

SECTION 34 - MISCELLANEOUS TOPICS**34-1 DISCOUNTS****A. Trade Discounts and Bargaining Discounts**

Trade discounts and bargaining discounts are not a part of the sales price on which sales tax is computed. A **“trade discount”** is a price reduction which is afforded a particular customer or customers in a particular trade or group without reservation at the time the sale is being negotiated. A **“bargaining discount”** is a price reduction which is extended to a customer at the time the sale is being negotiated as a result of bargaining between the customer and the seller.

B. Cash Discounts

A **“cash discount”** means a deduction from the sales price the seller allows the customer due to prompt payment of an invoice. The definition of **“sales price”** excludes cash discounts; therefore, the tax is computed on the amount of the sale less the cash discount allowed.

C. Credit For Trade-Ins

The amount of an over-allowance to the purchaser for an item taken in trade as a credit or part payment on the sale of a new article is not a reduction in the sales price of the new article. The tax is computed and paid on the gross sales price of the new article without any deduction on account of any trade-in or credit allowance.

History Note: Authority G.S. 105-164.3; 105-264;
Issued: June 1, 1996;
Revised: March 1, 2007; June 1, 2002; October 15, 1998.

34-2 FISH BAIT

Sales of bloodworms or crickets to users other than commercial fishermen for bait are subject to the general rate of State tax and any applicable local sales or use tax except when such products are sold in their original or unmanufactured state by the producer in his capacity as the producer. Sales of shrimp or seafood to users other than commercial fishermen for bait are subject to the 2% local sales and use tax. When sold in their original or unmanufactured state by the producer in his capacity as the producer, shrimp or seafood is exempt.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13;
105-164.13B; 105-264;
Issued: June 1, 1996;
Revised: March 1, 2007; June 1, 2002.

34-3 STAMPS, COINS, ETC.

Persons engaged in the business of selling collectible stamps, coins and related items to collectors thereof must register with the Department of Revenue for the purpose of collecting and remitting the general rate of State tax and any applicable local sales or use tax on such sales. Sales of stamps through vending machines or in any other manner for use as United States postal fees are exempt from the tax. Casual or isolated sales of coins and stamps by individuals who are not engaged in business are exempt from tax.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.13; 105-264;
Issued: June 1, 1996;

Revised: June 1, 2002.

34-4 SALES OF HOUSEHOLD GOODS

Occasional sales of household goods on which the sales tax has been paid are exempt from the tax when sold by the owner in his capacity as owner and not in the capacity of a retail merchant. Such sales are deemed to be casual or isolated sales by persons not holding themselves out as engaged in business.

History Note: Authority G.S. 105-164.3; 105-264;
Issued: June 1, 1996.

34-5 AUCTIONEERS AND AUCTION SALES

- A. Auctioneers who buy or acquire tangible personal property by consignment or otherwise which they sell at retail on their own account shall collect and remit the tax due on such sales and must have a Certificate of Registration. This includes persons who operate auction barns or similar places of business where they regularly receive merchandise on a consignment or some other basis and sell such items at auction.
- B. Auctioneers are not liable for collecting and remitting sales tax when they sell tangible personal property for the owners strictly in the capacity of an auctioneer and charge or receive a percentage of the sales price or other fee as compensation for their services. In these type transactions, the auctioneer is acting as agent for the owner of the property. Examples of auction sales on which no sales tax is due are estate sales of household possessions and sales of farm machinery and equipment for a farmer going out of business when such sales are conducted at the property owner's home or farm.
- C. If a retail or wholesale business conducts an auction sale as, for example, when it is going out of business, it shall collect and remit sales tax on any retail sales of the inventory of goods which it held for resale. The tax base is the sales price of the item before deducting the compensation paid to the auctioneer. Sales of store fixtures and equipment held for use in operating the business are exempt from sales tax as occasional or isolated sales by someone not engaged in the business of selling that kind of property.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-264;
Issued: June 1, 1996;
Revised: March 1, 2007; October 15, 1998.

34-6 CONSIGNMENT SALES

- A. G.S. 105-164.3(36) defines the word “**sale**” broadly to include “any transfer of title or possession . . . conditional or otherwise, in any manner or by any means whatsoever. . . .” Generally, in a consignment, the consignee or retailer is authorized to transfer possession of the property and title passes from the consignor through the consignee to the purchaser.
- B. Persons who are engaged in the business of consigning tangible personal property to consignment shops or stores for resale are liable for registering with the Department for sales and use tax purposes. The consignor is liable for a Certificate of Registration. Such sales to consignment shops or stores for resale come within the definition of “**wholesale sale**” in G.S. 105-164.3(52) and the consignor is a “**wholesale merchant**” as defined in G.S. 105-164.3(51). The consignor shall obtain a properly completed **Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E**, from the consignee as authority for not charging sales tax on the transaction in accordance with G.S. 105-164.28. In addition, consignors as wholesale

merchants shall maintain the records prescribed by G.S. 105-164.25. Form E-595E can be obtained from the North Carolina Department of Revenue website or the Taxpayer Assistance Division.

- C. Persons who, on an occasional or infrequent basis, consign their personal possessions such as clothing and household furnishings to consignment shops or stores for resale are not construed to be engaged in business and are not liable for obtaining a Certificate of Registration nor are such persons required to obtain a Certificate of Exemption from the consignee.
- D. If the consignee maintains a place of business at which he sells tangible personal property on a regular basis for consideration, regardless of the amount he retains or the circumstances under which the property was acquired, he is the retailer and is required to register and collect the applicable sales taxes. This includes persons who rent space in their places of business for consignors to display goods for sale. The tax is to be computed on the total sales price of the property to the consumer before deducting any commission, fee or charge withheld by the consignee or paid to the consignee by the consignor. It will not be necessary to determine if the consignor has a business location or otherwise makes regular sales as a retailer.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.5; 105-164.6;
105-164.25; 105-164.28; 105-264;
Issued: June 1, 1996;
Revised: January 15, 2009; March 1, 2007; July 1, 2005;
June 1, 2002; October 15, 1998.

34-7 FLEA MARKETS

- A. Every person who sells tangible personal property at a flea market, other than his own household personal property, is required to obtain a Certificate of Registration to engage in and conduct such business. When making sales at the flea market such person shall conspicuously display the license or shall display a receipt from the Department of Revenue showing that he has applied for the license in cases where he has not yet received the license. Every person who sells only his own household personal property at a flea market must certify in writing to the person from whom he leases or rents space that he will sell only his own household personal property and when selling tangible personal property at the flea market must conspicuously display a copy of the written statement.
- B. A person who leases or rents space to others at a flea market shall keep records of retailers to whom he has leased or rented space at the flea market. Such records shall include:
 - 1. the date;
 - 2. the name and address of the lessee;
 - 3. the sales and use tax registration number of the lessee or the receipt number and the name of the revenue officer issuing the receipt in cases where the lessee has applied for but has not yet received the Certificate of Registration; and
 - 4. a copy of the certified statement of vendors who sell only their own household personal property wherever applicable.

History Note: Authority G.S. 105-164.3(1); 105-164.4; 105-164.6; 105-264;
Issued: June 1, 1996;
Revised: March 1, 2007; October 15, 1998.

34-8 TRANSIENT SELLERS

Persons engaged in business selling tangible personal property, whether in stores, from private residences, from vehicles, by house-to-house canvass, or in any other manner whatsoever, are required to register with the Department and collect and remit the applicable State and local sales or use tax. However, sales of products of the farm, forest, mines and waters in their original or unmanufactured state by producers in their capacity as producers are exempt from tax pursuant to G.S. 105-164.13. Producers are deemed to be selling in their capacity as producers when making sales on foot or from vehicles.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-264;
Issued: June 1, 1996;
Revised: March 1, 2007.

34-9 RESEARCH EQUIPMENT

Sales of scientific or research equipment to independent contract research organizations for use in performing research services for clients are subject to the general rate of State tax and any applicable local sales or use tax. **Effective July 1, 2007**, purchases by a research and development company in the physical, engineering, and life sciences that is included in Industry 54171 of NAICS of equipment or attachments, or repair parts for equipment are subject to the 1% privilege tax with a maximum tax of \$80.00 per article. In order to qualify for the 1% privilege tax, the equipment, attachments, or repair parts must meet all of the following requirements:

1. is capitalized by the company for tax purposes under the Code;
2. is used by the company in the research and development of tangible personal property;
3. would be considered mill machinery under G.S. 105-187.51 if it were purchased by a manufacturing industry or plant and used in the research and development of tangible personal property manufactured by the industry or plant.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-187.50; 105-187.51;
105-187.51A; 105-187.51B; 105-187.52; 105-264;
Issued: June 1, 1996;
Revised: March 1, 2007; June 1, 2002.

34-10 PROPERTY TRANSFERRED BETWEEN DIVISIONS

Firms having divisions, both within and without North Carolina, are liable for remitting the applicable rate of tax on any purchases of tangible personal property for use in North Carolina including any property purchased outside North Carolina and imported into North Carolina for use in this State. No tax will be due on transfers of property by an out-of-state firm to its North Carolina divisions for their use if the property was originally purchased for use outside this State by the out-of-state firm and was, in fact, used by that firm outside this State for a substantial period of time.

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

34-11 CHANGE IN OWNERSHIP

When a partnership dissolves and one or both of the former partners begin operating a business on an individual basis, each person operating a business shall complete an application for

registration. When a partnership or proprietorship is succeeded by a corporation, the corporation shall complete an application for registration.

History Note: Authority G.S. 105-164.4; 105-264;
Issued: June 1, 1996;
Revised: February 1, 2004; January 6, 1997.

34-12 TRANSFEREE LIABILITY

The Secretary of Revenue may not assert a transferee liability against the purchaser of a business for sales and use taxes incurred by anyone further removed along the chain of registration than the purchaser's immediate predecessor, unless the Department can trace its lien against specific property down through the ensuing chain of title.

History Note: Authority G.S. 105-164.38; 105-239.1; 105-264;
Issued: June 1, 1996.

34-13 BANKRUPT'S LIABILITY

- A. A discharge under 11 U.S.C. Section 727, 1141, 1228(a), 1228(b), or 1328 (a) and (b) does not relieve an individual debtor in bankruptcy from liability for payment of pre-petition sales taxes. Furthermore, it does not relieve an individual debtor from liability for payment of pre-petition use taxes:
1. on pre-petition transactions for which a return is last due, including any extension, after three years before the petition date;
 2. on transactions with respect to which a return
 - a. was not filed; or
 - b. was filed after the due date, including any extension, and after two years before the petition date; or
 3. with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.
- B. Associated penalties and post-petition interest also are not discharged on such sales and use taxes imposed with respect to transactions occurring within three years prior to the petition date.
- C. An individual debtor's discharge under 11 U.S.C. Section 1328(a) or a corporate debtor's discharge under 11 U.S.C. Section 1141 releases the debtor from liability for payment of pre-petition sales and use taxes, penalties and interest. The tax liability is replaced by the debtor's liability under the repayment plan. **(Effective October 17, 2005, an individual debtor's discharge under 11 U.S.C. Section 1328(a) does not release the debtor from liability for payment of pre-petition sales and use taxes, penalties, and interest.)**

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;
11 U.S.C. §523;
Issued: March 1, 2007; June 1, 1996.

34-14 COUPONS

A. Sales of Coupons and Coupon Books

Sales of coupons and coupon booklets to advertising agencies, promoters and other users or consumers for use in advertising programs aimed at the promotion of sales by retail merchants are subject to sales or use tax. When coupons issued pursuant to such programs are given to retail merchants by customers in connection with the purchase of products, the retail merchant should charge and remit sales tax on the net amount charged for the products after deduction of any credit allowed for the coupons. Such coupons are considered to be for the purpose of advertising discounts or special sales prices, such as the sale of two items for the price of one item, and are not considered to be a part of the sales price upon which the sales tax is due.

B. Retailer's Coupons

When retailers issue coupons relating to products they sell and later receive the coupons from customers in connection with sales of their products, the retailer should charge and remit sales tax on the net amount charged for the products after deduction of any credit allowed for the coupons. Coupons issued by retailers are considered to be for the purpose of advertising discounts or reductions in the suggested sales price of products and are not considered to be a part of the sales price upon which sales tax is due.

C. Manufacturer's Coupons

When manufacturers issue coupons relating to their products and the coupons are subsequently taken by retailers from their customers in connection with sales of the manufacturers' products, the retailer should charge and remit sales tax on the total sales price of the products before deduction of any credit or issuance of any refund allowed for any coupons. Manufacturers' coupons taken by retailers from their customers constitute payment, or part payment, of the sales price of the property upon which sales tax is due. Any amounts paid by the manufacturer to the retailer for the value of the coupons or for handling them are not subject to sales tax.

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

34-15 ERRONEOUS INFORMATION FROM AGENT OF THE DEPARTMENT OF REVENUE

A. Prior to July 16, 2008, the State is not estopped from collecting taxes levied under Articles 5, 5A, 5B, 5C, 5D, and 5F by reason of an agent of the Department of Revenue erroneously advising the taxpayer that certain sales or purchases are not subject to the tax. When the Secretary interprets a law by adopting a rule or publishing a bulletin on the law, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If a taxpayer requests in writing specific advice from the Department and receives in response erroneous written advice, the taxpayer is not liable for any additional tax, penalty or interest thereon attributable to the erroneous advice furnished by the Department to the extent the advice was reasonably relied upon by the taxpayer and the additional tax did not result from the taxpayer's failure to provide adequate or accurate information.

B. Effective July 16, 2008

1. Interpretations and Advice

It is the duty of the Secretary to interpret all laws administered by the Secretary. The Secretary's interpretation of these laws shall be consistent with the applicable rules. An interpretation by the Secretary is prima facie correct. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive on the law, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. Any information presented in this Bulletin does not prevent the Secretary from changing an interpretation and it does not prevent a change in

an interpretation from applying on and after the effective date of the change. If the Secretary changes an interpretation, a taxpayer who relied on it before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the interpretation was changed and was not paid by reason of reliance upon the interpretation.

If a taxpayer requests specific advice from the Department and receives erroneous advice in response, the taxpayer is not liable for any penalty or additional assessment attributable to the erroneous advice furnished by the Department to the extent that the following conditions are all satisfied:

- a. The advice was reasonably relied upon by the taxpayer.
- b. The penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information.
- c. The Department provided the advice in writing or the Department's records establish that the Department provided erroneous verbal advice.

C. Documentation-Effective January 1, 2009

The Department will document advice given to a taxpayer in a conversation with that taxpayer when the taxpayer gives the Department the taxpayer's identifying information, asks the Department about the application of a tax to the taxpayer in specific circumstances, and requests that the Department document the advice in the taxpayer's records. The documentation may be an entry in the account record of the taxpayer or by another method determined by the Department. The documentation will set out the date of the conversation, the question asked, and the advice given.

D. Non Registered Retailers or Wholesale Merchants- Effective July 1, 2009

The Department will document advice given in a conversation with a person who is not registered as a retailer or a wholesale merchant under Article 5 of this Chapter when the person gives the Department the person's name and address, describes a business in which the person is engaged, asks if the person is required to be registered under Article 5 of this Chapter, and requests that the Department document the advice. The Department will keep a record of the person's inquiry that sets out the date of the conversation, the person making the inquiry, the business described in the conversation, and the advice given.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;
Issued: June 1, 1996;
Revised: January 15, 2009; March 1, 2007.

34-16 WATER TREATMENT SYSTEMS AND SERVICES

- A. **Retail sales of water treatment equipment, repair parts, and chemicals or other tangible personal property are taxable.** Firms shall pay tax to their suppliers on purchases unless they furnish properly executed **Streamlined Sales and Use Tax Agreement Certificates of Exemption, Form E-595E**. Firms making purchases for use in performing contracts and to sell at retail shall furnish their suppliers with properly completed Certificates of Exemption. Suppliers must keep executed Certificates of Exemption in their records as authority for not charging tax on such transactions. Purchasers are liable for remitting tax directly to the Department on the sales price of any tangible personal property sold at retail and on the cost price of any tangible personal property used in the performance of contracts.

- B. The application of tax to the installation of water treatment systems depends upon the nature of the agreement between the business and its customers.** Agreements need to set forth their provisions clearly. The following examples set out the taxability of various types of business agreements:

1. Lump Sum Contracts

Contractors are users of tangible personal property which they purchase for use in fulfilling contracts and are liable for payment of the general rate of State tax and any applicable local sales or use tax on their purchases of such property. When a contractor or subcontractor makes taxable purchases of tangible personal property from suppliers outside this State who charge North Carolina sales or use tax thereon or from suppliers in this State, they shall remit the tax on such purchases to their suppliers. When a contractor or subcontractor makes taxable purchases of tangible personal property for use in this State from a supplier outside this State who does not collect North Carolina sales or use tax thereon, they shall remit the tax directly to the Department.

Firms may contract to provide a water treatment service for a lump sum fee and provide all equipment and chemicals or other accessories necessary to accomplish this service. The equipment remains the property of the supplier of the service and the chemicals and/or other items are not sold to the customers but are used by the supplier in providing the service. There shall be no breakdown or separation of any charges for any tangible personal property or services furnished or provided to the customers. Under this type of agreement, firms are the users of the tangible personal property utilized in providing the service and are liable for payment of sales or use taxes on the purchase or cost price. The tax is due to be paid:

- a. to suppliers who should charge and collect such tax;
- b. to the Department when firms withdraw tangible personal property for use from their inventories held for resale; or
- c. to the Department when tangible personal property is purchased from out-of-state suppliers who do not collect the tax.

No sales or use tax is due on the charges to the customers under the above-stated facts.

2. Sale and Installation of Equipment With a Separate Service Contract

Firms may sell and install equipment for their customers and separately contract to service the equipment at certain intervals. Sales of the equipment to their user-customers are subject to the general rate of State tax and any applicable local sales tax. Any charges for installing the equipment will be exempt from the tax provided they are separately stated in the firm's books and records and on the invoice furnished to the customer. In the absence of such a separation, the total charge is taxable. If the service contract provides for the sale of chemicals and/or other items of tangible personal property, and separately provides for the servicing of the equipment, the sales of tangible personal property shall be subject to sales tax and charges for services shall not be subject to the tax if such charges are separately stated on invoices given to customers at the time of sale and in the vendors' records. If the service contract does not provide for the sale of chemicals and/or other tangible personal property but provides for servicing the system including changing the chemicals periodically, firms are liable for payment of sales or use taxes on the purchase or cost price of any such property. The tax is due to be paid:

- a. to suppliers who shall charge and collect the tax;
- b. to the Department when firms withdraw tangible personal property for use from their inventories held for resale; or

- c. to the Department when tangible personal property is purchased from out-of-state suppliers who do not collect the tax.

3. Service Contract for Maintenance of a Customer's Own Water Treatment System

If firms have a service contract for maintenance of a customer's own water treatment system for a stated charge and do not provide for the sale of any tangible personal property, the firms would be the users of any chemicals and other tangible personal property consumed in providing the service and liable for payment of sales or use tax on the purchase price or cost price of the property. The tax is due to be paid:

- a. to suppliers who shall charge and collect such tax;
- b. to the Department when the firms withdraw tangible personal property for use from their inventories held for resale; or
- c. to the Department when tangible personal property is purchased from out-of-state suppliers who do not collect the tax.

No sales or use tax shall be due on the charges to the customers in this case.

4. The Lease of Equipment and Maintenance or Service of the System

Firms may also lease all or certain parts of equipment and maintain or service the system.

a. Lease of Equipment With Mandatory Maintenance

If the lease requires that the lessor maintain the system, gross receipts from the lease or rental of tangible personal property including any charges for maintaining the system are subject to the general rate of State tax and any applicable local sales or use taxes. Repair parts, chemicals or accessories for such equipment are not subject to sales or use tax when purchased by a lessor in such a case since they are purchased "as for resale." For rental of tangible personal property, title to the property remains with the lessor and even though it may be affixed to realty, it does not become a part of the realty.

b. Lease of Equipment With Optional Maintenance

If a lessor provides separate maintenance service at the option of the lessee, the agreement shall be in writing and clearly state that it is optional. When an agreement is required and separately states the maintenance charge on the customer's invoice and in his records, the lease or rental of the tangible personal property shall be taxable and the service charge shall be exempt. In this situation, the lessor shall be liable to pay sales or use tax on any repair parts, chemicals or accessories purchased for use in providing the service. The tax is due to be paid:

- (1) to suppliers who shall charge and collect such tax;
- (2) to the Department when a firm withdraws tangible personal property for use from their inventories held for resale; or
- (3) to the Department when tangible personal property is purchased from out-of-state suppliers who do not collect the tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;
Issued: June 1, 1996;
Revised: March 1, 2007; July 1, 2005; June 1, 2002.

34-17 PORTABLE TOILETS - RENTAL AND MAINTENANCE

- A. Sales of tangible personal property to registered lessors or retailers for the purpose of lease or rental exclusively are wholesale sales and not subject to tax provided properly executed **Streamlined Sales and Use Tax Agreement Certificates of Exemption, Form E-595E**, are furnished to the vendors of such property. The gross receipts or gross proceeds derived from the lease or rental of portable toilets in this State are subject to the general rate of State tax and any applicable local sales or use tax.
- B. The application of tax to businesses renting or leasing portable toilets and providing a maintenance service depends upon the nature of the agreement between the business and its customers. The agreement needs to set forth its provisions clearly. The following information explains the taxability of various types of business agreements:

1. Firms may lease portable toilets and maintain or service the toilets.**a. Lease of Portable Toilets with Mandatory Maintenance**

If the lease requires that the lessor maintain the portable toilet, tax shall be due on both the lease or rental of the toilet and the maintenance charge even though they may be separately stated on the invoice and in the vendor's records. Chemicals or other supplies are not subject to sales or use tax when purchased by a lessor in this situation since they are purchased "as for resale." Lessors may make these purchases without payment of tax to vendors by furnishing a properly executed Certificate of Exemption.

b. Lease of Portable Toilets With Optional Maintenance

(1) If a lessor provides a separate optional maintenance service, the agreement shall be in writing and clearly state whether it is required. When an agreement is optional and separately states the maintenance charge on the customer's invoice and in his records, the lease or rental of the portable toilets is taxable and the service or maintenance charge is exempt. The lessor is liable to pay sales or use tax on any chemicals or other supplies purchased for use in providing the service. The tax is due to be paid:

- (a) to suppliers who are liable to charge and collect such tax;
- (b) to the Department when a firm withdraws tangible personal property for use from their inventories held for resale; or
- (c) to the Department when tangible personal property is purchased from out-of-state suppliers who do not collect the tax.

(2) The following are examples of methods that may be used by portable toilet businesses to satisfy the requirement to document entering into an optional maintenance agreement to service portable units along with an agreement to lease or rent the units.

(a) Written Contract for the Rental of a Portable Toilet Unit

The contract should contain the following:

- (1) A provision specifying that the contract is for the rental of a unit and the charge for rent per period. The provision could also contain the rental period.

- (2) A provision specifying that the lessor offers an optional maintenance service. If the customer contracts for service, the contract can specify the service charge and the number of service trips for the period.
- (3) The contract must be dated and signed by the lessee.

(b) **Written Contract for the Rental of an Unspecified Quantity of Portable Toilets**

The contract should contain the following:

- (1) A provision specifying that the contract is for the rental of portable toilets and reflecting the charge per unit per period. The contract could also contain a rental period.
- (2) A provision specifying that the lessor offers optional maintenance service for units. If the customer contracts for service, the contract can specify the service charge for each trip.
- (3) The contract must be dated and signed by the lessee.

(c) **Contract Provision Reflected on Invoice**

The lessor can furnish the appropriate provisions of the agreement on an invoice to the customer, which is to be signed and returned with the initial rental. The invoice should contain the following:

- (1) A clause providing for the rental of a unit and the charge per period.
- (2) A clause specifying that the lessor offers optional maintenance service. If the customer contracts for service, the invoice should specify the number of service trips per period and the charge per service trip.
- (3) A place on the invoice for the lessee to date and sign acknowledging agreement with the provisions reflected in (c)(1) and (c)(2).

(d) **Contract Provision on Invoice**

If a customer places an order by telephone and agrees to accept optional maintenance service, the lessor can summarize the telephone conversation on an invoice and provide it to the customer. The invoice should contain the following:

- (1) A provision that the lessee has agreed to lease a portable toilet for a specific charge per period.
- (2) A provision noting that the customer has agreed to accept optional maintenance service and the number of service trips per period and the charge for each service trip.
- (3) An entry showing the name of the individual placing the order and agreeing to the service on behalf of the lessee and the date of the order.

2. **Maintenance Contract on Customer's Own Portable Toilets**

Firms that have a service contract to maintain portable toilets which are owned by their customers for a stated charge are the users of any chemicals and other tangible personal property consumed in providing the service. Such firms are subject to sales or use tax on

the purchase price of any chemicals or other supplies purchased for use in providing the service. The tax is due to be paid:

- a. to suppliers who are liable to charge and collect such tax;
- b. to the Department when a firm withdraws tangible personal property for use from their inventories held for resale; or
- c. to the Department when tangible personal property is purchased from out-of-state suppliers who do not collect the tax.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-264;
Issued: June 1, 1996;
Revised: March 1, 2007; July 1, 2005; June 1, 2002.

34-18 FINANCE COMPANIES

- A. If a finance company maintains a regular place of business wherein repossessed tangible personal property is sold or placed on display for sale as an adjunct to the principal business of the finance company, such finance company must register with the Department and collect and remit the applicable state and local tax on its sales.
- B. If a finance company, as an incident only of its finance business, has occasion, from time to time, to repossess articles of tangible personal property upon which payments have become delinquent and sells such tangible personal property either at public auction or at private sale, such sales shall be deemed occasional sales and are not subject to the tax.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-264;
Issued: June 1, 1996.

34-19 CAR WASH BUSINESSES

The gross receipts from washing cars by persons operating a car wash business are exempt from tax. Such persons are liable for payment of the general rate of State tax and any applicable local sales or use tax on tangible personal property which they purchase for use in the operation of such businesses. If car wash operators make sales of tangible personal property through vending machines or otherwise, they are liable for collecting and remitting tax thereon.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-264;
Issued: June 1, 1996;
Revised: June 1, 2002.

34-20 BARTER - GRAIN EXCHANGED FOR FLOUR

A bag of flour or corn meal given by a miller to a customer in exchange for grain which is placed in the miller's inventory does not constitute a taxable transaction. The charge by a miller to mill a customer's own grain which is returned to the customer is not subject to sales tax. Grain bartered for dissimilar merchandise is subject to the general rate of State tax and any applicable local sales or use tax on the usual retail selling price of the merchandise received for the grain.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13;
105-264;
Issued: June 1, 1996;
Revised: June 1, 2002.

34-21 PROCEDURES FOR CLAIMING REFUNDS AND CREDITS FOR OVERPAYMENTS OF SALES AND USE TAX**A. In General**

A taxpayer who remits sales or use tax directly to the Department in excess of the rate or amount of State and/or county tax due on the sale or purchase of tangible personal property or other taxable transactions is entitled to a refund of the overpayment or erroneous payment of such tax. When taxes are paid to a vendor in error, the customer/vendee must request a refund or credit from the vendor who in turn may obtain a refund or credit from the Department. The vendor must issue a refund or credit to the customer/vendee and provide documentation thereof to the Department before receiving a refund or credit from the Department of Revenue. A taxpayer who requests a refund or credit from a vendor should retain copies of such requests and make them available for review by the Department.

B. Form For Submitting Claim

A claim for refund should be submitted in duplicate on **Form E-588, Business Claim for Refund State and County Sales and Use Taxes**. The refund will be verified by departmental personnel in Raleigh or referred to the appropriate field office of the Examination Division. After a claim is verified or approved, a refund voucher is issued and forwarded to the taxpayer.

C. Documentation Required

When submitting refund claims for excessive or erroneous collections of tax, supporting data to be submitted includes copies of invoices or schedules reflecting the purchaser's name, invoice numbers, description of the property purchased and the amount of tax collected and copies of refund checks or credit memos issued to the purchaser. If applicable, copies of executed exemption certificates should also be submitted.

When submitting claims for excessive or erroneous payments of tax on purchases for use, supporting documentation to be submitted includes copies of invoices or schedules reflecting vendor's name, invoice numbers, description of the property purchased and the amount of tax paid.

D. Taking Credit on Returns

A taxpayer may elect to take credit for an overpayment of tax when filing a regular sales and use tax return without submitting a Form E-588, Business Claim for Refund State and County Sales and Use Taxes. Line 20 of the sales and use tax return is the designated line to enter the amount of credit claimed. Under no circumstances should a taxpayer's receipts or purchases for the current month be reduced by the amount of sales or purchases representing the amount of the credit. The same documentary evidence required to support a claim for refund must be submitted with the return on which a credit is taken.

E. Credit For Erroneous Tax Paid to Seller

The Department has authorized the use of **Form E-599M, Request for Sales and Use Tax Credit by Vendee**, when a taxpayer **undergoing a sales and use tax audit** discovers that overpayments of tax were made to the supplier. The taxpayer should forward Forms E-599M to suppliers to be completed and returned to the taxpayer. The auditor will verify the amount of overpayment and this amount will be allowed as a credit against additional tax due in the audit. If the total credit from Forms E-599M is greater than the additional tax due, any excess shall be carried forward to future sales and use tax returns and deducted from net tax due until the credit

is exhausted. Documentary evidence as provided in Paragraph C. of this Bulletin for a claim for refund should be assembled for verification purposes. Forms E-599M are only used in connection with an examination of a taxpayer's books and records by the Department's auditors.

F. Applicable Period For Refund or Credit

G.S. 105-266.1 provides for refunds of overpayment of taxes provided a request for refund is made within three years after the date set by statute for the filing of the return or within six months from the date of payment of the tax, whichever is later. **(Effective January 1, 2008,** the statute of limitations for requesting a refund is the later of three years after the due date of the return or two years after the payment of the tax.) There are no provisions in the Revenue Laws for refunding overpayments after the applicable period. When using Form E-599M, the completed form must be presented to the Department's representative within three years of the date of the return on which the overpayment was made in order to be allowable.

G. Penalty For Submitting a False Claim

Taxpayers and tax preparers should be aware that G.S. 105-236(7) and G.S. 105-236(9a) impose felony penalties on willful attempts to evade or defeat taxes imposed and on persons who aid, assist, procure, counsel or advise the preparation, presentation or filing of claims that they know to be false or fraudulent.

H. Cause of Action

1. The customer refund procedures contained in this Bulletin provide the first course of remedy available to purchasers seeking a refund of over-collected sales or use taxes from the seller. A cause of action against the seller for the over-collected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had sixty days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request.
2. In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice if, in the collection of such taxes, the seller uses either a provider or a system, including a proprietary system, that is certified by the State and the seller has remitted to the State all taxes collected less any deductions, credits, or collection allowances.

History Note: Authority G.S. 105-164.16; 105-164.22; 105-236(7) and (9a);
105-264; 105-266; 105-266.1;
Issued: June 1, 1996;
Revised: April 1, 2008; March 1, 2007; July 1, 2005;
February 1, 2004; June 1, 2002; October 1, 1999; March 1, 1997.

34-22 DIPLOMATIC TAX EXEMPTION PROGRAM

- A. The Diplomatic Tax Exemption Program is administered by the Office of Foreign Missions (OFM). This Program provides sales and use tax exemption to certain official personnel from foreign countries who are stationed in the United States while working as diplomats, consular officers, or staff members at foreign embassies and consulates, and other organizations such as the United Nations. Not all foreign missions and their personnel are entitled to tax exemption, because this privilege is based on the principle of reciprocity and not all foreign countries grant such tax exemption to American Embassies and personnel.
- B. Foreign officials who are entitled to tax exemptions are issued a Tax Exemption Card by OFM. For identification purposes, the individual's name, photograph, mission employed by, expiration

date, and protocol identification number are provided on the card. There are two different types of Tax Exemption Cards: Personal and Official/Mission. Each card will have one of two different levels of sales and use tax exemption. (The Tax Exemption Card does not allow its holder to purchase gas or utilities free of tax.) The level and kind of exemption are designed to match the levels of exemption encountered by American Embassies in foreign countries. The level of tax exemption is indicated by the color of the card and the written explanation in the colored box.

1. The **Personal Tax Exemption Card** is used at the point of sale for exemption from state and local sales, restaurant, lodging, and similar taxes normally charged to a customer. The Personal Card bears the photograph and identification of a duly accredited consulate, embassy, or eligible international organization employee who is entitled to the tax exemption privileges as stated on the card. This card is only for the personal use of the bearer whose picture appears on the front of the card.
 - a. The cards with a blue stripe exempt the bearer from all state and local taxes nationwide. The cards with a yellow stripe require the bearer to purchase a minimum amount of goods or services before the bearer is entitled to tax exemption. The requirements may range from a specified purchase amount or could exempt certain sectors from exemption, with the most common exclusion being hotel taxes.
 - b. When a cardholder presents a yellow card, with a minimum purchase requirement, the total of all items purchased in a single transaction must equal or exceed the minimum purchase level. For example, if a foreign official has a card with a minimum purchase requirement of \$150, he or she would be required to pay the sales or use tax on a bill of \$145. However, the same individual would be exempt from all taxes on a bill of \$160. Also, if two foreign officials are traveling together but they have separate rooms and separate bills, they cannot combine the bills under one total in order to qualify for tax exemption.
2. The **Mission Tax Exemption Card** is used for official purchases of a foreign consulate or embassy. The Mission Card bears the photograph and identification of a consulate, embassy, or international organization employee who has been allowed official purchasing privileges for that office. This card is for official purchases only. All purchases must be made in the name of the mission and paid for by mission check or credit card (not cash or personal check). For example, the purchasing agent might use the card to buy office supplies or to book twenty hotel rooms for a visiting official delegation from that foreign country, providing the reservation is in the name of the Mission and the bill is paid for by a mission check or credit card. The Mission Tax Exemption Card is not transferable, and not to be used for personal purchases. (There are instances where a mission tax exemption cardholder would not have access to a personal tax exemption card.)
 - a. The cards with a blue stripe exempt the bearer from all state and local taxes nationwide. The cards with a yellow stripe require the bearer to purchase a minimum amount of goods or services before the bearer is entitled to tax exemption. The requirements may range from a specified purchase amount or could exempt certain sectors from exemption, with the most common exclusion being hotel taxes.
 - b. When a cardholder presents a yellow card, with a minimum purchase requirement, the total of all items purchased in a single transaction must equal or exceed the minimum purchase level. For example, if a foreign official has a card with a minimum purchase requirement of \$150, he or she would be required to pay the sales or use tax on a bill of \$145. However, the same individual would be exempt from all taxes on a bill of \$160. Also, if two foreign officials are traveling

together but they have separate rooms and separate bills, they cannot combine the bills under one total in order to qualify for tax exemption.

A brochure which contains examples of the various tax exemption cards and information about the Diplomatic Tax Exemption Program may be obtained from the Taxpayer Assistance Division of the North Carolina Department of Revenue. Additional information can be obtained at www.state.gov/ofm/tax/. At the bottom of the webpage, click on The Diplomatic Customer in PDF.

- C. The card holder should be allowed an exemption from tax to the extent noted on the card. The vendor should retain a copy of the purchaser's card and the invoice in his records as documentation to support the exemption. If unable to secure a copy of the card, the vendor should record the name, address, date of sale, Department of State Tax Exemption Number shown on the card, and expiration date of the card in his records and on the customer's invoice.
- D. Vendors are required to collect tax from diplomatic missions and their personnel unless the purchaser presents his Personal or Mission Tax Exemption Card. The exemption card may not be accepted by a vendor if:
1. The amount of the purchase is less than any minimum level shown on the purchaser's card;
 2. The personal or mission tax exemption card has expired;
 3. The individual purchaser or the person who purchases on behalf of the mission is not the person whose photograph appears on the tax exemption card; or
 4. The individual or mission making the purchase is not also the payer of record.

History Note: Authority: G.S. 105-164.4; 105-164.13; 105-264;
Issued: October 15, 1998;
Revised: January 15, 2009; March 1, 2007; July 1, 2005;
June 1, 2002.

34-23 ALCOHOLIC BEVERAGES

A. Spirituous Liquor

1. **Effective October 1, 2005**, sales of spirituous liquor, other than mixed beverages, are subject to the combined general rate of tax as defined in G.S. 105-164.3(4a). **Prior to October 1, 2005**, such sales were subject to a 6% State rate of tax.
2. "**Spirituous liquor**" is defined in G.S. 105-113.68 to mean distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin, and all other distilled spirits and mixtures of cordials, liqueurs, and premixed cocktails in closed containers for beverage use regardless of the dilution.

B. Mixed Beverages, Beer and Wine

1. Sales of mixed drinks and mixed beverages, including straight shots of spirituous liquor, by restaurants, bars and other similar establishments are subject to the general rate of State tax and any applicable local sales tax.
2. Sales of beer and wine, whether by the drink or in closed containers, are subject to the general rate of State tax and any applicable local sales tax.

3. A retailer who holds a wine shipper permit issued by the ABC Commission pursuant to G.S. 18B-1001.1 is considered to be engaged in business in North Carolina. The retailer is required to collect the State and applicable local sales or use tax on its retail sales of wine to purchasers in this State notwithstanding that the retailer may be located outside North Carolina.

History Note: Authority: G.S. 105-113.68; 105-164.3; 105-164.4; 105-164.6;
105-164.8; 105-164.13; 105-264;
Issued: June 1, 2002;
Revised: March 1, 2007; July 1, 2005; February 1, 2004.

34-24 AUGUST SALES TAX HOLIDAY

A. Sales Tax Holiday Allowed Under G.S. 105-164.13C

G.S. 105-164.13C provides that retail sales of specific items of tangible personal property are exempt from all State and local sales and use taxes, including the Mecklenburg public transportation tax, if sold between 12:01 AM on the first Friday of August and 11:59 PM the following Sunday.

B. Definitions

G.S. 105-164.3 contains the following definitions that apply to the August sales tax holiday. Some of the definitions apply to items that are exempt from tax during the holiday period, and some apply to items that are subject to tax during the holiday period. Sections C. and D. below list items that are included in these terms.

1. **“Clothing”** is defined in G.S. 105-164.3(3) as “All human wearing apparel suitable for general use including coats, jackets, hats, hosiery, scarves, and shoes.”
2. **“Clothing accessories or equipment”** is defined in G.S. 105-164.3(4) as “Incidental items worn on the person or in conjunction with clothing including jewelry, cosmetics, eyewear, wallets, and watches.”
3. **“Computer”** is defined in G.S. 105-164.3(4b) as “An electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.”
4. **“Computer supply”** is defined in G.S. 105-164.3(4d) as “An item that is considered a ‘school computer supply’ under the Streamlined Agreement.” As defined in the Streamlined Agreement, it is an item commonly used by a student in the course of study in which a computer is used and includes only the following items:
 - a. computer storage media, including diskettes and compact disks;
 - b. handheld electronic schedulers, except devices that are cellular phones;
 - c. personal digital assistants, except devices that are cellular phones;
 - d. computer printers; and
 - e. printer supplies for computers, including printer paper and printer ink.
5. **“Protective equipment”** is defined in G.S. 105-164.3(31) as “Items for human wear designed as protection of the wearer against injury or disease or as protection against

damage or injury of other persons or property but not suitable for general use including breathing masks, face shields, hard hats, and tool belts.”

6. **“School instructional material”** is defined in G.S. 105-164.3(37b) as being “defined in the Streamlined Agreement.” The following is an all-inclusive list of items considered to be school instructional materials: reference books, reference maps and globes, textbooks, and workbooks.
7. **“School supply”** is defined in G.S. 105-164.3(37d) as “An item that is commonly used by a student in the course of study and is considered a ‘school supply,’ a ‘school art supply,’ or ‘school instructional material’ under the Streamlined Agreement.” As defined in the Streamlined Agreement, those terms include only the items listed in D. 3. of Sales and Use Tax Technical Bulletin 34-24.
8. **“Sport or recreational equipment”** is defined in G.S. 105-164.3(42) as “Items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use including ballet shoes, cleated athletic shoes, shin guards, and ski boots.”

C. Exempt Property

Sales of the following items are exempt from sales or use tax during the August sales tax holiday period unless the items are sold for use in a trade or business:

1. Clothing with a sales price of \$100 or less per item.
2. Sport or recreational equipment with a sales price of \$50.00 or less per item.
3. School supplies with a sales price of \$100 or less per item. The exemption applies to items purchased for any use other than in a trade or business; therefore, the item need not be intended for use in school or in connection with a school activity to receive the exemption.
4. Computers with a sales price of \$3,500 or less per item.

For purposes of the exemption during the holiday, a computer includes a central processing unit, monitor, keyboard, mouse, and speakers since these items are deemed to be necessary in the operation of the computer. The separate sale of a monitor, keyboard, mouse, or speakers is subject to the applicable tax when the item is not sold in connection with a central processing unit. Peripherals are not considered part of a computer and are subject to the applicable tax notwithstanding that they may be sold with the computer as a package. Peripherals must be separately stated on the invoice and the appropriate tax charged on those items.

5. Computer supplies with a sales price of \$250 or less per item.
6. School instructional materials with a sales price of \$300 or less per item.

D. List of Property Eligible for Exemption

1. **Clothing**

The following is a list of items that are included in the term **“clothing”** and are therefore exempt from tax during the August sales tax holiday period if their sales price is \$100 or less per item. The list is not all-inclusive.

 - a. aprons, household and shop;

- b. athletic supporters;
- c. baby receiving blankets;
- d. bandannas;
- e. bathing suits and caps; beach capes and coats;
- f. belts and suspenders;
- g. boots; overshoes;
- h. coats, jackets, capes, and wraps;
- i. costumes (does not include costume masks sold separately);
- j. diapers (children and adults, including disposables);
- k. earmuffs; gloves and mittens for general use; hats and caps; hosiery; scarves;
- l. formal wear (rentals are not eligible);
- m. garters and garter belts; girdles; leotards and tights; panty hose; socks; stockings and footlets; underwear;
- n. insoles for shoes;
- o. jogging suits;
- p. lab coats;
- q. neckties;
- r. rainwear; rubber pants;
- s. sandals; shoes and shoelaces; slippers; sneakers; steel-toed shoes;
- t. uniforms (athletic and nonathletic when purchased for nonbusiness use); and
- u. wedding apparel (does not include rentals).

2. Sport or Recreational Equipment

The following is a list of items that are included in the term “**sport or recreational equipment**” and are therefore exempt from tax during the August sales tax holiday period if their sales price is \$50.00 or less per item. The list is not all-inclusive.

- a. ballet and tap shoes;
- b. cleated or spiked athletic shoes;
- c. gloves (baseball, bowling, boxing, hockey, golf and other sports);
- d. goggles;
- e. hand and elbow guards;
- f. helmets (bicycle, skating, baseball, and other sports);
- g. life preservers and vests;
- h. mouth guards;
- i. roller and ice skates;
- j. shin guards;
- k. shoulder pads;
- l. ski boots; and
- m. waders; wetsuits and fins.

3. School Supplies

The following is a list of items that are included in the term “**school supplies**” and are therefore exempt from tax during the August sales tax holiday period if their sales price is \$100 or less per item. The list is all-inclusive.

- a. binders;
- b. blackboard chalk
- c. book bags;
- d. calculators;
- e. cellophane tape;
- f. clay and glazes;
- g. compasses;
- h. composition books;

- i. crayons;
- j. erasers;
- k. folders (expandable, pocket, plastic, and manila);
- l. glue, paste, and paste sticks;
- m. highlighters;
- n. index card boxes
- o. index cards;
- p. legal pads;
- q. lunch boxes;
- r. markers;
- s. notebooks;
- t. paintbrushes for artwork;
- u. paints (acrylic, tempora, and oil);
- v. paper (loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper);
- w. pencil boxes and other school supply boxes;
- x. pencil sharpeners;
- y. pencils (includes pencil leads);
- z. pens (includes pen refills);
- aa. protractors;
- bb. rulers;
- cc. scissors;
- dd. sketch and drawing pads;
- ee. watercolors; and
- ff. writing tablets.

4. School Instructional Materials

The following is a list of items that are included in the term “**school instructional materials**” and are therefore exempt from tax during the August sales tax holiday period if their sales price is \$300 or less per item. The list is all-inclusive:

- a. reference books;
- b. reference maps and globes;
- c. textbooks; and
- d. workbooks.

E. Non-Exempt Property

The August sales tax holiday applies only to items included in the list of property eligible for exemption. It does not apply to any of the following:

- 1. any item sold for use in a trade or business;
- 2. any rental of property;
- 3. clothing accessories or equipment;
- 4. educational software;
- 5. furniture;
- 6. luggage;
- 7. protective equipment; or
- 8. stereo equipment, VCR's, DVD players, and similar items.

F. List of Property Not Eligible for Exemption**1. Clothing Accessories or Equipment**

The following is a list of items that are included in the term “**clothing accessories or equipment**” and are therefore subject to tax during the August sales tax holiday period. The list is not all-inclusive.

- a. briefcases;
- b. cosmetics;
- c. fabric, thread, yarn, and other such items purchased to make clothing;
- d. hair notions, including barrettes, hair bows, hairnets, and similar items;
- e. handbags;
- f. handkerchiefs;
- g. jewelry;
- h. sunglasses (nonprescription);
- i. umbrellas;
- j. wallets;
- k. watches; and
- l. wigs and hairpieces.

2. Protective Equipment

The following is a list of items that are included in the term “**protective equipment**” and are therefore subject to tax during the August sales tax holiday period. The list is not all-inclusive.

- a. breathing masks;
- b. clean room apparel and equipment;
- c. ear and hearing protectors;
- d. face shields;
- e. finger guards;
- f. hard hats;
- g. print or dust respirators;
- h. protective gloves;
- i. safety glasses and goggles;
- j. safety belts;
- k. tool belts; and
- l. welders' gloves and masks.

G. Specific Issues

The following information sets out the application of tax with respect to various matters concerning sales during the August sales tax holiday period.

1. Participation in the August sales tax holiday

Can retailers elect not to participate in the August sales tax holiday and collect tax from their customers on eligible items? No. Retailers may only collect from their customers sales taxes that are legally due. The Department may take action to revoke a retailer's Certificate of Registration if the retailer collects sales taxes that are not legally due.

2. Discounts and Retailer Coupons

A discount given by a retailer constitutes a reduction in sales price and the amount of the discount is deducted before determining whether an item is eligible for the exemption. For example, if a retailer issues a 15% off coupon and a customer purchases a dress with a price of \$105 and uses the coupon, the dress is exempt from tax. The price of the

dress after the 15% reduction is less than \$100, which is the per item clothing price limit for an exemption.

3. Layaway Sales

An item that was placed in a layaway or similar deferred plan before an August sales tax holiday period and is then delivered to the purchaser upon final payment during the holiday period is eligible for an exemption from sales or use tax. For example, if a customer places an item on layaway in June and the item is delivered to the customer during the August sales tax holiday period when the customer completes the layaway payments, the item is eligible for the exemption. The sale of an eligible item under a layaway sale is exempt from tax if the purchaser selects the item and the retailer accepts the order for the item during the holiday period, even if delivery occurs after the holiday period.

“**Eligible property**” or “**eligible item**” means an item of a type, such as clothing, that qualifies for a August sales tax holiday exemption. “**Layaway sale**” means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

4. Manufacturers’ Coupons

A manufacturer’s coupon does not constitute a reduction in sales price. A determination as to whether an item is eligible for the exemption is made before deducting the amount of the coupon.

5. Rain Check

An item purchased pursuant to a rain check is not eligible for the exemption unless the item is delivered during the August sales tax holiday period. If an eligible item is delivered to a purchaser during the holiday period pursuant to a rain check issued before the holiday period, the sale of the item is exempt from tax. “**Rain check**” means the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock.

6. Rebates

A rebate occurs after a sale and does not constitute a reduction in sales price. The amount of the rebate is not considered when determining whether an item is eligible for an exemption. For example, a customer buys a computer with a sales price of \$3,550 and can obtain a \$100 rebate upon mailing proof of purchase to the manufacturer. The computer is taxable because its sales price of \$3,550 exceeds the per item limit of \$3,500 for computers.

7. Retailer Charges Tax in Error

If a retailer charges a customer tax on a qualifying exempt item during the August sales tax holiday period, how can the customer obtain a refund of the tax paid in error?

In order to obtain a refund of tax paid in error, a customer must return to the store with his sales receipt and obtain a refund from the retailer. The retailer can claim a credit for the tax refunded to customers on his sales and use tax return, provided he remitted the tax to the Department. The Department does not issue refunds to individual customers for tax remitted to retailers in error.

8. Returns and Exchanges

If an eligible item that was purchased during the August sales tax holiday period is returned after the holiday period and is replaced by the same item (different size, different color, etc.), no additional tax is due. If a retailer gives the purchaser a credit for an item purchased during the holiday period and the credit is used to purchase a different type of item after the holiday period, the combined State and county rates of tax apply to the sales price of the new item.

For 60 days following the end of the August sales tax holiday period, when a purchaser returns an item that would have been exempt if purchased in the holiday period, the retailer may not refund or give credit for any sales or use tax on the item unless the customer either provides a receipt or invoice showing payment of the tax or the retailer has other evidence to document payment of the tax. This procedure is for the purpose of establishing whether tax was paid on an item and is not intended to alter a retailer's policy for accepting returned merchandise.

9. Sales by Remote Sellers

Sales of eligible items by mail order, telephone, Internet, or other remote means qualify for the exemption. For the purpose of the August sales tax holiday, an item is eligible for the exemption if the following occurs during the holiday period:

- a. The customer orders the item and pays for the item. A customer pays for an item when the seller receives a credit card number, a debit authorization, a check, or a money order.
- b. The retailer accepts the order and takes an action to fill the order for immediate delivery. The actual delivery can occur after the holiday period. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. An order is for immediate delivery when the customer does not request delayed shipment. An order is for immediate delivery notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller.

Most retailers are only able to change their tax application systems for an entire day and not for periods during the day.

10. Different Time Zones

The time zone of the seller's location determines the authorized time period for the holiday when the purchaser is located in one time zone and a seller is another.

11. Shipping and Handling

Delivery charges, including shipping, handling, and service charges, are part of the sales price of eligible property. For the purpose of determining a August sales tax holiday price threshold, if all the property in a shipment qualifies as eligible property and the sales price for each item in the shipment is within the August sales tax holiday price threshold, then the seller does not have to allocate the delivery, handling, or service charge to determine if the price threshold is exceeded. The shipment will be considered a sale of eligible products.

If the shipment includes eligible property and taxable property (including an eligible item with a sales price in excess of the price threshold), the seller should allocate the delivery charge by using:

- a. a percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment; or
- b. a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the eligible property.

12. Threshold

When the sales price of an item is greater than the ceiling threshold amount set for the sales price of an exempt item, whether \$50.00, \$100, \$250, \$300 or \$3,500, sales or use tax is due on the entire charge for the item. The sales price is not reduced by the threshold amount. For example, if a coat is sold for \$120, the entire sales price of the coat is taxable and not just the amount that exceeds \$100.

13. Units

Items that are generally sold as a unit, such as a pair of shoes, must continue to be sold as a unit and cannot be priced separately and sold as individual items to obtain an exemption. For example, if a pair of shoes is sold for \$120, the shoes are not exempt because they exceed the per item clothing price limit of \$100 per item. The retailer cannot price each shoe at \$60.00 and thereby exempt the sale of the pair of shoes from sales tax.

History Note: Authority: G.S. 105-113.68; 105-164.4; 105-164.6;
105-164.13; 105-264;
Issued: December 1, 2002;
Revised: July 12, 2012; January 15, 2009; April 1, 2008; March 1, 2007;
July 1, 2005; July 1, 2004; February 1, 2004.

34-25 BUNDLED TRANSACTIONS (EFFECTIVE OCTOBER 1, 2007)

A. In General

The bundled transaction provisions primarily address products that contain taxable and non-taxable items that are packaged together and sold for a single price. A customer has no option except to purchase the items packaged together and to pay the price charged by the retailer. Examples of bundled transactions are gift baskets containing food and non-food items and medical kits containing exempt prescription drugs and taxable medical supplies.

B. Definition

A “bundled transaction” is a retail sale of two or more distinct and identifiable products, at least one of which is taxable and one of which is exempt, for one nonitemized price. Products are not sold for one nonitemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each product. A bundled transaction does not include the retail sale of any of the following:

1. a product and any packaging item that accompanies the product and is exempt under G.S. 105-164.13(23);
2. a sale of two or more products whose combined price varies, or is negotiable, depending on the products the purchaser selects;
3. a sale of a product accompanied by a transfer of another product with no additional consideration;
4. a product and the delivery or installation of the product; or
5. a product and any service necessary to complete the sale.

C. Application of Tax

Tax applies to the sales price of a bundled transaction unless one of the following applies:

1. Fifty Percent (50%) Test

All of the products in the bundle are tangible personal property, the bundle includes one or more of the exempt products listed in this subdivision, and the price of the taxable products in the bundle does not exceed fifty percent (50%) of the price of the bundle:

- a. food exempt under G.S. 105-164.13B;
- b. a drug exempt under G.S. 105-164.13(13); or
- c. medical devices, equipment, or supplies exempt under G.S. 105-164.13(12).

2. Allocation

The bundle includes a service, and the retailer determines an allocated price for each product in the bundle based on a reasonable allocation of revenue that is supported by the retailer's business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of each taxable product in the bundle.

3. Ten Percent (10%) Test

The price of the taxable products in the bundle does not exceed ten percent (10%) of the price of the bundle, and no other subdivision in the subsection applies.

In determining if a transaction meets the fifty percent (50%) or ten percent (10%) test set out in C. 1. or C. 3. above, a retailer of a bundled transaction may use either his cost price or his sales price. A retailer may not use a combination of cost price and sales price to make this determination. If a bundled transaction subject to the 10 percent (10%) test in C. 3. above includes a service contract, the retailer must use the full term of the contract in determining whether the transaction meets the threshold.

D. Exclusions and Exceptions

1. True Object Exclusion

A transaction that otherwise meets the definition of a **"bundled transaction"** is not a **"bundled transaction"** if it is:

- a. The **"retail sale"** of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; or
- b. The **"retail sale"** of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service.

An example of this exclusion would be the preparation of a will by an attorney. The true object of the transaction is the providing of the attorney's services and the tangible personal property is essential to the use of the service. The attorney is selling non-taxable services and is not making a sale of a bundled transaction. Sales or use tax is not due on the attorney's charges for services; sales or use tax is due on the attorney's purchases of tangible personal property used to fulfill the services.

Transactions that qualify under the **"true object exclusion"** in D. 1. of this Bulletin are not affected by special **"bundled transaction"** taxability rules.

2. Ten Percent (10%) Exclusion

For a bundled transaction that consists of tangible personal property other than food and exempt medical products, a bundle that contains more than ten percent (10%) of taxable items is subject to sales and use tax on the total amount charged for the bundled products. If a bundle consists of ten percent (10%) or less of taxable items, the charge for the bundle is not subject to sale or use tax and sales or use tax is not due on the purchase price of the taxable items included in the bundle.

3. Fifty Percent (50%) Exclusion

- a. Food** – For a bundled transaction that only includes tangible personal property and consists of more than fifty percent (50%) of food items that are exempt from State sales and use tax, the total charge for the bundle is subject to the 2% local tax on food.
- b. Medical products** – For a bundled transaction that only includes tangible personal property and consists of prescription drugs, prosthetic devices, mobility enhancing equipment sold on prescription, durable medical equipment sold on prescription, or durable medical supplies sold on prescription, the total charge for the bundle is exempt if the portion of the bundle attributable to exempt medical products exceeds fifty percent (50%).

Sales or use tax is not due on the purchase price of items included in the bundle that would otherwise be taxable when sold at retail.

4. Determination of Threshold

In determining the percentages of products included in a bundle, a retailer may use either the cost price of products included in the bundle or the sales price of the products when sold separately. A retailer cannot use a combination of the cost price and sales price of products to make this determination.

E. Specific Transactions and Examples

For a bundled transaction that includes services, a retailer is authorized to allocate a price to each product included in a bundle and collect tax on the price allocated to the taxable products. A retailer's business records kept in the ordinary course of business must be maintained to support the allocation made.

An example is a firm that provides taxable telecommunications services, taxable video programming services, and exempt Internet access services and offers all the services in a bundled transaction. The firm can allocate the portion of its services attributable to the taxable products and collect and remit tax on the amount of revenues allocated to the taxable services.

A second example is a resort that offers a bundled transaction consisting of taxable room accommodations, taxable meals, exempt golf course green fees, and exempt spa fees. The firm can allocate the portion of revenues attributable to the taxable products and collect and remit tax on the taxable portion.

History Note: Authority G.S. 105-164.3; 105-264;
Issued: April 1, 2008;
Revised: October 11, 2010; January 15, 2009.

34-26 INTERIOR DESIGNERS AND DECORATORS

Purpose: To help interior designers and decorators understand when their services and sales are subject to sales or use tax.

A. Prior to August 1, 2008**1. Interior Design Services**

In general, charges for interior design or consulting services by an interior designer or decorator are not subject to sales or use tax. However, charges made in conjunction with the sale of tangible personal property are subject to sales or use tax because they are considered part of the sales price of the tangible personal property.

Examples of tangible personal property sold by interior designers and decorators include:

- a. Furniture;
- b. Paintings and other types of art;
- c. Lamps;
- d. Draperies and window treatments; and
- e. Other household furnishings.

2. When Charges Are Subject to Sales or Use Tax

An interior designer or decorator is liable for collecting and paying state sales or use tax (and any additional local sales or use taxes) on any retail sale of tangible personal property. The tax is due on the “**sales price**” of the property as defined in [G.S. 105-164.3\(37\)](#).

Charges for design consulting services directly related to the sale of tangible personal property constitute part of the sales price of the property and are subject to sales or use tax; these charges are subject to tax even if they are stated separately on an invoice given to the client and kept in the seller’s records.

3. When Charges Are Not Subject to Sales or Use Tax

Charges for design consulting services are not taxable when the charges do not result in the sale of tangible personal property.

Charges for design consulting services are not taxable when there is no sale of tangible personal property.

- **Note:** Items transferred to the client that are not considered sales of tangible personal property include renderings of construction documents or specifications, finish samples, presentation boards, or finish books. These items may be transferred to a client in written form or on a type of electronic storage medium, such as a diskette or compact disc.

4. Special Situations

Charges Relating to Sales Made After Design Services Are Complete: If an interior designer or decorator reaches an agreement with a client to sell tangible personal property after providing interior design services, the charges for interior design services do not constitute part of the sale of tangible personal property; therefore, the charges for such interior design services are not subject to sales or use tax. A taxpayer’s records must clearly establish that an agreement to sell tangible personal property was made after the completion of interior design services to avoid a tax liability.

Charges For Services Unrelated to Sales: Charges for design consulting services that are not directly related to a sale of tangible personal property are not considered part of the sales price; therefore, they are not subject to sales or use tax. This exception applies if an interior designer’s or decorator’s statement of work includes tasks that are directly related to the sale of tangible personal property and tasks that are not. The charges for interior design services directly related to the tangible personal property sale are subject to tax. Charges for interior design services that are not directly related to tangible

personal property sales are not subject to tax. Such non-related services may include concept development, construction documents, specifications, electrical takeoffs, tile selection, color selections, space planning, etc.

- **Note:** To qualify for this exception, the interior designer's or decorator's records must show a clear separation of charges that are related to sales of tangible personal property and charges that are not related to such sales.

Incidental Sales of Tangible Personal Property: There are some transactions that involve the performance of interior design services and the retail sale of tangible personal property where the sale of tangible personal property is incidental to the performance of the services.

- **Note:** Incidental sales are defined as sales where the charges for the tangible personal property equal 20 percent or less of the total combined charges for the tangible personal property and interior design services.

Charges for design consulting services with incidental sales of tangible personal property are not subject to sales or use tax; the **sales price** of the tangible personal property is subject to tax as usual. The charge for interior design service must be stated separately on an invoice provided to a client and in the interior designer's or decorator's records.

5. **Examples of Transactions Involving Interior Design Services and Sales of Tangible Personal Property**

a. **Interior Design Service in Conjunction With Sale of Tangible Personal Property**

An interior designer or decorator designs a room for a client and sells the client the furniture that the interior designer or decorator recommended in the interior design. The interior designer or decorator charges \$2,000 for the interior design work, \$5,000 for the furniture, and \$200 for delivery. The charge for the sale of tangible personal property is more than 20 percent of the combined charges for the tangible personal property and interior design services; therefore, the charge for the interior design work is considered to be part of the "sales price" of the furniture and the total charge of \$7,200 is subject to the general State rate and applicable local rates of sales or use tax.

b. **Interior Design Service Not in Conjunction With Sale of Tangible Personal Property**

An interior designer or decorator designs a room for a client in February and charges the client \$1,500. The client decides not to purchase any furniture from the interior designer or decorator. In September of that year, the client places an order with the interior designer or decorator for some of the pieces of furniture recommended by the interior designer or decorator in the amount of \$2,000. The interior designer or decorator collects \$1,000 as a deposit at the time of the order and makes a charge for the balance of \$1,000 plus \$100 for delivery in December of the same year when the furniture is delivered. Since the sale of tangible personal property was made after the completion of the interior design services, the charge for interior design work is not considered to be part of the "sales price" of the tangible personal property and the \$1,500 charge for interior design work is not subject to sales or use tax. The interior designer or decorator is liable for collecting and paying tax on the charges in the amount of \$2,100 for the furniture and delivery.

c. **Tangible Personal Property Incidental to Interior Design Service**

An interior designer or decorator designs a room for a client and sells the client a table lamp. The interior designer or decorator charges \$2,000 for interior design work, \$100 for the lamp, and \$10 for delivery. The charge for the sale of the lamp (tangible personal property) is less than 20 percent of the combined charges for the tangible personal property and interior design services; therefore, the retail sale of the lamp is considered to be incidental to the performance of the interior design work and only the \$110 in charges for the lamp and its delivery are subject to sales or use tax.

d. Multiple Interior Design Services

An interior designer or decorator enters into an agreement to provide multiple interior design services for the construction of a new home. Those services include selection of bathroom tile, selection of exterior ornamentation, and selection and sale of furniture. The interior designer or decorator charges \$500 for the selection of bathroom tile, \$1,000 for the selection of exterior ornamentation, \$1,000 for selection of the furniture, and \$5,000 for the furniture itself. The charges for the selection of the bathroom tile and exterior ornamentation totaling \$1,500 are not subject to sales or use tax since these charges are not made in conjunction with the sale of tangible personal property. Charges totaling \$6,000 for the furniture and the selection of the furniture are subject to sales or use tax; the charge for furniture selection is made in conjunction with the sale of tangible personal property and, therefore, constitutes part of the "sales price" of the furniture.

6. Keep Accurate and Detailed Records

An interior designer or decorator **must** maintain accurate and detailed records to support the following:

- a. Design services provided that do not include any sale or transfer of tangible personal property;
- b. A claim that sales of tangible personal property are made **after** design services are complete; and
- c. A claim that certain design services within a statement of work are **not** completed in conjunction with the sale of tangible personal property.

Without such documentation, interior design fees are considered to be part of the sales price of tangible personal property and are subject to tax, whether or not they are stated separately on an invoice.

- B. Effective August 1, 2008**, charges for interior design services provided in conjunction with a sale of tangible personal property are exempt. In order to qualify for the exemption, the charge representing the interior design services must be separately stated from the sales price of the tangible personal property.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-164.22; 105-164.24; 105-164.31; 105-264;
Issued: May 1, 2008;
Revised: January 15, 2009.

34-27 ENERGY STAR QUALIFIED PRODUCTS SALES AND USE TAX HOLIDAY**A. Sales Tax Holiday for Energy Star Qualified Products Allowed Under G.S. 105-164.13D**

G.S. 105-164.13D provides that retail sales of specific items of tangible personal property are exempt from all State and local sales and use taxes, including the Mecklenburg public transportation tax, if sold between 12:01 AM on the first Friday of November and 11:59 PM the following Sunday.

B. Definition

G.S. 105-164.3(8g) defines an “**Energy Star qualified product**” as a product that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United States Department of Energy and is authorized to carry the Energy Star label.

C. Exempt Property

Sales of the following items are exempt from sales or use tax during the Energy Star qualified product sales and use tax holiday period unless the items are rented during the period or sold for use in a trade or business:

1. Clothes washers;
2. Freezers and refrigerators;
3. Central air conditioners and room air conditioners;
4. Air-source heat pumps and geothermal heat pumps (Effective June 27, 2011, geothermal heat pumps are deleted);
5. Ceiling fans;
6. Dehumidifiers; and
7. Programmable thermostats.

This list is all-inclusive.

D. Specific Issues

The following information sets out the application of tax with respect to various matters concerning sales during the Energy Star qualified products sales and use tax holiday period.

1. Participation in the Energy Star Qualified Products Sales Tax Holiday

Can retailers elect not to participate in the Energy Star qualified products sales tax holiday and collect tax from their customers on eligible items? No. Retailers may only collect from their customers' sales taxes that are legally due. The Department may take action to revoke a retailer's Certificate of Registration if the retailer collects sales taxes that are not legally due.

2. Layaway Sales

An item that was placed in a layaway or similar deferred plan before a Energy Star qualified products sales tax holiday period and is then delivered to the purchaser upon final payment during the holiday period is eligible for an exemption from sales or use tax. For example, if a customer places an item on layaway in June and the item is delivered to the customer during the Energy Star qualified products sales tax holiday period when the customer completes the layaway payments, the item is eligible for the exemption. The sale of an eligible item under a layaway sale is exempt from tax if the purchaser selects the item and the retailer accepts the order for the item during the holiday period, even if delivery occurs after the holiday period.

“**Eligible property**” or “**eligible item**” means an item of a type that qualifies for an Energy Star qualified products sales tax holiday exemption. “**Layaway sale**” means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

3. Rain Check

An item purchased pursuant to a rain check is not eligible for the exemption unless the item is delivered during the Energy Star qualified products sales tax holiday period. If an eligible item is delivered to a purchaser during the holiday period pursuant to a rain check issued before the holiday period, the sale of the item is exempt from tax. “**Rain check**” means the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock.

4. Retailer Charges Tax in Error

If a retailer charges a customer tax on a qualifying exempt item during the Energy Star qualified products sales tax holiday period, how can the customer obtain a refund of the tax paid in error?

In order to obtain a refund of tax paid in error, a customer must return to the store with his sales receipt and obtain a refund from the retailer. The retailer can claim a credit for the tax refunded to customers on his sales and use tax return, provided he remitted the tax to the Department. The Department does not issue refunds to individual customers for tax remitted to retailers in error.

5. Returns and Exchanges

If an eligible item that was purchased during the Energy Star qualified products sales tax holiday period is returned after the holiday period and is replaced by the same item (different size, different color, etc.), no additional tax is due. If a retailer gives the purchaser a credit for an item purchased during the holiday period and the credit is used to purchase a different type of item after the holiday period, the combined State and county rates of tax apply to the sales price of the new item.

For 60 days following the end of the Energy Star qualified products sales tax holiday period, when a purchaser returns an item that would have been exempt if purchased in the holiday period, the retailer may not refund or give credit for any sales or use tax on the item unless the customer either provides a receipt or invoice showing payment of the tax or the retailer has other evidence to document payment of the tax. This procedure is for the purpose of establishing whether tax was paid on an item and is not intended to alter a retailer’s policy for accepting returned merchandise.

6. Sales by Remote Sellers

Sales of eligible items by mail order, telephone, Internet, or other remote means qualify for the exemption. For the purpose of the Energy Star qualified products sales tax holiday, an item is eligible for the exemption if the following occurs during the holiday period:

- a. The customer orders the item and pays for the item. A customer pays for an item when the seller receives a credit card number, a debit authorization, a check, or a money order.

- b. The retailer accepts the order and takes an action to fill the order for immediate delivery. The actual delivery can occur after the holiday period. Actions to fill an order include placement of an “**in date**” stamp on a mail order or assignment of an “**order number**” to a telephone order. An order is for immediate delivery when the customer does not request delayed shipment. An order is for immediate delivery notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller.

Most retailers are only able to change their tax application systems for an entire day and not for periods during the day.

7. Different Time Zones

The time zone of the seller’s location determines the authorized time period for the holiday when the purchaser is located in one time zone and a seller is another.

8. Shipping and Handling

Delivery charges, including shipping, handling, and service charges, are part of the sales price of eligible property.

If the shipment includes eligible property and taxable property, the seller should allocate the delivery charge by using:

- b. a percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment; or
- b. a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the eligible property.

9. Rental of Qualified Products

The sales or use tax is due from the rental of any of the products listed in Subdivision C. during the holiday period.

10. Sales of Qualified Products to a Trade or Business

The sales or use tax is due on all of the products listed in Subdivision C during the holiday period when the product is sold to a trade or business. For example, a contractor purchases a central air conditioner used to fulfill a performance contract. This transaction is considered taxable since a contractor operates a trade or business.

History Note: Authority: G.S. 105-164.3; 105-164.4; 105-164.6;
105-164.13D; 105-264;
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