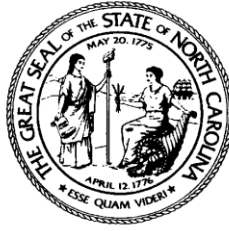

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DIRECTIVE

Subject: Photograph Tint or Color Charges
Tax: Sales and Use Tax
Law: N.C. Gen. Stat. §§ 105-164.3(33) and 105-164.4(a)(16)
Issued By: Sales and Use Tax Division
Date: May 25, 2018
Number: SD-18-5

This directive, issued under the authority granted the Secretary of Revenue pursuant to N.C. Gen. Stat. § 105-264, is to provide guidance to retailers who derive gross receipts from retail sales of services to tint or color photographs.

Change of Interpretation

Pursuant to the authority granted in N.C. Gen. Stat. § 105-264(c), the Secretary changes the interpretation of the taxability of charges by a retailer to tint or color a consumer's photograph delivered by the consumer to the retailer. **Effective September 1, 2018**, any charge for services to tint or color a consumer's tangible or digital photograph, provided by the consumer, is subject to tax as repair, maintenance, and installation services. The receipts from such services are subject to the 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax.

Imposition

The sales price of or the gross receipts derived from repair, maintenance, and installation services, including charges to tint or color a consumer's tangible or digital photograph, sold at retail are subject to the general State, applicable local, and applicable transit rates of sales and use tax, and generally, includes any tangible personal property that becomes a part of or is applied to a purchaser's property.¹ If the tax due is not paid at the time of purchase, an excise tax is applicable, at the same rate, to the purchase price of the tangible personal property for storage, use, or consumption in the State.²

Definitions

The definitions contained in this section are defined in N.C. Gen. Stat. § 105-164.3, unless otherwise noted.

"Apply"³ – To put or spread onto a surface.

¹ N.C. Gen. Stat. §§ 105-164.3(33) and 105-164.4(a)(16); Subchapter VIII of Chapter 105 of the North Carolina General Statutes; and Chapter 1096 of the 1967 Session Laws.

² N.C. Gen. Stat. § 105-164.6; Subchapter VIII of Chapter 105 of the North Carolina General Statutes; and Chapter 1096 of the 1967 Session Laws.

³ Directive SD-15-1.

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“Consumer” – A person who stores, uses, or otherwise consumes in this State tangible personal property, digital property, or a service purchased or received from a retailer or supplier either within or without this State.

“Digital Property”⁴ – An audio work, an audiovisual work, a book, a magazine, a newspaper, newsletter, a report, or another publication, a photograph or a greeting card that is delivered or accessed electronically, is not considered tangible personal property, and would be taxable if sold in a tangible medium.

“Person”⁵ – An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter, of G.S. 55-16-22, of Article 81 of Chapter 106 of the General Statutes, or of Article 3 of Chapter 119 of the General Statutes.

“Purchase price” – The term has the same meaning as the term “sales price” when applied to an item subject to use tax.

“Repair, maintenance, and installation services” – The term is defined, in part, as “[t]o install, apply, connect, adjust, or set into position tangible personal property, digital property, or a motor vehicle.”

“Retail sale or sale at retail” – The sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

“Retailer” – The term is defined, in part, as “[a] person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property . . . A person, other than a real property contractor, engaged in business of delivering, erecting, installing, or applying tangible personal property . . . for use in this State.”

“Sales price” – The term is defined, in part, as “[t]he total amount or consideration for which tangible personal property, digital property, or services are sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.” The term includes the retailer’s cost of the property sold; the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer; charges by the retailer for any services necessary to complete the sale, delivery charges, installation charges, credit for trade-in; and certain discounts that are reimbursable by a third party and can be determined at the time of the sale.

“Tangible personal property” – Personal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses. The term includes electricity, water, gas, steam, and prewritten computer software.

⁴ N.C. Gen. Stat. § 105-164.4(a)(6b); Subchapter VIII of Chapter 105 of the North Carolina General Statutes; and Chapter 1096 of the 1967 Session Laws.

⁵ N.C. Gen. Stat. § 105-228.90(b)(5).

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Purchases of Tint and Color Supplies

Photograph tint or color supplies and other tangible personal property that become a part of or are applied to a purchaser's property and are part of the sales price of repair, maintenance, and installation services should be purchased without payment of sales and use tax. To purchase such tangible personal property exempt from sales and use tax, a person should issue Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, to the seller as the seller's authority to sell the tangible personal property exempt from sales and use tax. Alternatively, the data elements, as required by N.C. Gen. Stat. § 105-164.28(a) to substantiate an exemption, may be provided to the seller.

Sales or Use Tax Due on Certain Purchases

A person is liable for sales and use tax at the time of purchase on any tool, equipment, supply, or similar tangible personal property that is used to tint or color a tangible or digital photograph but does not become a part of or is not applied to a customer's property or tangible personal property sold at retail. If the tax due is not paid at the time of purchase, an excise tax is applicable, at the same rate.

To the extent that there is any change in the rate or amount of tax, change to a statute or regulation, or new case law subsequent to this directive, the provisions in this directive may be superseded or voided. To the extent that any provisions in any other notice, directive, technical bulletin, or published guidance issued prior to the date of this directive conflicts with this directive, the provisions contained in this directive supersede. Specifically, 17 NCAC 07B .4103, last amended effective September 1, 2006, will be submitted to the Rules Review Commission for repeal. Additionally, the technical bulletins will be modified to correspond with the change of interpretation contained in this directive.