



**Sales and Use Tax Division
North Carolina Department of Revenue
Post Office Box 25000
Raleigh, North Carolina 27640-0001
www.dornc.com**

**IMPORTANT NOTICE: TAX BASE FOR TANGIBLE PERSONAL PROPERTY
SOLD BELOW COST WITH CONDITIONAL CONTRACT**

Effective May 11, 2016, N.C. Gen. Stat. § 105-164.12B(b) is amended and provides “[i]f a seller transfers an item of tangible personal property as part of a conditional contract, a sale has occurred. The sales price of the item is presumed to be the retail price at which the item would sell in the absence of the conditional contract. **Sales tax at the general rate under G.S. 105-164.4(a)** [emphasis added] is due at the time of the transfer on the following:

- (1) Any part of the presumed sales price the consumer pays at that time, if the service in the contract is taxable at the combined general rate.
- (2) The presumed sales price, if the service in the contract is not taxable at the combined general rate.
- (3) **The percentage of the presumed sales price that is equal to the percentage of the service in the contract that is not taxable at the combined general rate, if any part of the service in the contract is not taxable at the combined general rate** [emphasis added].”

A conditional contract as defined in N.C. Gen. Stat. § 105-164.12B(a) “is a contract in which all of the following conditions are met:

- (1) A seller transfers an item of tangible personal property to a consumer on the condition that the consumer enter into an agreement to purchase services on an ongoing basis for a minimum period of at least six months.
- (2) The agreement requires the consumer to pay a cancellation fee to the seller if the consumer cancels the contract for services within the minimum period.
- (3) For the item transferred, the seller charges the consumer a price that, after any price reduction the seller gives the consumer, is below the purchase price the seller paid for the item. The seller's purchase price is presumed to be no greater than the price the seller paid, as shown on the seller's purchase invoice, for the same item within 12 months before the seller entered into the conditional contract.”

N.C. Gen. Stat. § 105-164.15A(a) provides, in part, the effective date of a tax change for tangible personal property, digital property, or services subject to the general rate of sales and use tax is as follows:

- (1) For a taxable item that is provided and billed on a monthly or other periodic basis, a new tax or a tax rate increase applies to the first billing period that is at least 30 days after enactment and that starts on or after the effective date.
- (2) For a taxable item that is not billed on a monthly or other periodic basis, a tax change applies to amounts received for items provided on or after the effective date, except amounts received for items provided under a lump-sum or unit-price contract entered into or awarded before the effective date or entered into or awarded pursuant to a bid made before the effective date.

Assistance

General questions regarding this notice should be directed to the Taxpayer Assistance and Collection Center at telephone number 1-877-252-3052 (toll-free).

To the extent that there is any change in statute or regulation, or new case law subsequent to the date of this notice, the provisions in this important notice may be superseded or voided. To the extent that any provisions in any other notice, directive, technical bulletin, or published guidance regarding sales and use tax issued prior to the date of this notice conflicts with this important notice, the provisions contained in this important notice supersede.