

March 9, 2009

**S 487. MODERNIZE SALES TAX STAT/ DIGITAL PRODUCTS.** Filed 3/9/09. *TO MODERNIZE THE SALES AND USE TAX STATUTES BY TREATING MUSIC, MOVIES, BOOKS, AND COMPUTER SOFTWARE THAT ARE DELIVERED ELECTRONICALLY THE SAME AS THOSE THAT ARE PURCHASED IN A TANGIBLE MEDIUM AND BY REVISING THE "MAIL ORDER" SALES TAX PROVISIONS TO INCLUDE SPECIFIC REFERENCES TO INTERNET SALES.*

*Effective January 1, 2010.* Amends the definitions in GS 105-164.3 applying to the Sales and Use Tax (Article 5) to add definitions for (1) *audio work*, (2) *audiovisual work*, (3) *digital code*, and (4) *ring tone*. Makes accompanying organizational changes. Also deletes the definition for *load and leave*.

Current law provides for a privilege tax to be imposed on a retailer at a general rate of tax of 4.5%. Amends GS 105-164.4(a) to provide that the general rate of tax applies to the sales price of an item that (1) is listed in new subdivision (6b), (2) is delivered or accessed electronically, and (3) would be taxable under Article 5 if sold in a tangible medium. Additionally provides that the retail sale of a *digital code* that is used to obtain any of the items taxed by this proposed subdivision is considered a sale of that item and the tax applies regardless as to whether the purchaser has the rights to redistribution, permanent use, or use without making continued payments. Identifies as a retailer under Article V a person who sells an item that is taxable under this proposed subdivision. Provides that the following items are taxable under this proposed subdivision: 1) an audio work, (2) an audiovisual work, (3) a book, and (4) computer software. Provides that the tax does not apply to an item taxed under another subdivision of subsection (a) of GS 105-164.4 or under GS 105-164.4C.

Repeals GS 105-164.13(43a) (regarding computer software delivered electronically or by load and leave). Amends GS 105-467(a) regarding the scope of the sales tax to add a new subdivision (8) regarding the sales price of an audio work, audiovisual work, book, and computer software. Makes conforming change to Section 4 of Chapter 1096 of the 1967 Session Laws, as amended.

*Effective when the act becomes law.* Recodifies GS 105-164.3(18) as GS 105-164.3(33g) and rewrites it to (1) replace the term *mail order sale* with *remote sale*, (2) delete *computer link* as a mode of ordering tangible personal property, and (3) define *remote sale* to apply to a sale of tangible personal property made via the Internet in addition to ordered by mail, by telephone, or other similar method. Amends the catch line of GS 105-164.8 to delete the term *mail order sales* and replace it with the term *remote sales*. Makes a conforming change to GS 105-164.8(b). Clarifies that a retailer who makes a remote sale is considered to be doing business in North Carolina if the retailer solicits or transacts business in this state through employees, independent contractors, agents, or other representatives regardless as to whether the remote sales subject to taxation by North Carolina result from or are in any way related to the solicitation or transaction of business. Also provides that there is a rebuttable presumption that a retailer is soliciting or transacting business through an independent contractor, agent, or other representative if the cumulative gross receipts are in excess of \$100,000 during the preceding four quarterly periods from sales by the retailer to purchasers in this state, referred to the retailer by all residents with whom the retailer has a solicitation or transaction agreement. Provides criteria for submitting proof that rebuts the presumption.

**Intro. by Clodfelter.**

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