued to the applicant. The permit holder must provide a copy of the permit to its telecommunications service providers as authority for the providers to not charge tax on telecommunications service. A direct pay permit issued to a call center cannot be used in connection with purchases other than telecommunications services.

6. Credit
A taxpayer who pays a tax legally imposed by another State on telecommunications services subject to sales tax is allowed a credit against the tax imposed.

7. Sales of telecommunications services to the United States Government or any agency thereof are not subject to sales tax. In order to be a sale to the United States Government, the Government or agency involved must make the purchase of the services and pay directly to the vendor the purchase price of the services. Telecommunications service providers shall obtain a purchase requisition one time from each agency for their records.

8. Telecommunications providers or other vendors or lessors that sell or lease telecommunications equipment are liable for collecting and remitting the general rate of State tax and any applicable local sales or use tax on the amounts of such sales or leases.

9. Telecommunications service providers must report receipts from sales of telecommunications service on an accrual basis. The sale of the services is considered to occur when the company bills the customer for the sale and the tax shall be computed thereon. Such receipts must be reported on the **Utility and Liquor Sales and Use Tax Return, Form E-500E**. Telecommunications service providers are required to file returns and remit tax on the same basis as for remitting general sales and use taxes. If a telecommunications service provider’s liability averages over $10,000 per month, tax is due to be paid on a semimonthly basis. The tax due for the first fifteen days is due on or before the 25th of a month and the tax due for the sixteenth to the end of the month is due by the 10th of the following month. A monthly return is due to be filed by the 20th of the month following sales. A taxpayer is not subject to interest on or penalties for an underpayment for a semimonthly payment period if the taxpayer timely pays at least 95% of the lesser of the following and includes the underpayment with the monthly return for those semimonthly payment periods:

a. The amount due for each semimonthly payment period.
b. The average semimonthly payment for the prior calendar year.

In determining the amount of tax due from a taxpayer for a reporting period, the Secretary shall consider the total amount due from all places of business owned and operated by the same person as the amount due from that person.

Effective October 1, 2007, a telecommunication service provider with a tax liability consistently over $10,000 per month is required to make a prepayment in lieu of semimonthly payments. For information regarding prepayments, refer to Sales and Use Tax Technical Bulletin 1-4.

10. The sales tax on telecommunications service and ancillary service is not refundable under the provisions of G.S. 105-164.14(b) or (c).

History Note: Authority G.S. 105-164.4; 105-164.4C; 105-164.6; 105-164.13; 105-264;
Issued: June 1, 1996;

Revised: October 11, 2010; August 1, 2008; April 1, 2007; July 1, 2005; February 1, 2004; December 1, 2002; June 1, 2002; February 1, 2002; December 1, 2001; October 1, 1999; January 15, 1999.

21-2 CELLULAR TELEPHONE COMPANIES

A. Prior to January 1, 2006

Cellular telephone companies, which are licensed by the Federal Communications Commission and which provide their customers, on a commercial basis, access to local telecommunications company lines to make and receive telephonic quality communications by use of radio frequencies come within the purview of G.S. 105-164.4A(3) and this Bulletin as they relate to the 1% State rate of tax on specified equipment. Sales to such firms of microwave transmitters and receivers, antennas, radio channel units, and central office telecommunications equipment, switchboard or private branch exchange equipment and prewritten computer programs used in providing telecommunications services to subscribers are subject to the 1% State sales or use tax with a maximum tax of $80.00 per single article. Sales to such firms of towers to support antennas used to transmit and receive signals of microwave radios used in providing such telephonic quality communications are subject to the 1% State sales or use tax with a maximum tax of $80.00. For the purpose of applying the maximum tax, a tower is considered to be a single article only when the complete tower is sold by the same vendor. Sales of antenna cable used in transmitting the radio signals from the microwave antenna to the microwave transmitter or receiver are subject to the 1% State rate of tax.

B. Effective January 1, 2006

Sales to cellular telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis of central office equipment, switchboard equipment, private branch exchange equipment, terminal equipment other than public pay telephone terminal equipment, and parts and accessories attached to the equipment are exempt from sales and use tax. **Effective January 1, 2006,** the equipment listed in Sales and Use Tax Technical Bulletin 21-2 A. that was previously subject to the 1% State rate of tax with a maximum tax of $80.00 per article is exempt from tax**.**

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4A(3); 105-164.4C; 105-164.6; 105-264;
Issued: June 1, 1996;
Revised: April 1, 2007; December 1, 2002; June 1, 2002; December 1, 2001; October 1, 1999.

21-3 TANGIBLE PERSONAL PROPERTY SOLD BELOW COST WITH A SERVICE CONTRACT (CELLULAR TELEPHONES AND OTHER SIMILAR PROPERTY)

A. Conditional Service Contract Defined

A **"conditional service contract"** is a contract in which all of the following conditions are met:

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

2. The agreement requires the consumer to pay a cancellation fee to the service provider if the consumer cancels the contract for services within the minimum period.

3. For the item transferred, the seller charges the consumer a price that, after any price reduction the seller gives the consumer, is below the purchase price the seller paid for the item. The seller's purchase price is presumed to be no greater than the price the seller paid, as shown on the seller's purchase invoice, for the same item within 12 months before the seller entered into the conditional service contract.

B. Tax Due

If the seller transfers an item of tangible personal property as a part of a conditional service contract, a sale has occurred, and the sales price of the item is presumed to be the retail price at which the item would sell in the absence of the conditional sales contract. Sales tax is due at the time of the transfer on the following:

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

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

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.12B; 105-264;
Issued: June 1, 1996;
Revised: August 1, 2008; April 1, 2007; February 1, 2004;
December 1, 2001; October 1, 1999; January 6, 1997.

21-4 FACSIMILE SERVICES

Charges for sending and receiving copies of documents by facsimile equipment are not subject to sales tax. Firms providing such services in North Carolina are liable for paying the applicable State and any local sales or use tax on their purchases of the equipment and paper used in these transactions.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;
Issued: June 1, 1996.

21-5 PREPAID TELEPHONE CALLING SERVICES

The sale or recharge of **"prepaid telephone calling services,"** as defined under G.S. 105-164.3(27), is subject to the general rate of State tax and any applicable local sales or use tax. Prepaid telephone calling services that are subject to the general rate of tax are not subject to tax as a telecommunications service. Prepaid telephone calling services are taxable at the point of sale instead of at the point of use and are sourced in the same manner as sales of tangible personal property as provided under G.S. 105-164.4B.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4C; 105-264;
Issued: January 6, 1997;
Revised: April 1, 2007; December 1, 2002; June 1, 2002;
December 1, 2001.