

BILL DRAFT 2007-RBxz-2 [v.2] (12/11)

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE SALES TAX DEFINITIONS TO COMPLY WITH THE
3 STREAMLINED SALES TAX AGREEMENT AND TO MAKE OTHER SALES
4 TAX CHANGES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 105-164.3 reads as rewritten:

7 **"§ 105-164.3. Definitions.**

8 The following definitions apply in this Article:

9 (1) Ancillary service. – A service associated with or incidental to the
10 provision of a telecommunications service. The term includes detailed
11 communications billing, directory assistance, vertical service, and
12 voice mail service. A vertical service is a service, such as call
13 forwarding, caller ID, three-way calling, and conference bridging, that
14 allows a customer to identify a caller or manage multiple calls and call
15 connections.

16 (1b) Bundled transaction. – A retail sale of two or more distinct and
17 identifiable products, at least one of which is taxable and one of which
18 is exempt, for one non-itemized price. Products are not sold for one
19 non-itemized price if an invoice or another sales document made
20 available to the purchaser separately identifies the price of each
21 product. A bundled transaction does not include the retail sale of any
22 of the following:

23 a. A product and any packaging item that accompanies the product
24 and is exempt under G.S. 105-164.13(23).

25 b. A sale of two or more products whose combined price varies, or
26 is negotiable, depending on the products the purchaser selects.

- 1 c. A sale of a product accompanied by a transfer of another product
2 with no additional consideration.
3 d. A product and the delivery or installation of the product.
4 e. A product and any service necessary to complete the sale.
5 (1a)(1d) Business. – Includes any activity engaged in by any person or
6 caused to be engaged in by him with the object of gain, profit, benefit
7 or advantage, either direct or indirect. The term "business" shall not be
8 construed in this Article to include occasional and isolated sales or
9 transactions by a person who does not hold himself out as engaged in
10 business.
11 (1b)(1f) Cable service. – The one-way transmission to subscribers of video
12 programming or other programming service and any subscriber
13 interaction required to select or use the service.
14 ...
15 (12) Gross sales. – The sum total of the sales price of all retail sales of
16 tangible personal property ~~as defined herein, whether for cash or credit~~
17 ~~without allowance for cash discount and without any deduction on~~
18 ~~account of the cost of the property sold, the cost of materials used,~~
19 ~~labor or service costs, interest paid or any other expenses whatsoever~~
20 ~~and without any deductions of any kind or character except as~~
21 ~~provided in this Article.~~ and services.
22 ...
23 (37) Sales price. – The total amount or consideration for which tangible
24 personal property or services are sold, leased, or rented. The
25 consideration may be in the form of cash, credit, property, or services.
26 The sales price must be valued in money, regardless of whether it is
27 received in money.
28 a. The term includes all of the following:
29 1. The retailer's cost of the property sold.
30 2. The cost of materials used, labor or service costs,
31 interest, losses, all costs of transportation to the retailer,
32 all taxes imposed on the retailer, and any other expense
33 of the retailer.
34 3. Charges by the retailer for any services necessary to
35 complete the sale.
36 4. Delivery charges.
37 5. Installation charges.
38 6. ~~The value of exempt personal property given to the~~
39 ~~consumer when taxable and exempt personal property~~
40 ~~are bundled together and sold by the retailer as a single~~
41 ~~product or piece of merchandise.~~
42 7. Credit for trade-in.

8. Discounts that are reimbursable by a third party and can be determined at the time of sale through any of the following:

- a. Presentation by the consumer of a coupon or other documentation.
- b. Identification of the consumer as a member of a group eligible for a discount.
- c. The invoice the retailer gives the consumer.

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

1. ~~Discounts, including cash, term, or coupons, that are not reimbursed~~ Discounts that are not reimbursable by a third party, are allowed by the retailer, and are taken by a consumer on a sale.
2. Interest, financing, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale, or a similar document given to the consumer.
3. Any taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer.

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended ~~in November 2005~~ as of December 14, 2006.

SECTION 2. G.S. 105-164.4D, as enacted by Section 5 of S.L. 2006-151, reads as rewritten:

"§ 105-164.4D. Bundled services~~transactions~~.

~~When a taxable service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:~~

- (1) ~~If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all the services in the bundle compared to the bundled price of the services.~~
- (2) ~~If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service.~~

(a) Tax Application. – Tax applies to the sales price of a bundled transaction unless one of the following applies:

- (1) 50% Test. – All of the products in the bundle are tangible personal property, the bundle includes one or more of the exempt products listed in this subdivision, and the price of the taxable products in the bundle does not exceed fifty percent (50%) of the price of the bundle:
- a. Food exempt under G.S. 105-164.13B.
 - b. A drug exempt under G.S. 105-164.13(13).
 - c. Medical devices, equipment, or supplies exempt under G.S. 105-164.13(12).
- (2) Allocation. – The bundle includes a service and the retailer determines an allocated price for each product in the bundle based on a reasonable allocation of revenue that is supported by the retailer's business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of each taxable product in the bundle.
- (3) 10% Test. – The price of the taxable products in the bundle does not exceed ten percent (10%) of the price of the bundle and no other subdivision in this subsection applies.

(b) Determining Threshold. – A retailer of a bundled transaction subject to this section may use either the retailer's cost price or the retailer's sales price to determine if the transaction meets the 50% test or the 10% test set out in subdivisions (a)(1) and (a)(3) of this section. A retailer may not use a combination of cost price and sales price to make this determination. If a bundled transaction subject to subdivision (a)(3) of this section includes a service contract, the retailer must use the full term of the contract in determining whether the transaction meets the threshold set in the subdivision."

SECTION 3. G.S. 105-164.12B reads as rewritten:

"§ 105-164.12B. Tangible personal property ~~bundled~~ sold below cost with conditional service contract.

(a) ~~Bundled Transaction~~ Conditional Service Contract Defined. – A ~~bundled transaction is a transaction~~ conditional service contract is a contract in which all of the following conditions are met:

- (1) A seller transfers an item of tangible personal property to a consumer on the condition that the consumer enter into an agreement to purchase services on an ongoing basis for a minimum period of at least six months.
- (2) The agreement requires the consumer to pay a cancellation fee to the ~~service provider~~ seller if the consumer cancels the contract for services within the minimum period.
- (3) For the item transferred, the ~~seller:~~
 - a. ~~Does not charge the consumer; or~~
 - b. ~~Charges~~ seller charges the consumer a price that, after any ~~discount or rebate~~ price reduction the seller gives the consumer, is below the purchase price the seller paid for the item. The seller's purchase price is presumed to be no greater than the price the seller paid, as shown on the seller's purchase invoice.

1 for the same item within 12 months before the seller entered
2 into the conditional service contract.

3 (b) ~~Bundled Transaction Is a Sale; Sales Price; Tax.~~ – If a seller transfers an item
4 of tangible personal property as part of a ~~bundled transaction, conditional service~~
5 ~~contract, a sale has occurred, and the occurred.~~ The sales price of the item is presumed
6 to be the retail price at which the item would sell if ~~no agreement for services were~~
7 ~~entered into. Part of this price may be paid by the consumer at the time of the transfer;~~
8 ~~the remainder of the price is considered paid as part of the price to be paid for the~~
9 ~~services contracted for. in the absence of the conditional service contract. Sales tax is~~
10 ~~due on any part of the price paid by the consumer at the time of the transfer.~~
11 ~~transfer on~~
12 ~~the following:~~

12 (1) Any part of the presumed sales price the consumer pays at that time, if
13 the service in the contract is taxable at the combined general rate.

14 (2) The presumed sales price, if the service in the contract is not taxable at
15 the combined general rate.

16 (c) ~~No Additional Sales Tax if Services Taxed.~~ – If the services for which the
17 consumer was required to contract are subject to services taxes at a combined rate equal
18 to or greater than the combined State and local general rate of sales and use tax, then no
19 additional sales tax is due on the transfer. However, if the consumer cancels the contract
20 for services before the expiration of the minimum period, sales tax applies to the
21 cancellation fee paid by the consumer.

22 (d) ~~Additional Sales Tax if Services Not Taxed.~~ – If the services for which the
23 consumer was required to contract are not subject to services taxes at a combined rate
24 equal to or greater than the combined State and local general rate of sales and use tax,
25 then sales tax is due at the time of the transfer on the remainder of the sales price not
26 paid at that time.

27 (e) ~~Services Taxes Defined.~~ – For the purpose of this section, the term "services
28 taxes" means any combination of State franchise tax on gross receipts, State sales tax, or
29 local sales tax levied on the sale of or gross receipts from the services.

30 (f) ~~Determination of Purchase Price.~~ – For the purpose of this section, the
31 purchase price a seller paid for an item is presumed to be no greater than the price the
32 seller paid for the same model within 12 months before the bundled transaction, as
33 shown on the seller's invoices."

34 **SECTION 4.** G.S. 105-164.13(9) reads as rewritten:

35 **"§ 105-164.13. Retail sales and use tax.**

36 The sale at retail and the use, storage, or consumption in this State of the following
37 tangible personal property and services are specifically exempted from the tax imposed
38 by this Article:

39
40 Agricultural Group.

41
42

(9) ~~Sales of boats, Boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories, and supplies sold to persons~~ any of the following:

a. The holder of a standard commercial fishing license issued under G.S. 113-168.2 for principal use by them principally in commercial fishing operations within the meaning of G.S. 113-168, except when the property is for use by persons principally to take fish for recreation or personal use or consumption, operations.

b. The holder of a shellfish license issued under G.S. 113-169.2 for principal use in commercial shellfishing operations.

c. The operator of a for hire boat, as defined in G.S. 113-174, for principal use in the commercial use of the boat. As used in this subdivision, "fish" is defined as in G.S. 113-129(7)."

SECTION 5. G.S. 105-164.42L reads as rewritten:

"§ 105-164.42L. Databases on taxing jurisdictions.

The Secretary may develop databases that provide information on the boundaries of taxing jurisdictions and the tax rates applicable to those taxing jurisdictions. A ~~seller~~ that person who relies on the information provided in these databases is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in those databases."

SECTION 6. G.S. 105-467(a) reads as rewritten:

"§ 105-467. Scope of sales tax.

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

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

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

(3) The gross receipts derived from the rental of any room or other accommodations subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(3).

(4) The gross receipts derived from services rendered by laundries, dry cleaners, and other businesses subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(4).

(5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but is exempt from the State sales and use tax pursuant to G.S. 105-164.13B.

(5a) The sales price of a bundled transaction that includes food subject to tax under subdivision (5) of this subsection, if the price of the food

1 exceeds ten percent (10%) of the price of the bundle. A retailer must
2 determine the price of food in a bundled transaction in accordance with
3 G.S. 105-164.4D.

4 (6) The sales price of prepaid telephone calling service taxed as tangible
5 personal property under G.S. 105-164.4(a)(4d).

6 (7) The gross receipts derived from providing satellite digital audio radio
7 service subject to the general rate of tax under G.S. 105-164.4(a)(6a).

8 **SECTION 7.** The first paragraph of Section 4 of Chapter 1096 of the 1967
9 Session Laws, as amended, is amended by inserting a new subdivision between
10 subdivisions (5) and (6) to read as follows:

11 "(5a) The sales price of a bundled transaction that includes food subject to
12 tax under subdivision (5) of this section, if the price of the food
13 exceeds ten percent (10%) of the price of the bundle. A retailer must
14 determine the price of food in a bundled transaction in accordance with
15 G.S. 105-164.4D."

16 **SECTION 8.** This act becomes effective October 1, 2007.