

SECTION 42 - SALES IN INTERSTATE AND FOREIGN COMMERCE, SALES TO OUT-OF-STATE MERCHANTS FOR RESALE AND THIRD PARTY DROP SHIPMENTS**42-1 SALES IN INTERSTATE COMMERCE****A. Delivery to Purchaser Out of State**

Sales within the State of tangible personal property that the vendor delivers to the purchaser at a point outside the State, or that the vendor delivers to a common carrier or to the mails for transportation and delivery to the purchaser at a point outside the State, are not subject to the applicable State tax and any applicable local sales or use tax if the property is not returned to a point within the State, and the vendor furnishes acceptable proof of transportation to a point outside the State. The most acceptable proof of transportation and delivery to a point outside the State is any of the following:

1. a waybill or bill of lading made out to the seller's order calling for delivery; or
2. an insurance or registry receipt issued by the United States Postal Service, or a postal service receipt; or
3. a trip sheet that is signed by the seller's delivery agent and shows the signature and address of the person who received the delivered goods outside the State.

B. Gifts To Out-of-State Donees**1. Sale to a North Carolina Purchaser - Delivery to an Out-of-State Donee**

Sales of taxable tangible personal property to any person in North Carolina which such person provides without charge to recipients in North Carolina, whether it be advertising materials or gifts or donations are subject to the general rate of State tax and any applicable local sales or use tax. The donated property is not taxable if the vendor delivers the property to the donee at a point outside this State by mail or common carrier. The vendor must maintain acceptable proof of transportation by common carrier to the purchaser's designee, donee, or other recipient at a point outside the State. Refer to Paragraph A. of this Bulletin for acceptable proof. Sales of taxable tangible personal property delivered to a donee or any other user or consumer in North Carolina are taxable.

2. Sale to a Nonresident Purchaser - Delivery to an Out-of-State Donee

Sales of taxable tangible personal property by a North Carolina vendor to a nonresident vendee when the order is placed by mail, telephone or other electronic medium and the property is delivered by the vendor to a nonresident donee at a point outside the State, or when the vendor delivers the property to a common carrier or to the mails for transportation and delivery to a nonresident donee at a point outside the State, are not subject to the applicable State and any applicable local sales or use tax. The vendor must maintain acceptable proof of transportation to a point outside the State. Refer to Paragraph A. of this Bulletin for acceptable proof of transportation.

C. Machinery Entering State

When a North Carolina vendor sells tangible personal property and installs same on machinery or other property brought into this State for the purpose of having the property installed thereon and the North Carolina vendor delivers the property to the vendee at a point outside this State, the sale is consummated outside this State and is exempt from this State's tax.

D. In-State Deliveries

Sales of tangible personal property delivered in this State to the buyer or his agent, if such agent is not a carrier, are subject to the general rate of State tax and any applicable local sales or use tax, notwithstanding that the buyer may subsequently transport, or employ someone else to transport, the property out of this State, except as provided by G.S. 105-164.13.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-264;
Issued: June 1, 1996;
Revised: December 1, 2008; June 1, 2002; November 15, 2000;
October 15, 1998; March 1, 1997.

42-2 SALES IN FOREIGN COMMERCE

Tangible personal property purchased solely for the purpose of export to a foreign country for exclusive use or consumption in that foreign country and which purpose is consummated is exempt from tax if the transaction is supported by a **Purchaser's Affidavit of Export, Form E-599C**, and such property is exported within 90 days of purchase. Form E-599C can be obtained from the North Carolina Department of Revenue website or the Taxpayer Assistance Division. This exemption from the tax applies only when the tangible personal property is purchased for export to a foreign country for exclusive use or consumption in the performance or rendition of professional or commercial services, or in the operation of a trade or business, or purchased by a foreign government for export. This exemption from the tax does not extend to property acquired for personal use or consumption by the purchaser, including gifts. The term **"export"** as used in this Bulletin, includes possessing and marshalling property by the seller or purchaser, for transportation to a foreign country, but shall not include the devoting of such property to any other use in North Carolina or the United States. The words **"foreign country"** shall not include any territory or possession of the United States. The words **"personal use or consumption by the purchaser"** shall be given the usual meaning.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-264;
Issued: June 1, 1996;
Revised: December 1, 2008.

42-3 SALES TO OUT-OF-STATE MERCHANTS FOR RESALE

- A.** For the purpose of the Sales and Use Tax Law, the term **"registered nonresident retail or wholesale merchant"** means a person who does not have a place of business in this State, is engaged in the business of acquiring by purchase, consignment or otherwise, tangible personal property and selling the property outside this State and is registered for sales and use tax purposes in a taxing jurisdiction outside this State.
- B.** Sales of tangible personal property to registered nonresident retail or wholesale merchants for resale are exempt from the North Carolina sales tax, if all of the following conditions are met:
1. The wholesale merchant who sells tangible personal property for resale delivers to the nonresident retail or wholesale merchant a bill of sale for each sale of merchandise whether sold for cash or on credit, itemizing therein the various articles of tangible personal property included in said sale, and makes and retains a duplicate or carbon copy of each such bill of sale, and keeps a file of all such duplicate bills of sale for at least three years from the dates of sales.
 2. The character of such tangible personal property is such as the nonresident retail or wholesale merchant ordinarily and customarily purchases as a part of his stock for resale.

3. The nonresident retail or wholesale merchant is registered for sales and use tax purposes in a taxing jurisdiction outside this State and furnishes each wholesale merchant with a **Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E**, certifying that he is a registered nonresident retail or wholesale merchant, and further certifying that the tangible personal property purchased by him from the wholesale merchant is purchased for the purpose of resale at retail or wholesale in accordance and compliance with the laws of the jurisdiction in which he resides or does business. Such Certificate of Exemption, when properly completed and executed by the nonresident retail or wholesale merchant and delivered to the supplier, shall be deemed sufficient evidence that such nonresident retail or wholesale merchant is duly registered in a taxing jurisdiction outside this State and is engaged in the business of a retail or wholesale merchant purchasing tangible personal property at wholesale for legitimate sale in the taxing jurisdiction in which he resides or does business. If a sale made over the Internet or by other remote means, the seller may obtain the purchaser's name, address, registration number, and type of business and maintain this information in a retrievable format in its records in lieu of a **Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E**.
- C. The exemption in Paragraph B. of this Bulletin shall apply only to sales of tangible personal property to nonresident retail or wholesale merchants for resale who comply strictly with the terms and conditions hereof, and shall not be construed to apply to any sales of tangible personal property to users or consumers not for resale irrespective of the price, quantity or any other circumstances or conditions pertaining to such sale. Failure to comply with the provisions of this requirement shall subject the vendor to liability for the applicable rate of tax upon all sales which do not conform to this Bulletin.

History Note: Authority G.S. 105-164.3; 105-164.5; 105-264;
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Revised: April 1, 2007; July 1, 2005.

42-4 THIRD PARTY DROP SHIPMENTS

- A. A North Carolina wholesaler is not required to collect North Carolina sales tax on its sales to an out-of-state retailer or an out-of-state wholesaler properly registered in another taxing jurisdiction when it drop ships taxable tangible personal property to the out-of-state retailer's or out-of-state wholesaler's customers in North Carolina. The purchaser is liable for reporting the general rate of State tax and any applicable local use tax on these purchases.

This position is based on the decision by the North Carolina Court of Appeals in the case VSA, Inc. v. Faulkner, 126 N.C. App. 421, 485 S.E.2d 348 (1997). The facts in the case were as follows:

1. Taxpayer was a North Carolina wholesaler.
2. Taxpayer was properly registered for North Carolina sales and use tax purposes.
3. Taxpayer sold its products to vendees located in another state.
4. Taxpayer's vendees were not engaged in business in North Carolina.
5. Taxpayer's vendees were properly registered in their taxing jurisdictions.
6. Taxpayer's vendees resold the products to North Carolina customers.
7. Taxpayer delivered the products to its vendees' customers in North Carolina.

- B.** In-state retailers or in-state wholesalers and out-of-state retailers or wholesalers engaged in business in North Carolina making **retail sales** of taxable tangible personal property to out-of-state users or consumers where property is drop shipped to purchaser's locations in North Carolina continue to be subject to the sales tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-264;
Issued: October 15, 1998;
Revised: June 1, 2002.