

§ 105-164.11. Excessive and erroneous collections.

(a) Remittance of Overcollections to Secretary. – When tax is collected for any period on a taxable sale in excess of the total amount that should have been collected or is collected on an exempt or nontaxable sale, the total amount collected must be remitted to the Secretary. If the Secretary determines that the seller overcollected the sales tax on a transaction, the Secretary shall take only one of the actions listed in this subsection. This subsection shall be construed with other provisions of this Article and given effect so as to result in the payment to the Secretary of the total amount collected as tax if it is in excess of the amount that should have been collected.

- (1) If the Secretary determines that the seller overcollected tax on a transaction, the Secretary may allow a refund of the tax. The Secretary may allow the refund only if the seller gives the purchaser credit for or a refund of the overcollected tax. The Secretary shall not refund the overcollected tax to the seller if the seller has elected to offset a use tax liability on a related transaction with the overcollected sales tax under subdivision (2) of this subsection.
- (2) If the Secretary determines that a seller who overcollected sales tax on a transaction is instead liable for a use tax on a related transaction, the Secretary may allow the seller to offset the use tax liability with the overcollected sales tax. The Secretary shall not allow an offset if the seller has elected to receive a refund of the overcollected tax under subdivision (1) of this subsection. The decision by a seller to receive an offset of tax liability rather than a refund of the overcollected tax does not affect the liability of the seller to the purchaser for the overcollected tax.
- (3) If neither subdivision (1) nor (2) of this subsection applies, the Secretary shall retain the total amount collected on the transaction.

(b) Refund Procedures First Remedy. – The first course of remedy available to purchasers seeking a refund of over-collected sales or use taxes from the seller are the customer refund procedures provided in this Chapter or otherwise provided by administrative rule, bulletin, or directive on the law issued by the Secretary. Where a person recovers tax under G.S. 105-164.11B, a refund or credit under this section is not allowed by the Secretary.

(c) Cause of Action Against Seller. – A cause of action against the seller for over-collected sales or uses taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had 60 days to respond. The notice to the seller must contain the information necessary to determine the validity of the request.

(d) Presumption of Reasonable Business Practice. – In connection with a purchaser's request from the seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice if, in the collection of sales and use taxes, the seller uses either a provider or a system, including a proprietary system, that is certified by the State and the seller has remitted to the State all taxes collected less any deductions, credits, or collection allowances.

(e) Reliance on Written Advice. – A seller who requests specific written advice from the Secretary and who collects and remits sales or use tax in accordance with the written advice the Secretary gives the seller is not liable to a purchaser for any overcollected sales or use tax that was collected in accordance with the written advice. Subsection (a) of this section governs when a seller may obtain a refund for overcollected tax. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 826, s. 2; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 1007, s. 4; 2004-22, s. 1; 2009-413, s. 1; 2011-293, s. 1; 2018-5, s. 38.5(i).)