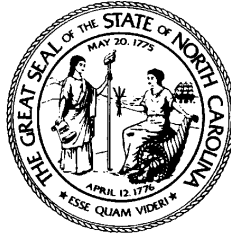

North Carolina Department of Revenue



DIRECTIVE

Subject: Exemption Certificates
Tax: Sales and Use Tax
Law: G.S. 105-164.28 and G.S. 105-164.28A
Issued By: Sales and Use Tax Division
Date: June 1, 2004
Number: SD-04-1

This Directive explains new procedures that will be effective January 1, 2005 for providing exemption certificates to vendors when making purchases of tangible personal property that are exempt from sales or use tax or subject to a preferential rate of tax. A new exemption certificate, Form E-595E, Streamlined Sales Tax Agreement Certificate of Exemption, is to be used for purchases for resale or other exempt purchases set forth in this Directive. Except as set out in Section VII of this Directive, a purchaser will be required to enter a sales and use tax registration number or an exemption number on the certificate, depending on the type of transaction. North Carolina is adopting the new exemption form in conjunction with the national Streamlined Sales and Use Tax Project. A similar form adopted for use in other participating states may also be accepted by a vendor.

Effective January 1, 2005, the forms listed below will be discontinued and should no longer be accepted by a vendor. The forms can be accepted for purchases made prior to this date, and an exemption number is not required to be entered except for issuance of a certificate of resale, which requires entry of the purchaser's sales and use tax registration number. Vendors and purchasers are encouraged to use the new exemption certificate, Form E-595E, as soon as practicable.

Discontinued Forms as of January 1, 2005:

Form E-526 Logging or Pulpwood Certificate
Form E-558 Commercial Fisherman's Certificate
Form E-567 Veterinarian's Certificate
Form E-575 Manufacturers' Certificate
Form E-580 Contractor's and Subcontractor's Certificate
Form E-590 Certificate of Resale
Form E-599 Agricultural Certificate
Form E-599Y Ice Certificate

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Section I. The Law

Certificate of Resale:

G.S. 105-164.28 provides:

- (a) **Seller's Responsibility.** – A seller who accepts a certificate of resale from a purchaser of tangible personal property has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:
 - (1) For a sale made in person, the certificate is signed by the purchaser, states the purchaser's name, address, and registration number, and describes the type of tangible personal property generally sold by the purchaser in the regular course of business.
 - (2) For a sale made in person, the purchaser is engaged in the business of selling tangible personal property of the type sold.
 - (3) For a sale made over the Internet or by other remote means, the sales tax registration number given by the purchaser matches the number on the Department's registry.
- (b) **Liabilities.** – A purchaser who does not resell property purchased under a certificate of resale is liable for any tax subsequently determined to be due on the sale. A seller of property sold under a certificate of resale is jointly liable with the purchaser of the property for any tax subsequently determined to be due on the sale only if the Secretary proves that the sale was a retail sale.

Other Exemption Certificates:

G.S. 105-164.28A provides:

- (a) **Authorization.** – The Secretary may require a person who purchases tangible personal property that is exempt from tax or is subject to a preferential rate of tax depending on the status of the purchaser or the intended use of the property to obtain an exemption certificate from the Department to receive the exemption or preferential rate. An exemption certificate authorizes a retailer to sell tangible personal property to the holder of the certificate and either collect tax at the preferential rate or not collect tax on the sale, as appropriate. A person who purchases tangible personal property under an exemption certificate is liable for any tax due on the sale if the Department determines that the person is not eligible for the certificate or the property was not used as intended.
- (b) **Scope.** – This section does not apply to a direct pay permit or a certificate of resale. G.S. 105-164.27A addresses a direct pay permit, and G.S. 105-164.28 addresses a certificate of resale.

Section II. Sales for Resale

Effective January 1, 2005, a purchaser of property for resale should issue Form E-595E to a vendor in order to exclude the sale from sales or use tax. A vendor who has accepted a Form E-590 from a purchaser prior to January 1, 2005 is not required to obtain a Form E-595E. If a purchaser is required to submit revisions, Form E-595E should be issued. A purchaser's sales and use tax registration number and other information required under G.S. 105-164.28 must be entered on the certificate.

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Section III. Sales to Manufacturers

A manufacturer should issue Form E-595E to a vendor when making a purchase of property subject to the preferential 1% State rate of tax, with an \$80.00 maximum tax per article, or property that is exempt from tax, such as ingredient or component materials or packaging materials that become part of the sale of a product. A manufacturer must enter its sales and use tax registration number on the certificate. A manufacturer that is not liable for remitting sales or use tax to the Department will be required to register with the Department for the purposes of obtaining a sales and use tax registration number by submitting Form AS/RP1.

Section IV. Sales to Farmers, Commercial Fishermen, Loggers, and Veterinarians

A farmer, commercial fisherman, logger, or veterinarian making a purchase of tangible personal property that is subject to a preferential rate of tax or exempt from sales or use tax should issue Form E-595E to a vendor as authority for collecting the reduced rate of tax or no tax. A taxpayer that is registered to remit sales or use tax to the Department must enter the assigned sales and use tax registration number on the certificate. A taxpayer that is not required to register for sales and use tax purposes must obtain an exemption number from the Department, and the exemption number assigned by the Department must be entered on Form E-595E when the completed form is furnished to a vendor.

Section V. Application for an Exemption Number

For all types of exemption numbers except a sales and use tax registration number, Form E-595EA is to be completed and submitted to the Department to obtain an exemption number. The taxpayer will receive a notice bearing the assigned exemption number.

Section VI. Liability

Over-the-Counter Sales:

When a customer makes a qualifying purchase as indicated on the exemption certificate and furnishes a properly completed certificate to a vendor, the vendor is relieved of the liability for any additional tax that is subsequently determined to be due, and the purchaser has assumed liability for the tax. In the absence of proper documentation to support a full or partial exemption from tax, the vendor will be held liable for any additional tax determined to be due.

The exemption certificate should be prepared in duplicate and retained by the purchaser and the vendor in their permanent records. A purchaser making occasional or infrequent purchases of tangible personal property that is eligible for an exemption should furnish a copy of the certificate with each purchase order. A purchaser who makes frequent purchases of the same type property from a vendor is only required to issue a single certificate to that vendor. A copy of a completed certificate should not be sent to the Department of Revenue unless requested by the Department.

Remote Sales:

For a sale for resale, a vendor is relieved of liability for any additional tax that is subsequently determined to be due when the vendor secures a sales and use tax registration number from a purchaser that matches the number on the Department's registry in lieu of obtaining a completed certificate. For a sale subject to a preferential rate of tax or exempt from tax other than as a sale for resale, the liability is relieved when the vendor secures the information as to a purchaser's type of business, reason for exemption, and identification number in lieu of obtaining an exemption certificate. The registry of sales and use tax registration numbers and a registry of exemption numbers is available on the Department's website at www.dor.state.nc.us. A vendor may choose to review the appropriate registry subsequent to the completion of a sale.

Section VII. Excluded Transactions

Certain purchasers, such as the United States Government or the State of North Carolina (effective July 1, 2004), are not required to furnish Form E-595E. Purchase requisitions, affidavits from purchasing officers, and applicable credit cards issued by the United States Government are acceptable documentation for exempting purchases by federal agencies and instrumentalities. Effective July 1, 2004, purchases by State agencies are exempt from sales or use tax, and purchase orders or other documentation bearing the assigned State agency exemption number are acceptable.

The Sales and Use Tax Technical Bulletins contain information on various topics, including items covered by this Directive, and can be referenced to address questions about the application of tax. Copies of Form E-595E, Form E-595EA, and the technical bulletins can be obtained by calling the Department's Forms Line at telephone number 1-877-252-3052 or from the Department's website at www.dor.state.nc.us. Written requests for forms or information should be sent to the Taxpayer Assistance Division, North Carolina Department of Revenue, P.O. Box 25000, Raleigh, N. C. 27640. Questions about the information in this Directive can be directed to the Taxpayer Assistance Division at telephone number 1-877-252-3052.