

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2006-33
HOUSE BILL 1915**

AN ACT TO INCORPORATE THE STREAMLINED SALES TAX DEFINITIONS CONCERNING TELECOMMUNICATIONS, TO SIMPLIFY THE TAX PAYMENT REQUIREMENTS FOR SEMIMONTHLY TAXPAYERS, AND TO TREAT TANGIBLE PERSONAL PROPERTY USED IN MODULAR HOMES THE SAME AS TANGIBLE PERSONAL PROPERTY USED IN OTHER HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 is amended by amending or adding the following definitions to read:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

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

...

(27) Prepaid telephone calling service. – Prepaid wireline calling service or prepaid wireless calling service.

(27a) Prepaid wireline calling service. – A right that meets all of the following requirements:

- a. Authorizes the exclusive purchase of wireline telecommunications service.
- b. Must be paid for in advance.
- c. Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.
- d. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.

(27b) Prepaid wireless calling service. – A right that meets all of the following requirements:

- a. Authorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services.
- b. Must be paid for in advance.
- c. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement ~~adopted November 12, 2002, as amended on November 19, 2003, November 16, 2004, and April 16, 2005.~~ in November 2005.

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(48) Telecommunications service. – The electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among ~~points, by or through any electronic, radio, satellite, optical, microwave, or other medium, regardless of the protocol used for the transmission, conveyance, or routing.~~ points. The term includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as voice-over Internet protocol or the Federal Communications Commission classifies it as enhanced or value added. The term does not include the following:

- a. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a customer whose primary purpose for using the service is to obtain the processed data or information.
- b. The sale, installation, maintenance, or repair of tangible personal property.
- c. Directory advertising and other advertising.
- d. Billing and collection services provided to a third party.
- e. Internet access service.
- f. Radio and television audio and video programming service, regardless of the medium of delivery, and the transmission, conveyance, or routing of the service by the programming service provider. The term includes cable service and audio and video programming service provided by a mobile telecommunications service provider.
- g. Ancillary service.

- h. A digital product delivered electronically, including software, music, a ring tone, video, and reading material."

SECTION 2. G.S. 105-164.4(a)(4c) and (4d) read as rewritten:

"§ 105-164.4. Tax imposed on retailers.

(a) **(Effective for sales made before July 1, 2007)** A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and one-half percent (4 1/2%).

(4c) The combined general rate applies to the gross receipts derived from providing telecommunications service and ancillary service. A person who provides telecommunications service or ancillary service is considered a retailer under this Article. ~~Telecommunications service is~~ These services are taxed in accordance with G.S. 105-164.4C.

(4d) The sale or recharge of prepaid telephone calling service is taxable at the general rate of tax. The tax applies regardless of whether tangible personal property, such as a card or a telephone, is transferred. The tax applies to a service that is sold in conjunction with prepaid wireless calling service. Prepaid telephone calling service is taxable at the point of sale instead of at the point of use and is sourced in accordance with G.S. 105-164.4B. Prepaid telephone calling service taxed under this subdivision is not subject to tax as a telecommunications service."

SECTION 3. G.S. 105-164.4B(a)(3) reads as rewritten:

"§ 105-164.4B. Sourcing principles.

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

- (1) Over-the-counter. – When a purchaser receives a product at a business location of the seller, the sale is sourced to that business location.
- (2) Delivery to specified address. – When a purchaser receives a product at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser receives the product.
- (3) Delivery address unknown. – When a seller of a product does not know the address where a product is received, the sale is sourced to the first address or location listed in this subdivision that is known to the seller:
 - a. The business or home address of the purchaser.
 - b. The billing address of the purchaser or, if the product is a prepaid ~~telephone-wireless calling service that authorizes the purchase of mobile telecommunications service,~~ the location associated with the mobile telephone number.
 - c. The address from which tangible personal property was shipped or from which a service was provided."

SECTION 4. G.S. 105-164.4C reads as rewritten:

"§ 105-164.4C. ~~Tax on telecommunications.~~ Telecommunications service and ancillary service.

(a) General. – The gross receipts derived from providing telecommunications service or ancillary service in this State are taxed at the rate set in G.S. 105-164.4(a)(4c). Telecommunications service is provided in this State if the service is sourced to this State under the sourcing principles set out in subsections (a1) and (a2) of this section. Ancillary service is provided in this State if the telecommunications service to which it is ancillary is provided in this State. The definitions and provisions of the federal Mobile Telecommunications Sourcing Act apply to the sourcing and taxation of mobile telecommunications services.

(a1) General Sourcing Principles. – The following general sourcing principles apply to telecommunications services. If a service falls within one of the exceptions set out in subsection (a2) of this section, the service is sourced in accordance with the exception instead of the general principle.

- (1) Flat rate. – A telecommunications service that is not sold on a call-by-call basis is sourced to this State if the place of primary use is in this State.
- (2) General call-by-call. – A telecommunications service that is sold on a call-by-call basis and is not a postpaid calling service is sourced to this State in the following circumstances:
 - a. The call both originates and terminates in this State.
 - b. The call either originates or terminates in this State and the telecommunications equipment from which the call originates or terminates and to which the call is charged is located in this State. This applies regardless of where the call is billed or paid.
- (3) Postpaid. – A postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system or, if the system used to transport the signal is not the seller's system, by information the seller receives from its service provider.

(a2) Sourcing Exceptions. – The following telecommunications services and products are sourced in accordance with the principles set out in this subsection:

- (1) Mobile. – Mobile telecommunications service is sourced to the place of primary use, unless the service is ~~authorized by a prepaid telephone~~ wireless calling service or is air-to-ground radiotelephone service. Air-to-ground radiotelephone service is a postpaid calling service that is offered by an aircraft common carrier to passengers on its aircraft and enables a telephone call to be made from the aircraft. The sourcing principle in this subdivision applies to a service provided as an adjunct to mobile telecommunications service if the charge for the service is included within the term "charges for mobile telecommunications services" under the federal Mobile Telecommunications Sourcing Act.
- (2) Prepaid. – Prepaid telephone calling service is sourced in accordance with G.S. 105-164.4B.

- (3) Private. – Private telecommunications service is sourced in accordance with subsection (e) of this section.
- (b) ~~Included in Gross Receipts. Gross receipts derived from telecommunications service include the following:~~
- ~~(1) Receipts from flat rate service, service provided on a call-by-call basis, mobile telecommunications service, and private telecommunications service.~~
 - ~~(2) Charges for directory assistance, directory listing that is not yellow page classified listing, call forwarding, call waiting, three way calling, caller ID, voice mail, and other similar services.~~
 - ~~(3) Customer access line charges billed to subscribers for access to the intrastate or interstate interexchange network.~~
 - ~~(4) Charges billed to a pay telephone provider who uses the telecommunications service to provide pay telephone service.~~
- (c) ~~Excluded From Gross Receipts. Gross receipts derived from telecommunications service do not include any of the following:~~
- ~~(1) Charges for telecommunications services that are a component part of or are integrated into a telecommunications service that is resold. Examples of services that are resold include carrier charges for access to an intrastate or interstate interexchange network, interconnection charges paid by a provider of mobile telecommunications service, and charges for the sale of unbundled network elements. An unbundled network element is a network element, as defined in 47 U.S.C. § 153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. § 251(e)(3).~~
 - ~~(2) Telecommunications services that are resold as part of a prepaid telephone calling service.~~
 - ~~(3) 911 charges imposed under G.S. 62A-4 or G.S. 62A-23 and remitted to the Emergency Telephone System Fund under G.S. 62A-7 or the Wireless Fund under G.S. 62A-24.~~
 - ~~(4) Allowable surcharges imposed to recoup assessments for the Universal Service Fund.~~
 - ~~(5) Receipts of a pay telephone provider from the sale of pay telephone service.~~
 - ~~(6) Charges for commercial, cable, mobile, broadcast, or satellite video or audio service unless the service provides two way communication, other than the customer's interactive communication in connection with the customer's selection or use of the video or audio service.~~
 - ~~(7) Paging service, unless the service provides two way communication.~~
 - ~~(8) Charges for telephone service made by a hotel, motel, or another entity whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the charges are incidental to the occupancy of the entity's accommodations.~~

- ~~(9) Receipts from the sale, installation, maintenance, or repair of tangible personal property.~~
- ~~(10) Directory advertising and yellow page classified listings.~~
- ~~(11) Repealed by Session Laws 2005-276, s. 33.7, effective October 1, 2005.~~
- ~~(12) Information services.—An information service is a service that can generate, acquire, store, transform, process, retrieve, use, or make available information through a communications service. Examples of an information service include an electronic publishing service and a web hosting service.~~
- ~~(13) Internet access service, electronic mail service, electronic bulletin board service, or similar on-line services.~~
- ~~(14) Billing and collection services.~~
- ~~(15) Charges for bad checks or late payments.~~
- ~~(16) Charges to a State agency or to a local unit of government for the North Carolina Information Highway and other data networks owned or leased by the State or unit of local government.~~

(d) Bundled Services. – When a taxable telecommunications 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.

(e) Private Line. – The gross receipts derived from private telecommunications service are sourced as follows:

- (1) If all the customer's channel termination points are located in this State, the service is sourced to this State.
- (2) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel termination points, the charge for each channel termination point located in this State is sourced to this State.

- (3) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel mileage, the following applies:
 - a. A charge for a channel segment between two channel termination points located in this State is sourced to this State.
 - b. Fifty percent (50%) of a charge for a channel segment between a channel termination point located in this State and a channel termination point located in another state is sourced to this State.
- (4) If all the customer's channel termination points are not located in this State and the service is not billed on the basis of channel termination points or channel mileage, a percentage of the charge for the service is sourced to this State. The percentage is determined by dividing the number of channel termination points in this State by the total number of channel termination points.

(f) **Call Center Cap.** The gross receipts tax on telecommunications service that originates outside this State, terminates in this State, and is provided to a call center that has a direct pay permit issued by the Department under G.S. 105-164.27A may not exceed fifty thousand dollars (\$50,000) a calendar year. This cap applies separately to each legal entity.

(g) **Credit.** – A taxpayer who pays a tax legally imposed by another state on a telecommunications service taxable under this section is allowed a credit against the tax imposed in this section.

(h) **Definitions.** – The following definitions apply in this section:

(01) Ancillary service. – Defined in G.S. 105-164.3.

- (1) **Call-by-call basis.** – A method of charging for a telecommunications service whereby the price of the service is measured by individual calls.
- (2) **Call center.** – Defined in G.S. 105-164.27A.
- (3) **Mobile telecommunications service.** – Defined in G.S. 105-164.3.
- (4) **Place of primary use.** – Defined in G.S. 105-164.3.
- (5) **Postpaid calling service.** – A telecommunications service that is charged on a call-by-call basis and is obtained by making payment at the time of the call either through the use of a credit or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the requirements of a prepaid wireline telephone calling service, except the exclusive use requirement.
- (6) **Prepaid telephone calling service.** – Defined in G.S. 105-164.3.
- (7) **Private telecommunications service.** – Telecommunications service that entitles a subscriber of the service to exclusive or priority use of a communications channel or group of channels.

(8) Telecommunications service. – Defined in G.S. 105-164.3."

SECTION 5. G.S. 105-164.13 is amended by adding the following subdivision to read:

"(54) The following telecommunications services and charges:

- a. Telecommunications service that is a component part of or is integrated into a telecommunications service that is resold. This exemption does not apply to service purchased by a pay telephone provider who uses the service to provide pay telephone service. Examples of services that are resold include carrier charges for access to an intrastate or interstate interexchange network, interconnection charges paid by a provider of mobile telecommunications service, and charges for the sale of unbundled network elements. An unbundled network element is a network element, as defined in 47 U.S.C. § 153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3).
- b. Pay telephone service.
- c. 911 charges imposed under G.S. 62A-4 or G.S. 62A-23 and remitted to the Emergency Telephone System Fund under G.S. 62A-7 or the Wireless Fund under G.S. 62A-24.
- d. Charges for telecommunications service made by a hotel, motel, or another entity whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the charges are incidental to the occupancy of the entity's accommodations.
- e. Telecommunications service purchased by a State agency or a unit of local government for the North Carolina Information Highway or another data network owned or leased by the State or unit of local government."

SECTION 6. G.S. 105-164.14(b) and (c) read as rewritten:

"(b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity included in the following list is allowed a semiannual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than ~~electricity and telecommunications~~ electricity, telecommunications service, and ancillary service, for use in carrying on the work of the nonprofit entity:

- (1) Hospitals not operated for profit, including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 2 of Chapter 131E of the General Statutes.
- (2) Educational institutions not operated for profit.
- (3) Churches, orphanages, and other charitable or religious institutions and organizations not operated for profit.
- (4) Qualified retirement facilities whose property is excluded from property tax under G.S. 105-278.6A.

Sales and use tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any

building or structure that is owned or leased by the nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the nonprofit entity.

A hospital that is not allowed a refund under this subsection of sales and use taxes paid on its direct purchases of tangible personal property is allowed a semiannual refund of sales and use taxes paid by it on medicines and drugs purchased for use in carrying out its work.

The refunds allowed under this subsection for certain nonprofit entities and for medicines and drugs purchased by hospitals do not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital facilities created under Article 2 of Chapter 131E of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c).

A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15.

(c) Certain Governmental Entities. – A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than ~~electricity and telecommunications~~ electricity, telecommunications service, and ancillary service. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year. The Secretary shall make an annual report to the Department of Public Instruction and the Fiscal Research Division of the General Assembly by March 1 of the amount of refunds, identified by taxpayer, claimed under subdivisions (2b) and (2c) of this subsection over the preceding year.

This subsection applies only to the following governmental entities:

- (1) A county.
- (2) A city as defined in G.S. 160A-1.
- (2a) A consolidated city-county as defined in G.S. 160B-2.
- (2b) (2c) Repealed by Session Laws 2005-276, s. 7.51(a), effective July 1, 2005, and applicable to sales made on or after that date.
- (3) A metropolitan sewerage district or a metropolitan water district in this State.

- (4) A water and sewer authority created under Chapter 162A of the General Statutes.
- (5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.
- (6) A sanitary district.
- (7) A regional solid waste management authority created pursuant to G.S. 153A-421.
- (8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.
- (9) A district health department, or a public health authority created pursuant to Part 1A of Article 2 of Chapter 130A of the General Statutes.
- (10) A regional council of governments created pursuant to G.S. 160A-470.
- (11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.
- (12) A regional planning commission created pursuant to G.S. 153A-391.
- (13) A regional sports authority created pursuant to G.S. 160A-479.
- (14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.
- (14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.
- (15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.
- (16) A local airport authority that was created pursuant to a local act of the General Assembly.
- (17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.
- (18) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.
- (19) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.
- (20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property or services that are eligible for refund under this subsection acquired by it through the expenditure of contract and grant funds.
- (21) The University of North Carolina Health Care System.
- (22) A regional natural gas district created pursuant to Article 28 of Chapter 160A of the General Statutes."

SECTION 7. G.S. 105-164.27A(b) reads as rewritten:

"(b) Telecommunications Service. – A direct pay permit for telecommunications service authorizes its holder to purchase telecommunications service and ancillary service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A person who purchases ~~telecommunications service~~ these services under a direct pay permit must file a return and pay the tax due monthly to the Secretary. A direct pay permit issued under this subsection does not apply to any tax other than the tax on telecommunications service and ancillary service.

A call center that purchases telecommunications service that originates outside this State and terminates in this State may apply to the Secretary for a direct pay permit for telecommunications service and ancillary service. A call center is a business that is primarily engaged in providing support services to customers by telephone to support products or services of the business. A business is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming."

SECTION 8. G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute to the cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and ancillary service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is eighteen and three one-hundredths percent (18.03%) of the net proceeds of the taxes collected during the quarter, minus two million six hundred twenty thousand nine hundred forty-eight dollars (\$2,620,948). This deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-120, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." The Secretary must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section."

SECTION 9. G.S. 105-164.16 reads as rewritten:

"§ 105-164.16. Returns and payment of taxes.

(a) General. – Sales and use taxes are payable ~~quarterly, monthly, or semimonthly as specified in this section.~~ when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

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

(b) Quarterly. – A taxpayer who is consistently liable for less than one hundred dollars (\$100.00) a month in State and local sales and use taxes must file a return and

pay the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.

(b1) Monthly. – A taxpayer who is consistently liable for more than one hundred dollars (\$100.00) ~~but less than ten thousand dollars (\$10,000)~~ a month in State and local sales and use taxes must file a return and pay the taxes due on a monthly basis. A monthly return is due by the 20th day of the month following the calendar month covered by the return.

(b2) ~~Semimonthly. Prepayment.~~ – A taxpayer who is consistently liable for at least ten thousand dollars (\$10,000) a month in State and local sales and use taxes must ~~pay the tax twice a month and must file a return on a monthly basis. One semimonthly payment covers the period from the first day of the month through the 15th day of the month. The other semimonthly payment covers the period from the 16th day of the month through the last day of the month. The semimonthly payment for the period that ends on the 15th day of the month is due by the 25th day of that month. The semimonthly payment for the period that ends on the last day of the month is due by the 10th day of the following month.~~

~~A return covers both semimonthly payment periods. The return is due by the 20th day of the month following the month of the payment periods covered by the return. A taxpayer is not subject to interest on or penalties for an underpayment for a semimonthly payment period if the taxpayer timely pays at least ninety five percent (95%) of the lesser of the following and includes the underpayment with the monthly return for those semimonthly payment periods:~~

- ~~(1) The amount due for each semimonthly payment period.~~
- ~~(2) The average semimonthly payment for the prior calendar year.~~

~~make a monthly prepayment of the next month's tax liability. The prepayment is due on the date a monthly return is due. The prepayment must equal at least sixty-five percent (65%) of any of the following:~~

- ~~(1) The amount of tax due for the current month.~~
- ~~(2) The amount of tax due for the same month in the preceding year.~~
- ~~(3) The average monthly amount of tax due in the preceding calendar year.~~

(b3) Category. – The Secretary must monitor the amount of State and local sales and use taxes paid by a taxpayer or estimate the amount of taxes to be paid by a new taxpayer and must direct each taxpayer to pay tax and file returns ~~in accordance with the appropriate schedule, as required by this section.~~ In determining the amount of taxes due from a taxpayer, the Secretary must consider the total amount due from all places of business owned or operated by the same person as the amount due from that person. A taxpayer must file a return and pay tax in accordance with the Secretary's ~~direction until notified in writing to file and pay under a different schedule.~~ direction.

(c) Repealed by Session Laws 2001-427, s. 6(a), effective January 1, 2002, and applicable to taxes levied on or after that date.

(d) **(Effective for taxable years ending before January 1, 2010)** Use Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases tangible personal property outside the State for a nonbusiness purpose is due on an annual basis.

For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14.

(d) **(Effective for taxable years beginning on or after January 1, 2010)** Use Tax on Out-of-State Purchases. – Notwithstanding subsection (b), an individual who purchases tangible personal property outside the State for a nonbusiness purpose shall file a use tax return on an annual basis. The annual reporting period ends on the last day of the calendar year. The return is due by the due date, including any approved extensions, for filing the individual's income tax return."

SECTION 10. G.S. 105-113(b) reads as rewritten:

"(b) Report and Payment. – The tax imposed by this section is payable ~~quarterly,~~ semimonthly, quarterly or monthly as specified in this subsection. A return is due quarterly.

A water company or public sewerage company must pay tax quarterly when filing a return. An electric power company must pay tax in accordance with the schedule ~~that applies to its~~ and requirements that apply to payments of sales and use tax under G.S. 105-164.16 and must file a return quarterly. ~~An electric power company is not subject to interest on or penalties for an underpayment for a semimonthly or monthly payment period if the electric power company timely pays at least ninety five percent (95%) of the amount due for each semimonthly or monthly payment period and includes the underpayment with the quarterly return for those semimonthly or monthly payment periods.~~

A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return. A taxpayer must submit a return on a form provided by the Secretary. The return must include the taxpayer's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section. A taxpayer must report its gross receipts on an accrual basis. A return must contain the following information:

- (1) The taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.
- (2) The taxpayer's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under Chapter 159B of the General Statutes or a city having an ownership share in a project established under that Chapter.
- (3) The amount of and price paid by the taxpayer for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.
- (4) For an electric power company the entity's gross receipts from the sale within each city of the commodities and services described in subsection (a)."

SECTION 11. G.S. 105-164.4(a)(8) reads as rewritten:

"(8) The rate of two and one-half percent (2.5%) applies to the sales price of each modular home ~~sold,~~ sold at retail, including all accessories attached to the modular home when it is delivered to the purchaser. ~~For the purposes of this subdivision, the retail sale is deemed to be the~~The sale of a modular home to a modular homebuilder. ~~homebuilder is considered a retail sale.~~ A person who sells a modular home at retail is allowed a credit against the tax imposed by this subdivision for sales or use tax paid to another state on tangible personal property incorporated in the modular home. The retail sale of a modular home occurs when a modular home manufacturer sells a modular home to a modular homebuilder or directly to the end user of the modular home."

SECTION 12. G.S. 105-164.42H(a)(3) is repealed.

SECTION 13. G.S. 105-187.43 reads as rewritten:

"§ 105-187.43. Payment of the tax.

(a) ~~Payment.~~ – The tax imposed by this Article is payable ~~semimonthly in accordance with the schedule set in G.S. 105-164.16 for semimonthly payments of sales and use taxes.~~ monthly. A monthly payment is due by the 20th day of the month following the calendar month in which liability for the tax accrues. The tax imposed by this Article on piped natural gas delivered to a sales or transportation customer accrues when the gas is delivered. The tax payable on piped natural gas received by a person who has direct access to an interstate pipeline for consumption by that person accrues when the gas is received.

(b) ~~Small Underpayments.~~ – ~~A person is not subject to interest on or penalties for an underpayment of a semimonthly amount due if the person timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the person files.~~ Prepayment. – A taxpayer who is consistently liable for at least ten thousand dollars (\$10,000) of tax a month must make a monthly prepayment of the next month's tax liability. This requirement applies when the taxpayer meets the threshold and the Secretary notifies the taxpayer to make prepayments. A prepayment is due on the date a monthly payment is due. The prepayment must equal at least sixty-five percent (65%) of any of the following:

- (1) The amount of tax due for the current month.
- (2) The amount of tax due for the same month in the preceding year.
- (3) The average monthly amount of tax due in the preceding calendar year.

(c) ~~Return.~~ – A return is due quarterly. A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return."

SECTION 14. Section 12 of this act becomes effective June 1, 2006. Section 11 of this act becomes effective July 1, 2006, and applies to purchases made on or after that date. Sections 9 through 10 and Section 13 of this act become effective October 1, 2007. The remainder of this act becomes effective January 1, 2007.

In the General Assembly read three times and ratified this the 26th day of June, 2006.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:54 p.m. this 29th day of June, 2006