



## DIRECTIVE

**Subject:** Marketplace Facilitators and Marketplace Sellers  
**Tax:** Sales and Use Tax  
**Law:** N.C. Gen. Stat. §§ 105-164.4J, 105-164.8(b)(9), and 105-164.8(b)(10)  
**Issued By:** Sales and Use Tax Division  
**Date:** January 28, 2020  
**Number:** SD-20-1

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. The issues addressed herein are based on law changes effective February 1, 2020<sup>1</sup> and apply to sales occurring on or after that date.

The purpose of this directive is to provide guidance to marketplace facilitators and marketplace sellers regarding their North Carolina sales and use tax obligations.

N.C. Gen. Stat. § 105-164.4J provides that a marketplace facilitator that makes sales, including all marketplace-facilitated sales for all marketplace sellers, sourced to this State for the previous or current calendar year that has gross sales in excess of \$100,000 or 200 or more separate transactions is required to collect and remit sales and use tax on all such sales.

### **Definitions**<sup>2</sup>

“**Engaged in business**” is defined, in part, as “[a]ny of the following:

- a. Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room, warehouse or storage place, or other place of business in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, sales representative, marketplace facilitator subject to the requirements of [N.C. Gen. Stat. §] 105-164.4J, or solicitor operating or transacting business by mobile phone application or other applications in this State. The fact that any corporate retailer, agent, or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State is immaterial.  
...
- c. Making a remote sale, if one of the conditions listed in [N.C. Gen. Stat. §] 105-164.8(b) is met.  
...
- e. Making marketplace-facilitated sales subject to the requirements of [N.C. Gen. Stat. §] 105-164.4J.”

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<sup>1</sup> Session Law 2019-246

<sup>2</sup> N.C. Gen. Stat. § 105-164.3



“**Gross sales**” is defined as “[t]he sum total of the sales price of all sales of tangible personal property, digital property, and services.”

“**In this (the) State**” is defined as “[w]ithin the exterior limits of the State of North Carolina, including all territory within these limits owned by or ceded to the United States of America.”

“**Item**” is defined as “[t]angible personal property, digital property, or a service, unless the context requires otherwise.”

“**Marketplace**” is defined as “[a] physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items, the delivery of or first use of which is sourced to this State.”

“**Marketplace-facilitated sale**” is defined as “[t]he sale of an item by a marketplace facilitator on behalf of a marketplace seller that occurs through a marketplace.”

“**Marketplace facilitator**” is defined as “[a] person that, directly or indirectly and whether through one or more affiliates, does both of the following:

- a. Lists or otherwise makes available for sale a marketplace seller's items through a marketplace owned or operated by the marketplace facilitator.
- b. Does one or more of the following:
  1. Collects the sales price or purchase price of a marketplace seller's items or otherwise processes payment.
  2. Makes payment processing services available to purchasers for the sale of a marketplace seller's items.”

“**Marketplace seller**” is defined as “[a] person that sells or offers to sell items through a marketplace regardless of any of the following:

- a. Whether the person has a physical presence in this State.
- b. Whether the person is registered as a retailer in this State.
- c. Whether the person would have been required to collect and remit sales and use tax had the sales not been made through a marketplace.
- d. Whether the person would not have been required to collect and remit sales and use tax had the sales not been made through a marketplace.”

“**Remote sale**” is defined as “[a] sale of an item ordered by mail, telephone, Internet, mobile phone application, or another method by a retailer who receives the order in another state and delivers the item or makes it accessible to a person in this State or causes the item to be delivered or made accessible to a person in this State or performs a service sourced to this State. It is presumed that a resident of this State who makes an order was in this State at the time the order was made.”

“**Retailer**” is defined as “[a]ny of the following persons:

- a. A person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of items sourced to this State. When the Secretary finds it necessary for the efficient administration of this Article to regard any sales representatives,







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.”

### **Liability Relief**

N.C. Gen. Stat. § 105-164.4J(d) provides “[t]he Department shall not assess a marketplace facilitator for failure to collect the correct amount of tax due if the marketplace facilitator can demonstrate to the Secretary’s satisfaction that all of the circumstances listed in this subsection apply. This subsection does not apply with regard to a marketplace facilitated sale for which the marketplace facilitator is the marketplace seller or if the marketplace facilitator and the marketplace seller are affiliates. If a marketplace facilitator is not assessed for tax due under this section, the marketplace seller is liable for the tax due under this section provided the marketplace seller is engaged in business in this State. The circumstances that a marketplace facilitator must demonstrate are as follows:

- (1) The failure to collect the correct amount of tax was due to incorrect information given to the marketplace facilitator by the marketplace seller.
- (2) The marketplace facilitator did not receive specific written advice from the Secretary for the transaction at issue.”

### **Agreements between Marketplace Facilitators and Marketplace Sellers**

Nothing in N.C. Gen. Stat. § 105-164.4J or this directive shall be construed to interfere with the ability of a marketplace facilitator and a marketplace seller to enter into an agreement with each other regarding the fulfillment of the requirements of Article 5 of Chapter 105 of the North Carolina General Statutes, except that an agreement may not require a marketplace seller to collect and remit sales and use tax on marketplace-facilitated sales.<sup>6</sup>

### **Refunds from Marketplace Facilitators**

If a purchaser receives a refund on any portion of the sales price from a marketplace facilitator who collected and remitted the tax on the retail sale, the provisions of N.C. Gen. Stat. § 105-164.11A(a) apply.<sup>7</sup>

### **Use Tax Obligations of Purchasers**

Nothing in N.C. Gen. Stat. § 105-164.4J or this directive affects the obligation of any purchaser to remit use tax<sup>8</sup> for any taxable transaction for which a marketplace facilitator does not collect and remit sales or use tax.<sup>9</sup>

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<sup>6</sup> N.C. Gen. Stat. § 105-164.4J(g)

<sup>7</sup> N.C. Gen. Stat. § 105-164.4J(e)

<sup>8</sup> N.C. Gen. Stat. § 105-164.6

<sup>9</sup> N.C. Gen. Stat. § 105-164.4J(h)



## **Reports to Marketplace Sellers**<sup>10</sup>

A marketplace facilitator must provide or make available to each marketplace seller the (i) gross sales and (ii) the number of separate transactions with respect to marketplace-facilitated sales that are made on behalf of the marketplace seller and that are sourced to this State. The information may be provided in any format and shall be provided or made available no later than 10 days after the end of each calendar month.

## **Limitations**

N.C. Gen. Stat. §§ 105-164.4J, 105-164.8(b)(9), 105-164.8(b)(10), and this directive do not apply to an accommodation facilitator<sup>11</sup>, an admission facilitator<sup>12</sup>, or a service contract facilitator<sup>13</sup> whose collection and remittance requirements are set out in N.C. Gen. Stat. §§ 105-164.4F, 105-164.4G, and 105-164.4I, respectively.

## **Registration**

North Carolina is a full member of the Streamlined Sales and Use Tax Governing Board (“SSTGB”). Marketplace facilitators and marketplace 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 (“SSTRS”). There is no fee to complete and submit this online registration form that is available at [www.sstregister.org/](http://www.sstregister.org/).

Marketplace facilitators and marketplace 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 for Income Tax Withholding, Sales and Use Tax, and Other Taxes and Service Charge, available on the Department’s website, [www.ncdor.gov](http://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 marketplace facilitator or marketplace seller registers through the SSTRS and needs assistance calculating the tax, preparing its returns, and remitting the appropriate sales and use taxes to any of the SSTGB 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 CSPs at [www.streamlinedsalestax.org](http://www.streamlinedsalestax.org).

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<sup>10</sup> N.C. Gen. Stat. § 105-164.4J(c)

<sup>11</sup> Session Law 2019-246, s. 4.(d)

<sup>12</sup> Session Law 2019-246, s. 4.(h)

<sup>13</sup> Session Law 2019-246, s. 4.(j)

## **Frequently Asked Questions (FAQs)**

### **1. Who is a remote seller?**

A remote seller is a seller that does not have a physical presence in North Carolina and does not have any legal requirement other than meeting the threshold provided in FAQ #2 to register in North Carolina for sales and use tax purposes, but sells products that are sourced to North Carolina.

A marketplace facilitator and a marketplace seller that sell items sourced to North Carolina are both remote sellers provided the marketplace facilitator and marketplace seller do not have a physical presence in North Carolina and do not have any other legal requirement to register in North Carolina for sales and use tax purposes.

### **2. Are there protections for small remote sellers?**

Remote sellers, marketplace facilitators, and marketplace sellers having either gross sales in excess of one hundred thousand dollars (\$100,000) sourced to North Carolina, including marketplace-facilitated sales and sales as a marketplace seller, or two hundred (200) or more separate transactions sourced to North Carolina for the previous or current calendar year (collectively "Threshold") are engaged in business in North Carolina for sales and use tax purposes. Remote sellers, marketplace facilitators, and marketplace sellers that do not meet the Threshold are not engaged in business in North Carolina for sales and use tax purposes. This small seller exception does not apply to sellers with a physical presence in North Carolina or any other legal requirement to collect and remit sales and use tax in North Carolina.

### **3. Is the Threshold computed on the previous calendar year's sales, current calendar year's sales, or both?**

Both.

### **4. How is the Threshold computed?**

The sales price of all sales of tangible personal property, digital property, and services sourced to North Carolina are added together to determine whether the remote seller, marketplace facilitator, or marketplace seller meets or exceeds the Threshold, including taxable sales, sales for resale, exempt sales, nontaxable sales, and marketplace-facilitated sales.

#### *Example –*

Company A has gross sales of \$400,000 (400 transactions) sourced to North Carolina for the calendar year that are made up of the following:

- \$220,000 (220 transactions) in sales to wholesalers that provided exemption certificates claiming sales for resale.



A remote seller that has met the Threshold is generally required to collect and remit tax on all taxable remote sales sourced to North Carolina, including sales made online.

The Internet Tax Freedom Act prohibits North Carolina from imposing a sales tax on Internet access services, but does not prohibit North Carolina from taxing sales made via the Internet.

8. Is a non-U.S. company that makes remote sales sourced to North Carolina that has met the Threshold required to collect and remit North Carolina sales and use tax?

Generally, yes. A remote seller that has met the Threshold is engaged in business in North Carolina.

9. Can sellers register without meeting the Threshold?

Yes.

10. How often are remote sellers required to file Sales and Use Tax Returns?

Retailers are required to file Sales and Use Tax Returns on a quarterly, monthly, or monthly with prepayment basis depending on the retailer's total monthly sales and use tax liability. More detailed information regarding the Department's file and pay options are available at [www.ncdor.gov/taxes-forms/sales-and-use-tax/filing-requirements](http://www.ncdor.gov/taxes-forms/sales-and-use-tax/filing-requirements).

If a remote seller registers through the Streamlined Sales Tax Registration System and contracts with a Certified Service Provider (CSP) to perform its sales and use tax functions, the CSP may file monthly sales and use tax returns on behalf of the remote seller.

11. When does North Carolina require marketplace facilitators to begin collecting and reporting sales and use tax on behalf of their marketplace sellers?

The marketplace facilitator provisions are effective February 1, 2020 and apply to sales occurring on or after that date. Refer to [Session Law 2019-246](#)

12. Is the marketplace facilitator required to collect and remit tax on behalf of all its marketplace sellers?

Yes. Once the Threshold is met, the marketplace facilitator is required to collect and remit sales tax on behalf of all its marketplace sellers regardless of whether the marketplace seller:

- has a physical presence in North Carolina;
- is registered as a retailer in North Carolina;
- would have been required to collect and remit sales and use tax had the sales not been made through a marketplace; or
- would not have been required to collect and remit sales and use tax had the sales not been made through a marketplace.

- 13.** Is the marketplace seller required to collect and remit tax on its sales through a marketplace facilitator?

Generally, no. However, if the seller has met the Threshold through multiple channels and also sells through a marketplace facilitator that has not met the Threshold in North Carolina, the marketplace seller would be responsible for collecting and remitting sales and use tax on such sales.

- 14.** Is the marketplace facilitator required to provide certification that it will collect and remit tax on behalf of the marketplace seller?

No. The marketplace facilitator is the retailer required to collect and remit tax on marketplace-facilitated sales.

- 15.** Is a marketplace facilitator required to collect any other types of taxes administered by the Sales and Use Tax Division?

Yes. If a marketplace facilitator meets the threshold, the marketplace facilitator is required to collect and remit [motor vehicle lease and subscription tax](#), [scrap tire disposal tax](#), [white goods disposal tax](#), [dry-cleaning solvent tax](#), and the [911 service charge for prepaid wireless telecommunications service, as applicable](#). Consult your tax professional regarding other types of taxes that may be due in North Carolina.

- 16.** Is a marketplace seller who only sells through a marketplace facilitator and does not have a physical presence in North Carolina required to register and file a return if the marketplace facilitator is required to collect and remit tax on all the marketplace seller's transactions?

No.

- 17.** Is a marketplace seller who only sells through a marketplace facilitator but has a physical presence in North Carolina required to register and file a return if the marketplace facilitator is required to collect and remit tax on all the marketplace seller's transactions?

No. However, a marketplace seller who has a physical presence in North Carolina is required to register and remit use tax on tangible personal property purchased, leased or rented inside or outside this State for storage, use, or consumption in North Carolina pursuant to N.C. Gen. Stat. § 105-164.6. Use tax is also due on taxable services sourced to North Carolina and certain digital property purchased inside or outside this State for storage, use, or consumption in North Carolina.

- 18.** Is a marketplace seller that sells through a marketplace and also has direct sales sourced to North Carolina required to register and file a return with North Carolina?

If the marketplace seller has met the Threshold through its multiple channels<sup>14</sup>, the marketplace seller is required to collect and remit sales and use tax on its direct sales sourced to North Carolina. The marketplace facilitator is responsible for collecting and remitting sales and use tax on the marketplace-facilitated sales.

- 19.** Is a marketplace seller required to report sales through a marketplace separately from direct sales sourced to North Carolina on its sales and use tax return?

A marketplace seller should include marketplace-facilitated sales and direct sales on Line 1, “North Carolina Gross Receipts” of the Sales and Use Tax Return, Form E-500. Sales through a marketplace facilitator should be included on Line 2, “Sales for Resale,” of the Sales and Use Tax Return. Direct sales for which the marketplace seller is responsible for collecting and remitting sales and use tax should be reported in the taxable “Receipts” column at the applicable rates of sales and use tax. The marketplace-facilitated sales are not reported by a marketplace seller as taxable receipts.

- 20.** Is a marketplace facilitator required to identify sales made on behalf of marketplace sellers separately from its own direct sales sourced to North Carolina on its return?

No. Sales made on behalf of marketplace sellers and direct sales made by a marketplace facilitator are added together and reported in the taxable “Receipts” column at the applicable rates on the marketplace facilitator’s return.

- 21.** Does North Carolina allow the marketplace facilitator to file a separate return for marketplace-facilitated sales?

Yes. Taxpayers seeking to file a separate return for its marketplace-facilitated sales should register for a second sales and use tax account identification number using the Department’s [online business registration portal](#) or by submitting a completed [Form NC-BR](#), Business Registration Application for Income Tax Withholding, Sales and Use Tax, and Other Taxes and Service Charge, available on the Department’s website, [www.ncdor.gov](http://www.ncdor.gov).

- 22.** Who is responsible for obtaining and maintaining exemption certificates for a marketplace-facilitated sale?

A marketplace facilitator is the retailer responsible for maintaining records that establish a marketplace-facilitated sale is exempt from sales and use tax.

- 23.** Does a marketplace seller need to receive an exemption certificate from a marketplace facilitator for the marketplace seller’s marketplace facilitated sales?

No. A marketplace seller is not required to obtain an exemption certificate for a marketplace-facilitated sale. The marketplace seller and marketplace facilitator should maintain any

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<sup>14</sup> A multi-channel seller includes any sellers that sell on multiple channels such as marketplaces, their own websites, or from their physical locations.



contract or agreement between the parties, the required monthly marketplace facilitator reports, and any other records that establish their sales and use tax liability.

24. I am a business located in North Carolina that sells products for delivery into other states. Am I required to collect and remit sales and use tax for other states?

Each state's tax laws are different. A North Carolina retailer that sells products that are sourced to another state may be required to collect and remit the other state's tax to that state. You should contact each state to determine each state's requirements for registering, collecting, and remitting sales tax. To obtain state website and contact information for other states, visit [www.streamlinedsalestax.org/index.php?page=State-Websites](http://www.streamlinedsalestax.org/index.php?page=State-Websites).

### **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](http://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 at [www.ncdor.gov/taxes/sales-and-use-taxes/streamlined-taxability-matrices](http://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](http://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](http://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](http://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 at [www.ncdor.gov/taxes/sales-and-use-tax/sales-and-use-tax-rates-other-information](http://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](http://www.streamlinedsalestax.org/index.php?page=alias-10).

### **Electronic Tax Updates**

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 <https://www.ncdor.gov/file-pay/eservices/e-alerts>.

*To the extent there is any change in the rate or amount of tax, change to a statute or regulation, or new case law subsequent to the date of this directive, the provisions in this directive may be superseded or voided. To the extent that any provisions in any other notice, directive, bulletin, or published guidance regarding the subject of this directive and issued prior to the date of this directive conflict with this directive, the provisions contained in this directive supersede the previous guidance.*