GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2007

S SENATE BILL 239*

Short Title:	Streamlined Sales Tax Changes.	(Public)
Sponsors:	Senators Kerr, Clodfelter, Dalton, Hartsell, Hoyle; and Goodall.	
Referred to:	Finance.	
	February 21, 2007	
STREAN TAX CH The General SI	A BILL TO BE ENTITLED O AMEND THE SALES TAX DEFINITIONS TO COMPLY WILLIAM SALES TAX AGREEMENT AND TO MAKE OTHE IANGES. Assembly of North Carolina enacts: ECTION 1. G.S. 105-164.3 reads as rewritten: 3. Definitions.	
The follo (1	 owing definitions apply in this Article: Ancillary service. – A service associated with or incident provision of a telecommunications service. The term include communications billing, directory assistance, vertical services. 	es detailed
	voice mail service. A vertical service is a service, such forwarding, caller ID, three-way calling, and conference brid allows a customer to identify a caller or manage multiple cal connections.	ch as call dging, that
<u>(1</u>	b) Bundled transaction. – A retail sale of two or more di identifiable products, at least one of which is taxable and one is exempt, for one non-itemized price. Products are not so non-itemized price if an invoice or another sales docum available to the purchaser separately identifies the price product. A bundled transaction does not include the retail s	e of which ld for one nent made e of each
	of the following: a. A product and any packaging item that accompanies the and is exempt under G.S. 105-164.13(23).	·
	b. A sale of two or more products whose combined price is negotiable, depending on the products the purchaser	selects.
	c. A sale of a product accompanied by a transfer of	<u>ot another</u>

product with no additional consideration.

A product and the delivery or installation of the product.

<u>d.</u>

1	e. A product and any service necessary to complete the sale.
2	(1a)(1d) Business Includes any activity engaged in by any person or
3	caused to be engaged in by him with the object of gain, profit, benefit
4	or advantage, either direct or indirect. The term "business" shall not be
5	construed in this Article to include occasional and isolated sales or
6	transactions by a person who does not hold himself out as engaged in
7	business.
8	(1b)(1f) Cable service. – The one-way transmission to subscribers of video
9	programming or other programming service and any subscriber
10	interaction required to select or use the service.
11	• • • • • • • • • • • • • • • • • • • •
12	(12) Gross sales. – The sum total of the sales price of all retail sales of
13	tangible personal property as defined herein, whether for cash or credit
14	without allowance for cash discount and without any deduction on
15	account of the cost of the property sold, the cost of materials used,
16	labor or service costs, interest paid or any other expenses whatsoever
17	and without any deductions of any kind or character except as
18	provided in this Article, and services.
19	provided in this richeron discourse the services.
20	(37) Sales price. – The total amount or consideration for which tangible
21	personal property or services are sold, leased, or rented. The
22	consideration may be in the form of cash, credit, property, or services.
23	The sales price must be valued in money, regardless of whether it is
24	received in money.
25	a. The term includes all of the following:
26	1. The retailer's cost of the property sold.
27	2. The cost of materials used, labor or service costs,
28	interest, losses, all costs of transportation to the retailer,
29	all taxes imposed on the retailer, and any other expense
30	of the retailer.
31	3. Charges by the retailer for any services necessary to
32	complete the sale.
33	4. Delivery charges.
34	5. Installation charges.
35	6. The value of exempt personal property given to the
36	consumer when taxable and exempt personal property
37	are bundled together and sold by the retailer as a single
38	product or piece of merchandise.
39	7. Credit for trade-in.
40	8. Discounts that are reimbursable by a third party and can
41	be determined at the time of sale through any of the
42	following:
43	I. Presentation by the consumer of a coupon or other
43	documentation.
TT	documentation.

1				<u>II.</u>	Identification of the consumer as a member of a
2					group eligible for a discount.
3				<u>III.</u>	The invoice the retailer gives the consumer.
4		b.			es not include any of the following:
5			1.		ounts, including cash, term, or coupons, that are not
6					oursed Discounts that are not reimbursable by a
7				third	party, are allowed by the retailer, and are taken by a
8				consu	imer on a sale.
9			2.	Intere	est, financing, and carrying charges from credit
10				exten	ded on the sale, if the amount is separately stated
11				on th	e invoice, bill of sale, or a similar document given
12				to the	consumer.
13			3.	Any	taxes imposed directly on the consumer that are
14					ately stated on the invoice, bill of sale, or similar
15				_	ment given to the consumer.
16	•••				
17	(45a)	Strear	nlined	Agre	ement The Streamlined Sales and Use Tax
18	,				nded in November 2005.as of December 14, 2006."
19	SECT	_			164.4D, as enacted by Section 5 of S.L. 2006-151,
20	reads as rewritte				,
21	"§ 105-164.4D.	Bundl	ed serv	ices. t	ransactions.
22					ed with a service that is not taxable, the tax applies
23					e service in the bundle as follows:
24	(1)	_			vider offers all the services in the bundle on an
25	()			_	ax is due on the unbundled price of the taxable
26					scount resulting from the bundling. The discount for
27					ult of bundling is the proportionate price decrease of
28					ined on the basis of the total unbundled price of all
29					e bundle compared to the bundled price of the
30		servic			r
31	(2)			- provi	der does not offer one or more of the services in the
32	()				ndled basis, tax is due on the taxable service based
33					llocation of revenue to that service. If the service
34					an account for revenue from a taxable service, the
35					allocation of revenue to that service for the purpose
36			-		tax due on the service must reflect its accounting
37					ue to that service.
38	Tax applies				a bundled transaction unless the bundled transaction
39					etermines an allocated price for each product in the
40					onable allocation of revenue that is supported by the
41					e ordinary course of business. In this circumstance,

the tax applies to the allocated price of each taxable product in the bundled transaction."

SECTION 3. G.S. 105-164.12B reads as rewritten:

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"§ 105-164.12B. Tangible personal property bundled sold below cost with conditional service contract.

- (a) Bundled Transaction Defined. A bundled transaction is a transaction in which all of the following conditions are met:
 - (1) A seller transfers an item of tangible personal property to a consumer on the condition that the consumer enter into an agreement to purchase services on an ongoing basis for a minimum period of at least six months.
 - (2) The agreement requires the consumer to pay a cancellation fee to the service provider if the consumer cancels the contract for services within the minimum period.
 - (3) For the item transferred, the seller:
 - a. Does not charge the consumer; or
 - b. Charges the consumer a price that, after any discount or rebate the seller gives the consumer, is below the purchase price the seller paid for the item.
- (b) Bundled Transaction Is a Sale; Sales Price. If a seller transfers an item of tangible personal property as part of a bundled transaction, a sale has occurred, and the sales price of the item is presumed to be the retail price at which the item would sell if no agreement for services were entered into. Part of this price may be paid by the consumer at the time of the transfer; the remainder of the price is considered paid as part of the price to be paid for the services contracted for. Sales tax is due on any part of the price paid by the consumer at the time of the transfer.
- (c) No Additional Sales Tax if Services Taxed. If the services for which the consumer was required to contract are subject to services taxes at a combined rate equal to or greater than the combined State and local general rate of sales and use tax, then no additional sales tax is due on the transfer. However, if the consumer cancels the contract for services before the expiration of the minimum period, sales tax applies to the cancellation fee paid by the consumer.
- (d) Additional Sales Tax if Services Not Taxed. If the services for which the consumer was required to contract are not subject to services taxes at a combined rate equal to or greater than the combined State and local general rate of sales and use tax, then sales tax is due at the time of the transfer on the remainder of the sales price not paid at that time.
- (e) Services Taxes Defined. For the purpose of this section, the term "services taxes" means any combination of State franchise tax on gross receipts, State sales tax, or local sales tax levied on the sale of or gross receipts from the services.
- (f) Determination of Purchase Price. For the purpose of this section, the purchase price a seller paid for an item is presumed to be no greater than the price the seller paid for the same model within 12 months before the bundled transaction, as shown on the seller's invoices.
- (a) <u>Conditional Service Contract Defined. A conditional service contract is a</u> contract in which all of the following conditions are met:

1	<u>(1)</u>	A seller transfers an item of tangible personal property to a consumer
2		on the condition that the consumer enter into an agreement to purchase
3		services on an ongoing basis for a minimum period of at least six
4		months.
5	<u>(2)</u>	The agreement requires the consumer to pay a cancellation fee to the
6		seller if the consumer cancels the services within the minimum period.
7	<u>(3)</u>	For the item transferred, the seller charges the consumer a price that,
8		after any price reduction the seller gives the consumer, is below the
9		purchase price the seller paid for the item. The seller's purchase price
10		is presumed to be no greater than the price the seller paid, as shown on
11		the seller's purchase invoice, for the same item within 12 months
12		before the seller transferred the item to the consumer.
13	(b) Tax.	- If a seller transfers an item of tangible personal property as part of a
14		ice contract, a sale has occurred. The sales price of the item is presumed
15		price at which the item would sell in the absence of the conditional
16		Sales tax is due at the time of the transfer on the following:
17	(1)	Any part of the presumed sales price the consumer pays at that time, if
18		the service in the contract is taxable at the combined general rate.
19	(2)	The presumed sales price, if the service in the contract is not taxable at
20	-,	the combined general rate."
21	SEC	FION 4. G.S. 105-164.13(9) reads as rewritten:
22		Retail sales and use tax.
23	The sale at 1	retail and the use, storage, or consumption in this State of the following
24		al property and services are specifically exempted from the tax imposed
25	by this Article:	
26	•	Agricultural Group.
27		
28	(9)	Sales of boats, Boats, fuel oil, lubricating oils, machinery, equipment,
29	. ,	nets, rigging, paints, parts, accessories, and supplies sold to persons
30		any of the following:
31		a. The holder of a standard commercial fishing license issued
32		under G.S. 113-168.2 for principal use by them principally in
33		commercial fishing operations within the meaning of
34		G.S. 113-168, except when the property is for use by persons
35		principally to take fish for recreation or personal use or
36		consumption. operations.
37		b. The holder of a shellfish license issued under G.S. 113-169.2
38		for principal use in commercial shellfishing operations.
39		c. The operator of a for hire boat, as defined in G.S. 113-174, for
40		principal use in the commercial use of the boat. As used in this
41		subdivision, "fish" is defined as in G.S. 113-129(7)."
42	SEC	FION 5. G.S. 105-164.42L reads as rewritten:

"§ 105-164.42L. Databases on taxing jurisdictions.

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The Secretary may develop databases that provide information on the boundary	es of
taxing jurisdictions and the tax rates applicable to those taxing jurisdictions. A	seller
that person who relies on the information provided in these databases is not liab	le for
underpayments of tax attributable to erroneous information provided by the Secreta	ary in
those databases."	-

SECTION 6. This act becomes effective October 1, 2007.