

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1253

Short Title: Modify Mail Order Sales Tax.

(Public)

Sponsors: Representative Miller.

Referred to: Finance.

May 10, 1991

A BILL TO BE ENTITLED  
AN ACT TO MODIFY THE MAIL ORDER SALES TAX.  
The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.3(5) reads as rewritten:

"(5) 'Engaged in ~~business~~' shall mean ~~business~~.' A person is engaged in business if the person sells or delivers tangible personal property for storage, use, or consumption in this State and:

- a. Maintains, occupies, or uses any place of business in this State, whether temporarily or permanently, directly or indirectly, or through a subsidiary or agent;
- b. Has an agent in this State who solicits orders or sells or delivers property;
- c. Maintains tangible personal property in this State for lease or rental, whether temporarily or permanently, directly or indirectly, or through a subsidiary or agent;
- d. Systematically solicits orders in this State through a radio, television, or cable television operator located in this State, billboards located in this State, or a publisher located in this State; or
- e. Systematically solicits orders in this State by any means and utilizes telecommunications, banking, or debt collection services in this State.

~~maintaining, occupying or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name~~

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1 called, any office, place of distribution, sales or sample room or place,  
2 warehouse or storage place, or other place of business, for the selling  
3 or delivering of tangible personal property for storage, use or  
4 consumption in this State, or permanently or temporarily, directly or  
5 through a subsidiary, having any representative, agent, salesman,  
6 canvasser or solicitor operating in this State in such selling or  
7 delivering, and the fact that any corporate retailer, agent or subsidiary  
8 engaged in business in this State may not be legally domesticated or  
9 qualified to do business in this State shall be immaterial. It shall also  
10 mean the maintaining in this State, either permanently or temporarily,  
11 directly or through a subsidiary, tangible personal property for the  
12 purpose of lease or rental. It shall also mean making a mail order sale,  
13 as defined in subdivision (8a) of this section, if one of the conditions  
14 listed in G.S. 105-164.8(b) is met."

15 Sec. 2. G.S. 105-164.3(8) is repealed.

16 Sec. 3. G.S. 105-164.3(14) reads as rewritten:

17 "(14) 'Retailer' means and includes every person engaged in the business  
18 of making sales of tangible personal property at retail, either within  
19 or without this State, or peddling the same or soliciting or taking  
20 orders for sales, whether for immediate or future delivery, for  
21 storage, use or consumption in this State and every manufacturer,  
22 producer or contractor engaged in business in this State and selling,  
23 delivering, erecting, installing or applying tangible personal  
24 property for use in this State notwithstanding that said property  
25 may be permanently affixed to a building or realty or other tangible  
26 personal property. 'Retailer' also means a person who makes a mail  
27 order sale, as defined in this section, if one of the conditions listed in  
28 G.S. 105-164.8(b) is met.—Provided, however, that when in the  
29 opinion of the Secretary it is necessary for the efficient  
30 administration of this Article to regard any salesmen, solicitors,  
31 representatives, consignees, peddlers, truckers or canvassers as  
32 agents of the dealers, distributors, consignors, supervisors,  
33 employers or persons under whom they operate or from whom they  
34 obtain the tangible personal property sold by them regardless of  
35 whether they are making sales on their own behalf or on behalf of  
36 such dealers, distributors, consignors, supervisors, employers or  
37 persons, the Secretary may so regard them and may regard the  
38 dealers, distributors, consignors, supervisors, employers or persons  
39 as 'retailers' for the purpose of this Article."

40 Sec. 4. G.S. 105-164.8 reads as rewritten:

41 "**§ 105-164.8. Retailer to collect tax regardless of place sale consummated; mail order**  
42 **sales subject to tax, consummated.**

43 (a) Every retailer engaged in business in this State as defined in this Article shall  
44 collect ~~said tax~~ the taxes levied in this Article notwithstanding

- 1 (1) That the purchaser's order or the contract of sale is delivered, mailed or  
2 otherwise transmitted by the purchaser to the retailer at a point outside  
3 this State as a result of solicitation by the retailer through the medium  
4 of a catalogue or other written advertisement; or
- 5 (2) That the purchaser's order or the contract of sale is made or closed by  
6 acceptance or approval outside this State, or before said tangible  
7 personal property enters this State; or
- 8 (3) That the purchaser's order or the contract of sale provides that said  
9 property shall be or is in fact procured or manufactured at a point  
10 outside this State and shipped directly to the purchaser from the point  
11 of origin; or
- 12 (4) That said property is mailed to the purchaser in this State or a point  
13 outside this State or delivered to a carrier outside this State f.o.b. or  
14 otherwise and directed to the purchaser in this State regardless of  
15 whether the cost of transportation is paid by the retailer or by the  
16 purchaser; or
- 17 (5) That said property is delivered directly to the purchaser at a point  
18 outside this State; or
- 19 (6) Any combination in whole or in part of any two or more of the  
20 foregoing statements of fact, if it is intended that the tangible personal  
21 property purchased be brought to this State for storage, use or  
22 consumption in this State.
- 23 (b) ~~A retailer who makes a mail order sale is engaged in business in this State~~  
24 ~~and is subject to the tax levied under this Article if one of the following conditions is~~  
25 ~~met:~~
- 26 (1) ~~The retailer is a corporation engaged in business under the laws of this~~  
27 ~~State or a person domiciled in, a resident of, or a citizen of, this State;~~
- 28 (2) ~~The retailer maintains retail establishments or offices in this State,~~  
29 ~~whether the mail order sales thus subject to taxation by this State result~~  
30 ~~from or are related in any other way to the activities of such~~  
31 ~~establishments or offices;~~
- 32 (3) ~~The retailer has representatives in this State who solicit business or~~  
33 ~~transact business on behalf of the retailer, whether the mail order sales~~  
34 ~~thus subject to taxation by this State result from or are related in any~~  
35 ~~other way to such solicitation or transaction of business;~~
- 36 (4) ~~The property was delivered in this State in fulfillment of a sales~~  
37 ~~contract that was entered into in this State, in accordance with~~  
38 ~~applicable conflict of laws rules, when a person in this State accepted~~  
39 ~~an offer by ordering the property;~~
- 40 (5) ~~The retailer, by purposefully or systematically exploiting the market~~  
41 ~~provided by this State by any media-assisted, media-facilitated, or~~  
42 ~~media-solicited means, including direct mail advertising, distribution~~  
43 ~~of catalogues, computer-assisted shopping, television, radio or other~~

1                    ~~electronic media, telephone solicitation, magazine or newspaper~~  
2                    ~~advertisements, or other media, creates nexus with this State;~~  
3                    (6) ~~Through compact or reciprocity with another jurisdiction of the United~~  
4                    ~~States, that jurisdiction uses its taxing power and its jurisdiction over~~  
5                    ~~the retailer in support of this State's taxing power; or~~  
6                    (7) ~~The retailer consents, expressly or by implication, to the imposition of~~  
7                    ~~the tax imposed by this Article. For purposes of this subdivision,~~  
8                    ~~evidence that a retailer engaged in the activity described in subdivision~~  
9                    ~~(5) shall be **prima facie** evidence that the retailer consents to the~~  
10                    ~~imposition of the tax imposed by this Article."~~

11                    Sec. 5. This act is effective upon ratification.