

To: Scott Peterson and Pam Cook

From: Eric K. Wayne, Director of Sales and Use Tax, NC DOR

Re: Preliminary report on 2009 Annual Recertification

Date: 10/25/09

North Carolina

Issue:

(no 30 day rule for rate changes, but did comment that provided relief in this situation in 2007)

Response:

Session Law 2009-575 provided that "...a retailer is not liable for an overcollection or undercollection of sales tax if the retailer has made a good faith effort to comply with the law and collect the proper amount of tax and has, due to the change under Section 27A.2 of Senate Bill 202, 2009 Regular Session, in the rate of tax imposed under G.S. 105-164.4(a), overcollected or undercollected the amount of sales tax that is due. This subsection applies only to the period beginning September 1, 2009, and ending October 1, 2009. A 30 days savings relief was provided by the legislature.

Issue:

The statute defines prepaid telephone calling service to include prepaid wireline calling service and prepaid wireless calling service. There is no definition for prepaid calling service (which includes both wireline and wireless service) and prepaid wireline calling service is not a defined term.

Response:

NCGS 105-164.3(27) Prepaid telephone calling service. – Prepaid wireline calling service or prepaid wireless calling service

NCGS 105-164.3(27a) Prepaid wireless calling service. – A right that meets all of the following requirements:

- a. Authorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services.
- b. Must be paid for in advance.
- c. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.

NCGS 105-164.3(27b) Prepaid wireline calling service. – A right that meets all of the following requirements:

- a. Authorizes the exclusive purchase of wireline telecommunications service.
- b. Must be paid for in advance.
- c. Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.
- a. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.

Issue:

The statute exempts pay telephone service but does not define it. There is a definition in the Agreement.

Response:

The definition of pay telephone service is included in Sales and Use Tax Technical Bulletin 21 (copy included with response).

Issue:

The statute cited for providing relief from liability from errors in the taxability matrix for sellers and CSPs (section 328) and purchasers (section 331) only relates to errors in information on rates, boundaries and taxing jurisdiction assignments. There is no provision for errors in the taxability matrix.

Response:

NCGS 105-264 This statute was rewritten to provide that a taxpayer is not liable for any penalty or additional assessment attributable to erroneous advice, either in writing or verbal, furnished by the Department when all of the following conditions are satisfied: (1) The advice was reasonably relied upon by the taxpayer, (2) The penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information, and (3) The Department provided the advice in writing or the Department's records establish that it provided erroneous verbal advice. Effective *July 16, 2008; HB 2436, s. 28.16(e), S.L. 08-107.*)