

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE DRH70181-SV-8A* (03/03)

Short Title: Repeal Remote Retailer Click-Through.

(Public)

Sponsors: Representative Starnes.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE CLICK-THROUGH PROVISION AND TO ELIMINATE A
REMOTE RETAILER'S OBLIGATION TO COLLECT SALES TAX BASED ON
AFFILIATE CONTRACTS WITH NORTH CAROLINA RESIDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.8(b) reads as rewritten:

"(b) Remote Sales. – A retailer who makes a remote sale is engaged in business in this State and is subject to the tax levied under this Article if at least 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 remote sales thus subject to taxation by this State result from or are related in any other way to the activities of the establishments or offices.
- (3) The retailer solicits or transacts business in this State by employees, independent contractors, agents, or other representatives, whether the remote sales thus subject to taxation by this State result from or are related in any other way to the solicitation or transaction of business. A retailer is ~~presumed~~ not considered to be soliciting or transacting business by an independent contractor, agent, or other representative if the retailer enters into an agreement with a resident of this State under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet Web site or otherwise, to the retailer. ~~This presumption applies only if the cumulative gross receipts from sales by the retailer to purchasers in this State who are referred to the retailer by all residents with this type of agreement with the retailer is in excess of ten thousand dollars (\$10,000) during the preceding four quarterly periods. This presumption may be rebutted by proof that the resident with whom the retailer has an agreement did not engage in any solicitation in the State on behalf of the seller that would satisfy the nexus requirement of the United States Constitution during the four quarterly periods in question.~~
- (4) Repealed by Session Laws 1991, c. 45, s. 16.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



* D R H 7 0 1 8 1 - S V - 8 A *

1 catalogs, computer-assisted shopping, television, radio or other electronic
2 media, telephone solicitation, magazine or newspaper advertisements, or
3 other media, creates nexus with this State. A nonresident retailer who
4 purchases advertising to be delivered by television, by radio, in print, on the
5 Internet, or by any other medium is not considered to be engaged in business
6 in this State based solely on the purchase of the advertising.

7 (6) Through compact or reciprocity with another jurisdiction of the United
8 States, that jurisdiction uses its taxing power and its jurisdiction over the
9 retailer in support of this State's taxing power.

10 (7) The retailer consents, expressly or by implication, to the imposition of the
11 tax imposed by this Article. For purposes of this subdivision, evidence that a
12 retailer engaged in the activity described in subdivision (5) is prima facie
13 evidence that the retailer consents to the imposition of the tax imposed by
14 this Article.

15 (8) The retailer is a holder of a wine shipper permit issued by the ABC
16 Commission pursuant to G.S. 18B-1001.1."

17 **SECTION 2.** This act is effective retroactively for tax years beginning on or after
18 January 1, 2009.