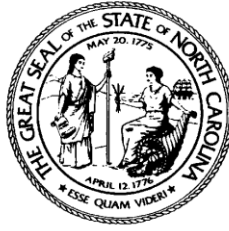

North Carolina Department of Revenue



DIRECTIVE

Subject: Sales and Use Tax Collections on Remote Sales
Tax: Sales and Use Tax
Law: N.C. Gen. Stat. § 105-164.8
Issued By: Sales and Use Tax Division
Date: August 7, 2018
Number: SD-18-6

This directive is issued under the authority granted the Secretary of Revenue pursuant to N.C. Gen. Stat. § 105-264 to interpret North Carolina sales and use tax law.

South Dakota v. Wayfair

On June 21, 2018, the United States Supreme Court announced its decision in *South Dakota v. Wayfair, Inc.*, et al., 585 U. S. ____ (2018), that overruled *Quill Corp. v. North Dakota*, 504 U. S. 298 (1992), and *National Bellas Hess, Inc. v. Department of Revenue of Illinois*, 386 U. S. 753 (1967). The Court found physical presence is not necessary to create substantial nexus between a remote seller and a taxing state. Accordingly, the North Carolina Department of Revenue (“Department”) will enforce N.C. Gen. Stat. § 105-164.8(b) regarding remote sales and require remote sellers to collect and remit the applicable sales and use tax on taxable retail sales sourced to North Carolina pursuant to N.C. Gen. Stat. § 105-164.4B. A remote seller is a seller that does not have a physical presence in North Carolina and does not have any other legal requirement to register in North Carolina for sales and use tax purposes, but that sells products for delivery into this State.

Remote Sales Subject to Tax

N.C. Gen. Stat. § 105-164.8(b) provides, in part, “[a] retailer who makes a remote sale is engaged in business in this State and is subject to [sales and use] tax levied under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] if at least one of the following conditions is met:

. . .

(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 catalogs, computer-assisted shopping, television, radio or other electronic media, telephone solicitation, magazine or newspaper advertisements, or other media, creates nexus with this State.

. . .

(7) The retailer consents, expressly or by implication, to the imposition of the tax imposed by . . . Article [5 of Chapter 105 of the North Carolina General Statutes]. For purposes of this subdivision, evidence that a retailer engaged in the activity described in subdivision (5) is prima

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facie evidence that the retailer consents to the imposition of the [sales and use] tax imposed by . . . Article [5 of Chapter 105 of the North Carolina General Statutes].”

N.C. Gen. Stat. § 105-164.8(c) provides “[a] retailer who is required to collect the [sales and use] tax imposed by . . . Article [5 of Chapter 105 of the North Carolina General Statutes] must collect a local use tax on a transaction if a local sales tax does not apply to the transaction. The sourcing principles in G.S. 105-164.4B determine whether a local sales tax or a local use tax applies to the transaction. A ‘local use tax’ is a tax imposed under Chapter 1096 of the 1967 Session Laws or by Subchapter VIII of . . . Chapter [105 of the North Carolina General Statutes], and a local use tax is a use tax imposed under that act or Subchapter.”

Definitions

“**Engaged in business**”¹ is defined, in part, as “[m]aking a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met.”

“**Remote sale**”² is defined as “[a] sale of tangible personal property or digital property ordered by mail, by telephone, via the Internet, or by another 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 delivers the property or causes it to be delivered 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.”

“**Retailer**”³ is defined, in part, as a “person engaged in business of making a remote sale if one of the conditions listed in G.S. 105-164.8(b) is met.”

Prospective Liability – Effective November 1, 2018

The Department will apply the Court’s ruling in the *Wayfair* decision **on a prospective basis** for remote sellers that do not have a physical presence in North Carolina if the remote sellers are not registered to collect and remit North Carolina sales and use tax. This prospective treatment does not apply if a person has a physical presence or other legal obligation to collect and remit North Carolina sales and use tax.

The Department requires all remote sellers having gross sales in excess of one hundred thousand dollars (\$100,000) sourced to North Carolina or two hundred (200) or more separate transactions sourced to North Carolina in the previous or current calendar year (“Threshold”) to register, collect, and remit sales and use tax to this State **effective November 1, 2018 or 60 days after a remote seller meets the Threshold, whichever is later**. Remote sellers may voluntarily begin collecting and remitting sales and use tax any time prior to November 1, 2018.

For purposes of this directive, a remote seller that does not meet the Threshold may voluntarily register with the Department to collect and remit sales and use tax to this State. Retailers and remote sellers that are currently collecting and remitting North Carolina sales and use tax should continue to do so.

Registration

North Carolina is a full member of the Streamlined Sales and Use Tax Governing Board (“SSTGB”). Remote sellers can register for all 24 Streamlined member states (AR, GA, IN, IA, KS, KY, MI, MN, NE, NV, NJ, NC, ND, OH, OK, RI, SD, TN, UT, VT, WA, WV, WI, and WY) by completing one online application through the Streamlined Sales Tax Registration System

¹ N.C. Gen. Stat. §105-164.3(9)

² N.C. Gen. Stat. §105-164.3(33j)

³ N.C. Gen. Stat. §105-164.3(35)

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("SSTRS"). There is no fee to complete and submit this online registration form that is available at www.sstregister.org/.

Remote sellers can also register with North Carolina specifically by using the Department's [online business registration portal](#) or by submitting a completed [Form NC-BR](#), Business Registration Application, that is available on the Department's website, www.ncdor.gov. There is no fee to apply for a certificate of registration in North Carolina. General questions about business registrations may be directed to 1-877-252-3052.

Certified Service Providers

If a remote seller registers through the SSTRS and needs assistance calculating the tax, preparing its returns, and remitting the appropriate sales and use taxes in any of the Streamlined member states, the SSTGB has contracts with various certified service providers ("CSP"). A CSP is an agent certified under the Streamlined Sales and Use Tax Agreement to perform many of the seller's sales and use tax functions. To learn more about the CSP program, see the [FAQs](#) related to certified service providers at www.streamlinedsalestax.org.

Additional Information

An overview of sales and use taxes with detailed information regarding the taxability of products sourced to North Carolina is located on the Department's website at www.ncdor.gov/taxes-forms/sales-and-use-tax/overview-sales-and-use-taxes.

The Department's taxability matrix provides information on the taxability of certain items or certain tax administration practices. North Carolina's taxability matrix is located on the Department's website www.ncdor.gov/taxes/sales-and-use-taxes/streamlined-taxability-matrices. Streamlined member states' taxability matrices are available at www.streamlinedsalestax.org/Shared-Pages/State-taxability-matrix.

The Department's boundary database provides information on the boundaries of taxing jurisdictions and the tax rates applicable to those taxing jurisdictions. North Carolina's boundary database and rates table are located on the Department's website at www.ncdor.gov/taxes/sales-and-use-taxes/streamlined-sales-and-use-tax. Streamlined member states' sales and use tax resources are available at www.streamlinedsalestax.org/index.php?page=state-info.

Detailed information regarding North Carolina sales and use tax rates, is located on the Department's website www.ncdor.gov/taxes/sales-and-use-tax/sales-and-use-tax-rates-other-information. Streamlined member states' tax rates are available at www.streamlinedsalestax.org/index.php?page=alias-10.

Tax Update Email List

To receive electronic notifications (E-Alerts) regarding North Carolina bulletins, directives, and other important notices about law changes and related tax matters, subscribe to the Department's Tax Update Email List at www.ncdor.gov/contact-us.

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.