

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 1388

Short Title: Uniform Taxes on Sales.

(Public)

Sponsors: Representative Miller.

Referred to: Finance.

April 29, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR UNIFORM TAX TREATMENT OF INTERSTATE AND INTRASTATE 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 tax notwithstanding the tax even if one or more of the following conditions exist:

- (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 advertisement.
(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 State.
(3) That the purchaser's order or the contract of sale provides that said the property shall be or is in fact procured or manufactured at a point

1 outside this State and shipped directly to the purchaser from the point of
2 ~~origin; or origin.~~

3 (4) ~~That said~~ The property is mailed to the purchaser in this State or a point
4 outside this State or delivered to a carrier outside this State f.o.b. or
5 otherwise and directed to the purchaser in this State regardless of
6 whether the cost of transportation is paid by the retailer or by the
7 ~~purchaser; or purchaser.~~

8 (5) ~~That said~~ The property is delivered directly to the purchaser at a point
9 outside this ~~State; or State.~~

10 (6) Any combination in whole or in part of any two or more of the
11 foregoing ~~statements of fact, conditions,~~ if it is intended that the tangible
12 personal property purchased be brought to this State for storage, use or
13 consumption in this State.

14 (b) A retailer who makes a mail order sale is engaged in business in this State and
15 is subject to the tax levied under this Article if one or more of the following conditions is
16 are met:

17 (1) The retailer is a corporation engaged in business under the laws of this
18 State or a person domiciled in, a resident of, or a citizen of, this ~~State;~~
19 State.

20 (2) The retailer or an affiliate of the retailer maintains retail establishments
21 or offices in this State, whether the mail order sales thus subject to
22 taxation by this State result from or are related in any other way to the
23 activities of ~~such those~~ establishments or ~~offices; offices.~~

24 (3) The retailer has one or more representatives or agents in this State ~~who~~
25 that solicit business or transact business on behalf of the retailer,
26 whether the mail order sales thus subject to taxation by this State result
27 from or are related in any other way to ~~such this~~ solicitation or
28 transaction of ~~business; business.~~

29 (4) Repealed by Session Laws 1991, c. 45, s. 16.

30 (5) The retailer, by purposefully or systematically exploiting the market
31 provided by this State by any media-assisted, media-facilitated, or
32 media-solicited means, including direct mail advertising, distribution of
33 catalogs, computer-assisted shopping, television, radio or other
34 electronic media, telephone solicitation, magazine or newspaper
35 advertisements, or other media, creates nexus with this ~~State; State.~~

36 (6) Through compact or reciprocity with another jurisdiction of the United
37 States, that jurisdiction uses its taxing power and its jurisdiction over the
38 retailer in support of this State's taxing ~~power; or power.~~

39 (7) The retailer consents, expressly or by implication, to the imposition of
40 the tax imposed by this Article. For purposes of this subdivision,
41 evidence that a retailer engaged in the activity described in subdivision
42 (5) shall be prima facie evidence that the retailer consents to the
43 imposition of the tax imposed by this Article.

1 (8) The retailer maintains an Internet web site on a server located in this
2 State.

3 (9) The retailer places data, known as 'cookies', on a purchaser's web site
4 located in this State."

5 Section 2. G.S. 105-164.3(2) reads as rewritten:

6 "(20) Tangible personal property. – Personal property that may be seen,
7 weighed, measured, felt, or touched or is in any other manner
8 perceptible to the senses. The term does not include stocks, bonds,
9 notes, insurance, or other obligations or securities, nor does it
10 include water delivered by or through main lines or pipes either for
11 commercial or domestic use or consumption. The term includes
12 computer software ~~delivered on a storage medium, such as a cd-rom, a~~
13 ~~disk, or a tape.~~ software."

14 Section 3. This act becomes effective October 1, 1999, and applies to sales
15 made on or after that date.