



## North Carolina Department of Revenue

Beverly Eaves Perdue  
Governor

Kenneth R. Lay  
Secretary

November 19, 2009

To: Compliance Review and Interpretations Committee

CC: Scott Peterson, Executive Director  
Pam Cook

Re: North Carolina compliance issues

Original responses to the North Carolina compliance issues were provided by memo on October 25, 2009. During the committee call on November 12, 2009, North Carolina was granted additional time to review a couple of items noted during the initial compliance review discussion and to address concerns raised by the Business Advisory Committee. Below are additional responses to the issues raised during the phone conference on November 12, 2009.

**Issue:**

NCGS 105-164.3(27) defines prepaid telephone calling service to include prepaid wireline calling service or 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:**

It was determined during the initial phone call that technical changes would be required to the general statute in order to remove "wireline" from the defined terms "prepaid telephone calling service" and "prepaid wireline calling service." During the 2010 legislative session, the Department will request that technical changes be made to remove the word "wireline" from NCGS 105-164.3(27) and (27b).

CGS 105-164.3(27) as currently written states the following:

*Prepaid telephone calling service. – Prepaid wireline calling service or prepaid wireless calling service.*

NCGS 105-164.3(27b) as currently written states the following:

*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.*
- d. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.*

The imposition of tax on prepaid telephone calling service is noted in the following statute.

*NCGS 105-164.4 (4d). The sale or recharge of prepaid telephone calling service is taxable at the general rate of tax. The tax applies regardless of whether tangible personal property, such as a card or a telephone, is transferred. The tax applies to a service that is sold in conjunction with prepaid wireless calling service. Prepaid telephone calling service is taxable at the point of sale instead of at the point of use and is sourced in accordance with G.S. 105-164.4B. Prepaid telephone calling service taxed under this subdivision is not subject to tax as a telecommunications service.*

**Issue:**

The BAC raised the following items:

-Section 317 of the Agreement has two time periods (90 and 120 days) for sellers to obtain exemption certificates – these time periods are not in North Carolina’s law – but compliance with Section 317 is referenced in the instructions section on the exemption certificate form (Form E-595E)

- Exemption certificates for over-the-counter sales limited to sales of property typically sold by the type of business stated on the certificate

**Response:**

A legislative change in the 2010 session will be required in order to address the statutory language at issue under NCGS 105-164.28(a)(2). NC has worked with representatives from BAC and has revised the technical bulletin regarding exemption administration as an interim solution that will be posted on the Department’s website and distributed through our e-Alert communication network. See North Carolina Technical Bulletin 52- Exemption Administration also provided for your review. References to the 90 day and 120 day requirements have also been included in the revised technical bulletin. We will request that the timelines be included as legislative amendments by the general assembly as well.

**SECTION 52 - EXEMPTION ADMINISTRATION****52-1 STREAMLINED SALES AND USE TAX AGREEMENT CERTIFICATE OF EXEMPTION, FORM E-595E**

**North Carolina Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption**, is to be used for purchases for resale or other exempt purchases. The Streamlined Sales Tax Certificate of Exemption (SST Form F0003) may also be used or information required on the form may be provided by a purchaser to a seller. With certain limited exceptions, the Streamlined Sales and Use Tax Agreement Certificate of Exemption and Form E-595E require either a sales and use tax registration number or an exemption number.

The following forms are discontinued and should no longer be accepted by a seller:

1. Form E-526, Logging or Pulpwood Certificate;
2. Form E-558, Commercial Fisherman's Certificate;
3. Form E-567, Veterinarian's Certificate;
4. Form E-575, Manufacturers' Certificate;
5. Form E-580, Contractor's and Subcontractor's Certificate;
6. Form E-590, Certificate of Resale;
7. Form E-599, Agricultural Certificate;
8. Form E-599U, Electricity and Piped Natural Gas Certificate; and
9. Form E-599Y, Ice Certificate.

History Note: Authority G.S. 105-164.28; 105-164.28A; 105-264;  
Issued: July 1, 2005;  
Revised: July 1, 2007;  
Revised: November 15, 2009.

**52-2 APPLICATION FOR EXEMPTION NUMBER**

For all types of exemption numbers except a sales and use tax registration number, an **Application for Exemption Number for Qualified Purchases, Form E-595EA**, is to be completed and submitted to the Department. The Department will mail the applicant a notice bearing the assigned exemption number. **Form NC-BR, Business Registration Application for Income Tax Withholding, Sales and Use Tax, and Machinery, Equipment, and Manufacturing Fuel Tax**, must be completed and submitted to the Department when applying for a sales and use tax registration number.

History Note: Authority G.S. 105-164.28; 105-164.28A; 105-264;  
Issued: July 1, 2005;  
Revised: July 1, 2007.

**52-3 SALES FOR RESALE**

A purchaser of property for resale is required to issue **Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption**, the Streamlined Sales Tax Certificate of Exemption (SST Form F0003), or provide information required on the form to a seller in order to exclude the sale from sales or use tax. A seller who accepted a **Certificate of Resale, Form E-590**, from a purchaser prior to January 1, 2005 is not required to obtain a Form E-595E. If a purchaser is required to submit revisions, Form E-595E must be issued. A purchaser's sales and use tax registration number and other information required under G.S. 105-164.28 must be entered on the certificate as applicable.

History Note: Authority G.S. 105-164.13; 105-164.28; 105-164.28A; 105-264;  
Issued: July 1, 2005; Revised: July 1, 2007; November 19, 2009

**52-4 OTHER EXEMPT SALES****A. Manufacturers**

A manufacturer is required to issue **Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption**, the Streamlined Sales Tax Certificate of Exemption (SST Form F0003), or provide information required on the form to a seller when making a purchase of property that is exempt from tax. A manufacturer must provide its sales and use tax registration number. A manufacturer that is not registered with the Department for sales and use tax or privilege tax purposes will be required to register with the Department to obtain a sales and use tax registration number by submitting **Form NC-BR, Business Registration Application for Income Tax Withholding, Sales and Use Tax, and Machinery, Equipment, and Manufacturing Fuel Tax**. Some items exempt from sales or use tax may be subject to the privilege tax. For more information regarding the privilege tax, refer to Section 56 of the Sales and Use Tax Technical Bulletins.

**B. Farmers, Commercial Fishermen, Loggers, and Veterinarians**

A farmer, commercial fisherman, logger, or veterinarian making a purchase of tangible personal property that is exempt from sales or use tax is required to issue Form E-595E, the Streamlined Sales Tax Certificate of Exemption (SST Form F0003), or provide information required on the form to a seller as authority for not collecting the tax. A taxpayer that is registered to remit sales or use tax to the Department must provide the assigned sales and use tax registration number on the certificate or to the seller. A taxpayer that is not required to register for sales and use tax purposes must obtain an exemption number from the Department and the exemption number assigned by the Department must be entered on Form E-595E when the completed form is furnished to a seller.

History Note: Authority G.S. 105-164.4; 105-164.4A; 105-164.6; 105-164.13;  
105-164.28; 105-164.28A; 105-264;  
Issued: July 1, 2005;  
Revised: July 1, 2007.

**52-5 LIABILITY****A. Seller Responsibility**

When a customer makes a qualifying purchase as indicated on the Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, and furnishes a properly completed Certificate of Exemption or the information required on the form to a seller at the time of the sale, the seller is relieved of the liability for any additional tax that is subsequently determined to be due, and the purchaser has assumed liability for the tax. If the seller obtains a fully completed exemption certificate or captures the relevant data elements within 90 days subsequent to the date of sale, the Department shall relieve a seller of the tax otherwise applicable. In the absence of proper documentation to support an exemption from tax, the seller will be held liable for any additional tax determined to be due.

For a sale for resale, a seller is relieved of liability for any additional tax that is subsequently determined to be due when the seller secures a sales and use tax registration number from a purchaser at the time of the sale. For a sale exempt from tax other than as a sale for resale, the liability is relieved when the seller secures the information as to a purchaser's name, address, type of business, reason for exemption, and exemption number in lieu of obtaining an exemption certificate. **If a paper certificate is provided, it must be signed by the purchaser.** The Department shall relieve a seller of the tax otherwise applicable if it obtains a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship.

**B. Exemption Substantiation**

If the seller has not obtained an exemption certificate or all relevant data elements at the time of the sale or within 90 days subsequent to the date of sale, the seller may, within 120 days subsequent to a request for substantiation by the Department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith. The Department will continue to apply its own standard of good faith until such time as a uniform standard for good faith is defined in the Streamlined Sales and Use Tax Agreement.

History Note: Authority G.S. 105-164.4; 105-164.4A; 105-164.6; 105-164.13;  
105-164.28; 105-164.28A; 105-264;  
Issued: July 1, 2005;  
Revised: July 1, 2007; November 15, 2009.

**52-6 EXCLUDED TRANSACTIONS**

Certain purchasers, such as the United States Government or the State of North Carolina, are not required to furnish a **Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption**. Purchase requisitions, affidavits from purchasing officers, and applicable credit cards issued by the United States Government are acceptable documentation for exempting purchases by federal agencies and instrumentalities. Purchases by the State of North Carolina are exempt from sales or use tax. Purchase orders or other documentation bearing the assigned State agency exemption number are acceptable.

**Note:** For additional information on State agencies, refer to Sales and Use Tax Technical Bulletin 18-1.

History Note: Authority G.S. 105-164.13; 105-164.28; 105-164.28A; 105-264;  
Issued: July 1, 2005;  
Revised: July 1, 2007.