

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 257*

Short Title: Streamlined Sales Tax Changes. (Public)

Sponsors: Representatives Hill; Allen, Brubaker, Carney, Church, Haire, Insko, Luebke, Wainwright, Wilkins, and Wray.

Referred to: Finance.

February 20, 2007

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

The General Assembly of North Carolina enacts:

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

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

(1) 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.

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

- a. A product and any packaging item that accompanies the product and is exempt under G.S. 105-164.13(23).
- b. A sale of two or more products whose combined price varies, or is negotiable, depending on the products the purchaser selects.
- c. A sale of a product accompanied by a transfer of another product with no additional consideration.

1 d. A product and the delivery or installation of the product.

2 e. A product and any service necessary to complete the sale.

3 ~~(1a)~~(1d) Business. – Includes any activity engaged in by any person or
4 caused to be engaged in by him with the object of gain, profit, benefit
5 or advantage, either direct or indirect. The term "business" shall not be
6 construed in this Article to include occasional and isolated sales or
7 transactions by a person who does not hold himself out as engaged in
8 business.

9 ~~(1b)~~(1f) Cable service. – The one-way transmission to subscribers of video
10 programming or other programming service and any subscriber
11 interaction required to select or use the service.

12 ...

13 (12) Gross sales. – The sum total of the sales price of all retail sales of
14 tangible personal property ~~as defined herein, whether for cash or credit~~
15 ~~without allowance for cash discount and without any deduction on~~
16 ~~account of the cost of the property sold, the cost of materials used,~~
17 ~~labor or service costs, interest paid or any other expenses whatsoever~~
18 ~~and without any deductions of any kind or character except as~~
19 ~~provided in this Article.~~ and services.

20 ...

21 (37) Sales price. – The total amount or consideration for which tangible
22 personal property or services are sold, leased, or rented. The
23 consideration may be in the form of cash, credit, property, or services.
24 The sales price must be valued in money, regardless of whether it is
25 received in money.

26 a. The term includes all of the following:

27 1. The retailer's cost of the property sold.

28 2. The cost of materials used, labor or service costs,
29 interest, losses, all costs of transportation to the retailer,
30 all taxes imposed on the retailer, and any other expense
31 of the retailer.

32 3. Charges by the retailer for any services necessary to
33 complete the sale.

34 4. Delivery charges.

35 5. Installation charges.

36 6. ~~The value of exempt personal property given to the~~
37 ~~consumer when taxable and exempt personal property~~
38 ~~are bundled together and sold by the retailer as a single~~
39 ~~product or piece of merchandise.~~

40 7. Credit for trade-in.

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

- 1 I. Presentation by the consumer of a coupon or other
- 2 documentation.
- 3 II. Identification of the consumer as a member of a
- 4 group eligible for a discount.
- 5 III. The invoice the retailer gives the consumer.
- 6 b. The term does not include any of the following:
- 7 1. ~~Discounts, including cash, term, or coupons, that are not~~
- 8 ~~reimbursed~~ Discounts that are not reimbursable by a
- 9 third party, are allowed by the retailer, and are taken by a
- 10 consumer on a sale.
- 11 2. Interest, financing, and carrying charges from credit
- 12 extended on the sale, if the amount is separately stated
- 13 on the invoice, bill of sale, or a similar document given
- 14 to the consumer.
- 15 3. Any taxes imposed directly on the consumer that are
- 16 separately stated on the invoice, bill of sale, or similar
- 17 document given to the consumer.

18 ...

19 (45a) Streamlined Agreement. – The Streamlined Sales and Use Tax
20 Agreement as amended in November 2005 as of December 14, 2006."

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

23 **"§ 105-164.4D. Bundled services.transactions.**

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

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

40 Tax applies to the sales price of a bundled transaction unless the bundled transaction
41 includes a service and the retailer determines an allocated price for each product in the
42 bundled transaction based on a reasonable allocation of revenue that is supported by the
43 retailer's business records kept in the ordinary course of business. In this circumstance,
44 the tax applies to the allocated price of each taxable product in the bundled transaction."

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

2 "**§ 105-164.12B. Tangible personal property ~~bundled~~ sold below cost with**
3 **conditional service contract.**

4 (a) ~~Bundled Transaction Defined.~~ — A bundled transaction is a transaction in
5 which all of the following conditions are met:

6 (1) ~~A seller transfers an item of tangible personal property to a consumer~~
7 ~~on the condition that the consumer enter into an agreement to purchase~~
8 ~~services on an ongoing basis for a minimum period of at least six~~
9 ~~months.~~

10 (2) ~~The agreement requires the consumer to pay a cancellation fee to the~~
11 ~~service provider if the consumer cancels the contract for services~~
12 ~~within the minimum period.~~

13 (3) ~~For the item transferred, the seller:~~

14 a. ~~Does not charge the consumer; or~~

15 b. ~~Charges the consumer a price that, after any discount or rebate~~
16 ~~the seller gives the consumer, is below the purchase price the~~
17 ~~seller paid for the item.~~

18 (b) ~~Bundled Transaction Is a Sale; Sales Price.~~ — If a seller transfers an item of
19 tangible personal property as part of a bundled transaction, a sale has occurred, and the
20 sales price of the item is presumed to be the retail price at which the item would sell if
21 no agreement for services were entered into. Part of this price may be paid by the
22 consumer at the time of the transfer; the remainder of the price is considered paid as part
23 of the price to be paid for the services contracted for. Sales tax is due on any part of the
24 price paid by the consumer at the time of the transfer.

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

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

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

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

43 (a) Conditional Service Contract Defined. — A conditional service contract is a
44 contract in which all of the following conditions are met:

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

6 **SECTION 6.** This act becomes effective October 1, 2007.