

**North Carolina Department of Revenue
Post Office Box 25000
Raleigh, North Carolina 27640-0001**

To Registered Taxpayers:

This document lists changes made by the 2005 General Assembly to the taxes administered by the Sales and Use Tax Division. Legislative changes supersede any information previously set forth in Sales and Use Tax Administrative Rules or Technical Bulletins relating to any subject matter of the legislation. The changes are cited in order of effective date.

Effective January 1, 2005

Refund for Interstate Passenger Air Carrier

G.S. 105-164.14, which authorizes refunds for certain entities and organizations, is amended to add new subsection (a1) Passenger Plane Maximum for interstate passenger air carriers. It provides that an interstate passenger air carrier is allowed a refund of the net amount of sales and use tax paid by it in North Carolina on fuel during a calendar year in excess of \$2,500,000.00. The "net amount of sales and use tax paid" is the amount paid less the refund allowed under 105-164.14(a) for interstate carriers; this refund is in addition to the refund allowed for interstate carriers. The refund request is due within six months after the end of the calendar year for which the refund is claimed. This additional refund provision is effective for purchases made on or after January 1, 2005 and is repealed effective for purchases made on or after January 1, 2007. Information on procedures for claiming the refund will be issued in a separate notice.

Refund for Motorsports Events

G.S. 105-164.14 is further amended to add new subsection (k) for motorsports events. It provides that a motorsports racing team or a motorsports sanctioning body is allowed a refund of the sales and use tax paid by it in North Carolina on aviation fuel used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a North Carolina location, or to travel to North Carolina from a motorsports event in another state. For purposes of the refund provision, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. A refund request is due by December 31 for the prior fiscal year ending June 30; a refund applied for after the due date is barred. The refund provision is effective for purchases made on or after January 1, 2005 and is repealed effective for purchases made on or after January 1, 2007. Information on procedures for claiming the refund will be issued in a separate notice.

Effective June 30, 2005

Extension of State Tax

The additional 0.5% State tax that was scheduled to expire July 1, 2005 was extended temporarily. Additional legislation effective August 13, 2005 extends the additional 0.5% State tax until July 1, 2007. As a result, the general State rate of sales and use tax will remain at 4.5%.

Effective July 1, 2005

Repeal of Refund for Schools/New Transfer

G.S. 105-164.14(c)(2b) and (2c), which authorize refunds of sales and use taxes to local school administrative units and joint agencies created by interlocal agreements among local school administrative units, are repealed. For purchases made on or after July 1, 2005, the taxes paid will not be subject to refund. In lieu of the refund, effective July 1, 2006, a quarterly transfer of funds from the State sales and use tax net collections will be made by the Secretary of Revenue to the State Treasurer for the State Public School Fund.

Effective August 1, 2005

Refunds for Certain Industrial Facilities

G.S. 105-164.14(j)(3), which authorizes refunds to certain industrial facilities, is rewritten to add air courier services to the list of industries that are allowed refunds. The provision is effective for sales made on or after August 1, 2005.

G.S. 105-164.14(j)(5) is a new subdivision that provides a sunset for the refund provision for certain industrial facilities. G.S. 105-164.14(j) is repealed for sales made on or after January 1, 2010.

Effective August 13, 2005

Authorization for Local Sales and Use Tax for Beach Nourishment

The 2004 General Assembly enacted Article 45, Local Government Sales and Use Tax for Beach Nourishment, which authorized coastal counties to levy an additional 1% local tax. The 2005 General Assembly passed legislation that limits the authorization for the additional tax to Dare County only. Additional information will be provided if the additional Dare County tax becomes effective.

Consumer Use Tax

The line on the individual income tax return for reporting and payment of consumer use tax on out-of-state purchases will continue for the 2005 through 2009 tax years. The use tax line was scheduled to be deleted from the income tax return beginning with the return for the 2005 tax year. The use tax line will be deleted from the income tax return beginning with the return for the 2010 tax year.

Effective October 1, 2005

Definitions

G.S. 105-164.3(1a) is added and defines "cable service" as "the one-way transmission to subscribers of video programming or other programming service and any subscriber interaction required to select or use the service."

G.S. 105-164.3(4a) is added and defines "combined general rate" as "the State's general rate of tax set in G.S. 105-164.4(a) plus the sum of the rates of the local sales and use taxes authorized by Subchapter VIII of this Chapter for every county in this State." The combined general rate is 7%; it is based on the State rate of 4.5% plus the local rate in effect in all counties, which is 2.5%. Local levies that are not in effect in all 100 counties are not included in the "combined general rate."

G.S. 105-164.3(4d) is added and defines "computer supply" as "an item that is considered a 'school computer supply' under the Streamlined Agreement." The term includes only the following items: computer storage media; diskettes; compact disks; handheld electronic schedulers, except devices that are cellular phones; personal digital assistants, except devices that are cellular phones; computer printers; printer supplies for computers; printer paper; printer ink.

G.S. 105-164.3(10), which defines "food," is rewritten to provide that "an alcoholic beverage, as defined in G.S. 105-113.68," is not considered "food." There is no change in the taxation of alcoholic beverages; they continue to be subject to the general State rate and applicable local rate of sales and use tax.

G.S. 105-164.3(37a) is added and defines "satellite digital audio radio service" as "a radio communication service in which audio programming is digitally transmitted by satellite to an earth-based receiver, whether directly or via a repeater station."

G.S. 105-164.3(37b) is added and defines "school supply" as "an item that is commonly used by a student in the course of study and is considered a 'school supply,' a 'school art supply,' or 'school instructional material' under the Streamlined Agreement." An all-inclusive list of items that qualify as school supplies is available in the Sales and Use Tax Technical Bulletins.

G.S. 105-164.3(45a) is added and defines "Streamlined Agreement" as "the Streamlined Sales and Use Tax Agreement adopted November 12, 2002, as amended on November 19, 2003, November 16, 2004, and April 16, 2005."

Rate Changes (Increases and Repeals)

G.S. 105-164.4(a)(4c) is rewritten to increase the sales and use tax on telecommunications service from 6% to the combined general rate (7%).

G.S. 105-164.4(a)(6) is rewritten to increase the sales and use tax on direct-to-home satellite service from 5% to the combined general rate (7%).

G.S. 105-164.4(a)(7) is rewritten to increase the sales and use tax on spirituous liquor other than mixed beverages from 6% to the combined general rate (7%).

Voice Mail

G.S. 105-164.4C(b)(2) is rewritten to provide that voice mail is included in the gross receipts derived from telecommunications service and therefore subject to the applicable sales and use tax. G.S. 105-164.4C(c)(11), which provided that voice mail services were not included in the gross receipts, is repealed.

Use Tax

G.S. 105-164.6, which imposes the use tax on tangible personal property purchased for storage, use, or consumption in this State, is rewritten primarily to modernize the language. The statute now also clarifies that the use tax applies to taxable services sourced to this State.

Tax on Food

G.S. 105-164.13B(a) is rewritten to include candy in the list of items that are not exempt from the State tax on food. The effect of the change is that candy is subject to the general State rate and applicable local rate of sales and use tax effective October 1, 2005. As a result, the local tax collected on sales of candy must be reported by county on Form E-536, Schedule of County Sales and Use Tax; prior to October 1, 2005, it is reported with sales of other qualifying food items on the 2% Food Tax line of Form E-536. It also removes "alcoholic beverages" from the list of items that are not exempt from the State tax on food since that term was deleted from the definition of "food." There is no change in the application of tax; alcoholic beverages (other than spirituous liquor) continue to be subject to the general State rate and applicable local rate of sales and use tax.

Sales Tax Holiday

G.S. 105-164.13C(a) is rewritten to add computer supplies with a sales price of two hundred fifty dollars (\$250.00) or less per item to the list of items that are exempt from the sales and use tax during the sales tax holiday.

Effective Date of Rate Changes

G.S. 105-164.15A is a new section providing that, for a rate increase for a taxable service, the new rate applies to the first billing period that starts on or after the effective date. For a rate decrease for a taxable service, the new rate applies to bills rendered on or after the effective date.

Certificate of Resale

G.S. 105-164.28 is rewritten to change some of the conditions that must be met with regard to a seller's responsibility in accepting an exemption certificate from a purchaser. The certificate no longer requires a description of the type of property generally sold by the purchaser in the regular course of business. For a sale made over the Internet or by other remote means, the seller is required to obtain the purchaser's name, address, registration number, and type of business and maintain this information in a retrievable format in its records; the provision that the sales tax registration number given by the purchaser match the number on the Department's registry was deleted. The subsection regarding a purchaser's liability is rewritten to delete the provision that a seller of property sold under a certificate of resale is jointly liable with the purchaser of the property for any tax subsequently determined to be due on the sale only if the Secretary proves that the sale was a retail sale.

Effective January 1, 2006

Rate Changes (Increases and Repeals)

G.S. 105-164.4(a)(1b) is rewritten delete railway cars and locomotives from the list of items that are subject to the 3% State sales and use tax with a maximum tax of \$1,500 per article. Railway cars and locomotives are subject to the general State rate and applicable local rate of sales and use tax effective January 1, 2006; however, interstate carriers may include a portion of the tax paid on the interstate carrier claim for refund.

G.S. 105-164.4(a)(1c), which levies a 1% State rate of tax on sales of horses, mules, semen for artificial insemination of animals, certain fuels, and freezer locker plant supplies, is repealed. Some of the items will be exempt from the tax as noted in the exemptions section below; sales to freezer locker plants, including sales of fuel, will become subject to the general State rate and applicable local rate of tax.

G.S. 105-164.4(a)(1d) and G.S. 105-164.4A, which levy the 1% State rate of tax with a maximum tax of \$80.00 per article on farm machinery, manufacturing machinery, telephone company property, laundry machinery, freezer plant machinery, broadcasting machinery, tobacco equipment, farm storage facilities, farm containers, recycling facility equipment, air courier equipment, and flight crew training equipment, are repealed. Effective January 1, 2006, some of the items are exempt from the tax as noted in the exemption section below; sales of freezer plant machinery are subject to the general State rate and applicable local rate of tax; and some are subject to the new privilege tax as noted in the privilege tax section on page 6 of this document.

G.S. 105-164.4(a)(1e), which levies a 3% State rate of tax with a maximum tax of \$1,500.00 per article on mobile classrooms and mobile offices, is repealed. These items are subject to the general State rate and applicable local rate of tax effective January 1, 2006.

G.S. 105-164.4(a)(6), which levies a sales tax at the combined general rate of 7% on the gross receipts derived from direct-to-home satellite service, is rewritten to add cable service to the list of services subject to the tax. The tax is effective January 1, 2006 and applies to the first billing period that starts on or after the effective date. Since bills for cable service may include charges for services that occur both prior to and after the billing date, the "first billing period" is considered to start on or after February 1, 2006. A cable service provider is allowed a credit against the sales tax imposed for the amount of local franchise tax payable on cable service. Prior to January 1, 2006, cable service is not subject to sales or use tax.

G.S. 105-164.4(a)(6a) imposes a sales tax at the general State rate on the gross receipts derived from providing satellite digital audio radio service. Satellite digital audio radio service is also subject to the applicable local tax. For services received by a mobile or portable station, the service is sourced to the subscriber's business or home address. The tax is effective January 1, 2006 and applies to the first billing period that starts on or after the effective date. Since bills for satellite digital audio radio service may include charges for services that occur both prior to and after the billing date, the "first billing period" is considered to start on or after February 1, 2006. Prior to January 1, 2006, satellite digital audio radio service is not subject to sales or use tax.

Exemptions

G.S. 105-164.13(1), which exempts commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, and seeds, is rewritten to expand the exemption for sales to farmers. The exemption as rewritten, includes farm machinery, attachments and repair parts for the machinery, lubricants applied to the machinery, horses or mules, and fuel other than electricity. Prior to January 1, 2006, these items are subject to a 1% State rate of sales or use tax, some with a maximum tax of \$80.00 per article. Sales of potting soil to farmers are also exempt effective January 1, 2006.

G.S. 105-164.13(1a) is a new exemption for sales to a farmer of containers used in planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals or used in packaging and transporting the farmer's product for sale. Prior to January 1, 2006, these items are subject to a 1% State rate of sales or use tax with a maximum tax of \$80.00 per article.

G.S. 105-164.13(2a), which exempts certain substances such as vaccines, feeds, and pesticides when purchased for use on animals or plants held or produced for commercial purposes, is rewritten to add semen to the list of items that are exempt. Prior to January 1, 2006, semen used in the artificial insemination of animals is subject to a 1% State rate of sales or use tax.

G.S. 105-164.13(4c), which exempts certain items used in housing, raising, or feeding animals, is rewritten to change the introductory wording. There is no substantive change.

G.S. 105-164.13(4d), which exempts the lease or rental of tobacco sheets used in handling tobacco in the warehouse and transporting tobacco to and from the warehouse, is rewritten to add other tobacco items to the list of items that are exempt. A metal flue sold for use in curing tobacco, a bulk tobacco barn or rack and parts and accessories attached thereto, and any similar apparatus, part, or accessory used to cure or dry tobacco or other crops are now exempt from the tax. Prior to January 1, 2006, these items are subject to a 1% State rate of tax with a maximum tax of \$80.00 per article.

G.S. 105-164.13(4e) is a new exemption for grain, feed, or soybean storage facilities and parts and accessories attached to the facility. Prior to January 1, 2006, these items are subject to a 1% State rate of tax with a maximum tax of \$80.00 per article.

G.S. 105-164.13(5a), which exempts mill machinery and mill machinery parts and accessories that are subject to the privilege tax under Article 5F, is rewritten to exempt any product that is subject to the privilege tax.

G.S. 105-164.13(5b) is a new exemption for sales to a telephone company regularly engaged in providing telephone service to subscriber on a commercial basis of the following: central office equipment, switchboard equipment, private branch exchange equipment, terminal equipment other than public pay telephone terminal equipment, and parts and accessories attached to the equipment.

G.S. 105-164.13(5c) is a new exemption for sales to a radio or television company licensed by the Federal Communications Commission of the following: towers, broadcasting equipment, and parts and accessories attached to the equipment.

G.S. 105-164.13(5d) is a new exemption for sales to a cable service provider of broadcasting equipment and parts and accessories attached to the equipment. The term "broadcasting equipment" does not include cable; therefore, cable will be subject to the general State rate and applicable local rate of sales or use tax.

G.S. 105-164.13(10), which exempts sales to commercial laundries or pressing and dry cleaning establishments of certain materials such as bags, hangers, cleaning fluids, and chemicals, is rewritten to expand the exemption. As rewritten, the exemption also includes laundry and dry-cleaning machinery, parts and accessories attached to the machinery, and lubricants applied to the machinery. Prior to January 1, 2006, these items are subject to a 1% State rate of tax with a maximum tax of \$80.00 per article. Also, fuel, other than electricity, used in the direct performance of the laundering, pressing, and cleaning service is exempt from the tax effective January 1, 2006. Prior to that date, such fuel is subject to a 1% State rate of tax.

G.S. 105-164.13(10a), which exempts sales to a major recycling facility of certain items such as lubricants, materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and that are used or consumed in the manufacturing and material handling processes, is rewritten for clarification. It also incorporates the exemption for electricity previously set out in G.S. 105-164.13(10b).

G.S. 105-164.13(10b), which exempts sales to a major recycling facility of electricity used at the facility, is repealed and incorporated into G.S. 105-164.13(10a).

G.S. 105-164.13(18), which exempts funeral expenses not to exceed \$1,500.00, is repealed. The effect of this change is that funeral services will no longer be subject to the sales or use tax. However, any tangible personal property, such as caskets or vaults, sold in connection with funeral services are subject to the general State rate and applicable local rate of tax effective January 1, 2006.

G.S. 105-164.13(45), which exempts sales to an interstate passenger air carrier or air courier of aircraft lubricants, aircraft repair parts, and aircraft accessories for use at its hub, is rewritten to provide that the exemption applies only to interstate passenger air carriers. It also adds aircraft simulators for flight crew training to the list of items that are exempt. Prior to January 1, 2006, aircraft simulators are subject to a 1% State rate of tax with a maximum tax of \$80.00 per article. A separate new exemption addresses sales to interstate air couriers.

G.S. 105-164.13(45b) is a new exemption as a result of the rewrite of an existing exemption. Sales to an interstate air courier of aircraft lubricants, aircraft repair parts, and aircraft accessories for use at its hub continue to be exempt from the tax. The new exemption also includes sales to an interstate air courier of materials handling equipment, racking systems, and related parts and accessories for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility. Prior to January 1, 2006, these items are subject to a 1% State rate of tax with a maximum tax of \$80.00 per article.

Refund for Interstate Carriers

G.S. 105-164.14(a), which authorizes a refund to an interstate carrier of a portion of the sales and use taxes paid by it on fuel, lubricants, repair parts, and accessories, is rewritten to add railway cars and locomotives to the list of eligible items covered by the refund provisions. The change applies to purchases made on or after January 1, 2006.

Privilege Tax on Manufacturing Fuel and Certain Machinery and Equipment

The privilege tax is imposed on the purchaser and will be paid by the purchaser directly to the Department instead of to the retailer. Purchasers will issue an exemption certificate or a direct pay permit at the time of the purchase. The tax will be reported on a separate return; returns will be mailed to taxpayers responsible for reporting and paying the tax to the Department. Additional information regarding the privilege tax will be issued at a later date.

Article 5F, which was enacted by the 2001 General Assembly and imposes a privilege tax on "Mill Machinery," is amended to provide that the tax applies to "Manufacturing Fuel and Certain Machinery and Equipment." The effective date of the privilege tax is January 1, 2006.

G.S. 105-187.51 imposes a 1% privilege tax with a maximum tax of \$80.00 per article on a manufacturing industry or plant that purchases mill machinery or mill machinery parts or accessories for storage use, or consumption in North Carolina; a contractor or subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a manufacturing industry or plant or with a general contractor that has a contract with such industry or plant. As used in this section, the term "accessories" does not include electricity.

G.S. 105-187.51A is a new section that imposes a 1% privilege tax on a manufacturing industry or plant that purchases fuel, other than electricity or piped natural gas, to operate the industry or plant.

G.S. 105-187.51B is a new section that imposes a 1% privilege tax with a maximum tax of \$80.00 per article on a major recycling facility that purchases the following items for use in connection with the facility: cranes, structural steel crane support systems, foundations related to the cranes and support systems, port and dock facilities, rail equipment, and material handling equipment.

Frequently asked questions with responses can be found on the Department's website at www.dornrc.com. If you have questions about the information in this document or about sales and use tax, you may contact the Taxpayer Assistance Call Center at 1-877-252-3052 (toll-free) or write to the Taxpayer Assistance Division, North Carolina Department of Revenue, Post Office Box 25000, Raleigh, North Carolina 27640-0001.