

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 144
Finance Committee Substitute Adopted 5/23/01
House Committee Substitute Favorable 7/16/01

Short Title: Streamlined Sales and Use Tax Agreement.

(Public)

Sponsors:

Referred to:

February 14, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO ENABLE NORTH CAROLINA TO ENTER THE STREAMLINED
3 SALES AND USE TAX AGREEMENT.

4 The General Assembly of North Carolina enacts:

5

6

PART 1. UNIFORM SALES AND USE TAX ADMINISTRATION ACT

7

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9 SECTION 1.1. Article 5 of Chapter 105 of the General Statutes is amended
10 by adding a new Part 7A to be titled "Uniform Sales and Use Tax Administration Act."
11 The following statutes are recodified in the new Part 7A: G.S. 105-164.43A(a) is
12 recodified as G.S. 105-164.42H(a); G.S. 105-164.43A(b) is recodified as G.S.
13 105-164.42I(a); G.S. 105-164.43B is recodified as G.S. 105-164.42I(b).

14

15 SECTION 1.2. G.S. 105-164.43C is repealed.

16

17 SECTION 1.3. Part 7A of Article 5 of Chapter 105 of the General Statutes,
18 as created in Section 1.1 of this act, reads as rewritten:

19

"Part 7A. Uniform Sales and Use Tax Administration Act.

20

21 "**§ 105-164.42A. Short title.**

22

23 This Part is the 'Uniform Sales and Use Tax Administration Act' and may be cited by
24 that name.

25

26 "**§ 105-164.42B. Definitions.**

27

The following definitions apply in this Part:

28

(1) Agreement. – The Streamlined Sales and Use Tax Agreement.

29

(2) Certified automated system. – Software certified jointly by the states
30 that are signatories to the Agreement to calculate the tax imposed by
31 each jurisdiction on a transaction, determine the amount of tax to remit
32 to the appropriate state, and maintain a record of the transaction.

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- 1 (3) Certified service provider. – An agent certified jointly by the states
2 that are signatories to the Agreement to perform all of the seller's sales
3 tax functions.
- 4 (4) Member state. – A state that has entered into the Agreement.
- 5 (5) Person. -- Defined in G.S. 105-228.90.
- 6 (6) Sales tax. – The tax levied in G.S. 105-164.4.
- 7 (7) Seller. – A person making sales, leases, or rentals of personal property
8 or services.
- 9 (8) State. – The term "this State" means the State of North Carolina.
10 Otherwise, the term "state" means any state of the United States and
11 the District of Columbia.
- 12 (9) Use tax. – The tax levied in G.S. 105-164.6.

13 **"§ 105-164.42C. Authority to enter Agreement.**

14 The Secretary is authorized to enter into the Agreement with one or more states to
15 simplify and modernize sales and use tax administration in order to substantially reduce
16 the burden of tax compliance for all sellers and for all types of commerce. The Secretary
17 may act jointly with other member states to establish standards for certification of a
18 certified service provider and a certified automated system and to establish performance
19 standards for multistate sellers.

20 The Secretary is authorized to represent this State before the other member states.
21 The Secretary may take any other actions reasonably required to implement this Part,
22 including the joint procurement with other member states of goods and services in
23 furtherance of the Agreement.

24 **"§ 105-164.42D. Relationship to North Carolina law.**

25 No provision of the Agreement authorized by this Part invalidates or amends any
26 provision of the law of this State. Adoption of the Agreement by this State does not
27 amend or modify any law of this State. Implementation of a condition of the Agreement
28 in this State must be made pursuant to an act of the General Assembly.

29 **"§ 105-164.42E. Agreement requirements.**

30 The Secretary may not enter into the Agreement unless the Agreement requires each
31 state to abide by the following requirements:

- 32 (1) Uniform state rate. – The Agreement must set restrictions to achieve
33 more uniform state rates through the following:
- 34 a. Limiting the number of state rates.
- 35 b. Limiting maximums on the amount of state tax that is due on a
36 transaction.
- 37 c. Limiting thresholds on the application of a state tax.
- 38 (2) Uniform standards. – The Agreement must establish uniform standards
39 for all of the following:
- 40 a. The sourcing of transactions to taxing jurisdictions.
- 41 b. The administration of exempt sales.
- 42 c. The allowances a seller can take for bad debts.
- 43 d. Sales and use tax returns and remittances.

- 1 (3) Uniform definitions. – The Agreement must require states to develop
2 and adopt uniform definitions of sales and use tax terms. The
3 definitions must enable a state to preserve its ability to make policy
4 choices not inconsistent with the uniform definitions.
- 5 (4) Central registration. – The Agreement must provide a central,
6 electronic registration system that allows a seller to register to collect
7 and remit sales and use taxes for all signatory states.
- 8 (5) No nexus attribution. – The Agreement must provide that registration
9 with the central registration system and the collection of sales and use
10 taxes in the signatory states will not be used as a factor in determining
11 whether the seller has nexus with a state for any tax.
- 12 (6) Local sales and use taxes. – The Agreement must provide for reduction
13 of the burdens of complying with local sales and use taxes through one
14 or more of the following:
- 15 a. Restricting variances between the state and local tax bases.
16 b. Requiring states to administer any sales and use taxes levied by
17 local jurisdictions within the state so that sellers collecting and
18 remitting these taxes will not have to register or file returns
19 with, remit funds to, or be subject to independent audits from
20 local taxing jurisdictions.
- 21 c. Restricting the frequency of changes in the local sales and use
22 tax rates and setting effective dates for the application of local
23 jurisdictional boundary changes to local sales and use taxes.
- 24 d. Providing notice of changes in local sales and use tax rates and
25 of changes in the boundaries of local taxing jurisdictions.
- 26 (7) Monetary allowances. –The Agreement must outline any monetary
27 allowances that are to be provided by the states to sellers or certified
28 service providers.
- 29 (8) State compliance. – The Agreement must require each state to certify
30 compliance with the terms of the Agreement before becoming a
31 member and to maintain compliance, under the laws of the member
32 state, with all provisions of the Agreement while a member.
- 33 (9) Consumer privacy. – The Agreement must require each state to adopt a
34 uniform policy for certified service providers that protects the privacy
35 of consumers and maintains the confidentiality of tax information.

36 **"§ 105-164.42F. Cooperating sovereigns.**

37 The Agreement authorized by this Part is an accord among individual cooperating
38 sovereigns in furtherance of their governmental functions. The Agreement provides a
39 mechanism among the member states to establish and maintain a cooperative, simplified
40 system for the application and administration of sales and use taxes under the laws of
41 each member state.

42 **"§ 105-164.42G. Effect of Agreement.**

1 Entry of this State into the Agreement does not create a cause of action or a defense
2 to an action. No person may challenge any action or inaction by a department, agency,
3 or other instrumentality of this State, or a political subdivision of this State, on the
4 ground that the action or inaction is inconsistent with the Agreement. No law of this
5 State, or its application, may be declared invalid on the ground that the provision or
6 application is inconsistent with the Agreement.

7 **"§ 105-164.42H. Certification of certified automated system and effect of**
8 **certification.**

9 (a) ~~Software.~~ Certification. – The Secretary may certify a software program as a
10 certified ~~sales tax collection program automated system~~ if the Secretary determines that
11 the program correctly determines all of the following and that the software can generate
12 reports and returns required by the Secretary:

- 13 (1) The applicable combined State and local sales and use tax rate for a
14 sale, based on ~~a ship to address.~~ the sourcing principles in G.S. 105-
15 164.4B.
- 16 (2) Whether or not an item is exempt from tax, based on a uniform
17 product code or another method.
- 18 (3) Whether or not an exemption certificate offered by a purchaser is a
19 valid certificate, based on the Department's registry of holders of
20 exemption certificates.
- 21 (4) The amount of tax to be remitted for each taxpayer for a reporting
22 period.
- 23 (5) Any other issue necessary for the application or calculation of sales
24 and use tax due.

25 (b) Liability. – A seller may choose to use a certified automated system in
26 performing its sales tax administration functions. A seller that uses a certified automated
27 system is liable for sales and use taxes due on transactions it processes using the
28 certified automated system except for underpayments of tax attributable to errors in the
29 functioning of the system. A person that provides a certified automated system is
30 responsible for the proper functioning of that system and is liable for underpayments of
31 tax attributable to errors in the functioning of the system.

32 **"§ 105-164.42I. Contract with certified service provider and effect of contract.**

33 (a) ~~Tax Collector.~~ Certification. – The Secretary may certify an entity as a
34 Certified ~~Sales Tax Collector~~ certified service provider if the entity meets all of the
35 following requirements:

- 36 (1) The entity uses a certified ~~sales tax collection program.~~ automated
37 system.
- 38 (2) The entity has agreed to update its program upon notification by the
39 Secretary.
- 40 (3) The entity integrates its certified ~~sales tax collection program~~
41 automated system with the system of a ~~retailer~~ seller for whom the
42 entity collects tax so that the tax due on a sale is determined at the time
43 of the sale.

1 (4) The entity remits the taxes it collects at the time and in the manner
2 specified by the Secretary.

3 (5) The entity agrees to file sales and use tax returns on behalf of the
4 ~~retailers-sellers~~ for whom it collects tax.

5 (6) The entity enters into a contract with the Secretary and agrees to
6 comply with all the conditions of the contract.

7 (b) Contract. – The Secretary may contract with a ~~Certified Sales Tax Collector~~
8 certified service provider for the collection and remittance of sales and use taxes. A
9 ~~Certified Sales Tax Collector~~ certified service provider must file with the Secretary a
10 bond or an irrevocable letter of credit in the amount set by the Secretary. A bond must
11 be conditioned upon compliance with the contract, be payable to the State, and be in the
12 form required by the Secretary. The amount a ~~Certified Sales Tax Collector~~ certified
13 service provider charges under the contract is a cost of collecting the tax and is payable
14 from the amount collected.

15 (c) Liability. – A seller may contract with a certified service provider to collect
16 and remit sales and use taxes payable to the State on sales made by the seller. A
17 certified service provider with whom a seller contracts is the agent of the seller. As the
18 seller's agent, the certified service provider, rather than the seller, is liable for sales and
19 use taxes due this State on all sales transactions the certified service provider processes
20 for the seller unless the seller misrepresents the type of products it sells or commits
21 fraud. A seller that misrepresents the type of products it sells or commits fraud is liable
22 for taxes not collected as a result of the misrepresentation or fraud.

23 (d) Audit and Review. – In the absence of misrepresentation or fraud, a seller that
24 contracts with a certified service provider is not subject to audit on the transactions
25 processed by the certified service provider. A seller is subject to audit for transactions
26 not processed by the certified service provider. The State may perform a system check
27 of a seller and review a seller's procedures to determine if the certified service provider's
28 system is functioning properly and the extent to which the seller's transactions are being
29 processed by the certified service provider. A certified service provider is subject to
30 audit.

31 **"§ 105-164.42J. Performance standard for multistate seller.**

32 The Secretary may establish a performance standard for a seller that is engaged in
33 business in this State and at least 10 other states and has developed a proprietary system
34 to determine the amount of sales and use taxes due on transactions. A seller that enters
35 into an agreement with the Secretary that establishes a performance standard for that
36 system is liable for the failure of the system to meet the performance standard."

37
38 PART 2. CONFORMING CHANGES

39
40 SECTION 2.1. The introductory language of G.S. 105-164.3 reads as
41 rewritten:

42 "§ 105-164.3. Definitions.

1 The following definitions apply in this article, ~~except when the context clearly~~
2 ~~indicates a different meaning.~~ Article:".

3 **SECTION 2.2.** G.S. 105-164.3, as amended by Section 2.1 of this act, is
4 amended by adding the following new subdivisions:

5 **"§ 105-164.3. Definitions.**

6 The following definitions apply in this Article:

7

8 (2a) Candy. – A preparation of sugar, honey, or other natural or artificial
9 sweeteners in combination with chocolate, fruits, nuts, or other
10 ingredients or flavorings in the form of bars, drops, or pieces that do
11 not require refrigeration. The term does not include any preparation
12 that contains flour.

13

14 (4a) Delivery charges. – Charges imposed by the retailer for preparation
15 and delivery of personal property or services to a location designated
16 by the consumer.

17

18 (4b) Dietary supplement. – A product that is intended to supplement the
19 diet of humans and is required to be labeled as a dietary supplement
20 under federal law, identifiable by the "Supplement Facts" box found
21 on the label.

22

23 (5a) Food. – Substances that are sold for ingestion or chewing by humans
24 and are consumed for their taste or nutritional value. The substances
25 may be in liquid, concentrated, solid, frozen, dried, or dehydrated
26 form. The term does not include alcoholic beverages, as defined in
27 G.S. 105-113.68, or tobacco products, as defined in G.S. 105-113.4.

28

29 (5b) Food sold through a vending machine. – Food dispensed from a
30 machine or another mechanical device that accepts payment.

31

32 (12a) Purchase price. – The term has the same meaning as the term "sales
33 price" when applied to an item subject to use tax.

34

35 (16b) Soft drink. – A nonalcoholic beverage that contains natural or artificial
36 sweeteners. The term does not include beverages that contain one or
37 more of the following:

38 a. Milk or milk products.

39 b. Soy, rice, or similar milk substitutes.

40 c. More than fifty percent (50%) vegetable or fruit juice."

41 **SECTION 2.3.** G.S. 105-164.3(11a) reads as rewritten:

42 ~~"(11a) Prepared food and drink. food. – Meals, food, and beverages to which~~
43 ~~a retailer has added value or whose state the retailer has altered (other~~

1 than solely by cooling) by preparing, combining, dividing, heating, or
2 serving, in order to make them available for immediate human
3 consumption. Food that meets at least one of the following conditions:

- 4 a. It is sold in a heated state or it is heated by the retailer.
5 b. It consists of two or more foods mixed or combined by the
6 retailer for sale as a single item.
7 c. It is sold with eating utensils provided by the retailer, such as
8 plates, knives, forks, spoons, glasses, cups, napkins, and straws.

9 The term does not include food the retailer sliced, repackaged, or
10 pasteurized but did not otherwise process."

11 **SECTION 2.4.** G.S. 105-164.3(13) reads as rewritten:

12 "(13) "Retail" shall mean the sale of any tangible personal property in any
13 quantity or quantities for any use or purpose on the part of the
14 purchaser other than for resale. Retail sale or sale at retail. – The sale,
15 lease, or rental for any purpose other than for resale, sublease, or
16 subrent."

17 **SECTION 2.5.** G.S. 105-164.3(16) reads as rewritten:

18 "(16) ~~Except as provided in paragraph f., "sales price" means the total~~
19 ~~amount for which tangible personal property is sold including charges~~
20 ~~for any services that go into the fabrication, manufacture or delivery of~~
21 ~~such tangible personal property and that are a part of the sale valued in~~
22 ~~money whether paid in money or otherwise and includes any amount~~
23 ~~for which credit is given to the purchaser by the seller without any~~
24 ~~deduction therefrom on account of the cost of the property sold, the~~
25 ~~cost of materials used, labor or service costs, interest charged, losses or~~
26 ~~any other expenses whatsoever. Provided, however, that where a~~
27 ~~manufacturer, producer or contractor erects, installs or affixes tangible~~
28 ~~personal property upon real property pursuant to a construction or~~
29 ~~performance type contract with or for the benefit of the owner of such~~
30 ~~real property, the sales price shall be the cost of such property to the~~
31 ~~manufacturer, producer or contractor performing the contract.~~
32 ~~Provided, further:~~

- 33 a. ~~The cost for labor or services rendered in erecting, installing or~~
34 ~~applying property sold when separately charged shall not be~~
35 ~~included as a part of the "sales price";~~
36 b. ~~Finance charges, service charges or interest from credit~~
37 ~~extended under conditional sales contracts or other conditional~~
38 ~~contracts providing for deferred payments of the purchase price~~
39 ~~shall not be considered a part of the "sales price" when~~
40 ~~separately charged;~~
41 e. ~~"Sales price" shall not include the amount of any tax imposed by~~
42 ~~the United States upon or with respect to retail sales whether~~
43 ~~imposed upon the retailer or consumer except that any~~

1 manufacturers' or importers' excise tax shall be included in the
2 term.

3 d. ~~"Sales price" shall not include any amounts charged as deposits
4 on beverage containers which are returnable to vendors for
5 reuse and which amounts are refundable or creditable to
6 vendees, whether or not said deposits are separately charged.~~

7 e. ~~"Sales price" shall not include amounts charged as deposits on
8 aeronautic, automotive, industrial, marine and farm replacement
9 parts which are returnable to vendors for rebuilding or
10 remanufacturing and which amounts are refundable or
11 creditable to vendees, whether or not such deposits are
12 separately charged. This subsection shall not be construed to
13 include tires and batteries.~~

14 f. ~~The sales price of tangible personal property sold through a
15 coin operated vending machine, other than closed container soft
16 drinks or tobacco products, is considered to be fifty percent
17 (50%) of the total amount for which the property is sold in the
18 vending machine.~~

19 Sales price. – The total amount or consideration for which personal
20 property or services are sold, leased, or rented. The consideration may
21 be in the form of cash, credit, property, or services. The sales price
22 must be valued in money, regardless of whether it is received in
23 money.

24 a. The term includes all of the following:

- 25 1. The retailer's cost of the property sold.
- 26 2. The cost of materials used, labor or service costs,
27 interest, losses, all costs of transportation to the retailer,
28 all taxes imposed on the retailer, and any other expense
29 of the retailer.
- 30 3. Charges by the retailer for any services necessary to
31 complete the sale.
- 32 4. Delivery charges.
- 33 5. Installation charges.
- 34 6. The value of exempt personal property given to the
35 consumer when taxable and exempt personal property
36 are bundled together and sold by the retailer as a single
37 product or piece of merchandise.

38 b. The term does not include any of the following:

- 39 1. Discounts, including cash, term, or coupons, that are not
40 reimbursed by a third party, are allowed by the retailer,
41 and are taken by a consumer on a sale.
- 42 2. Interest, financing, and carrying charges from credit
43 extended on the sale, if the amount is separately stated

1 on the invoice, bill of sale, or a similar document given
2 to the consumer.

3 3. Any taxes imposed directly on the consumer that are
4 separately stated on the invoice, bill of sale, or similar
5 document given to the consumer."

6 **SECTION 2.6.** G.S. 105-164.3(18) reads as rewritten:

7 "(18) "Use" means and includes the exercise of any right or power or
8 dominion whatsoever over tangible personal property by a purchaser
9 thereof and includes, but is not limited to, any withdrawal from
10 storage, distribution, installation, affixation to real or personal
11 property, or exhaustion or consumption of tangible personal property
12 by the owner or purchaser thereof, but ~~shall~~does not include the sale
13 of tangible personal property in the regular course of business."

14 **SECTION 2.7.** G.S. 105-164.3(16c) is recodified as G.S. 105-164.3(16d).
15 G.S. 105-164.3(16b) is recodified as G.S. 105-164.3(16c).

16 **SECTION 2.8.** G.S. 105-164.4A(2) is repealed.

17 **SECTION 2.9.** Part 2 of Article 5 of Chapter 105 of the General Statutes is
18 amended by adding a new section to read:

19 "**§ 105-164.4B. Sales are sourced based on destination.**

20 (a) Principles. – The following principles apply in determining where to source
21 the sale of a product. These principles apply regardless of the nature of the product.

22 (1) Over-the-counter. – When a purchaser receives a product at a business
23 location of the seller, the sale is sourced to that business location.

24 (2) Delivery to specified address. – When a purchaser receives a product
25 at a location specified by the purchaser and the location is not a
26 business location of the seller, the sale is sourced to the location where
27 the purchaser receives the product.

28 (3) Delivery address unknown. – When a seller of a product does not
29 know the address where a product is received, the sale is sourced to the
30 first address listed in this subsection that is known to the seller:

31 a. The business or home address of the purchaser.

32 b. The billing address of the purchaser.

33 c. The address of the seller.

34 (b) Exceptions. – This section does not apply to telecommunications services."

35 **SECTION 2.10.** G.S. 105-164.8 reads as rewritten:

36 "**§ 105-164.8. Retailer-Retailer's obligation to collect tax regardless of place sale**
37 **consummated; tax; mail order sales subject to tax.**

38 (a) Sales Tax. – Every retailer engaged in business in this State as defined in this
39 Article shall collect said tax notwithstanding

40 (1) That the purchaser's order or the contract of sale is delivered, mailed or
41 otherwise transmitted by the purchaser to the retailer at a point outside
42 this State as a result of solicitation by the retailer through the medium
43 of a catalogue or other written advertisement; or

- 1 (2) That the purchaser's order or the contract of sale is made or closed by
2 acceptance or approval outside this State, or before said tangible
3 personal property enters this State; or
4 (3) That the purchaser's order or the contract of sale provides that said
5 property shall be or is in fact procured or manufactured at a point
6 outside this State and shipped directly to the purchaser from the point
7 of origin; or
8 (4) That said property is mailed to the purchaser in this State or a point
9 outside this State or delivered to a carrier outside this State f.o.b. or
10 otherwise and directed to the purchaser in this State regardless of
11 whether the cost of transportation is paid by the retailer or by the
12 purchaser; or
13 (5) That said property is delivered directly to the purchaser at a point
14 outside this State; or
15 (6) Any combination in whole or in part of any two or more of the
16 foregoing statements of fact, if it is intended that the tangible personal
17 property purchased be brought to this State for storage, use or
18 consumption in this State.
- 19 (b) Mail Order Sales. – A retailer who makes a mail order sale is engaged in
20 business in this State and is subject to the tax levied under this Article if one of the
21 following conditions is met:
- 22 (1) The retailer is a corporation engaged in business under the laws of this
23 State or a person domiciled in, a resident of, or a citizen of, this State;
24 (2) The retailer maintains retail establishments or offices in this State,
25 whether the mail order sales thus subject to taxation by this State result
26 from or are related in any other way to the activities of such
27 establishments or offices;
28 (3) The retailer has representatives in this State who solicit business or
29 transact business on behalf of the retailer, whether the mail order sales
30 thus subject to taxation by this State result from or are related in any
31 other way to such solicitation or transaction of business;
32 (4) Repealed by Session Laws 1991, c. 45, s. 16.
33 (5) The retailer, by purposefully or systematically exploiting the market
34 provided by this State by any media-assisted, media-facilitated, or
35 media-solicited means, including direct mail advertising, distribution
36 of catalogs, computer-assisted shopping, television, radio or other
37 electronic media, telephone solicitation, magazine or newspaper
38 advertisements, or other media, creates nexus with this State;
39 (6) Through compact or reciprocity with another jurisdiction of the United
40 States, that jurisdiction uses its taxing power and its jurisdiction over
41 the retailer in support of this State's taxing power; or
42 (7) The retailer consents, expressly or by implication, to the imposition of
43 the tax imposed by this Article. For purposes of this subdivision,

1 evidence that a retailer engaged in the activity described in subdivision
2 (5) shall be prima facie evidence that the retailer consents to the
3 imposition of the tax imposed by this Article.

4 (c) Use Tax. – A retailer who is required to collect the tax imposed by this
5 Article must collect a local use tax on a transaction if a local sales tax does not apply to
6 the transaction. The sourcing principles in G.S. 105-164.4B determine whether a local
7 sales tax or a local use tax applies to a transaction. A "local sales tax" is a tax imposed
8 under Chapter 1096 of the 1967 Session Laws or by Subchapter VIII of this Chapter,
9 and a local use tax is a use tax imposed under that act or Subchapter."

10 **SECTION 2.11.** G.S. 105-164.12 is repealed.

11 **SECTION 2.12.** G.S. 105-164.13 is amended by adding the following new
12 subdivisions:

13 "**§ 105-164.13. Retail sales and use tax.**

14 The sale at retail, the use, storage or consumption in this State of the following
15 tangible personal property is specifically exempted from the tax imposed by this Article:

16 ...

17 (5a) Mill machinery and mill machinery parts and accessories that are
18 subject to tax under Article 5F of this Chapter.

19 ...

20 (47) An amount charged as a deposit on a beverage container that is
21 returnable to the vendor for reuse when the amount is refundable or
22 creditable to the vendee, whether or not the deposit is separately
23 charged.

24 (48) An amount charged as a deposit on an aeronautic, automotive,
25 industrial, marine, or farm replacement part that is returnable to the
26 vendor for rebuilding or remanufacturing when the amount is
27 refundable or creditable to the vendee, whether or not the deposit is
28 separately charged. This exemption does not include tires or batteries.

29 (49) Installation charges when the charges are separately stated.

30 (50) Fifty percent (50%) of the sales price of tangible personal property
31 sold through a coin-operated vending machine, other than closed-
32 container soft drinks and tobacco."

33 **SECTION 2.13.** G.S. 105-164.13B reads as rewritten:

34 "**§ 105-164.13B. Food exempt from tax.**

35 ~~The~~ Except as provided in this section, the taxes imposed by this Article do not
36 apply to food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be
37 exempt pursuant to G.S. 105-164.13 if it were purchased under the Food Stamp
38 Program, 7 U.S.C. § 51, food. The tax does apply to all of the following:

39 (1) Candy not sold for home consumption.

40 (2) Dietary supplements.

41 (3) Prepared food not sold for home consumption.

42 (4) Food sold through a vending machine.

43 (5) Soft drinks not sold for home consumption."

1 **SECTION 2.14.** G.S. 105-164.16 reads as rewritten:

2 "**§ 105-164.16. Report Returns and payment of taxes.**

3 (a) ~~Payment. General. – Taxes levied under this Article are due when a return is~~
4 ~~required to be filed. Every taxpayer liable for the tax imposed by this Article shall,~~
5 ~~within the specified time after the end of the appropriate reporting period, submit a~~
6 ~~return to the Secretary on a form prescribed by the Secretary. A return must be signed~~
7 ~~by the taxpayer or the taxpayer's agent. Sales and use taxes are payable quarterly,~~
8 ~~monthly, or semimonthly as specified in this section. A return must be filed with the~~
9 ~~Secretary on a form prescribed by the Secretary and must be signed by the taxpayer or~~
10 ~~the taxpayer's agent.~~

11 A sales tax return must state the taxpayer's gross sales for the reporting period, the
12 amount and type of sales made in the period that are exempt from tax under G.S.
13 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other
14 information required by the Secretary. A use tax return must state the cost price of
15 tangible personal property that was purchased or received during the reporting period
16 and is subject to tax under G.S. 105-164.6, the amount of tax due, and any other
17 information required by the Secretary. Returns that do not contain the required
18 information ~~shall~~will not be accepted. When an unacceptable return is submitted, the
19 Secretary ~~shall~~must require a corrected return to be filed.

20 (b) ~~General Reporting Periods. Quarterly. – Returns of taxpayers who are~~
21 ~~required by this subsection to report on a monthly or quarterly basis are due within 15~~
22 ~~days after the end of each monthly or quarterly period. Returns of taxpayers who are~~
23 ~~required to report on a semimonthly basis are due within 10 days after the end of each~~
24 ~~semimonthly period.~~

25 A taxpayer who is consistently liable for less than one hundred dollars (\$100.00) a
26 month in State and local sales and use taxes ~~may, with the approval of the Secretary,~~
27 must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a
28 calendar quarter and is due by the 15th day of the month following the end of the
29 quarter. A

30 (b1) Monthly. – A taxpayer who is consistently liable for more than one hundred
31 dollars (\$100.00) but less than twenty thousand dollars (\$20,000) a month in State and
32 local sales and use taxes must file a return and pay the taxes due on a monthly basis. A
33 monthly return is due by the 15th day of the month following the month covered by the
34 return.

35 (b2) Semimonthly. – A taxpayer who is consistently liable for at least twenty
36 thousand dollars (\$20,000) a month in State and local sales and use taxes shall, when
37 directed to do so by the Secretary, file a return on a semimonthly basis. All other
38 taxpayers shall file a return on a monthly basis. Quarterly reporting periods end on the
39 last day of March, June, September, and December; monthly reporting periods end on
40 the last day of the month; and semimonthly reporting periods end on the 15th of each
41 month and the last day of each month must pay the tax twice a month and must file a
42 return on a monthly basis. One semimonthly payment covers the period from the first
43 day of the month through the 15th day of the month. The other semimonthly payment

1 covers the period from the 16th day of the month through the last day of the month. The
2 semimonthly payment for the period that ends on the 15th day of the month is due by the
3 25th day of that month. The semimonthly payment for the period that ends on the last
4 day of the month is due by the 10th day of the following month. A return covers both
5 semimonthly payment periods. The return is due by the 20th day of the month following
6 the month of the payment periods covered by the return. A taxpayer is not subject to
7 interest on or penalties for an underpayment for a semimonthly payment period if the
8 taxpayer timely pays at least 95% of the amount due for each semimonthly payment
9 period and includes the underpayment with the monthly return for those semimonthly
10 payment periods.

11 (b3) Category. – The Secretary shall ~~must~~ monitor the amount of tax ~~remitted by a~~
12 taxpayer and shall direct a taxpayer who consistently remits at least twenty thousand
13 dollars (\$20,000) each month to file a return on a semimonthly basis. ~~State and local~~
14 sales and use taxes paid by a taxpayer or estimate the amount of taxes to be paid by a
15 new taxpayer and must direct each taxpayer to pay tax and file returns in accordance
16 with the appropriate schedule. In determining the amount of tax ~~taxes~~ due from a
17 taxpayer for a reporting period ~~taxpayer~~, the Secretary shall ~~must~~ consider the total
18 amount due from all places of business owned or operated by the same person as the
19 amount due from that person. A taxpayer must file a return and pay tax in accordance
20 with the Secretary's direction until notified in writing to file and pay under a different
21 schedule.

22 A taxpayer who is directed to remit sales and use taxes on a semimonthly basis but
23 who is unable to gather the information required to submit a complete return for either
24 the first reporting period or both the first and second semimonthly reporting periods
25 may, upon written authorization by the Secretary, file an estimated return for that first
26 reporting period or both periods on the basis prescribed by the Secretary. Once a
27 taxpayer is authorized to file an estimated return for the first period or both periods, the
28 taxpayer may continue to file an estimated return for the first or both periods until the
29 Secretary, by written notification, revokes the taxpayer's authorization to do so. When
30 filing a return for the second semimonthly reporting period, a taxpayer who files an
31 estimated return for the first period but not both periods shall remit the amount of tax
32 due for both the first and second reporting periods, less the amount the taxpayer
33 remitted with the estimated return.

34 A taxpayer who files an estimated return for both periods is considered to have been
35 granted an extension for both the first and second reporting periods. Notwithstanding
36 G.S. 105-164.19, if a taxpayer who files an estimated return for both periods files a
37 reconciling return for those periods within ten days of the due date of the return for the
38 second period and any underpayment of estimated taxes remitted with the reconciling
39 return is less than ten percent (10%) of the amount of taxes due for both the first and
40 second reporting periods, no interest shall be charged. Otherwise, a taxpayer who files
41 an estimated return for both periods shall be charged interest at the statutory rate from
42 the due date of the return for the first reporting period to the date the reconciling return
43 is filed.

1 (c) Sales Tax on Utility Services. – ~~A return for taxes~~ Taxes levied under G.S.
2 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c) are payable when a return is required to be
3 filed. A return for these taxes is due quarterly or monthly as specified in this subsection.
4 A utility that is allowed to pay tax under G.S. 105-120 on a quarterly basis shall file a
5 quarterly return. All other utilities shall file a monthly return. A quarterly return is due
6 by the last day of the month following the quarter covered by the return. A monthly
7 return is due by the last day of the month following the month in which the taxes accrue,
8 except the return for taxes that accrue in May. A return for taxes that accrue in May is
9 due by June 25.

10 A utility that is required to file a monthly return may file an estimated return for the
11 first month, the second month, or both the first and second months in a quarter. A utility
12 is not subject to interest on or penalties for an underpayment submitted with an
13 estimated monthly return if the utility timely pays at least ninety-five percent (95%) of
14 the amount due with a monthly return and includes the underpayment with the
15 company's return for the third month in the same quarter.

16 (d) **(Effective until taxable years beginning on or after January 1, 2003)** Use
17 Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases
18 tangible personal property outside the State for a nonbusiness purpose is due on an
19 annual basis. For an individual who is not required to file an individual income tax
20 return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the
21 last day of the calendar year and a use tax return is due by the following April 15. For
22 an individual who is required to file an individual income tax return, the annual
23 reporting period ends on the last day of the individual's income tax year, and the use tax
24 must be paid on the income tax return as provided in G.S. 105-269.14.

25 (d) **(Effective for taxable years beginning on or after January 1, 2003)** Use
26 Tax on Out-of-State Purchases. – Notwithstanding subsection (b), an individual who
27 purchases tangible personal property outside the State for a nonbusiness purpose shall
28 file a use tax return on an annual basis. The annual reporting period ends on the last day
29 of the calendar year. The return is due by the due date, including any approved
30 extensions, for filing the individual's income tax return."

31 **SECTION 2.15.** G.S. 105-467 reads as rewritten:

32 "**§ 105-467. Scope of sales tax.**

33 (a) Sales Tax. – The sales tax that may be imposed under this Article is limited to a
34 tax at the rate of one percent (1%) of the ~~following transactions listed in this subsection.~~
35 The sales tax authorized by this Article does not apply to sales that are taxable by the
36 State under G.S. 105-164.4 but are not specifically included in this subsection.

37 (1) The sales price of tangible personal property subject to the general rate
38 of sales tax imposed by the State under G.S. 105-164.4(a)(1) and
39 (a)(4b).

40 (2) The gross receipts derived from the lease or rental of tangible personal
41 property when the lease or rental of the property is subject to the
42 general rate of sales tax imposed by the State under G.S.
43 105-164.4(a)(2).

- 1 (3) The gross receipts derived from the rental of any room or other
2 accommodations subject to the general rate of sales tax imposed by the
3 State under G.S. 105-164.4(a)(3).
- 4 (4) The gross receipts derived from services rendered by laundries, dry
5 cleaners, and other businesses subject to the general rate of sales tax
6 imposed by the State under G.S. 105-164.4(a)(4).
- 7 (5) The sales price of food that is not otherwise exempt from tax pursuant
8 to G.S. 105-164.13 but would be exempt from the State sales and use
9 tax pursuant to G.S. 105-164.13 if it were purchased under the Food
10 Stamp Program, 7 U.S.C. § 51.

11 ~~The sales tax authorized by this Article does not apply to sales that are taxable by the~~
12 ~~State under G.S. 105-164.4 but are not specifically included in this section.~~

13 (b) Exemptions and Refunds. – The State exemptions and exclusions contained in
14 G.S. 105-164.13 and the State refund provisions contained in G.S. 105-164.14 apply to
15 the local sales and use tax authorized to be levied and imposed under this Article. A
16 taxing county may not allow an exemption, exclusion, or refund that is not allowed
17 under the State sales and use tax.

18 (c) Sourcing. – The local sales tax authorized to be imposed and levied under this
19 Article applies to taxable transactions by retailers whose place of business is located
20 within the taxing county. ~~For the purpose of this Article, the situs of a transaction is the~~
21 ~~location of the retailer's place of business.~~ The sourcing principles in G.S. 105-164.4B
22 apply in determining whether the local sales tax applies to a transaction."

23 **SECTION 2.16.** The third paragraph of Section 4 of Chapter 1096 of the
24 1967 Session Laws, as amended, is amended as follows:

- 25 (1) By adding the following sentence immediately after the second
26 sentence in that paragraph:

27 "The sourcing principles in G.S. 105-164.4B apply in determining
28 whether the local sales tax applies to a transaction."

- 29 (2) By deleting the last sentence in that paragraph.

30 **SECTION 2.17.** Chapter 105 of the General Statutes is amended by adding a
31 new Article to read:

32 "Article 5F.

33 "Mill Machinery.

34 **§ 105-187.50. Definitions.**

35 The definitions in G.S. 105-164.3 apply in this Article.

36 **§ 105-187.51. Tax imposed on mill machinery.**

- 37 (a) Scope. – A privilege tax is imposed on the following persons:

- 38 (1) A manufacturing industry or plant that purchases mill machinery or
39 mill machinery parts or accessories for storage, use, or consumption in
40 this State. A manufacturing industry or plant does not include a
41 delicatessen, café, cafeteria, restaurant, or another similar retailer that
42 is principally engaged in the retail sale of foods prepared by it for
43 consumption on or off its premises.

1 (2) A contractor or subcontractor that purchases mill machinery or mill
2 machinery parts or accessories for use in the performance of a contract
3 with a manufacturing industry or plant.

4 (3) A subcontractor that purchases mill machinery or mill machinery parts
5 or accessories for use in the performance of a contract with a general
6 contractor that has a contract with a manufacturing industry or plant.

7 (b) Rate. – The tax is one percent (1%) of the sales price of the machinery, part,
8 or accessory purchased. The maximum tax is eighty dollars (\$80.00) per article.

9 "§ 105-187.52. Administration.

10 The privilege tax this Article imposes on a person listed in G.S. 105-187.51 is an
11 additional State use tax. Except as otherwise provided in this Article, the collection and
12 administration of this tax is the same as the State use tax imposed by Article 5 of this
13 Chapter."

14 **SECTION 2.18.** Subdivision (b)(5) of Section 5 of Part IV of Chapter 908 of
15 the 1983 Session Laws, as amended by Chapter 821 of the 1989 Session Laws, reads as
16 rewritten:

17 "(b) Definitions. The definitions in G.S. 105-164.3 apply to this Part insofar as
18 they are not inconsistent with the provisions of this Part. In addition, the following
19 definitions apply in this Part:

20 ...

21 (5) Prepared Food and Beverages. ~~Any food or beverage which a retailer~~
22 ~~has added value to or has altered its state (other than solely by cooling)~~
23 ~~by preparing, combining, dividing, heating, or serving, in order to~~
24 ~~make the food or beverage available for immediate human~~
25 ~~consumption.~~The term has the same meaning as the term "prepared
26 food" in G.S. 105-164.3."

27 **SECTION 2.19.** Subdivision (a)(2) of Section 2 of Chapter 413 of the 1993
28 Session Laws reads as rewritten:

29 "Sec. 2. Definitions; Sales and Use Tax Statutes. – (a) The definitions in G.S.
30 105-164.3 apply to this act to the extent they are not inconsistent with the provisions of
31 this act. In addition, the following definitions apply in this act:

32 ...

33 (2) Prepared food and beverages. – ~~Any meals, food, or beverages to~~
34 ~~which a retailer has added value or has altered its state (other than~~
35 ~~solely by cooling) by preparing, combining, dividing, heating, or~~
36 ~~serving, in order to make the food or beverage available for immediate~~
37 ~~human consumption.~~The term has the same meaning as the term
38 "prepared food" in G.S. 105-164.3."

39 **SECTION 2.20.** Section 2 of Chapter 449 of the 1985 Session Laws, as
40 amended by Chapter 826 of the 1985 Session Laws and Chapter 177 of the 1991
41 Session Laws, reads as rewritten:

42 "Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply in this act. In addition,
43 the following definitions apply in this act.

- 1 (1) Net proceeds. Gross proceeds less the cost to the county of
2 administering and collecting the tax.
- 3 (2) Prepared food and beverages. ~~Meals, food, and beverages which a~~
4 ~~retailer has added value to or whose state has been altered (other than~~
5 ~~solely by cooling) by preparing, combining, dividing, heating, or~~
6 ~~servicing, in order to make them available for immediate~~
7 ~~consumption.~~The term has the same meaning as the term "prepared
8 food" in G.S. 105-164.3."

9 **SECTION 2.21.** Subsection (b) of Section 1 of Chapter 449 of the 1993
10 Session Laws reads as rewritten:

11 "(b) Definitions; Sales and Use Tax Statutes. – The definitions in G.S. 105-164.3
12 apply to this section to the extent they are not inconsistent with the provisions of this
13 section. In addition, the term "prepared food and beverages" ~~means any meals, food, or~~
14 ~~beverages to which a retailer has added value or has altered its state (other than solely~~
15 ~~by cooling) by preparing, combining, dividing, heating, or serving, in order to make the~~
16 ~~food or beverage available for immediate human consumption.~~has the same meaning as
17 the term "prepared food" in G.S. 105-164.3. The provisions of Article 5 and Article 9 of
18 Chapter 105 of the General Statutes apply to this section to the extent they are not
19 inconsistent with the provisions of this section."

20 **SECTION 2.22.** Subdivision (3) of Section 2 of Chapter 594 of the 1991
21 Session Laws reads as rewritten:

22 "Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply to this act to the extent
23 they are not inconsistent with the provisions of this act. The following definitions also
24 apply in this act:

25 ...

- 26 (3) Prepared food and beverage. ~~Any food or beverage to which a retailer~~
27 ~~has added value or has altered its state (other than by cooling alone) by~~
28 ~~preparing, combining, dividing, heating, or serving, in order to make~~
29 ~~the food or beverage available for immediate human consumption.~~The
30 term has the same meaning as the term "prepared food" in G.S. 105-
31 164.3."

32 PART 3. EFFECTIVE DATES

33 **SECTION 3.1.** Part 1 of this act is effective when it becomes law and
34 expires January 1, 2006, unless one of the following occurs: (i) 15 states have signed
35 the Streamlined Sales and Use Tax Agreement, or (ii) states representing a combined
36 resident population equal to at least ten percent (10%) of the national resident
37 population, as determined by the 2000 federal decennial census, have signed the
38 Agreement.

39 **SECTION 3.2.** Section 2.8, G.S. 105-164.13(5a), as enacted by Section
40 2.12, and Section 2.17 of Part 2 of this act become effective January 1, 2006. The
41 remainder of Part 2 of this act becomes effective January 1, 2002.
42
43

1 **SECTION 3.3.** The remainder of this act is effective when it becomes law.