

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 144

Short Title: Streamlined Sales and Use Tax Agreement. (Public)

Sponsors: Senators Kerr, Hartsell, Hoyle, Dalton, Webster; and Berger.

Referred to: Finance.

February 14, 2001

A BILL TO BE ENTITLED

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 G.S. 105-164.43C is repealed.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

- 1 (3) Certified service provider. – An agent certified jointly by the states
2 that are signatories to the Agreement to perform all of the seller's sales
3 tax functions.
- 4 (4) Member state. – A state that has entered into the Agreement.
- 5 (5) Person. -- Defined in G.S. 105-228.90.
- 6 (6) Sales tax. – The tax levied in G.S. 105-164.4.
- 7 (7) Seller. – A person making sales, leases, or rentals of personal property
8 or services.
- 9 (8) State. – The term "this State" means the State of North Carolina.
10 Otherwise, the term "state" means any state of the United States and
11 the District of Columbia.
- 12 (9) Use tax. – The tax levied in G.S. 105-164.6.

13 **"§ 105-164.42C. Authority to enter Agreement.**

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

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

24 **"§ 105-164.42D. Relationship to North Carolina law.**

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

29 **"§ 105-164.42E. Agreement requirements.**

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

- 32 (1) Uniform state rate. – The Agreement must set restrictions to achieve
33 more uniform state rates through the following:
- 34 a. Limiting the number of state rates.
- 35 b. Eliminating maximums on the amount of state tax that is due on
36 a transaction.
- 37 c. Eliminating thresholds on the application of a state tax.
- 38 (2) Uniform standards. – The Agreement must establish uniform standards
39 for all of the following:
- 40 a. The sourcing of transactions to taxing jurisdictions.
- 41 b. The administration of exempt sales.
- 42 c. The allowances a seller can take for bad debts.
- 43 d. Sales and use tax returns and remittances.

- 1 (3) Uniform definitions. – The Agreement must require states to develop
2 and adopt uniform definitions of sales and use tax terms. The
3 definitions must enable a state to preserve its ability to make policy
4 choices not inconsistent with the uniform definitions.
- 5 (4) Central registration. – The Agreement must provide a central,
6 electronic registration system that allows a seller to register to collect
7 and remit sales and use taxes for all signatory states.
- 8 (5) No nexus attribution. – The Agreement must provide that registration
9 with the central registration system and the collection of sales and use
10 taxes in the signatory states will not be used as a factor in determining
11 whether the seller has nexus with a state for any tax.
- 12 (6) Local sales and use taxes. – The Agreement must provide for reduction
13 of the burdens of complying with local sales and use taxes through one
14 or more of the following:
- 15 a. Restricting and eliminating variances between the state and
16 local tax bases.
- 17 b. Requiring states to administer any sales and use taxes levied by
18 local jurisdictions within the state so that sellers collecting and
19 remitting these taxes will not have to register or file returns
20 with, remit funds to, or be subject to independent audits from
21 local taxing jurisdictions.
- 22 c. Restricting the frequency of changes in the local sales and use
23 tax rates and setting effective dates for the application of local
24 jurisdictional boundary changes to local sales and use taxes.
- 25 d. Providing notice of changes in local sales and use tax rates and
26 of changes in the boundaries of local taxing jurisdictions.
- 27 (7) Monetary allowances. –The Agreement must outline any monetary
28 allowances that are to be provided by the states to sellers or certified
29 service providers.
- 30 (8) State compliance. – The Agreement must require each state to certify
31 compliance with the terms of the Agreement before becoming a
32 member and to maintain compliance, under the laws of the member
33 state, with all provisions of the Agreement while a member.
- 34 (9) Consumer privacy. – The Agreement must require each state to adopt a
35 uniform policy for certified service providers that protects the privacy
36 of consumers and maintains the confidentiality of tax information.

37 **"§ 105-164.42F. Cooperating sovereigns.**

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

43 **"§ 105-164.42G. Effect of Agreement.**

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

7 **"§ 105-164.42H. Certification of certified automated system and effect of**
8 **certification.**

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

- 13 (1) The applicable combined State and local sales and use tax rate for a
14 sale, based on a ship-to address.
- 15 (2) Whether or not an item is exempt from tax, based on a uniform
16 product code or another method.
- 17 (3) Whether or not an exemption certificate offered by a purchaser is a
18 valid certificate, based on the Department's registry of holders of
19 exemption certificates.
- 20 (4) The amount of tax to be remitted for each taxpayer for a reporting
21 period.
- 22 (5) Any other issue necessary for the application or calculation of sales
23 and use tax due.

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

31 **"§ 105-164.42I. Contract with certified service provider and effect of contract.**

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

- 35 (1) The entity uses a certified ~~sales tax collection program automated~~
36 system.
- 37 (2) The entity has agreed to update its program upon notification by the
38 Secretary.
- 39 (3) The entity integrates its certified ~~sales tax collection program~~
40 automated system with the system of a ~~retailer seller~~ for whom the
41 entity collects tax so that the tax due on a sale is determined at the time
42 of the sale.
- 43 (4) The entity remits the taxes it collects at the time and in the manner
44 specified by the Secretary.

1 (5) The entity agrees to file sales and use tax returns on behalf of the
2 ~~retailers-sellers~~ for whom it collects tax.

3 (6) The entity enters into a contract with the Secretary and agrees to
4 comply with all the conditions of the contract.

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

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

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

29 **"§ 105-164.42J. Performance standard for multistate seller.**

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

35
36 PART 2. CONFORMING CHANGES

37
38 SECTION 2.1. The introductory language of G.S. 105-164.3 reads as
39 rewritten:

40 **"§ 105-164.3. Definitions.**

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

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

1 **"§ 105-164.3. Definitions.**

2 The following definitions apply in this Article:

3

4 (2a) Candy. – A preparation of sugar, honey, or other natural or artificial
5 sweeteners in combination with chocolate, fruits, nuts, or other
6 ingredients or flavorings in the form of bars, drops, or pieces that do
7 not require refrigeration. The term does not include any preparation
8 that contains flour.

9

10 (4a) Delivery charges. – Charges imposed by the retailer for preparation
11 and delivery of personal property or services to a location designated
12 by the consumer.

13

14 (4b) Dietary supplement. – A product that is intended to supplement the
15 diet of humans and is required to be labeled as a dietary supplement
16 under federal law, identifiable by the "Supplement Facts" box found
17 on the label.

18

19 (5a) Food. – Substances that are sold for ingestion or chewing by humans
20 and are consumed for their taste or nutritional value. The substances
21 may be in liquid, concentrated, solid, frozen, dried, or dehydrated
22 form. The term does not include alcoholic beverages, as defined in
23 G.S. 105-113.68, or tobacco products, as defined in G.S. 105-113.4.

24

25 (5b) Food sold through a vending machine. – Food dispensed from a
26 machine or another mechanical device that accepts payment.

27

28 (12a) Purchase price. – The term has the same meaning as the term "sales
29 price" when applied to an item subject to use tax.

30

31 (16b) Soft drink. – A nonalcoholic beverage that contains natural or artificial
32 sweeteners. The term does not include beverages that contain one or
33 more of the following:

34 a. Milk or milk products.

35 b. Soy, rice, or similar milk substitutes.

36 c. More than fifty percent (50%) vegetable or fruit juice."

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

38 ~~"(11a) Prepared food and drink. food. – Meals, food, and beverages to which~~
39 ~~a retailer has added value or whose state the retailer has altered (other~~
40 ~~than solely by cooling) by preparing, combining, dividing, heating, or~~
41 ~~selling, in order to make them available for immediate human~~
42 ~~consumption. Food that meets at least one of the following conditions:~~

43 a. It is sold in a heated state or it is heated by the retailer.

1 b. It consists of two or more foods mixed or combined by the
2 retailer for sale as a single item.

3 c. It is sold with eating utensils provided by the retailer, such as
4 plates, knives, forks, spoons, glasses, cups, napkins, and straws.

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

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

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

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

14 "~~(16) Except as provided in paragraph f., "sales price" means the total~~
15 ~~amount for which tangible personal property is sold including charges~~
16 ~~for any services that go into the fabrication, manufacture or delivery of~~
17 ~~such tangible personal property and that are a part of the sale valued in~~
18 ~~money whether paid in money or otherwise and includes any amount~~
19 ~~for which credit is given to the purchaser by the seller without any~~
20 ~~deduction therefrom on account of the cost of the property sold, the~~
21 ~~cost of materials used, labor or service costs, interest charged, losses or~~
22 ~~any other expenses whatsoever. Provided, however, that where a~~
23 ~~manufacturer, producer or contractor erects, installs or affixes tangible~~
24 ~~personal property upon real property pursuant to a construction or~~
25 ~~performance type contract with or for the benefit of the owner of such~~
26 ~~real property, the sales price shall be the cost of such property to the~~
27 ~~manufacturer, producer or contractor performing the contract.~~
28 ~~Provided, further:~~

29 a. ~~The cost for labor or services rendered in erecting, installing or~~
30 ~~applying property sold when separately charged shall not be~~
31 ~~included as a part of the "sales price";~~

32 b. ~~Finance charges, service charges or interest from credit~~
33 ~~extended under conditional sales contracts or other conditional~~
34 ~~contracts providing for deferred payments of the purchase price~~
35 ~~shall not be considered a part of the "sales price" when~~
36 ~~separately charged;~~

37 c. ~~"Sales price" shall not include the amount of any tax imposed by~~
38 ~~the United States upon or with respect to retail sales whether~~
39 ~~imposed upon the retailer or consumer except that any~~
40 ~~manufacturers' or importers' excise tax shall be included in the~~
41 ~~term.~~

42 d. ~~"Sales price" shall not include any amounts charged as deposits~~
43 ~~on beverage containers which are returnable to vendors for~~

1 ~~reuse and which amounts are refundable or creditable to~~
2 ~~vendees, whether or not said deposits are separately charged.~~

3 e. ~~"Sales price" shall not include amounts charged as deposits on~~
4 ~~aeronautic, automotive, industrial, marine and farm replacement~~
5 ~~parts which are returnable to vendors for rebuilding or~~
6 ~~remanufacturing and which amounts are refundable or~~
7 ~~creditable to vendees, whether or not such deposits are~~
8 ~~separately charged. This subsection shall not be construed to~~
9 ~~include tires and batteries.~~

10 f. ~~The sales price of tangible personal property sold through a~~
11 ~~coin-operated vending machine, other than closed-container soft~~
12 ~~drinks or tobacco products, is considered to be fifty percent~~
13 ~~(50%) of the total amount for which the property is sold in the~~
14 ~~vending machine.~~

15 Sales price. – The total amount or consideration for which personal
16 property or services are sold, leased, or rented. The consideration may
17 be in the form of cash, credit, property, or services.

18 a. The sales price must be valued in money, regardless of whether
19 it is received in money. The term includes all of the following:

20 1. The retailer's cost of the property sold.

21 2. The cost of materials used, labor or service costs,
22 interest, losses, all costs of transportation to the retailer,
23 all taxes imposed on the retailer, and any other expense
24 of the retailer.

25 3. Charges by the retailer for any services necessary to
26 complete the sale.

27 4. Delivery charges.

28 5. Installation charges.

29 6. The value of exempt personal property given to the
30 consumer when taxable and exempt personal property
31 are bundled together and sold by the retailer as a single
32 product or piece of merchandise.

33 b. The term does not include any of the following:

34 1. Discounts, including cash, term, or coupons, that are not
35 reimbursed by a third party, are allowed by the retailer,
36 and are taken by a consumer on a sale.

37 2. Interest, financing, and carrying charges from credit
38 extended on the sale, if the amount is separately stated
39 on the invoice, bill of sale, or a similar document given
40 to the consumer.

41 3. Any taxes imposed directly on the consumer that are
42 separately stated on the invoice, bill of sale, or similar
43 document given to the consumer."

1 **SECTION 2.6.** G.S. 105-164.3(16c) is recodified as G.S. 105-164.3(16d).
2 G.S. 105-164.3(16b) is recodified as G.S. 105-164.3(16c).

3 **SECTION 2.7.** G.S. 105-164.12 is repealed.

4 **SECTION 2.8.** G.S. 105-164.13 is amended by adding the following new
5 subdivisions:

6 "(47) An amount charged as a deposit on a beverage container that is
7 returnable to the vendor for reuse when the amount is refundable or
8 creditable to the vendee, whether or not the deposit is separately
9 charged.

10 (48) An amount charged as a deposit on an aeronautic, automotive,
11 industrial, marine, or farm replacement part that is returnable to the
12 vendor for rebuilding or remanufacturing when the amount is
13 refundable or creditable to the vendee, whether or not the deposit is
14 separately charged. This exemption does not include tires or batteries.

15 (49) Installation charges when the charges are separately stated.

16 (50) Fifty percent (50%) of the sales price of tangible personal property
17 sold through a coin-operated vending machine, other than closed-
18 container soft drinks and tobacco."

19 **SECTION 2.9.** G.S. 105-164.13B reads as rewritten:

20 **"§ 105-164.13B. Food exempt from tax.**

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

25 (1) Candy.

26 (2) Dietary supplements.

27 (3) Prepared foods.

28 (4) Food sold through a vending machine.

29 (5) Soft drinks."

30 **SECTION 2.10.** Subdivision 5(b)(5) of Part IV of Chapter 903 of the 1983
31 Session Laws, as amended by Chapter 821 of the 1989 Session Laws, reads as rewritten:

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

35

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

42 **SECTION 2.11.** Subdivision 2(a)(2) of Chapter 413 of the 1993 Session
43 Laws reads as rewritten:

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

4

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

11 **SECTION 2.12.** Section 2 of Chapter 449 of the 1985 Session Laws, as
12 amended by Chapter 826 of the 1985 Session Laws and Chapter 177 of the 1991
13 Session Laws, reads as rewritten:

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

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

24 **SECTION 2.13.** Subsection 1(b) of Chapter 449 of the 1993 Session Laws
25 reads as rewritten:

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

35 **SECTION 2.14.** Subdivision 2(3) of Chapter 594 of the 1991 Session Laws
36 reads as rewritten:

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

40

- 41 (3) Prepared food and beverage. ~~Any food or beverage to which a retailer~~
42 ~~has added value or has altered its state (other than by cooling alone) by~~
43 ~~preparing, combining, dividing, heating, or serving, in order to make~~
44 ~~the food or beverage available for immediate human consumption.~~The

1 term has the same meaning as the term "prepared food" in G.S. 105-
2 164.3."

3
4 **PART 3. EFFECTIVE DATES**

5
6 **SECTION 3.1.** Part 1 of this act is effective when it becomes law.

7 **SECTION 3.2.** Part 2 of this act becomes effective January 1, 2002, if the
8 Streamlined Sales and Use Tax Agreement becomes effective before August 1, 2001. If
9 the Agreement does not become effective before August 1, 2001, Part 2 becomes
10 effective on the first day of the fourth month after the Agreement does become
11 effective. The Secretary of Revenue must notify the codifier of the statutes when the
12 Agreement becomes effective.

13 **SECTION 3.3.** The remainder of this act is effective when it becomes law.