



State of North Carolina

Department of Justice
PO Box 629
Raleigh, North Carolina
27602

Reply to:
Tenisha S. Jacobs
Revenue Section
Telephone: (919) 716-6550
Fax: (919) 715-3550
E-mail: tjacobs@ncdoj.gov

ROY COOPER
ATTORNEY GENERAL

TO: Mr. Eric K. Wayne, Director
Sales and Use Tax Division

FROM: Tenisha S. Jacobs *TJS*
Assistant Attorney General

SUBJECT: Rate of Tax Due on Leases on and after 1 October 2009

DATE: 18 February 2010

You have requested an opinion from this office regarding the rate of tax due on lease receipts billed on or after 1 October 2009 where the lease was entered into for a stipulated period of time before 1 September 2009. You request this opinion in light of the recent changes to the State and local sales tax rates enacted by the North Carolina General Assembly in 2009 N.C. Sess. Laws 451.

Under N.C. Gen. Stat. § 105-164.4(a)(2), the “applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property.” The “tax is due and payable at the time the lessor bills the lessee for the rent whether such billing is for the lump sum rental or on a monthly or other periodic basis.” 17 N.C.A.C. § 7B.4401. The “applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented.” N.C. Gen. Stat. § 105-164.4(a)(2).

Gross receipts subject to tax under N.C. Gen. Stat. § 105-164.4(a)(2) are also subject to various local sales taxes. These taxes are authorized by the General Assembly and levied by the counties. Local sales taxes, as well as the authorizing statutes or session laws, are set forth below:

<u>Local Sales Tax</u>	<u>Authorizing Statute or Session Law</u>
1%	N.C. Gen. Stat. § 105-466 (Article 39 of Chapter 105)
½%	N.C. Gen. Stat. § 105-483 (Article 40 of Chapter 105)

1/2%	N.C. Gen. Stat. § 105-498 (Article 42 of Chapter 105)
1/4% ¹	2007 N.C. Sess. Laws 323, § 31.16.3(a) (Article 44 of Chapter 105)
1/4%	N.C. Gen. Stat. § 105-537 (Article 46 of Chapter 105)

From 1 September 2009 to 30 September 2009, the combined State and local tax rate in 91 counties was 7.75%. This rate was comprised of a 5.5% State rate and 2.25% local rate. In Alexander, Catawba, Cumberland, Haywood, Martin, Pitt, Sampson and Surry counties, gross receipts were subject to a combined rate of 8%, as these counties levied the additional 1/4% tax authorized under N.C. Gen. Stat. § 105-537. Finally, in Mecklenburg county, gross receipts were subject to a combined rate of 8.25% due to the additional 1/2% transportation tax levied pursuant to Article 43 of Chapter 105 of the North Carolina General Statutes.

Effective 1 October 2009, the General Assembly increased the State rate from 5.5% to 5.75%. 2009 N.C. Sess. Laws 451, § 27A.2.(b). At the same time, the 1/4% tax authorized by Article 44 of Chapter 105 of the General Statutes was phased out by the General Assembly. As a result, the local tax rate decreased to 2.0% in 91 counties, 2.25% in the eight counties levying the additional 1/4% tax authorized under N.C. Gen. Stat. § 105-537 and 2.5% in Mecklenburg county. After these changes, the combined State and local combined rate continued to be 7.75% in 91 counties, 8% in eight counties and 8.25 % Mecklenburg county. N.C. Gen. Stat. § 105-164.16(e), entitled Simultaneous State and Local Changes, applies when “State and local sales and use tax rates change on the same date because one increases and the other decreases but the combined rate does not change.” For this reason, N.C. Gen. Stat. § 105-164.16(e) is applicable to 1 October 2009 rate changes.

Pursuant to N.C. Gen. Stat. § 105-164.16(e), “sales and use taxes payable on the following periodic payments are reportable in accordance with the changed State and local rates: (1) Lease or rental payments billed after the effective date of the changes.” (Emphasis added). Thus, the determining factor under N.C. Gen. Stat. § 105-164.16(e) is the date of billing for the lease or rental payment. Lease or rental payments billed after 1 October 2009 are therefore subject to the changed State and local sales tax rates.

¹ Prior to 1 October 2008, Article 44 of Chapter 105 of the General Statutes authorized counties to levy a 1/2% local sales and use tax. See N.C. Gen. Stat. § 105-517, repealed by 2007 N.C. Sess. Laws 323, § 31.16.4(a). For sales and occurring on or after 1 October 2008, the General Assembly reduced the tax rate imposed under Article 44 of Chapter 105 to 1/4%. 2007 N.C. Sess. Laws 323, §§ 31.16.3 (a) and (j).

Mr. Eric K. Wayne
18 February 2010
Page 3

The Equipment Leasing and Finance Association (“ELFA”) submitted to the North Carolina Department of Revenue, stating that it is of the opinion that the October 1 change only alters the allocation of the combined rate of state and local tax and not the applicable combined percentage rate because “ § 105-164.16 is in Part 4, Reporting and Payments, rather than the imposition section Part 2, Taxes Levied. As recently recognized by the North Carolina Court of Appeals, however, “the law is clear that captions of a statute cannot control when the text is clear.” Wal-Mart Stores East v. Hinton, __ N.C. App. __, 676 S.E.2d 634, 653 (2009)(internal citations omitted). Because the text of N.C. Gen. Stat. § 105-164.16(e) makes it clear that lease or rental payments billed after 1 October 2009 are reported in accordance with the changed State and local tax rates, the text of the statute controls and lease or rental payments billed after 1 October 2009 are subject to the changed State and local sales tax rates

I hope you find the information provided herein helpful. This is an advisory letter and it has not been reviewed and approved in accordance with the procedures for issuing an Attorney General’s opinion.

cc: Mr. Grayson Kelley
Mr. Reggie Watkins