

GENERAL ASSEMBLY OF NORTH CAROLINA  
1987 SESSION

CHAPTER 1096  
HOUSE BILL 2430

AN ACT TO PROVIDE THAT SALES AND USE TAXES SHALL BE IMPOSED ON  
CERTAIN MAIL ORDER SALES.

The General Assembly of North Carolina enacts:

**Section 1.** G.S. 105-164.3(5) reads as rewritten:

"(5) 'Engaged in business' shall mean maintaining, occupying or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business, for the selling or delivering of tangible personal property for storage, use or consumption in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, salesman, canvasser or solicitor operating in this State in such selling or delivering, and the fact that any corporate retailer, agent or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State shall be immaterial. It shall also mean the maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property for the purpose of lease or rental. It shall also mean making a mail order sale, as defined in subdivision (8a) of this section, if one of the conditions listed in G.S. 105-164.8(b) is met."

**Sec. 2.** G.S. 105-164.3(14) reads as rewritten:

"(14) 'Retailer' means and includes every person engaged in the business of making sales of tangible personal property at retail, either within or without this State, or peddling the same or soliciting or taking orders for sales, whether for immediate or future delivery, for storage, use or consumption in this State and every manufacturer, producer or contractor engaged in business in this State and selling, delivering, erecting, installing or applying tangible personal property for use in this State notwithstanding that said property may be permanently affixed to a building or realty or other tangible personal property. 'Retailer' also means a person who makes a mail order sale, as defined in subdivision (8a) of this section, if one of the conditions listed in G.S. 105-164.8(b) is met. Provided, however, that when in the opinion of the Secretary it is necessary for the efficient administration of this Article to regard any salesmen, solicitors, representatives, consignees, peddlers, truckers or canvassers as agents of the dealers, distributors, consignors, supervisors, employers or persons under whom they operate or from whom they obtain the tangible personal property sold by them regardless of whether they are making sales on their own behalf or on behalf of such dealers, distributors, consignors, supervisors, employers or persons, the Secretary may

so regard them and may regard the dealers, distributors, consignors, supervisors, employers or persons as 'retailers' for the purpose of this Article."

**Sec. 3.** G.S. 105-164.3 is amended by redesignating subdivision (8a) as (8b) and adding a new subdivision (8a) to read:

"(8a) 'Mail order sale' means a sale of tangible personal property, ordered by mail, telephone, computer link, or other similar method, to a purchaser who is in this State at the time the order is remitted, from a retailer who receives the order in another state and transports the property or causes it to be transported to a person in this State. It is presumed that a resident of this State who remits an order was in this State at the time the order was remitted."

**Sec. 4.** G.S. 105-164.8 reads as rewritten:

**"§ 105-164.8. Retailer to collect tax regardless of place sale consummated-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

- (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
- (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 tangible personal property enters this State; or
- (3) That the purchaser's order or the contract of sale provides that said property shall be or is in fact procured or manufactured at a point outside this State and shipped directly to the purchaser from the point of origin; or
- (4) That said property is mailed to the purchaser in this State or a point outside this State or delivered to a carrier outside this State f.o.b. or otherwise and directed to the purchaser in this State regardless of whether the cost of transportation is paid by the retailer or by the purchaser; or
- (5) That said property is delivered directly to the purchaser at a point outside this State; or
- (6) Any combination in whole or in part of any two or more of the foregoing statements of fact, if it is intended that the tangible personal property purchased be brought to this State for storage, use or consumption in this State.

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

- (1) The retailer is a corporation engaged in business under the laws of this State or a person domiciled in, a resident of, or a citizen of, this State;
- (2) The retailer maintains retail establishments or offices in this State, whether the mail order sales thus subject to taxation by this State result

from or are related in any other way to the activities of such establishments or offices;

- (3) The retailer has representatives in this State who solicit business or transact business on behalf of the retailer, whether the mail order sales thus subject to taxation by this State result from or are related in any other way to such solicitation or transaction of business;
- (4) The property was delivered in this State in fulfillment of a sales contract that was entered into in this State, in accordance with applicable conflict of laws rules, when a person in this State accepted an offer by ordering the property;
- (5) The retailer, by purposefully or systematically exploiting the market provided by this State by any media-assisted, media-facilitated, or media-solicited means, including direct mail advertising, distribution of catalogues, computer-assisted shopping, television, radio or other electronic media, telephone solicitation, magazine or newspaper advertisements, or other media, creates nexus with this State;
- (6) Through compact or reciprocity with another jurisdiction of the United States, that jurisdiction uses its taxing power and its jurisdiction over the retailer in support of this State's taxing power; or
- (7) The retailer consents, expressly or by implication, to the imposition of the tax imposed by this Article. For purposes of this subdivision, evidence that a retailer engaged in the activity described in subdivision (5) shall be prima facie evidence that the retailer consents to the imposition of the tax imposed by this Article."

**Sec. 5.** The General Assembly finds that legislation is pending in Congress that would authorize the states to require out-of-state retailers who make mail order sales to residents of the state to collect state and local sales and use taxes. This legislation would only apply, however, if the combined state and local tax rate is imposed at the same rate in all geographic areas of the state. It is the intent of the General Assembly to take advantage of this federal legislation. Therefore, if this federal legislation is enacted, effective on the date this federal legislation is enacted, notwithstanding the provisions of G.S. 105-473, 105-483, 105-490, and 105-498, and Chapter 1096 of the 1967 Session Laws, no county may repeal any local sales and use tax enacted pursuant to Article 39, 40, 41, or 42 of Chapter 105 of the General Statutes or Chapter 1096 of the 1967 Session Laws that is in effect on the effective date of the federal legislation.

**Sec. 6.** It is the intent of the General Assembly that the Department of Revenue shall collect all of the sales and use taxes due to the State and local governments. Notwithstanding the provisions of G.S. 105-268.1, the Secretary of Revenue may, without seeking prior approval of the Governor and the Council of State, enter into agreements with any other state to coordinate and promote collection of sales and use taxes by retailers making mail order sales, as defined in this act.

**Sec. 7.** The Department of Revenue shall study the practical, legal, and fiscal consequences of this act's extension of liability for collection of State and local sales

and use taxes, and shall report the results of its study and any recommendations for legislative changes to the Revenue Laws Study Committee of the Legislative Research Commission on or before December 1, 1988. In addition, the Department of Revenue shall promptly report any additional information and recommendations it develops after that date to the President of the Senate, the Speaker of the House of Representatives, the Chairman of the House Finance Committee, and the Chairman of the Senate Finance Committee.

**Sec. 8.** This act shall become effective January 1, 1989, and applies to sales made on or after that date.

In the General Assembly read three times and ratified this the 11th day of July, 1988.