

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-347
SENATE BILL 144**

AN ACT TO ENABLE NORTH CAROLINA TO ENTER THE STREAMLINED
SALES AND USE TAX AGREEMENT.

The General Assembly of North Carolina enacts:

PART 1. UNIFORM SALES AND USE TAX ADMINISTRATION ACT

SECTION 1.1. Article 5 of Chapter 105 of the General Statutes is amended by adding a new Part 7A to be titled "Uniform Sales and Use Tax Administration Act." The following statutes are recodified in the new Part 7A: G.S. 105-164.43A(a) is recodified as G.S. 105-164.42H(a); G.S. 105-164.43A(b) is recodified as G.S. 105-164.42I(a); G.S. 105-164.43B is recodified as G.S. 105-164.42I(b).

SECTION 1.2. G.S. 105-164.43C is repealed.

SECTION 1.3. Part 7A of Article 5 of Chapter 105 of the General Statutes, as created in Section 1.1 of this act, reads as rewritten:

"Part 7A. Uniform Sales and Use Tax Administration Act.

"§ 105-164.42A. Short title.

This Part is the 'Uniform Sales and Use Tax Administration Act' and may be cited by that name.

"§ 105-164.42B. Definitions.

The following definitions apply in this Part:

- (1) Agreement. – The Streamlined Sales and Use Tax Agreement.
- (2) Certified automated system. – Software certified jointly by the states that are signatories to the Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.
- (3) Certified service provider. – An agent certified jointly by the states that are signatories to the Agreement to perform all of the seller's sales tax functions.
- (4) Member state. – A state that has entered into the Agreement.
- (5) Person. – Defined in G.S. 105-228.90.
- (6) Sales tax. The tax levied in G.S. 105-164.4.
- (7) Seller. – A person making sales, leases, or rentals of personal property or services.
- (8) State. – The term "this State" means the State of North Carolina. Otherwise, the term "state" means any state of the United States and the District of Columbia.
- (9) Use tax. – The tax levied in G.S. 105-164.6.

"§ 105-164.42C. Authority to enter Agreement.

The Secretary is authorized to enter into the Agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. The Secretary may act jointly with other member states to establish standards for certification of a certified service provider and a certified automated system and to establish performance standards for multistate sellers.

The Secretary is authorized to represent this State before the other member states. The Secretary may take any other actions reasonably required to implement this Part, including the joint procurement with other member states of goods and services in furtherance of the Agreement.

"§ 105-164.42D. Relationship to North Carolina law.

No provision of the Agreement authorized by this Part invalidates or amends any provision of the law of this State. Adoption of the Agreement by this State does not amend or modify any law of this State. Implementation of a condition of the Agreement in this State must be made pursuant to an act of the General Assembly.

"§ 105-164.42E. Agreement requirements.

The Secretary may not enter into the Agreement unless the Agreement requires each state to abide by the following requirements:

- (1) Uniform state rate. – The Agreement must set restrictions to achieve more uniform state rates through the following:
 - a. Limiting the number of state rates.
 - b. Limiting maximums on the amount of state tax that is due on a transaction.
 - c. Limiting thresholds on the application of a state tax.
- (2) Uniform standards. – The Agreement must establish uniform standards for all of the following:
 - a. The sourcing of transactions to taxing jurisdictions.
 - b. The administration of exempt sales.
 - c. The allowances a seller can take for bad debts.
 - d. Sales and use tax returns and remittances.
- (3) Uniform definitions. – The Agreement must require states to develop and adopt uniform definitions of sales and use tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.
- (4) Central registration. – The Agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.
- (5) No nexus attribution. – The Agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.
- (6) Local sales and use taxes. – The Agreement must provide for reduction of the burdens of complying with local sales and use taxes through one or more of the following:
 - a. Restricting variances between the state and local tax bases.
 - b. Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions.
 - c. Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.
 - d. Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.
- (7) Monetary allowances. – The Agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.
- (8) State compliance. – The Agreement must require each state to certify compliance with the terms of the Agreement before becoming a

member and to maintain compliance, under the laws of the member state, with all provisions of the Agreement while a member.

- (9) Consumer privacy. – The Agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

"§ 105-164.42F. Cooperating sovereigns.

The Agreement authorized by this Part is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The Agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the laws of each member state.

"§ 105-164.42G. Effect of Agreement.

Entry of this State into the Agreement does not create a cause of action or a defense to an action. No person may challenge any action or inaction by a department, agency, or other instrumentality of this State, or a political subdivision of this State, on the ground that the action or inaction is inconsistent with the Agreement. No law of this State, or its application, may be declared invalid on the ground that the provision or application is inconsistent with the Agreement.

"§ 105-164.42H. Certification of certified automated system and effect of certification.

(a) ~~Software. Certification.~~ – The Secretary may certify a software program as a certified ~~sales tax collection program automated system~~ if the Secretary determines that the program correctly determines all of the following and that the software can generate reports and returns required by the Secretary:

- (1) The applicable combined State and local sales and use tax rate for a sale, based on ~~a ship-to address.~~ the sourcing principles in G.S. 105-164.4B.
- (2) Whether or not an item is exempt from tax, based on a uniform product code or another method.
- (3) Whether or not an exemption certificate offered by a purchaser is a valid certificate, based on the Department's registry of holders of exemption certificates.
- (4) The amount of tax to be remitted for each taxpayer for a reporting period.
- (5) Any other issue necessary for the application or calculation of sales and use tax due.

(b) Liability. – A seller may choose to use a certified automated system in performing its sales tax administration functions. A seller that uses a certified automated system is liable for sales and use taxes due on transactions it processes using the certified automated system except for underpayments of tax attributable to errors in the functioning of the system. A person that provides a certified automated system is responsible for the proper functioning of that system and is liable for underpayments of tax attributable to errors in the functioning of the system.

"§ 105-164.42I. Contract with certified service provider and effect of contract.

(a) ~~Tax Collector. Certification.~~ – The Secretary may certify an entity as a Certified Sales Tax Collector ~~certified service provider~~ if the entity meets all of the following requirements:

- (1) The entity uses a certified ~~sales tax collection program automated system.~~
- (2) The entity has agreed to update its program upon notification by the Secretary.
- (3) The entity integrates its certified ~~sales tax collection program automated system~~ with the system of a ~~retailer seller~~ for whom the entity collects tax so that the tax due on a sale is determined at the time of the sale.

- (4) The entity remits the taxes it collects at the time and in the manner specified by the Secretary.
- (5) The entity agrees to file sales and use tax returns on behalf of the ~~retailers~~ sellers for whom it collects tax.
- (6) The entity enters into a contract with the Secretary and agrees to comply with all the conditions of the contract.

(b) Contract. – The Secretary may contract with a ~~Certified Sales Tax Collector~~ certified service provider for the collection and remittance of sales and use taxes. A ~~Certified Sales Tax Collector~~ certified service provider must file with the Secretary a bond or an irrevocable letter of credit in the amount set by the Secretary. A bond must be conditioned upon compliance with the contract, be payable to the State, and be in the form required by the Secretary. The amount a ~~Certified Sales Tax Collector~~ certified service provider charges under the contract is a cost of collecting the tax and is payable from the amount collected.

(c) Liability. – A seller may contract with a certified service provider to collect and remit sales and use taxes payable to the State on sales made by the seller. A certified service provider with whom a seller contracts is the agent of the seller. As the seller's agent, the certified service provider, rather than the seller, is liable for sales and use taxes due this State on all sales transactions the certified service provider processes for the seller unless the seller misrepresents the type of products it sells or commits fraud. A seller that misrepresents the type of products it sells or commits fraud is liable for taxes not collected as a result of the misrepresentation or fraud.

(d) Audit and Review. – In the absence of misrepresentation or fraud, a seller that contracts with a certified service provider is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The State may perform a system check of a seller and review a seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider. A certified service provider is subject to audit.

"§ 105-164.42J. Performance standard for multistate seller.

The Secretary may establish a performance standard for a seller that is engaged in business in this State and at least 10 other states and has developed a proprietary system to determine the amount of sales and use taxes due on transactions. A seller that enters into an agreement with the Secretary that establishes a performance standard for that system is liable for the failure of the system to meet the performance standard."

PART 2. CONFORMING CHANGES

SECTION 2.1. The introductory language of G.S. 105-164.3 reads as rewritten:

"§ 105-164.3. Definitions.

The following definitions apply in this ~~article, except when the context clearly indicates a different meaning:~~ Article:".

SECTION 2.2. G.S. 105-164.3, as amended by Section 2.1 of this act, is amended by adding the following new subdivisions:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

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- (2a) Candy. – A preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces that do not require refrigeration. The term does not include any preparation that contains flour.
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(4a) Delivery charges. – Charges imposed by the retailer for preparation and delivery of personal property or services to a location designated by the consumer.

....
(4b) Dietary supplement. – A product that is intended to supplement the diet of humans and is required to be labeled as a dietary supplement under federal law, identifiable by the "Supplement Facts" box found on the label.

....
(5a) Food. – Substances that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. The substances may be in liquid, concentrated, solid, frozen, dried, or dehydrated form. The term does not include alcoholic beverages, as defined in G.S. 105-113.68, or tobacco products, as defined in G.S. 105-113.4.

....
(5b) Food sold through a vending machine. – Food dispensed from a machine or another mechanical device that accepts payment.

....
(12a) Purchase price. – The term has the same meaning as the term "sales price" when applied to an item subject to use tax.

....
(16b) Soft drink. – A nonalcoholic beverage that contains natural or artificial sweeteners. The term does not include beverages that contain one or more of the following:

- a. Milk or milk products.
- b. Soy, rice, or similar milk substitutes.
- c. More than fifty percent (50%) vegetable or fruit juice."

SECTION 2.3. G.S. 105-164.3(11a) reads as rewritten:

"(11a) ~~Prepared food and drink.~~ food. – Meals, food, and beverages to which a retailer has added value or whose state the retailer has altered (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make them available for immediate human consumption. Food that meets at least one of the following conditions:

- a. It is sold in a heated state or it is heated by the retailer.
- b. It consists of two or more foods mixed or combined by the retailer for sale as a single item.
- c. It is sold with eating utensils provided by the retailer, such as plates, knives, forks, spoons, glasses, cups, napkins, and straws.

The term does not include food the retailer sliced, repackaged, or pasteurized but did not otherwise process."

SECTION 2.4. G.S. 105-164.3(13) reads as rewritten:

"(13) ~~"Retail" shall mean the sale of any tangible personal property in any quantity or quantities for any use or purpose on the part of the purchaser other than for resale.~~ Retail sale or sale at retail. – The sale, lease, or rental for any purpose other than for resale, sublease, or subrent."

SECTION 2.5. G.S. 105-164.3(16) reads as rewritten:

"(16) ~~Except as provided in paragraph f., "sales price" means the total amount for which tangible personal property is sold including charges for any services that go into the fabrication, manufacture or delivery of such tangible personal property and that are a part of the sale valued in money whether paid in money or otherwise and includes any amount for which credit is given to the purchaser by the seller without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest charged, losses or~~

~~any other expenses whatsoever. Provided, however, that where a manufacturer, producer or contractor erects, installs or affixes tangible personal property upon real property pursuant to a construction or performance type contract with or for the benefit of the owner of such real property, the sales price shall be the cost of such property to the manufacturer, producer or contractor performing the contract. Provided, further:~~

- ~~a. The cost for labor or services rendered in erecting, installing or applying property sold when separately charged shall not be included as a part of the "sales price";~~
- ~~b. Finance charges, service charges or interest from credit extended under conditional sales contracts or other conditional contracts providing for deferred payments of the purchase price shall not be considered a part of the "sales price" when separately charged;~~
- ~~c. "Sales price" shall not include the amount of any tax imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or consumer except that any manufacturers' or importers' excise tax shall be included in the term.~~
- ~~d. "Sales price" shall not include any amounts charged as deposits on beverage containers which are returnable to vendors for reuse and which amounts are refundable or creditable to vendees, whether or not said deposits are separately charged.~~
- ~~e. "Sales price" shall not include amounts charged as deposits on aeronautic, automotive, industrial, marine and farm replacement parts which are returnable to vendors for rebuilding or remanufacturing and which amounts are refundable or creditable to vendees, whether or not such deposits are separately charged. This subsection shall not be construed to include tires and batteries.~~
- ~~f. The sales price of tangible personal property sold through a coin-operated vending machine, other than closed container soft drinks or tobacco products, is considered to be fifty percent (50%) of the total amount for which the property is sold in the vending machine.~~

Sales price. – The total amount or consideration for which personal 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.

- a. The term includes all of the following:
 - 1. The retailer's cost of the property sold.
 - 2. 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.
 - 3. Charges by the retailer for any services necessary to complete the sale.
 - 4. Delivery charges.
 - 5. Installation charges.
 - 6. The value of exempt personal property given to the consumer when taxable and exempt personal property are bundled together and sold by the retailer as a single product or piece of merchandise.

- b. The term does not include any of the following:
1. Discounts, including cash, term, or coupons, that are not reimbursed by a third party, are allowed by the retailer, and are taken by a consumer on a sale.
 2. Interest, financing, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale, or a similar document given to the consumer.
 3. Any taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer."

SECTION 2.6. G.S. 105-164.3(18) reads as rewritten:

"(18) "Use" means and includes the exercise of any right or power or dominion whatsoever over tangible personal property by a purchaser thereof and includes, but is not limited to, any withdrawal from storage, distribution, installation, affixation to real or personal property, or exhaustion or consumption of tangible personal property by the owner or purchaser thereof, but ~~shall~~ does not include the sale of tangible personal property in the regular course of business."

SECTION 2.7. G.S. 105-164.3(16c) is recodified as G.S. 105-164.3(16d).
G.S. 105-164.3(16b) is recodified as G.S. 105-164.3(16c).

SECTION 2.8. G.S. 105-164.4A(2) is repealed.

SECTION 2.9. Part 2 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-164.4B. Sales are sourced based on destination.

(a) Principles. – The following principles apply in determining where to source the sale of a product. These principles apply regardless of the nature of the product.

- (1) Over-the-counter. – When a purchaser receives a product at a business location of the seller, the sale is sourced to that business location.
- (2) Delivery to specified address. – When a purchaser receives a product at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser receives the product.
- (3) Delivery address unknown. – When a seller of a product does not know the address where a product is received, the sale is sourced to the first address listed in this subsection that is known to the seller:
 - a. The business or home address of the purchaser.
 - b. The billing address of the purchaser.
 - c. The address of the seller.

(b) Exceptions. – This section does not apply to telecommunications services."

SECTION 2.10. G.S. 105-164.8 reads as rewritten:

"§ 105-164.8. Retailer's obligation to collect tax regardless of place sale consummated; tax; mail order sales subject to tax.

(a) Sales Tax. – Every retailer engaged in business in this State as defined in this Article shall collect said tax notwithstanding

- (1) That the purchaser's order or the contract of sale is delivered, mailed or otherwise transmitted by the purchaser to the retailer at a point outside this State as a result of solicitation by the retailer through the medium of a catalogue or other written advertisement; or
- (2) That the purchaser's order or the contract of sale is made or closed by acceptance or approval outside this State, or before said tangible personal property enters this State; or
- (3) That the purchaser's order or the contract of sale provides that said property shall be or is in fact procured or manufactured at a point

outside this State and shipped directly to the purchaser from the point of origin; or

- (4) That said property is mailed to the purchaser in this State or a point outside this State or delivered to a carrier outside this State f.o.b. or otherwise and directed to the purchaser in this State regardless of whether the cost of transportation is paid by the retailer or by the purchaser; or
- (5) That said property is delivered directly to the purchaser at a point outside this State; or
- (6) Any combination in whole or in part of any two or more of the foregoing statements of fact, if it is intended that the tangible personal property purchased be brought to this State for storage, use or consumption in this State.

(b) Mail Order Sales. – A retailer who makes a mail order sale is engaged in business in this State and is subject to the tax levied under this Article if one of the following conditions is met:

- (1) The retailer is a corporation engaged in business under the laws of this State or a person domiciled in, a resident of, or a citizen of, this State;
- (2) The retailer maintains retail establishments or offices in this State, whether the mail order sales thus subject to taxation by this State result from or are related in any other way to the activities of such establishments or offices;
- (3) The retailer has representatives in this State who solicit business or transact business on behalf of the retailer, whether the mail order sales thus subject to taxation by this State result from or are related in any other way to such solicitation or transaction of business;
- (4) Repealed by Session Laws 1991, c. 45, s. 16.
- (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;
- (6) Through compact or reciprocity with another jurisdiction of the United States, that jurisdiction uses its taxing power and its jurisdiction over the retailer in support of this State's taxing power; or
- (7) The retailer consents, expressly or by implication, to the imposition of the tax imposed by this Article. For purposes of this subdivision, evidence that a retailer engaged in the activity described in subdivision (5) shall be prima facie evidence that the retailer consents to the imposition of the tax imposed by this Article.

(c) Use Tax. – A retailer who is required to collect the tax imposed by this Article 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 a transaction. A "local sales tax" is a tax imposed under Chapter 1096 of the 1967 Session Laws or by Subchapter VIII of this Chapter, and a local use tax is a use tax imposed under that act or Subchapter."

SECTION 2.11. G.S. 105-164.12 is repealed.

SECTION 2.12. G.S. 105-164.13 is amended by adding the following new subdivisions:

"§ 105-164.13. **Retail sales and use tax.**

The sale at retail, the use, storage or consumption in this State of the following tangible personal property is specifically exempted from the tax imposed by this Article:

...

- (5a) Mill machinery and mill machinery parts and accessories that are subject to tax under Article 5F of this Chapter.
- ...
- (47) An amount charged as a deposit on a beverage container that is returnable to the vendor for reuse when the amount is refundable or creditable to the vendee, whether or not the deposit is separately charged.
- (48) An amount charged as a deposit on an aeronautic, automotive, industrial, marine, or farm replacement part that is returnable to the vendor for rebuilding or remanufacturing when the amount is refundable or creditable to the vendee, whether or not the deposit is separately charged. This exemption does not include tires or batteries.
- (49) Installation charges when the charges are separately stated.
- (50) Fifty percent (50%) of the sales price of tangible personal property sold through a coin-operated vending machine, other than closed-container soft drinks and tobacco."

SECTION 2.13. G.S. 105-164.13B reads as rewritten:

"§ 105-164.13B. Food exempt from tax.

~~The~~ Except as provided in this section, the taxes imposed by this Article do not apply to food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased under the Food Stamp Program, 7 U.S.C. § 51, food. The tax does apply to all of the following:

- (1) Candy not sold for home consumption.
- (2) Dietary supplements.
- (3) Prepared food not sold for home consumption.
- (4) Food sold through a vending machine.
- (5) Soft drinks not sold for home consumption."

SECTION 2.14. G.S. 105-164.16 reads as rewritten:

"§ 105-164.16. Report Returns and payment of taxes.

(a) ~~Payment. General. – Taxes levied under this Article are due when a return is required to be filed. Every taxpayer liable for the tax imposed by this Article shall, within the specified time after the end of the appropriate reporting period, submit a return to the Secretary on a form prescribed by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent. Sales and use taxes are payable quarterly, monthly, or semimonthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and must be signed by the taxpayer or the taxpayer's agent.~~

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the cost price of tangible personal property that was purchased or received during the reporting period and is subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information ~~shall~~ will not be accepted. When an unacceptable return is submitted, the Secretary ~~shall~~ must require a corrected return to be filed.

(b) ~~General Reporting Periods. Quarterly. – Returns of taxpayers who are required by this subsection to report on a monthly or quarterly basis are due within 15 days after the end of each monthly or quarterly period. Returns of taxpayers who are required to report on a semimonthly basis are due within 10 days after the end of each semimonthly period.~~

A taxpayer who is consistently liable for less than one hundred dollars (\$100.00) a month in State and local sales and use taxes ~~may, with the approval of the Secretary,~~ must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a

calendar quarter and is due by the 15th day of the month following the end of the quarter. A

(b1) Monthly. – A taxpayer who is consistently liable for more than one hundred dollars (\$100.00) but less than twenty thousand dollars (\$20,000) a month in State and local sales and use taxes must file a return and pay the taxes due on a monthly basis. A monthly return is due by the 15th day of the month following the month covered by the return.

(b2) Semimonthly. – A taxpayer who is consistently liable for at least twenty thousand dollars (\$20,000) a month in State and local sales and use taxes shall, when directed to do so by the Secretary, file a return on a semimonthly basis. All other taxpayers shall file a return on a monthly basis. Quarterly reporting periods end on the last day of March, June, September, and December; monthly reporting periods end on the last day of the month; and semimonthly reporting periods end on the 15th of each month and the last day of each month must pay the tax twice a month and must file a return on a monthly basis. One semimonthly payment covers the period from the first day of the month through the 15th day of the month. The other semimonthly payment covers the period from the 16th day of the month through the last day of the month. The semimonthly payment for the period that ends on the 15th day of the month is due by the 25th day of that month. The semimonthly payment for the period that ends on the last day of the month is due by the 10th day of the following month. A return covers both semimonthly payment periods. The return is due by the 20th day of the month following the month of the payment periods covered by the return. A taxpayer is not subject to interest on or penalties for an underpayment for a semimonthly payment period if the taxpayer timely pays at least 95% of the amount due for each semimonthly payment period and includes the underpayment with the monthly return for those semimonthly payment periods.

(b3) Category. – The Secretary shall must monitor the amount of tax remitted by a taxpayer and shall direct a taxpayer who consistently remits at least twenty thousand dollars (\$20,000) each month to file a return on a semimonthly basis. State and local sales and use taxes paid by a taxpayer or estimate the amount of taxes to be paid by a new taxpayer and must direct each taxpayer to pay tax and file returns in accordance with the appropriate schedule. In determining the amount of tax taxes due from a taxpayer for a reporting period taxpayer, the Secretary shall must consider the total amount due from all places of business owned or operated by the same person as the amount due from that person. A taxpayer must file a return and pay tax in accordance with the Secretary's direction until notified in writing to file and pay under a different schedule.

~~A taxpayer who is directed to remit sales and use taxes on a semimonthly basis but who is unable to gather the information required to submit a complete return for either the first reporting period or both the first and second semimonthly reporting periods may, upon written authorization by the Secretary, file an estimated return for that first reporting period or both periods on the basis prescribed by the Secretary. Once a taxpayer is authorized to file an estimated return for the first period or both periods, the taxpayer may continue to file an estimated return for the first or both periods until the Secretary, by written notification, revokes the taxpayer's authorization to do so. When filing a return for the second semimonthly reporting period, a taxpayer who files an estimated return for the first period but not both periods shall remit the amount of tax due for both the first and second reporting periods, less the amount the taxpayer remitted with the estimated return.~~

~~A taxpayer who files an estimated return for both periods is considered to have been granted an extension for both the first and second reporting periods. Notwithstanding G.S. 105-164.19, if a taxpayer who files an estimated return for both periods files a reconciling return for those periods within ten days of the due date of the return for the second period and any underpayment of estimated taxes remitted with the reconciling return is less than ten percent (10%) of the amount of taxes due for both the first and~~

~~second reporting periods, no interest shall be charged. Otherwise, a taxpayer who files an estimated return for both periods shall be charged interest at the statutory rate from the due date of the return for the first reporting period to the date the reconciling return is filed.~~

(c) Sales Tax on Utility Services. – ~~A return for taxes~~ Taxes levied under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c) are payable when a return is required to be filed. A return for these taxes is due quarterly or monthly as specified in this subsection. A utility that is allowed to pay tax under G.S. 105-120 on a quarterly basis shall file a quarterly return. All other utilities shall file a monthly return. A quarterly return is due by the last day of the month following the quarter covered by the return. A monthly return is due by the last day of the month following the month in which the taxes accrue, except the return for taxes that accrue in May. A return for taxes that accrue in May is due by June 25.

A utility that is required to file a monthly return may file an estimated return for the first month, the second month, or both the first and second months in a quarter. A utility is not subject to interest on or penalties for an underpayment submitted with an estimated monthly return if the utility timely pays at least ninety-five percent (95%) of the amount due with a monthly return and includes the underpayment with the company's return for the third month in the same quarter.

(d) **(Effective until taxable years beginning on or after January 1, 2003)** Use Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases tangible personal property outside the State for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14.

(d) **(Effective for taxable years beginning on or after January 1, 2003)** Use Tax on Out-of-State Purchases. – Notwithstanding subsection (b), an individual who purchases tangible personal property outside the State for a nonbusiness purpose shall file a use tax return on an annual basis. The annual reporting period ends on the last day of the calendar year. The return is due by the due date, including any approved extensions, for filing the individual's income tax return."

SECTION 2.15. G.S. 105-467 reads as rewritten:

"§ 105-467. Scope of sales tax.

(a) Sales Tax. – The sales tax that may be imposed under this Article is limited to a tax at the rate of one percent (1%) of the ~~following transactions listed in this subsection.~~ The sales tax authorized by this Article does not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically included in this subsection.

- (1) The sales price of tangible personal property subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(1) and (a)(4b).
- (2) The gross receipts derived from the lease or rental of tangible personal property when the lease or rental of the property is subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(2).
- (3) The gross receipts derived from the rental of any room or other accommodations subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(3).
- (4) The gross receipts derived from services rendered by laundries, dry cleaners, and other businesses subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(4).
- (5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use

tax pursuant to G.S. 105-164.13 if it were purchased under the Food Stamp Program, 7 U.S.C. § 51.

~~The sales tax authorized by this Article does not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically included in this section.~~

(b) Exemptions and Refunds. – The State exemptions and exclusions contained in G.S. 105-164.13 and the State refund provisions contained in G.S. 105-164.14 apply to the local sales and use tax authorized to be levied and imposed under this Article. A taxing county may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax.

(c) Sourcing. – The local sales tax authorized to be imposed and levied under this Article applies to taxable transactions by retailers whose place of business is located within the taxing county. ~~For the purpose of this Article, the situs of a transaction is the location of the retailer's place of business.~~ The sourcing principles in G.S. 105-164.4B apply in determining whether the local sales tax applies to a transaction.

SECTION 2.16. The third paragraph of Section 4 of Chapter 1096 of the 1967 Session Laws, as amended, is amended as follows:

(1) By adding the following sentence immediately after the second sentence in that paragraph:

"The sourcing principles in G.S. 105-164.4B apply in determining whether the local sales tax applies to a transaction."

(2) By deleting the last sentence in that paragraph.

SECTION 2.17. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 5F.

"Mill Machinery.

"§ 105-187.50. Definitions.

The definitions in G.S. 105-164.3 apply in this Article.

"§ 105-187.51. Tax imposed on mill machinery.

(a) Scope. – A privilege tax is imposed on the following persons:

(1) A manufacturing industry or plant that purchases mill machinery or mill machinery parts or accessories for storage, use, or consumption in this State. A manufacturing industry or plant does not include a delicatessen, café, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of foods prepared by it for consumption on or off its premises.

(2) 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.

(3) A subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a general contractor that has a contract with a manufacturing industry or plant.

(b) Rate. – The tax is one percent (1%) of the sales price of the machinery, part, or accessory purchased. The maximum tax is eighty dollars (\$80.00) per article.

"§ 105-187.52. Administration.

The privilege tax this Article imposes on a person listed in G.S. 105-187.51 is an additional State use tax. Except as otherwise provided in this Article, the collection and administration of this tax is the same as the State use tax imposed by Article 5 of this Chapter."

SECTION 2.18. Subdivision (b)(5) of Section 5 of Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapter 821 of the 1989 Session Laws, reads as rewritten:

"(b) Definitions. The definitions in G.S. 105-164.3 apply to this Part insofar as they are not inconsistent with the provisions of this Part. In addition, the following definitions apply in this Part:

...

- (5) Prepared Food and Beverages. ~~Any food or beverage which a retailer has added value to or has altered its state (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make the food or beverage available for immediate human consumption. The term has the same meaning as the term "prepared food" in G.S. 105-164.3.~~

SECTION 2.19. Subdivision (a)(2) of Section 2 of Chapter 413 of the 1993 Session Laws reads as rewritten:

"Sec. 2. Definitions; Sales and Use Tax Statutes. – (a) The definitions in G.S. 105-164.3 apply to this act to the extent they are not inconsistent with the provisions of this act. In addition, the following definitions apply in this act:

- ..(2) Prepared food and beverages. – ~~Any meals, food, or beverages to which a retailer has added value or has altered its state (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make the food or beverage available for immediate human consumption. The term has the same meaning as the term "prepared food" in G.S. 105-164.3.~~

SECTION 2.20. Section 2 of Chapter 449 of the 1985 Session Laws, as amended by Chapter 826 of the 1985 Session Laws and Chapter 177 of the 1991 Session Laws, reads as rewritten:

"Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply in this act. In addition, the following definitions apply in this act.

- (1) Net proceeds. Gross proceeds less the cost to the county of administering and collecting the tax.
- (2) Prepared food and beverages. ~~Meals, food, and beverages which a retailer has added value to or whose state has been altered (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make them available for immediate consumption. The term has the same meaning as the term "prepared food" in G.S. 105-164.3.~~

SECTION 2.21. Subsection (b) of Section 1 of Chapter 449 of the 1993 Session Laws reads as rewritten:

"(b) Definitions; Sales and Use Tax Statutes. – The definitions in G.S. 105-164.3 apply to this section to the extent they are not inconsistent with the provisions of this section. In addition, the term "prepared food and beverages" ~~means any meals, food, or beverages to which a retailer has added value or has altered its state (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make the food or beverage available for immediate human consumption.~~ has the same meaning as the term "prepared food" in G.S. 105-164.3. The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this section to the extent they are not inconsistent with the provisions of this section."

SECTION 2.22. Subdivision (3) of Section 2 of Chapter 594 of the 1991 Session Laws reads as rewritten:

"Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply to this act to the extent they are not inconsistent with the provisions of this act. The following definitions also apply in this act:

- ..(3) Prepared food and beverage. ~~Any food or beverage to which a retailer has added value or has altered its state (other than by cooling alone) by preparing, combining, dividing, heating, or serving, in order to make the food or beverage available for immediate human consumption. The term has the same meaning as the term "prepared food" in G.S. 105-164.3.~~

PART 3. EFFECTIVE DATES

SECTION 3.1. Part 1 of this act is effective when it becomes law and expires January 1, 2006, unless one of the following occurs: (i) 15 states have signed the Streamlined Sales and Use Tax Agreement, or (ii) states representing a combined resident population equal to at least ten percent (10%) of the national resident population, as determined by the 2000 federal decennial census, have signed the Agreement.

SECTION 3.2. Section 2.8, G.S. 105-164.13(5a), as enacted by Section 2.12, and Section 2.17 of Part 2 of this act become effective January 1, 2006. The remainder of Part 2 of this act becomes effective January 1, 2002.

SECTION 3.3. The remainder of this act is effective when it becomes law. In the General Assembly read three times and ratified this the 30th day of July, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 8:20 a.m. this 8th day of August, 2001