

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2334

Short Title: Modify Mail Order Sales Tax.

(Public)

Sponsors: Representative Pope.

Referred to: Commerce.

June 6, 1990

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE SALES AND USE TAX ON CERTAIN MAIL ORDER SALES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.8 reads as rewritten:

"§ 105-164.8. Retailer to collect tax regardless of place sale consummated; mail order sales subject to tax.

(a) Every retailer engaged in business in this State as defined in this Article shall collect ~~said the tax notwithstanding-notwithstanding:~~

- (1) That the purchaser's order or the contract of sale is delivered, mailed or otherwise transmitted by the purchaser to the retailer at a point outside this State as a result of solicitation by the retailer through the medium of a catalogue or other written advertisement; or
- (2) That the purchaser's order or the contract of sale is made or closed by acceptance or approval outside this State, or before ~~said the~~ tangible personal property enters this State; or
- (3) That the purchaser's order or the contract of sale provides that ~~said the~~ property shall be or the property is in fact procured or manufactured at a point outside this State and shipped directly to the purchaser from the point of origin; or
- (4) That ~~said the~~ property is mailed to the purchaser in this State or a point outside this State or delivered to a carrier outside this State f.o.b. or otherwise and directed to the purchaser in this State regardless of

- 1                   whether the cost of transportation is paid by the retailer or by the  
2                   purchaser; or  
3           (5)    That ~~said~~ the property is delivered directly to the purchaser at a point  
4                   outside this State; or  
5           (6)    Any combination in whole or in part of any two or more of the  
6                   foregoing statements of fact, if it is intended that the tangible personal  
7                   property purchased be brought to this State for storage, use or  
8                   consumption in this State.

9       (b)    A retailer who makes a mail order sale is engaged in business in this State  
10   and is subject to the tax levied under this Article if one of the following conditions is  
11   met:

- 12           (1)    The retailer is a corporation engaged in business under the laws of this  
13                   State or a person domiciled in, a resident of, or a citizen of, this State;  
14           (2)    The retailer maintains retail establishments or offices in this State,  
15                   whether the mail order sales thus subject to taxation by this State result  
16                   from or are related in any other way to the activities of such  
17                   establishments or offices;  
18           (3)    The retailer has representatives in this State who solicit business or  
19                   transact business on behalf of the retailer, whether the mail order sales  
20                   thus subject to taxation by this State result from or are related in any  
21                   other way to such solicitation or transaction of business;  
22           (4)    ~~The property was delivered in this State in fulfillment of a sales~~  
23                   ~~contract that was entered into in this State, in accordance with~~  
24                   ~~applicable conflict of laws rules, when a person in this State accepted~~  
25                   ~~an offer by ordering the property;~~  
26           (5)    ~~The retailer, by purposefully or systematically exploiting the market~~  
27                   ~~provided by this State by any media assisted, media facilitated, or~~  
28                   ~~media solicited means, including direct mail advertising, distribution~~  
29                   ~~of catalogues, computer assisted shopping, television, radio or other~~  
30                   ~~electronic media, telephone solicitation, magazine or newspaper~~  
31                   ~~advertisements, or other media, creates nexus with this State;~~  
32           (6)    Through compact or reciprocity with another jurisdiction of the United  
33                   States, that jurisdiction uses its taxing power and its jurisdiction over  
34                   the retailer in support of this State's taxing power; or  
35           (7)    The retailer consents, expressly or by implication, to the imposition of  
36                   the tax imposed by this Article. ~~For purposes of this subdivision,~~  
37                   ~~evidence that a retailer engaged in the activity described in subdivision~~  
38                   ~~(5) shall be prima facie evidence that the retailer consents to the~~  
39                   ~~imposition of the tax imposed by this Article."~~

40       Sec. 2. Section 56 of Chapter 1086 of the 1987 Session Laws is repealed.  
41   All State sales and use tax revenues in the State Special Revenue Fund created in  
42   Section 56 of Chapter 1086 of the 1987 Session Laws shall be deposited in the General  
43   Fund. All local sales and use tax revenues in the Local Special Revenue Fund created  
44   in Section 56 of Chapter 1086 of the 1987 Session Laws shall be distributed to local

- 1 governments in accordance with Articles 39, 40, 41, and 42 of Chapter 105 of the  
2 General Statutes and in accordance with Chapter 1096 of the 1967 Session Laws.  
3           Sec. 3. This act shall become effective July 1, 1990, and applies to sales  
4 made on or after that date.