

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019**

**SENATE BILL 557  
RATIFIED BILL**

AN ACT TO INCREASE THE STANDARD DEDUCTION, TO EXPAND THE DEFINITION OF HOLDING COMPANY FOR FRANCHISE TAX PURPOSES, TO IMPLEMENT MARKET-BASED SOURCING FOR MULTISTATE INCOME TAX APPORTIONMENT, TO REQUIRE CERTAIN MARKETPLACE FACILITATORS TO COLLECT SALES TAX, TO DIRECT REVENUE LAWS TO STUDY CERTAIN TAX SUNSET PROVISIONS, AND TO MAKE TECHNICAL CORRECTIONS.

The General Assembly of North Carolina enacts:

**INCREASE STANDARD DEDUCTION**

**SECTION 1.(a)** G.S. 105-153.5(a)(1) reads as rewritten:

"(1) Standard deduction amount. – The standard deduction amount is zero for a person who is not eligible for a standard deduction under section 63 of the Code. For all other taxpayers, the standard deduction amount is equal to the amount listed in the table below based on the taxpayer's filing status:

| Filing Status                            | Standard Deduction                  |
|--|-------------------------------------|
| Married, filing jointly/surviving spouse | <del>\$20,000</del> <u>\$21,500</u> |
| Head of Household                        | <del>15,000</del> <u>16,125</u>     |
| Single                                   | <del>10,000</del> <u>10,750</u>     |
| Married, filing separately               | <del>10,000</del> <u>10,750.</u> "  |

**SECTION 1.(b)** This section is effective for taxable years beginning on or after January 1, 2020.

**EXPAND DEFINITION OF HOLDING COMPANY**

**SECTION 2.(a)** G.S. 105-120.2(c) reads as rewritten:

"(c) For purposes of this section, a "holding company" is a corporation that satisfies at least one of the following conditions:

- (1) It has no assets other than ownership interests in corporations in which it owns, directly or indirectly, more than fifty percent (50%) of the outstanding voting stock or voting capital interests.
- (2) It receives during its taxable year more than eighty percent (80%) of its gross income from corporations in which it owns directly or indirectly more than fifty percent (50%) of the outstanding voting stock, voting capital interests, or ownership interests.
- (3) It owns copyrights, patents, or trademarks that represent more than eighty percent (80%) of its total assets, or receives royalties and license fees that represent more than eighty percent (80%) of its gross income, and it is one hundred percent (100%) directly owned by a corporation that meets all of the following conditions:
  - a. Is a manufacturer, as defined by NAICS codes 31 through 33.
  - b. Generates revenues in excess of five billion dollars (\$5,000,000,000) for income tax purposes from goods that it manufactures.



- c. Includes in its net worth, as determined under G.S. 105-122(b), an investment in a subsidiary that owns copyrights, patents, or trademarks."

**SECTION 2.(b)** This section is effective for taxable years beginning on or after January 1, 2020, and applicable to the calculation of franchise tax reported on the 2019 and later corporate income tax returns.

## **USE MARKET-BASED SOURCING FOR MULTISTATE INCOME TAX APPORTIONMENT**

**SECTION 3.(a)** G.S. 105-130.4 reads as rewritten:

### **"§ 105-130.4. Allocation and apportionment of income for corporations.**

...

(l) ~~(1)~~Sales Factor. – The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Notwithstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its apportionable income but is taxable in another state only because of nonapportionable income, all sales shall be treated as having been made in this State.

Receipts are in this State if the taxpayer's market for the receipts is in this State. If the market for a receipt cannot be determined, the state or states of assignment shall be reasonably approximated. In a case in which a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned through the use of a method of reasonable approximation, the receipts must be excluded from the denominator of a taxpayer's sales factor. Except as otherwise provided by this section, a taxpayer's market for receipts is in this State as provided below:

- (1) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this State.
- (2) Sales of tangible personal property are in this State if the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State. In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this State.
- (3) Other sales are in this State if any of the following occur: In the case of sale of tangible personal property, if and to the extent the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed is considered the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State constitutes delivery to the purchaser in this State.
  - a. The receipts are from real or tangible personal property located in this State, and includes receipts from incidental services sold as part of, or in connection with, the sale of tangible personal property in this State.
  - b. The receipts are from intangible property and are received from sources within this State.

e. ~~The receipts are from services and the income producing activities are in this State. For the purposes of this subdivision, an "income producing activity" means an activity directly performed by the taxpayer or its agents for the ultimate purpose of generating the sale of the service. Receipts from income producing activities performed within and without this State are attributed to this State in proportion to the income producing activities performed in this State to total income producing activities performed everywhere that generate the sale of service.~~

(4) In the case of sale of a service, if and to the extent the service is delivered to a location in this State.

(5) In the case of intangible property that is rented, leased, or licensed, if and to the extent the property is used in this State. Intangible property utilized in marketing a good or service to a consumer is "used in this State" if that good or service is purchased by a consumer who is in this State.

(6) In the case of intangible property that is sold, if and to the extent the property is used in this State. A contract right, government license, or similar intangible property that authorized the holder to conduct a business activity in a specific geographic area is "used in this State" if the geographic area includes all or part of this State. Receipts from a sale of intangible property that is contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of the intangible property as provided under subdivision (5) of this subsection. All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the sales factor.

(1) Wholesale Content Distributors. – A wholesale content distributor's market for receipts is in this State as provided in G.S. 105-130.4A. In no event may the amount of income apportioned to this State be less than the amount determined under this subsection. The amount determined under this subsection is the total domestic gross receipts of the wholesale content distributor from advertising and licensing activities multiplied by two percent (2%). For purposes of this section, the term "wholesale content distributor" has the same meaning as defined in G.S. 105-130.4A.

(2) Banks. – A bank's market for receipts is in this State as provided in G.S. 105-130.4B. For purposes of this section, the term "bank" has the same meaning as defined in G.S. 105-130.4B.

...

(s2) Pipeline Company. – Receipts from the transportation or transmission of a petroleum-based liquids pipeline or natural gas by a company subject to rate regulation by the Federal Energy Regulatory Commission shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of barrel miles traffic units in this State during the tax year and the denominator of which is the total number of barrel miles traffic units everywhere during the tax year. For purposes of this section, the term "barrel mile" means one barrel of liquid property transported one mile. "traffic unit" means one or more of the following:

(1) Barrel mile. – One barrel of liquid property transported one mile.

(2) Cubic foot mile. – One cubic foot of gaseous property transported one mile.

(s3) Electric Power Company. – All apportionable income of an electric power company shall be apportioned by a fraction, the numerator of which is the average value of the real and tangible personal property owned or rented and used in this State by the electric power company during the income year and the denominator of which is the average value of all the real and tangible personal property owned or rented and used by the electric power company during the income year. For purposes of this subsection, the term "electric power company" is a company,

including any of its wholly owned noncorporate limited liability companies, primarily engaged in the business of supplying electricity for light, heat, current, or power to persons in this State and that is subject to control of one or more of the following entities: the North Carolina Utilities Commission or the Federal Energy Regulatory Commission.

For purposes of this subsection, the average value of real and tangible personal property owned or rented by an electric power company is determined as follows:

- (1) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary may require the averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property.
- (2) An electric power company that ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a merger, conversion, or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the electric power company's property.
- (3) Property owned by an electric power company is valued at its original cost.
- (4) Property rented by an electric power company is valued at eight times the net annual rental rate.
- (5) Net annual rental rate is the annual rental rate paid by an electric power company less any annual rental rate received by the electric power company from sub-rentals except that sub-rentals shall not be deducted when they constitute apportionable income.
- (6) Any property under construction and any property the income from which constitutes nonapportionable income shall be excluded from the computation of the average value of an electric power company's real and tangible personal property.

...

(t3) State Net Loss Apportionment Election. – Notwithstanding subdivision (l)(4) of this section, a taxpayer with a State net loss balance as of the end of its 2019 taxable year may elect to apportion receipts from services based on the percentage of its income-producing activities performed in this State. The election must be made on the 2020 tax year return and must be in the form prescribed by the Secretary and contain any supporting documentation the Secretary may require. The election is binding and irrevocable until the earlier of the tax year in which (i) the existing State net loss balance is fully utilized or (ii) all of the existing State net loss balance has expired, as determined by applying the limitations set forth in G.S. 105-130.8A(b). A taxpayer must apportion receipts from services in accordance with subdivision (l)(4) of this section for tax years beginning on and after the tax year that the existing State net loss is fully utilized.

For purposes of this subsection, a taxpayer's State net loss balance is the total amount of State net losses computed under G.S. 105-130.8A for taxable years beginning before January 1, 2020, and available to carry forward to taxable years beginning on or after January 1, 2020. A State net loss balance does not include a State net loss created in a taxable year beginning on or after January 1, 2020. A State net loss created in a taxable year beginning on or after January 1, 2020, must be determined using the apportionment rules in G.S. 105-130.4(l)."

**SECTION 3.(b)** Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-130.4A. Market-based sourcing for wholesale content distributors.**

(a) Definitions. – The definitions in G.S. 105-130.4 and the following definitions apply to this section:

- (1) Customer. – A person who has a direct contractual relationship with a wholesale content distributor from whom the wholesale content distributor derives gross receipts, including a business customer such as an advertiser or licensee and an individual customer that directly subscribes with the wholesale content distributor for access to film programming.
- (2) Gross receipts. – The same meaning as the term "sales" in G.S. 105-130.4.
- (3) Wholesale content distributor. – A broadcast television network, a cable program network, or any television distribution company owned by, affiliated with, or under common ownership with any such network. The term does not mean or include a multichannel video programming distributor or a distributor of subscription-based Internet programming services.

(b) Market for Receipts. – The receipts factor of a wholesale content distributor is a fraction, the numerator of which is the sum of the wholesale content distributor's gross receipts from transactions and activity in the regular course of its trade or business from sources within the State and the denominator of which is the sum of the wholesale content distributor's gross receipts from transactions and activity in the regular course of its trade or business everywhere. A wholesale content distributor's receipts from transactions and activities in the regular course of its business, including advertising, licensing, and distribution activities, but excluding receipts from the sale of real property or tangible personal property, are in this State if derived from a business customer whose commercial domicile is in this State. Receipts derived from an individual customer are in this State if the billing address of the individual customer as listed in the broadcaster's books and records is in this State."

**SECTION 3.(c)** Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-130.4B. Market-based sourcing for banks.**

(a) Definitions. – The definitions in G.S. 105-130.4 apply to this section, and the following definitions apply to this section:

- (1) Bank. – Defined in G.S. 105-130.7B.
- (2) Billing address. – The location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the date in the taxable year when the customer relationship began, as the address where any notice, statement, or billing relating to the customer's account is mailed.
- (3) Borrower, cardholder, or payor located in this State. – A borrower, credit cardholder, or payor whose billing address is in this State.
- (4) Card issuer's reimbursement fee. – The fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit, debit, or similar type of card has charged merchandise or services to the card.
- (5) Credit card. – A card, or other means of providing information, that entitles the holder to charge the cost of purchases, or a cash advance, against a line of credit.
- (6) Debit card. – A card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.
- (7) Loan. – Any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such an extension of credit from another. The term includes participations, syndications, and leases treated as loans for federal income tax purposes.

- (8) Loan secured by real property. – A loan or other obligation of which fifty percent (50%) or more of the aggregate value of the collateral used to secure the loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.
- (9) Merchant discount. – The fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the cardholder, net of any cardholder chargeback and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchases made by its cardholder.
- (10) Participation. – An extension of credit in which an undivided ownership interest is held on a prorated basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.
- (11) Payor. – The person who is legally responsible for making payment to the taxpayer.
- (12) Real property owned. – Real property (i) on which the taxpayer may claim depreciation for federal income tax purposes or (ii) to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes or could claim depreciation if subject to federal income tax. Real property does not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.
- (13) Syndication. – An extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.
- (14) Tangible personal property owned. – Tangible personal property (i) on which the taxpayer may claim depreciation for federal income tax purposes or (ii) to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes could claim depreciation if subject to federal income tax. Tangible personal property does not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.
- (15) Transportation property. – Vehicles and vessels capable of moving under their own power as well as any equipment or containers attached to such property. Examples of transportation property include aircraft, trains, water vessels, motor vehicles, rolling stock, barges, and trailers.

(b) General Rule. – The receipts factor of a bank is a fraction, the numerator of which is the total receipts of the taxpayer in this State during the income year, and the denominator of which is the total receipts of the taxpayer everywhere during the income year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor includes only those receipts described herein that are apportionable income for the taxable year. Notwithstanding any other provision under this Part, the receipts from the following are excluded from both the numerator and the denominator of the receipts factor:

- (1) Receipts from a casual sale of property.
- (2) Receipts exempt from taxation.
- (3) The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal.
- (4) Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a) and (3b) and dividends excluded for federal tax purposes.

(5) The portion of receipts from financial swaps and other similar financial derivatives that represent the notional principal amount that generates the cash flow traded in the swap agreement.

(c) Receipts from the Sale, Lease, or Rental of Real Property. – The numerator of the receipts factor includes receipts from the sale, lease, or rental of real property owned by the taxpayer if the property is located within this State or receipts from the sublease of real property if the property is located within this State.

(d) Receipts from the Sale, Lease, or Rental of Tangible Personal Property. – The method for calculating receipts from the sale, lease, or rental of tangible personal property is as follows:

(1) Tangible personal property. – Except as provided in subdivision (2) of this subsection, the numerator of the receipts factor includes receipts from the sale, lease, or rental of tangible personal property owned by the taxpayer if the property is located within this State when it is first placed in service by the lessee.

(2) Transportation property. – Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this State. The extent an aircraft will be deemed to be used in this State and the amount of receipts that is to be included in the numerator of this State's receipts factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this State and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this State cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(e) Interest, Fees, and Penalties from Loans Secured by Real Property. – The numerator of the receipts factor includes interest, fees, and penalties from loans secured by real property if the property is located within this State. If the property is located both within this State and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent (50%) of the fair market value of the real property is located within this State. If more than fifty percent (50%) of the fair market value of the real property is not located within any one state, then the receipts described in this subsection are included in the numerator of the receipts factor if the borrower is located in this State. The determination of whether the real property securing a loan is located within this State is made as of the time the original agreement was made and any and all subsequent substitutions of collateral are disregarded.

(f) Interest, Fees, and Penalties from Loans Not Secured by Real Property. – The numerator of the receipts factor includes interest, fees, and penalties from loans not secured by real property if the borrower is located in this State.

(g) Net Gains from the Sale of Loans. – The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans include income recorded under the coupon stripping rules of section 1286 of the Code. The amount of net gains from the sale of loans that is included in the numerator is determined as follows:

(1) Secured by real property. – The amount of net gains, but not less than zero, from the sale of loans secured by real property is determined by multiplying the net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (e) of this section, and the denominator of which is the total amount of interest, fees, and penalties from loans secured by real property.

(2) Not secured by real property. – The amount of net gains, but not less than zero, from the sale of loans not secured by real property is determined by multiplying the net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (f) of this section, and the denominator of which is the total amount of interest, fees, and penalties from loans not secured by real property.

(h) Receipts from Interest, Fees, and Penalties from Cardholders. – The numerator of the receipts factor includes interest, fees, and penalties charged to credit, debit, or similar cardholders, including annual fees and overdraft fees, if the cardholder is located in this State.

(i) Receipts from ATM Fees. – The numerator of the receipts factor includes receipts from fees from the use of an ATM owned or rented by the taxpayer, if the ATM is located in this State. The receipts factor includes all ATM fees that are not forwarded directly to another bank. Receipts from ATM fees that are not sourced under this subsection are sourced pursuant to subsection (l) of this section.

(j) Net Gains from the Sale of Credit Card Receivables. – The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (h) of this section, and the denominator of which is the taxpayer's total amount of interest, fees, and penalties charged to cardholders.

(k) Miscellaneous Receipts. – The numerator of the receipts factor includes all of the following:

(1) Card issuer's reimbursement fees. – Receipts from card issuer's reimbursement fees if the payor is located in this State.

(2) Receipts from merchant's discount. – Receipts from a merchant discount if the payor is located in this State.

(3) Loan servicing fees. – Receipts from loan servicing fees if the payor is located in this State.

(4) Receipts from services. – Receipts from services not otherwise apportioned under this section if the payor is located in this State.

(5) Receipts from investment assets and activity and trading assets and activity. – Receipts from one or more of the following:

a. Interest and dividends from investment assets and activities and trading assets and activities if the payor is located in this State.

b. Net gains and other income, but not less than zero, from investment assets and activities and trading assets and activities multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to sub-subdivision a. of this subdivision, and the denominator of which is the taxpayer's total amount of interest and dividends from investment assets and activities and trading assets and activities.

(l) All Other Receipts. – All other receipts not specifically enumerated in this section are included in the numerator of the receipts factor if the payor is located in this State."

**SECTION 3.(d)** G.S. 105-122(c1) reads as rewritten:

"(c1) Apportionment. – A corporation that is doing business in this State and in one or more other states must apportion its net worth to this State. A corporation must use the apportionment method set out in subdivision (1) of this subsection unless the Department has authorized it to use a different method under subdivision (2) of this subsection. A taxpayer that has made an election under G.S. 105-130.4(t3) must use the apportionment method set out in subdivision (1) of this subsection as if the election had not been made, unless the Department has authorized a different method under subdivision (2) of this subsection. The portion of a corporation's net worth



determined by applying the appropriate apportionment method is considered the amount of net worth the corporation uses in its business in this State:

- (1) Statutory. – A corporation that is subject to income tax under Article 4 of this Chapter must apportion its net worth by using the fraction it applies in apportioning its income under that Article. A corporation that is not subject to income tax under Article 4 of this Chapter must apportion its net worth by using the fraction it would be required to apply in apportioning its income if it were subject to that Article. The apportionment fraction for a wholesale content distributor, as that term is defined in G.S. 105-130.4A, shall not be less than two percent (2%). The apportionment method set out in this subdivision is considered the statutory method of apportionment and is presumed to be the best method of determining the amount of a corporation's capital stock, surplus, and undivided profits attributable to the corporation's business in this State.

...."

**SECTION 3.(e)** The Utilities Commission shall adjust the rates for public utilities, excluding water public utilities with less than two hundred thousand dollars (\$200,000) in annual operating revenues, for the tax changes in subsection (a) of this section. Each utility shall calculate the cumulative net effect of the tax changes and file the calculations with proposed rate changes to reflect the net prospective tax changes in utility customer rates within 60 days of the enactment of this act. Any adjustments required to existing tax assets or liabilities reflected in the utility's books and records required by the tax changes shall be deferred and reflected in customer rates in either the utility's next rate case or earlier if deemed appropriate by the Commission.

**SECTION 3.(f)** Under Section 38.4 of S.L. 2016-94, the Department of Revenue adopted and submitted to the Rules Review Commission rules regarding the implementation and administration of market-based sourcing principles based on legislation proposed in that section. The Department adopted the rules on January 4, 2017, and submitted the rules to the Rules Review Commission on January 18, 2017. The Rules Review Commission approved and delivered the rules to the Codifier of Rules on February 16, 2017. Pursuant to Section 38.4(b) of S.L. 2016-94, the Codifier of Rules did not enter the rules into the Administrative Code. The Codifier of Rules is hereby directed by the General Assembly to enter the rules into the Administrative Code on the effective date of this act, and the rules apply to taxable years beginning on or after January 1, 2020.

The Department of Revenue shall adopt and submit to the Rules Review Commission rules regarding the implementation and administration of market-based sourcing principles, to the extent modifications are needed based on the statutory changes enacted by this section. In adopting rules pursuant to this subsection, the following provisions apply:

- (1) The exemption provided in G.S. 150B-1(d)(4) applies.
- (2) The provisions of G.S. 150B-21.3(b1) and (b2) do not apply.
- (3) The provisions of G.S. 150B-21.4 do not apply.

**SECTION 3.(g)** Subsections (a) through (d) of this section are effective for taxable years beginning on or after January 1, 2020. The remainder of this section is effective when it becomes law.

## **MARKETPLACE FACILITATORS TO COLLECT SALES TAX**

**SECTION 4.(a)** G.S. 105-164.3 reads as rewritten:

### **"§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

- (20a) Marketplace. – A physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items, the delivery of or first use of which is sourced to this State.
- (20b) Marketplace-facilitated sale. – The sale of an item by a marketplace facilitator on behalf of a marketplace seller that occurs through a marketplace.
- (20c) Marketplace facilitator. – A person that, directly or indirectly and whether through one or more affiliates, does both of the following:
  - a. Lists or otherwise makes available for sale a marketplace seller's items through a marketplace owned or operated by the marketplace facilitator.
  - b. Does one or more of the following:
    - 1. Collects the sales price or purchase price of a marketplace seller's items or otherwise processes payment.
    - 2. Makes payment processing services available to purchasers for the sale of a marketplace seller's items.
- (20d) Marketplace seller. – A person that sells or offers to sell items through a marketplace regardless of any of the following:
  - a. Whether the person has a physical presence in this State.
  - b. Whether the person is registered as a retailer in this State.
  - c. Whether the person would have been required to collect and remit sales and use tax had the sales not been made through a marketplace.
  - d. Whether the person would not have been required to collect and remit sales and use tax had the sales not been made through a marketplace.

...."

**SECTION 4.(b)** G.S. 105-164.8(b), as amended by S.L. 2019-6, 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:

...

- (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 to be soliciting or transacting business by an independent contractor, agent, or other representative if the retailer enters into an agreement with a ~~resident person~~ resident person of this State under which the ~~resident person~~, 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~~ persons 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 person~~ 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.

...

- (9) ~~The retailer, with respect to retailer makes remote sales into North Carolina sourced to this State, including sales as a marketplace seller, for the previous or the current calendar year, had one or more year that meet either of the following:~~

- a. Gross sales in excess of one hundred thousand dollars (\$100,000).
  - b. Two hundred or more separate transactions.
- (10) The retailer is a marketplace facilitator that makes sales, including all marketplace-facilitated sales for all marketplace sellers, sourced to this State for the previous or the current calendar year that meet either of the following:
- a. Gross sales in excess of one hundred thousand dollars (\$100,000).
  - b. Two hundred or more separate transactions."

**SECTION 4.(c)** Part 2 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-164.4J. Marketplace-facilitated sales.**

(a) Scope. – This section applies to a marketplace facilitator that makes sales, including all marketplace-facilitated sales for all marketplace sellers, sourced to this State for the previous or the current calendar year that meet either of the following:

- (1) Gross sales in excess of one hundred thousand dollars (\$100,000).
- (2) Two hundred or more separate transactions.

(b) Payment of Tax. – A marketplace facilitator that meets the threshold in subsection (a) of this section is considered the retailer of each marketplace-facilitated sale it makes and is liable for collecting and remitting the sales and use tax on all such sales. A marketplace facilitator is required to comply with the same requirements and procedures as all other retailers registered or who are required to be registered to collect and remit sales and use tax in this State. A marketplace facilitator is required to collect and remit sales tax as required by this section regardless of whether a marketplace seller for whom it makes a marketplace-facilitated sale meets any of the following conditions:

- (1) Has a physical presence in this State.
- (2) Is required to be registered to collect and remit sales and use tax in this State.
- (3) Would have been required to collect and remit sales and use tax in this State had the sale not been made through a marketplace.
- (4) Would not have been required to collect and remit sales and use tax in this State had the sale not been made through a marketplace.

(c) Report. – A marketplace facilitator must provide or make available to each marketplace seller the information listed in this subsection with respect to marketplace-facilitated sales that are made on behalf of the marketplace seller and that are sourced to this State. The information may be provided in any format and shall be provided or made available no later than 10 days after the end of each calendar month. The required information to be provided or made available to each marketplace seller is as follows:

- (1) Gross sales.
- (2) The number of separate transactions.

(d) Liability Relief. – The Department shall not assess a marketplace facilitator for failure to collect the correct amount of tax due if the marketplace facilitator can demonstrate to the Secretary's satisfaction that all of the circumstances listed in this subsection apply. This subsection does not apply with regard to a marketplace-facilitated sale for which the marketplace facilitator is the marketplace seller or if the marketplace facilitator and the marketplace seller are affiliates. If a marketplace facilitator is not assessed for tax due under this section, the marketplace seller is liable for the tax due under this section provided the marketplace seller is engaged in business in this State. The circumstances that a marketplace facilitator must demonstrate are as follows:

- (1) The failure to collect the correct amount of tax was due to incorrect information given to the marketplace facilitator by the marketplace seller.
- (2) The marketplace facilitator did not receive specific written advice from the Secretary for the transaction at issue.

(e) Refund of Tax. – If a purchaser receives a refund on any portion of the sales price from a marketplace facilitator who collected and remitted the tax on the retail sale, the provisions of G.S. 105-164.11A(a) apply.

(f) Class Actions. – No class action may be brought against a marketplace facilitator in any court of this State on behalf of customers arising from or in any way related to an overpayment of sales or use tax collected on facilitated sales by a marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection affects a customer's right to seek a refund as provided under G.S. 105-164.11.

(g) Agreements. – Nothing in this section shall be construed to interfere with the ability of a marketplace facilitator and a marketplace seller to enter into an agreement with each other regarding the fulfillment of the requirements of this Article, except that an agreement may not require a marketplace seller to collect and remit sales and use tax on marketplace-facilitated sales.

(h) Use Tax Obligation. – Nothing in this section affects the obligation of any purchaser to remit use tax for any taxable transaction for which a marketplace facilitator does not collect and remit sales or use tax.

(i) Limitation. – This section does not apply to an accommodation facilitator, an admission facilitator, or a service contract facilitator whose collection and remittance requirements are set out in G.S. 105-164.4F, 105-164.4G, and 105-164.4I, respectively."

**SECTION 4.(d)** G.S. 105-164.3 reads as rewritten:

**"§ 105-164.3. Definitions.**

The following definitions apply in this Article:

(1) Accommodation. – A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.

(1a) Accommodation facilitator. – A person that contracts, either directly or indirectly, with a provider of an accommodation to perform, either directly or indirectly, one or more of the activities listed in this subdivision. The term includes a real estate broker as defined in G.S. 93A-2. The activities are:

- a. Market the accommodation and accept payment or collect credit card or other payment information for the rental of the accommodation.
- b. List the accommodation for rental on a forum, platform, or other application for a fee or other consideration.

...."

**SECTION 4.(e)** G.S. 105-164.4F reads as rewritten:

**"§ 105-164.4F. Accommodation rentals.**

(a) Definition.—The following definitions apply in this section:

(1) Accommodation.—A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.

(2) Facilitator.—A person who is not a rental agent and who contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer for the accommodation.

(3) Rental agent.—The term includes a real estate broker, as defined in G.S. 93A-2.

(b) Tax. – The gross receipts derived from the rental of an accommodation are taxed at the general rate set in G.S. 105-164.4. Gross receipts derived from the rental of an accommodation include the sales price of the rental of the accommodation. The sales price of the rental of an accommodation is determined as if the rental were a rental of tangible personal property. The sales price of the rental of an accommodation ~~marketed~~ made by a ~~an~~ accommodation facilitator includes any charges designated as facilitation fees and any other charges or fees, by whatever name called, charged by the accommodation facilitator to the purchaser of the accommodation that are necessary to complete the rental. The tax is due and payable by the retailer in accordance with G.S. 105-164.16.

(b1) Retailer. – Except as otherwise provided in subsection (c) of this section, the retailer of the rental of an accommodation is one or more of the persons listed below that collects the payment, or a portion of the payment, for the rental of the accommodation. In the event the person who collects the payment cannot be determined or is a third party that is not listed in this subsection, and subsection (c) of this section does not apply, the provider of the accommodation shall be considered the retailer of the transaction. The retailer is liable for reporting and remitting the tax due on the portion of the gross receipts derived from the rental of the accommodation that the retailer collects. The retailer may be one or more of the following:

(1) The provider of the accommodation.

(2) An accommodation facilitator.

(c) Certain Accommodation Facilitator Transactions. – A facilitator must report to the retailer with whom it has a contract the sales price a consumer pays to the facilitator for an accommodation rental marketed by the facilitator. A retailer must notify a facilitator when an accommodation rental marketed by the facilitator is completed, and the This subsection applies only to an accommodation facilitator that is operated by or on behalf of a hotel or a hotel corporation, that facilitates the rental of hotel accommodations solely for the hotel or the hotel corporation's owned or managed hotels and franchisees, and that collects payment, or a portion of the payment, for the rental of an accommodation. An accommodation facilitator subject to this subsection is not considered the retailer of the rental of the accommodation. The accommodation facilitator must send the retailer the portion of the sales price the facilitator owes the retailer and the tax due on the sales price-price, or the portion of the sales price, the accommodation facilitator collected no later than 10 days after the end of each calendar month. A-An accommodation facilitator that does not send the retailer the tax due on the sales price-price, or the portion of the sales price the accommodation facilitator collected, is liable for the amount of tax the accommodation facilitator fails to send. A-An accommodation facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a-an accommodation facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a-an accommodation facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a-an accommodation facilitator. The requirements imposed by this section on a retailer and a facilitator are considered terms of the contract between the retailer and the facilitator.

(c1) Accommodation Facilitator Report. – An accommodation facilitator must file with the Secretary an annual report by March 31 of each year for the prior calendar year for accommodation rentals it makes. The annual report must be provided in electronic format and include the property owner's name, the property owner's mailing address, the physical location of the accommodation, and gross receipts information for the rentals. The report may only be used by the Secretary, and any person receiving the report, pursuant to G.S. 105-259, for tax compliance purposes.

(d) Rental Agent. – A person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax imposed by this section. The liability of a rental agent for the tax imposed by this section relieves the provider of the accommodation from liability.

(e) Exemptions. – The tax imposed by this section does not apply to the following:

(1) A private residence, cottage, or similar accommodation that is rented for fewer than 15 days in a calendar year other than a private residence, cottage, or similar accommodation listed with a real estate broker or agent unless the rental of the accommodation is made by an accommodation facilitator.

(2) An accommodation supplied to the same person for a period of 90 or more continuous days.

- (3) An accommodation arranged or provided to a person by a school, camp, or similar entity where a tuition or fee is charged to the person for enrollment in the school, camp, or similar entity."

**SECTION 4.(f)** G.S. 160A-215(c) reads as rewritten:

"(c) Collection. – A retailer who is required to remit to the Department of Revenue the State sales tax imposed by G.S. 105-164.4(a)(3) on accommodations is required to remit a room occupancy tax to the taxing city on and after the effective date of the levy of the room occupancy tax. The room occupancy tax applies to the same gross receipts as the State sales tax on accommodations and is calculated in the same manner as that tax. ~~A rental agent or a facilitator, as defined in G.S. 105-164.4F,~~ An accommodation facilitator, as defined in G.S. 105-164.3, has the same responsibility and liability under the room occupancy tax as the ~~rental agent or accommodation~~ facilitator has under the State sales tax on accommodations.

If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered, the person offering the package may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business and calculate tax on the allocated price of the taxable accommodation.

A retailer must separately state the room occupancy tax. Room occupancy taxes paid to a retailer are held in trust for and on account of the taxing city.

The taxing city shall design and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the retailer for State sales and use tax."

**SECTION 4.(g)** G.S. 153A-155(c) reads as rewritten:

"(c) Collection. – A retailer who is required to remit to the Department of Revenue the State sales tax imposed by G.S. 105-164.4(a)(3) on accommodations is required to remit a room occupancy tax to the taxing county on and after the effective date of the levy of the room occupancy tax. The room occupancy tax applies to the same gross receipts as the State sales tax on accommodations and is calculated in the same manner as that tax. ~~A rental agent or a facilitator, as defined in G.S. 105-164.4F,~~ An accommodation facilitator, as defined in G.S. 105-164.3, has the same responsibility and liability under the room occupancy tax as the ~~rental agent or accommodation~~ facilitator has under the State sales tax on accommodations.

If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered, the person offering the package may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business and calculate tax on the allocated price of the taxable accommodation.

A retailer must separately state the room occupancy tax. Room occupancy taxes paid to a retailer are held in trust for and on account of the taxing county.

The taxing county shall design and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. A retailer who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the retailer for State sales and use tax."

**SECTION 4.(h)** G.S. 105-164.3 reads as rewritten:

**"§ 105-164.3. Definitions.**

The following definitions apply in this Article:

- ...
- (1b) Admission charge. – Gross receipts derived for the right to attend an entertainment activity. The term includes a charge for a single ticket, a multi-occasion ticket, a seasonal pass, and an annual pass; a membership fee that provides for admission; a cover charge; a surcharge; a convenience fee, a processing fee, a facility charge, a facilitation fee, or similar charge; or any other charges included in gross receipts derived from admission.
- (1c) Admission facilitator. – A person who accepts payment of an admission charge to an entertainment activity and who is not the operator of the venue where the entertainment activity occurs.
- ...
- (1f) Amenity. – A feature that increases the value or attractiveness of an entertainment activity that allows a person access to items that are not subject to tax under this Article and that are not available with the purchase of admission to the same event without the feature. The term includes parking privileges, special entrances, access to areas other than general admission, mascot visits, and merchandise discounts. The term does not include any charge for food, prepared food, and alcoholic beverages subject to tax under this Article.
- ...
- (9a) Entertainment activity. – An activity listed in this subdivision:
- a. A live performance or other live event of any kind, the purpose of which is for entertainment.
  - b. A movie, motion picture, or film.
  - c. A museum, a cultural site, a garden, an exhibit, a show, or a similar attraction.
  - d. A guided tour at any of the activities listed in sub-subdivision c. of this subdivision.

...."

**SECTION 4.(i)** G.S. 105-164.4G reads as rewritten:

**"§ 105-164.4G. Entertainment activity.**

- (a) **Definition.**—The following definitions apply in this section:
- (1) ~~Admission charge.~~—~~Gross receipts derived for the right to attend an entertainment activity. The term includes a charge for a single ticket, a multi-occasion ticket, a seasonal pass, and an annual pass; a membership fee that provides for admission; a cover charge; a surcharge; a convenience fee, a processing fee, a facility charge, a facilitation fee, or similar charge; or any other charges included in gross receipts derived from admission.~~
  - (2) ~~Amenity.~~—~~A feature that increases the value or attractiveness of an entertainment activity that allows a person access to items that are not subject to tax under this Article and that are not available with the purchase of admission to the same event without the feature. The term includes parking privileges, special entrances, access to areas other than general admission, mascot visits, and merchandise discounts. The term does not include any charge for food, prepared food, and alcoholic beverages subject to tax under this Article.~~
  - (3) ~~Entertainment activity.~~—~~An activity listed in this subdivision:~~
    - a. ~~A live performance or other live event of any kind, the purpose of which is for entertainment.~~
    - b. ~~A movie, motion picture, or film.~~

- e. ~~A museum, a cultural site, a garden, an exhibit, a show, or a similar attraction.~~
- d. ~~A guided tour at any of the activities listed in sub-subdivision c. of this subdivision.~~

(4) ~~Facilitator. — A person who accepts payment of an admission charge to an entertainment activity and who is not the operator of the venue where the entertainment activity occurs.~~

(b) Tax. — The gross receipts derived from an admission charge to an entertainment activity are taxed at the general rate set in G.S. 105-164.4. The tax is due and payable by the retailer in accordance with G.S. 105-164.16. For purposes of the tax imposed by this section, the retailer is the applicable person listed below:

- (1) The operator of the venue where the entertainment activity occurs, unless the retailer and the admission facilitator have a contract between them allowing for dual remittance, as provided in subsection (d) of this section.
- (2) The person that provides the entertainment and that receives admission charges directly from a purchaser.
- (3) A person other than a person listed in subdivision (1) or (2) of this subsection that receives gross receipts derived from an admission charge sold at retail.

(c) Admission Facilitator. — ~~A~~ An admission facilitator must report to the retailer with whom it has a contract the admission charge a consumer pays to the admission facilitator for an entertainment activity. The admission facilitator must send the retailer the portion of the gross receipts the admission facilitator owes the retailer and the tax due on the gross receipts derived from an admission charge no later than 10 days after the end of each calendar month. ~~A~~ An admission facilitator that does not send the retailer the tax due on the gross receipts derived from an admission charge is liable for the amount of tax the admission facilitator fails to send to the retailer. ~~A~~ An admission facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from ~~a~~ an admission facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from ~~a~~ an admission facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from ~~a~~ an admission facilitator. The requirements imposed by this subsection on a retailer and ~~a~~ an admission facilitator are considered terms of the contract between the retailer and the admission facilitator.

(d) Dual Remittance. — The tax due on the gross receipts derived from an admission charge may be partially reported and remitted to the operator of the venue for remittance to the Department and partially reported and remitted by the admission facilitator directly to the Department. The portion of the tax not reported and remitted to the operator of the venue must be reported and remitted directly by the admission facilitator to the Department. ~~A~~ An admission facilitator that elects to remit tax under the dual remittance option is required to obtain a certificate of registration in accordance with G.S. 105-164.29. ~~A~~ An admission facilitator is subject to the provisions of Article 9 of this Chapter.

...."

**SECTION 4.(j)** G.S. 105-164.3 reads as rewritten:

**"§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(38c) Service contract facilitator. — A person who contracts with the obligor of a service contract to market the service contract and accepts payment from the purchaser for the service contract.

...."

**SECTION 4.(k)** G.S. 105-164.4I reads as rewritten:

**"§ 105-164.4I. Service contracts.**



(a) Tax. – The sales price of or the gross receipts derived from a service contract or the renewal of a service contract sold at retail is subject to the general rate of tax set in G.S. 105-164.4 and is sourced in accordance with the sourcing principles in G.S. 105-164.4B. The retailer of a service contract is required to collect the tax due at the time of the retail sale of the contract and is liable for payment of the tax. The tax is due and payable in accordance with G.S. 105-164.16.

The retailer of a service contract is the applicable person listed below:

- (1) When a service contract is sold at retail to a purchaser by the obligor under the contract, the obligor is the retailer.
- (2) When a service contract is sold at retail to a purchaser by a service contract facilitator on behalf of the obligor under the contract, the service contract facilitator is the retailer unless the provisions of subdivision (3) of this subsection apply.
- (3) When a service contract is sold at retail to a purchaser by a service contract facilitator on behalf of the obligor under the contract and there is an agreement between the service contract facilitator and the obligor that states the obligor will be liable for the payment of the tax, the obligor is the retailer. The service contract facilitator must send the retailer the tax due on the sales price of or gross receipts derived from the service contract no later than 10 days after the end of each calendar month. A service contract facilitator that does not send the retailer the tax due on the sales price or gross receipts is liable for the amount of tax the service contract facilitator fails to send. A service contract facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a service contract facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a service contract facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a service contract facilitator. The requirements imposed by this subdivision on a retailer and a service contract facilitator are considered terms of the agreement between the retailer and the service contract facilitator.

...

(e) ~~Definition. — For purposes of this section, the term "facilitator" means a person who contracts with the obligor of the service contract to market the service contract and accepts payment from the purchaser for the service contract."~~

**SECTION 4.(l)** G.S. 105-164.22 reads as rewritten:

**"§ 105-164.22. Record-keeping requirements, inspection authority, and effect of failure to keep records.**

(a) Record Keeping Generally. – Retailers, wholesale merchants, facilitators, real property contractors, and consumers must keep records that establish their tax liability under this Article. The Secretary or a person designated by the Secretary may inspect these records at any reasonable time during the day.

(b) Retailers. – A retailer's records must include records of the retailer's gross income, gross sales, net taxable sales, ~~and all items purchased for resale-resale, and any reports or records related to transactions with a facilitator with whom it has a contract as provided in this Article.~~ Failure of a retailer to keep records that establish ~~that~~ a sale is exempt under this Article subjects the retailer to liability for tax on the sale.

(c) Wholesale Merchants. – A wholesale merchant's records must include a bill of sale for each customer that contains the name and address of the purchaser, the date of the purchase, the item purchased, and the sales price at which the wholesale merchant sold of the item. A wholesale merchant must also keep records that establish a sale is exempt from tax and any reports or records related to transactions with a facilitator with whom it has a contract as provided

in this Article. Failure of a wholesale merchant to keep these records for the sale of an item that establish a sale is exempt from tax under this Article subjects the wholesale merchant to liability for tax at the rate that applies to the retail sale of the item.

(d) Facilitators. – A facilitator's records must include records of the facilitator's gross income, gross sales, net taxable sales, all items purchased for resale, any reports or records related to transactions with a retailer with whom it has a contract as provided in this Article, and any other records that establish its tax liability. Failure of a facilitator to keep records that establish a sale is exempt from tax under this Article subjects the facilitator to liability for tax on the sale.

(e) Real Property Contractors. – A real property contractor's records must include substantiation that a transaction is a real property contract or a mixed transaction contract pursuant to G.S. 105-164.4H(a1). Failure of a real property contractor to keep records that establish a real property contract under this Article subjects the real property contractor to liability for tax on the sale.

(f) Consumers. – A consumer's records must include an invoice or other statement of the purchase price of an item the consumer purchased from inside or outside the State. State and any sales and use tax paid thereon. Failure of the consumer to keep these records subjects the consumer to liability for tax on the purchase price of the item, as determined by the Secretary."

**SECTION 4.(m)** G.S. 105-164.3, as amended by subsection (a) of this section, reads as rewritten:

**"§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

~~(1)~~(1d) Advertising and promotional direct mail. – Printed material that meets the definition of "direct mail" and the primary purpose of which is to attract public attention to ~~a product, an item,~~ person, business, or organization, or to attempt to sell, popularize, or secure financial support for ~~a product, an item,~~ person, business, or organization. ~~As used in this subdivision, "product" means tangible personal property, digital property, or a service.~~

(1e) Affiliate. – Defined in G.S. 105-130.2.

...

~~(1a)~~(1g) Analytical services. – Testing laboratories that are included in national industry 541380 of NAICS or medical laboratories that are included in national industry 621511 of NAICS.

~~(1b)~~(1h) Ancillary service. – A service associated with or incidental to the provision of a telecommunications service. The term includes detailed communications billing, directory assistance, vertical service, and voice mail service. A vertical service is a service, such as call forwarding, caller ID, three-way calling, and conference bridging, that allows a customer to identify a caller or manage multiple calls and call connections.

~~(1f)~~(1i) Audio work. – A series of musical, spoken, or other sounds, including a ringtone.

~~(1g)~~(1j) Audiovisual work. – A series of related images and any sounds accompanying the images that impart an impression of motion when shown in succession.

~~(1h)~~(1k) Aviation gasoline. – Defined in G.S. 105-449.60.

~~(1i)~~(1l) Bundled transaction. – A retail sale of two or more distinct and identifiable ~~products, items,~~ at least one of which is taxable and one of which is ~~exempt, nontaxable,~~ for one nonitemized price. The term does not apply to real property ~~and or~~ services to real property. ~~Products-Items~~ are not sold for one nonitemized price if an invoice or another sales document made available to

the purchaser separately identifies the price of each ~~product-item~~. A bundled transaction does not include the retail sale of any of the following:

- a. ~~A product~~ An item and any packaging ~~item~~ that accompanies the ~~product-item~~ and is exempt under G.S. 105-164.13(23).
- b. A sale of two or more ~~products-items~~ whose combined price varies, or is negotiable, depending on the ~~products-items~~ the purchaser selects.
- c. A sale of a ~~product-an item~~ accompanied by a transfer of another ~~product-item~~ with no additional consideration.
- d. ~~A product~~ An item and the delivery or installation of the ~~product-item~~.
- e. ~~A product~~ An item and any service necessary to complete the sale.

~~(1k)~~(1m) Business. – An activity a person engages in or causes another to engage in with the object of gain, profit, benefit, or advantage, either direct or indirect. The term does not include an occasional and isolated sale or transaction by a person who does not claim to be engaged in business.

~~(1m)~~(1n) Cable service. – The one-way transmission to subscribers of video programming or other programming service and any subscriber interaction required to select or use the service.

...

(2c) Capital improvement. – One or more of the following:

...

- k. An addition or alteration to real property that is permanently affixed or installed to real property and is not an activity listed in subdivision ~~(33l)~~ (33m) of this section as repair, maintenance, and installation services.

...

(9) Engaged in business. – Any of the following:

- a. Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room, warehouse or storage place, or other place of business ~~for selling or delivering tangible personal property, digital property, or a service for storage, use, or consumption~~ in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, sales representative, marketplace facilitator subject to the requirements of G.S. 105-164.4J, or solicitor operating or transacting business by mobile phone application or other applications in this State ~~in the selling or delivering~~. State. The fact that any corporate retailer, agent, or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State is immaterial.

...

- e. Making marketplace-facilitated sales subject to the requirements of G.S. 105-164.4J.

...

~~(20b)~~(20e) Facilitator. – An accommodation facilitator, an admission facilitator, or a service contract facilitator.

...

~~(20b)~~(20e) Mixed transaction contract. – A contract that includes both a real property contract for a capital improvement and repair, maintenance, and installation services for real property that are not related to the capital improvement.

...

(33j) Remote sale. – A sale of ~~tangible personal property or digital property~~ an item ordered by mail, by telephone, via the Internet, mobile phone application, or by another similar method, to a purchaser who is in this State at the time the order is remitted, from method by a retailer who receives the order in another state and delivers the property item or makes it accessible to a person in this State or causes it the item to be delivered or made accessible to a person in this State. State or performs a service sourced to this State. It is presumed that a resident of this State who ~~remits~~ makes an order was in this State at the time the order was ~~remitted~~ made.

...

~~(33l)~~(33m) Repair, maintenance, and installation services. – The term includes the activities listed in this subdivision and applies to tangible personal property, motor ~~vehicle, vehicles,~~ certain digital property, and real property. The term does not include ~~services~~ a service used to fulfill a real property contract taxed in accordance with ~~G.S. 105-164.4H;~~ G.S. 105-164.4H. The included activities are:

...

(35) Retailer. – Any of the following persons:

- a. A person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of ~~tangible personal property, digital property for storage, use, or consumption in this State, or services items~~ sourced to this State. When the Secretary finds it necessary for the efficient administration of this Article to regard any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these dealers, distributors, consignors, supervisors, employers, or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers, or persons as "retailers" for the purpose of this Article.
- b. A person, other than a real property contractor, engaged in business of delivering, erecting, installing, or applying tangible personal property or digital property for use in this State.
- c. A person engaged in business of making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met.
- d. ~~A person, other than a facilitator,~~ person required to collect the State tax levied under this Article or the local taxes levied under Subchapter VIII of this Chapter and under Chapter 1096 of the 1967 Session Laws.
- e. A marketplace facilitator that is subject to the requirements of G.S. 105-164.4J or a facilitator that is required to collect and remit the tax under this Article.

...."

**SECTION 4.(n)** There is no obligation to collect the sales and use tax required by this section retroactively.

**SECTION 4.(o)** If any provision of this section, or the application of any provision to a person or circumstance, is held to be invalid or unconstitutional, then the remainder of this section, and the application of the provisions to any person or circumstance, shall not be affected thereby.

**SECTION 4.(p)** The Revisor of Statutes is authorized to renumber the subdivisions of G.S. 105-164.3 to ensure that the subdivisions are listed in alphabetical order and in a manner that reduces the current use of alphanumeric designations, to make conforming changes, and to reserve sufficient space to accommodate future additions to the statutory section.

**SECTION 4.(q)** This section becomes effective February 1, 2020, and applies to sales occurring on or after that date.

## **REVENUE LAWS STUDY OF TAX SUNSET PROVISIONS**

**SECTION 5.** G.S. 120-70.106(a) reads as rewritten:

- "(a) The Revenue Laws Study Committee may:
- (1) Study the revenue laws of North Carolina and the administration of those laws.
  - (2) Review the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, easy to administer, and equitable.
  - (2a) Review any tax provision set to sunset within one year of the beginning of next regular session of the General Assembly to determine whether the sunset needs to be extended.
  - (3) Call upon the Department of Revenue to cooperate with it in the study of the revenue laws.
  - (4) Report to the General Assembly at the beginning of each regular session concerning its determinations of needed changes in the State's revenue laws.

These powers, which are enumerated by way of illustration, shall be liberally construed to provide for the maximum review by the Committee of all revenue law matters in this State."

## **TECHNICAL CHANGES**

**SECTION 6.** G.S. 105-164.13(61a) reads as rewritten:

"(61a) The sales price of or the gross receipts derived from the repair, maintenance, and installation services and service contracts listed in this subdivision are exempt from tax. Except as otherwise provided in this subdivision, property and services used to fulfill either a repair, maintenance, or installation service or a service contract exempt from tax under this subdivision are taxable. The list of repair, maintenance, and installation services and service contracts exempt from tax under this subdivision is as follows:

...

- k. Self-service ~~car~~ vehicle wash or vacuum and limited-service vehicle wash. For purposes of this sub-subdivision, the following definitions apply:
  1. Limited-service vehicle wash. – The cleaning of a vehicle by mechanical means where the only activities performed by an employee include one or more of the following: (i) receiving payment for the transaction, (ii) guiding the vehicle into the entrance or exit of a conveyor, (iii) applying low-pressure spray of chemicals to the vehicle prior to the cleaning of the vehicle, or (iv) placing protective tape or covers on the vehicle prior to cleaning. The term does not include any activity whereby an employee physically touches the vehicle for the purpose of cleaning or restoring the vehicle, enters or cleans any part of the interior of the vehicle, or performs an activity on the vehicle other than one of those listed in this sub-sub-subdivision.

2. Self-service vehicle wash or vacuum. – The cleaning of a vehicle by a customer without any cleaning or restoring activity performed by an employee."

**SECTION 7.(a)** Section 3.9(g) of S.L. 2019-169 reads as rewritten:

"**SECTION 3.9.(g)** This section is effective when it becomes law and applies to property management contracts entered into on or after that date. law. The provisions of G.S. 105-164.15A apply to the implementation of this change as if it is a decrease in the tax rate."

**SECTION 7.(b)** This section is effective when it becomes law and applies retroactively to July 26, 2019.

**SECTION 8.** G.S. 105-164.3(12) reads as rewritten:

"(12) Gross sales. – The sum total of the sales price of all sales of ~~items~~ tangible personal property, digital property, and services."

## **DOR/UPDATE ELECTRONIC TAX SYSTEMS TO SEND NOTICES TO TAXPAYER AND TAXPAYER'S POWER OF ATTORNEY**

**SECTION 8.1.** The Department of Revenue shall update its electronic tax systems to store and recognize power of attorney registrations to ensure that notices generated by the Department are simultaneously sent to both the taxpayer and the person designated in the taxpayer's power of attorney registration. By January 31, 2020, the Department shall report to the Joint Legislative Oversight Committee on General Government on its progress in updating its electronic tax systems to store and recognize power of attorney registrations.

## **EFFECTIVE DATE**

**SECTION 9.** Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 31<sup>st</sup> day of October, 2019.

s/ Philip E. Berger  
President Pro Tempore of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

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Roy Cooper  
Governor

Approved \_\_\_\_\_ .m. this \_\_\_\_\_ day of \_\_\_\_\_, 2019