

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 81
PROPOSED COMMITTEE SUBSTITUTE S81-PCS15212-RBxr-20

Short Title: Sales Tax Economic Nexus For Remote Sales. (Public)

Sponsors:

Referred to:

February 15, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO DEFINE A RETAILER AS A PERSON WHO FACILITATES SALES IN THIS
3 STATE AND TO ESTABLISH THAT ECONOMIC NEXUS AND THE
4 MARKETPLACE IS THE BASIS FOR COLLECTION OF SALES TAX BY REMOTE
5 SELLERS.

6 The General Assembly of North Carolina enacts:

7 SECTION 1.(a) G.S. 105-164.3 reads as rewritten:

8 "§ 105-164.3. Definitions.

9 The following definitions apply in this Article:

10 ...

11 (9) Engaged in business. – Any of the following:

12 a. Maintaining, occupying, or using permanently or temporarily,
13 directly or indirectly, or through a subsidiary or agent, by whatever
14 name called, any office, place of distribution, sales or sample room,
15 warehouse or storage place, or other place of business ~~for selling or~~
16 ~~delivering tangible personal property, digital property, or a service~~
17 ~~for storage, use, or consumption~~ in this State, or permanently or
18 temporarily, directly or through a subsidiary, having any
19 representative, agent, sales representative, or solicitor operating n
20 this State ~~in the selling or delivering.~~ State. The fact that any
21 corporate retailer, agent, or subsidiary engaged in business in this
22 State may not be legally domesticated or qualified to do business in
23 this State is immaterial.

24 ...

25 e. Facilitating the sale of tangible personal property, digital property, or
26 a service in this State.

27 ...

28 (34) Retail sale or sale at retail. – The sale, lease, or rental for any purpose other
29 than for resale, sublease, or subrent. The term includes a sale made or
30 facilitated by a person regularly engaged in the sale or facilitation of sales.

31 (35) Retailer. – Any of the following persons:

32 ...

33 e. A person who facilitates the sale of tangible personal property,
34 digital property, or a service on behalf of a third party.

35 ...



- 1 (51) Wholesale merchant. – A person engaged in the business of any of the
 2 following:
 3 a. Making wholesale sales.
 4 b. Buying or manufacturing tangible personal property, digital property,
 5 or a service and selling it to a ~~registered resident or nonresident retail~~
 6 retailer or wholesale merchant for resale.
 7 c. Manufacturing, producing, processing, or blending any articles of
 8 commerce and maintaining a store, warehouse, or any other place
 9 that is separate and apart from the place of manufacture or
 10 production for the sale or distribution of the articles, other than
 11 bakery products, to another for the purpose of resale.

12"

13 **SECTION 1.(b)** G.S. 105-164.4F reads as rewritten:

14 **"§ 105-164.4F. Accommodation rentals.**

- 15 (a) Definition. – The following definitions apply in this section:

16 ...

- 17 (2) Facilitator. – A person who is not a rental agent and who contracts with a
 18 provider of an accommodation for one or more of the following:
 19 a. to market ~~Market~~ the accommodation and to accept accommodation.
 20 b. Accept payment from the consumer for ~~for the rental of the~~
 21 accommodation.
 22 c. Make available a forum or platform for a listing fee or by some other
 23 similar arrangement to market the accommodation.

24 ...

25 (c) Facilitator Transactions. – A facilitator must report to the retailer with whom it has
 26 contract the sales price ~~a consumer pays to the facilitator~~ for an accommodation rental
 27 marketed by the facilitator. A retailer must notify a facilitator when an accommodation rental
 28 marketed by the facilitator is completed, and the facilitator must send the retailer the portion of
 29 the sales price the facilitator owes the retailer and the tax due on the sales price no later than 10
 30 days after the end of each calendar ~~month~~ month unless the gross receipts are collected by the
 31 retailer in lieu of the facilitator. A facilitator that does not send the retailer the tax due on the
 32 sales price is liable for the amount of tax the facilitator fails to send. A facilitator is not liable
 33 for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received
 34 by a retailer from a facilitator are held in trust by the retailer for remittance to the Secretary. A
 35 retailer that receives a tax payment from a facilitator must remit the amount received to the
 36 Secretary. A retailer is not liable for tax due but not received from a facilitator. The
 37 requirements imposed by this section on a retailer and a facilitator are considered terms of the
 38 contract between the retailer and the facilitator.

39 (c1) Facilitator Report. – A facilitator who only makes available a forum or platform for
 40 a listing fee or by some other similar arrangement to market the accommodation and does not
 41 otherwise enter into a contract on behalf of the retailer or collect any part of the gross receipts
 42 derived from the rental of an accommodation must file an annual report by March 31 of each
 43 year for the prior calendar year with the Secretary. The annual report must be provided in
 44 electronic format and include the property owner's name, property owner's mailing address,
 45 physical location of the accommodation, rental activity detail, available gross receipts
 46 information for rentals, and any other information deemed necessary by the Secretary.

47"

48 **SECTION 1.(c)** G.S. 105-164.8(b) reads as rewritten:

49 "(b) Remote Sales. – A retailer who makes a remote sale is engaged in business in this
 50 State and is subject to the tax levied under this Article if at least one of the following conditions
 51 is met:

1 ...
 2 (3) The retailer solicits or transacts business in this State by employees,
 3 independent contractors, agents, or other representatives, whether the remote
 4 sales thus subject to taxation by this State result from or are related in any
 5 other way to the solicitation or transaction of business. A retailer is
 6 presumed to be soliciting or transacting business by an independent
 7 contractor, agent, or other representative if the retailer enters into an
 8 agreement with a resident of this State under which the ~~resident-person~~, for
 9 a commission or other consideration, directly or indirectly refers potential
 10 customers, whether by a link on an Internet Web site or otherwise, to the
 11 retailer. This presumption applies only if the cumulative gross receipts from
 12 sales by the retailer to purchasers in this State who are referred to the retailer
 13 by all ~~residents-persons~~ with this type of agreement with the retailer is in
 14 excess of ten thousand dollars (\$10,000) during the preceding four quarterly
 15 periods. This presumption may be rebutted by proof that the ~~resident-person~~
 16 with whom the retailer has an agreement did not engage in any solicitation in
 17 the State on behalf of the seller that would satisfy the nexus requirement of
 18 the United States Constitution during the four quarterly periods in question.

19"

20 **SECTION 2.** G.S. 105-164.8(b), as amended by Section 1(c) of this act, is
 21 amended by adding a new subdivision to read:

22 "(b) Remote Sales. – A retailer who makes a remote sale is engaged in business in this
 23 State and is subject to the tax levied under this Article if at least one of the following conditions
 24 is met:

25 ...

26 (9) The retailer made remote sales sourced to this State during the retailer's
 27 previous taxable year that exceeded one of the following:

28 a. Gross sales in excess of one hundred thousand dollars (\$100,000).

29 b. Two hundred or more separate transactions."

30 **SECTION 3.(a)** G.S. 105-164.3, as amended by Section 1(a) of this act, reads as
 31 rewritten:

32 "**§ 105-164.3. Definitions.**

33 The following definitions apply in this Article:

34 ...

35 (9) Engaged in business. – Any of the following:

36 a. Maintaining, occupying, or using permanently or temporarily,
 37 directly or indirectly, or through a subsidiary or agent, by whatever
 38 name called, any office, place of distribution, sales or sample room,
 39 warehouse or storage place, or other place of business in this State, or
 40 permanently or temporarily, directly or through a subsidiary, having
 41 any representative, agent, sales representative, marketplace provider,
 42 or solicitor operating or transacting business by mobile phone
 43 applications or other applications in this State. The fact that any
 44 corporate retailer, agent, or subsidiary engaged in business in this
 45 State may not be legally domesticated or qualified to do business in
 46 this State is immaterial.

47 ...

48 (20a) Marketplace provider. – A person who facilitates a sale sourced to this State.
 49 The person may facilitate the sale directly or indirectly through agreements
 50 or arrangements with third parties. A person facilitates a sale when the
 51 person meets any of the following:

- a. Makes available the forum or platform in which, or by means of which, the retail sale takes place.
- b. Makes available the forum or platform in which, or by means of which, the offer of sale is accepted.
- c. Makes available or has another party make available a mobile phone application or other applications to assist with the sale of products.
- d. Collects payment from the consumer and transmits that payment to the retailer, regardless of whether the person receives compensation or consideration in exchange for its services.

...

(33h) Remote sale. – A sale of tangible personal ~~property or property,~~ digital ~~property-property,~~ or services ordered by mail, by telephone, ~~via the~~ Internet, mobile phone application, or by another ~~similar~~ method, ~~to a purchaser who is in this State at the time the order is remitted, from by~~ a retailer who receives the order in another state and delivers the property or makes it accessible to a person in this State or causes ~~it the~~ property to be delivered or made accessible to a person in this State. ~~State or performs a service sourced to this State.~~ It is presumed that a resident of this State who ~~remits~~ makes an order was in this State at the time the order was ~~remitted.~~ made.

...

(35) Retailer. – Any of the following persons:

...

- e. A marketplace provider or other person who facilitates the sale of tangible personal property, digital property, or a service on behalf of a third party.

...."

SECTION 3.(b) G.S. 105-164.8(b), as amended by Section 1(c) and Section 2 of this act, is amended by adding a new subdivision to read:

"(b) Remote Sales. – A retailer who makes a remote sale is engaged in business in this State and is subject to the tax levied under this Article if at least one of the following conditions is met:

...

- (10) The person is a marketplace provider that transacts business in this State and facilitates a sale sourced to this State. The provisions of subdivision (9) of this subsection do not apply to this requirement."

SECTION 3.(c) Part 4 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-164.16B. Transactions involving a marketplace provider.

(a) Payment of Tax. – A marketplace provider must file a return and remit sales or use tax under this Article in accordance with G.S. 105-164.16 for all sales it facilitates for a retailer that are sourced to this State unless the retailer for whom it facilitates the sale is registered in this State and the facilitator and retailer have an agreement that stipulates the retailer rather than the marketplace provider will remit the sales and use tax on facilitated sales. A marketplace provider is subject to audit on the retail sales for which it must file a return and remit sales or use tax. A marketplace provider is not liable for failure to file, collect, and remit sales and use taxes if the marketplace provider demonstrates that the error was due to incorrect or insufficient information given to the marketplace provider by the retailer; this sentence does not apply if the marketplace provider and the retailer are related members.

(b) Refund of Tax. – If the purchaser receives a refund on any portion of the sales price from the marketplace provider who collected and remitted the tax on the retail sale, the provisions of G.S. 105-164.11A(a) apply. If the purchaser receives a refund on any portion of

1 the sales price from a person other than the marketplace provider required to remit the tax on
2 the retail sale, the purchaser may receive a refund of the pro rata amount of the sales tax paid
3 based on the taxable amount of the sales price refunded as provided in this subsection:

4 (1) Refund from retailer. – If the purchaser receives a refund on any portion of a
5 sales price from a retailer registered in this State, then the refund of the sales
6 price must include a refund of the pro rata amount of the sales tax based on
7 the taxable amount of the sales price refunded.

8 (2) Refund application. – If the purchaser receives a refund on any portion of a
9 sales price from a person not registered as a retailer in this State, then the
10 purchaser may apply to the Department for a refund of the pro rata amount
11 of the tax paid based on the taxable amount of the sales price refunded to the
12 purchaser. The application for a refund by a purchaser must be made on a
13 form prescribed by the Secretary, supported by documentation on the taxable
14 amount of the sales price refunded to the purchaser from the person who
15 refunded that amount, and filed within 30 days after the purchaser receives a
16 refund. An application for a refund filed by the purchaser after the due date
17 is barred. Taxes for which a refund is allowed directly to the purchaser for
18 sales tax paid on a sales price are not an overpayment of tax and do not
19 accrue interest as provided in G.S. 105-241.21."

20 **SECTION 4.** Section 1 of this act becomes effective September 1, 2017, and
21 applies to sales made on or after that date. Section 2 of this act becomes effective January 1,
22 2018, and applies to sales made on or after that date. Section 3 of this act becomes effective
23 July 1, 2019, and applies to sales made on or after that date. The remainder of this act is
24 effective when it becomes law.