

**SECTION 40 - TRADE-INS, REPOSSESSIONS, RETURNED MERCHANDISE AND USED OR SECONDHAND MERCHANDISE****40-1 TRADE-INS**

Sales or use tax must be computed and paid on the full gross sales price of a new article without any deduction for any trade-in credit or allowance. The term “**new article**” means the original stock in trade of the merchant and shall not be limited to newly manufactured articles.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-264;  
Issued: June 1, 1996;  
Revised: February 1, 2004; October 1, 1999.

**40-2 MERCHANDISE INVENTORY TRANSFERRED TO NEW BUSINESS**

- A. When a proprietorship or partnership is succeeded by a corporation and the merchandise inventory is sold or transferred to the corporation for resale, the tax is not due on such transactions. The corporation will be liable for collecting and remitting the general rate of State tax and any applicable local sales or use tax on its retail sales of tangible personal property acquired from the proprietorship or partnership, including any tangible personal property which would have been exempt from tax under the provisions of G.S. 105-164.13(16) if sold by the proprietorship or partnership as repossessed articles.
- B. When corporations merge pursuant to the provisions of G.S. 55-11-01 and the merchandise inventory is transferred from the predecessor corporation to a surviving corporation for resale, the tax is not due on such transactions. Furthermore, G.S. 55-11-01 operates so that the exemption from sales tax provided by G.S. 105-164.13(16) and applicable to sales of articles repossessed by a predecessor corporation is applicable to the sale of such repossessed articles when they are sold by the surviving corporation.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-264;  
Issued: June 1, 1996;  
Revised: February 1, 2004; June 1, 2002; October 1, 1999.

**40-3 REPOSSESSIONS**

- A. An article repossessed by a vendor is exempt from tax provided tax was paid on the gross sales price of the “**new**” or “**used**” article when it was originally sold by the dealer. The term “**new article**” shall mean the original stock in trade of a merchant and shall not be limited to newly manufactured articles.
- B. Retailers shall not deduct from their gross taxable sales the unpaid amounts on repossessed merchandise.
- C. Tax liability in connection with the following three types of operating agreements between selling dealers and the assignees of sales contracts:
  - 1. **No Recourse Endorsement**  
In the case of a no recourse endorsement by the selling dealer to the financial institution, the selling dealer has no liability as a result of debtor default; and if the dealer reacquires the property that is the collateral for the contract, he has actually purchased the property. In such a case it is not property “. . . repossessed by the vendor . . .” and it would be subject to sales tax when sold at retail by the dealer.

**2. Limited Recourse Endorsement**

In the case of the limited recourse, repurchase or dealer participation endorsement by the selling dealer to the financial institution, the selling dealer does have liability to the financial institution as a result of debtor default. Generally, under this type of endorsement, in the event of debtor default, the property is taken back by the financial institution and is redelivered to the selling dealer within a specified period of time after the maturity date of the oldest unpaid delivery installment which period of time is stipulated in the contract. The dealer is obligated for payment of the next unpaid balance upon delivery of the property to him by the financial institution. In such cases, the property is deemed to be “. . . articles repossessed by the vendor . . .” and thus is exempt from tax when sold by the dealer at retail provided sales tax was paid on the gross sales price of the initial sale. Otherwise, the sale of any repossessed article is subject to the general rate of State tax and any applicable local sales or use tax.

**3. Full Recourse Endorsement**

In the case of the full recourse endorsement by the selling dealer to the financial institution, the selling dealer has liability for any unpaid balance in the event the debtor defaults in payment. In this type of endorsement, the financial institution only needs to make demand of the dealer that he repurchase the contract for the unpaid balance and, if need be, the property is repossessed by the dealer and, therefore, it qualifies as property “. . . repossessed by the vendor . . .” and is exempt from tax when sold at retail provided sales tax was paid on the gross sales price of the initial sale. Otherwise, the sale of any repossessed article is subject to the general rate of State tax and any applicable local sales or use tax.

- D. The full gross sales price of any used article taken in trade by the vendor as a credit or part payment of the sales price of such nontaxable repossessed article is subject to the general rate of State tax and any applicable local sales or use tax when sold at retail.

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

**40-4 RETURNED MERCHANDISE**

If an article sold is returned and the sale is rescinded by a refund of the entire amount paid including tax, the vendor is entitled to obtain a refund of or credit for the sales or use tax paid to the Department by reason of the initial sale of such merchandise. The records of the taxpayer must clearly reflect and support his claim for any such refund or credit.

History Note: Authority G.S. 105-164.41; 105-264;  
Issued: June 1, 1996.

**40-5 USED PROPERTY**

Retail sales of used tangible personal property which the vendor acquired by purchase or by any means other than by repossession are subject to the general rate of State tax and any applicable local sales or use tax. In cases where a vendor reacquires property that is collateral for a nonrecourse endorsement by the vendor to a financing institution, the vendor has actually repurchased the property. In such case, it is not property repossessed by the vendor and the gross sales price of such property is subject to the general rate of State tax and any applicable local sales or use tax when sold at retail. Used or secondhand property accepted in lieu of commissions is deemed to have been purchased. The original stock in trade of the merchant is

not limited to newly manufactured articles; therefore, the fact that tangible personal property is secondhand or used does not exempt sales of such property from the tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;  
Issued: June 1, 1996;  
Revised: February 1, 2004; June 1, 2002; October 1, 1999.

#### 40-6 SALES OF USED PARTS REMOVED FROM JUNKED PROPERTY

Retail sales of used parts which have been removed from junked tangible personal property, including motor vehicles, by persons engaged in the business of selling such merchandise are subject to the general rate of State tax and any applicable local sales tax. When repossessed articles are dismantled and the parts therefrom are sold at retail by such businesses, the parts have lost their identity as repossessed articles and are subject to the tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;  
Issued: June 1, 1996;  
Revised: February 1, 2004; June 1, 2002; October 1, 1999.

#### 40-7 USED PROPERTY SOLD FOR REPAIR CHARGES

The retail sale of taxable tangible personal property that is left with merchants for repair or storage and is sold to satisfy repair or storage charges because the owners fail to reclaim it within a stipulated period of time is subject to the general rate of State tax and any applicable local sales or use tax.

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

#### 40-8 SALES OF REPAIR PARTS USED TO RECONDITION USED PROPERTY

- A. Sales of repair parts to registered merchants for use in reconditioning used property for sale to other registered merchants for resale are exempt from tax when such parts are sold pursuant to a **Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E**.
- B. Sales of repair parts to registered merchants to be attached to used property, the sale, lease or rental of which will be exempt from tax under the provisions of G.S. 105-164.13(16), should be classified as wholesale sales and exempt from sales or use tax when supported by a Certificate of Exemption.

History Note: Authority G.S. 105-164.5; 105-164.13; 105-164.28; 105-264;  
Issued: June 1, 1996;  
Revised: April 1, 2007; July 1, 2005.