

## Court Opinions North Carolina General Statutes § 105-164.8 Retailer's obligation to collect tax; mail order sales subject to tax

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(a) Obligation. A retailer is required to collect the tax imposed by this Article notwithstanding any of the following:

(1) That the purchaser's order or the contract of sale is delivered, mailed, or otherwise transmitted by the purchaser to the retailer at a point outside this State as a result of solicitation by the retailer through the medium of a catalogue or other written advertisement.

(2) That the purchaser's order or the contract of sale is made or closed by acceptance or approval outside this State, or before any tangible personal property or digital property that is part of the order or contract enters this State.

(3) That the purchaser's order or the contract of sale provides that the property shall be or is in fact procured or manufactured at a point outside this State and shipped directly to the purchaser from the point of origin.

(4) That the property is mailed to the purchaser in this State or a point outside this State or delivered to a carrier outside this State f.o.b. or otherwise and directed to the purchaser in this State regardless of whether the cost of transportation is paid by the retailer or by the purchaser.

(5) That the property is delivered directly to the purchaser at a point outside this State.

(6) Any combination in whole or in part of any two or more of the foregoing statements of fact, if it is intended that the property purchased be brought to this State for storage, use, or consumption in this State.

(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:

(1) The retailer is a corporation engaged in business under the laws of this State or a person domiciled in, a resident of, or a citizen of, this State.

(2) The retailer maintains retail establishments or offices in this State, whether the remote sales thus subject to taxation by this State result from or are related in any other way to the activities of the establishments or offices.

(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 of this State under which the resident, 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 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 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.

(4) Repealed by Session Laws 1991, c. 45, s. 16.

(5) The retailer, by purposefully or systematically exploiting the market provided by this State by any media-assisted, media-facilitated, or media-solicited means, including direct mail advertising, distribution of catalogs, computer-assisted shopping, television, radio or other electronic media, telephone solicitation, magazine or newspaper advertisements, or other media, creates nexus with this State. A nonresident retailer who purchases advertising to be delivered by television, by radio, in print, on the Internet, or by any other medium is not considered to be engaged in business in this State based solely on the purchase of the advertising.

(6) Through compact or reciprocity with another jurisdiction of the United States, that

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## US Code

Copyrights  
Crimes  
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## US Constitution

Preamble  
Art. I - Legislative  
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Art. IV - States' Relations  
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jurisdiction uses its taxing power and its jurisdiction over the retailer in support of this State's taxing power.

(7) The retailer consents, expressly or by implication, to the imposition of the tax imposed by this Article. For purposes of this subdivision, evidence that a retailer engaged in the activity described in subdivision (5) is prima facie evidence that the retailer consents to the imposition of the tax imposed by this Article.

(8) The retailer is a holder of a wine shipper permit issued by the ABC Commission pursuant to G.S. 18B-1001.1.

(c) Local Tax. A retailer who is required to collect the tax imposed by this Article must collect a local use tax on a transaction if a local sales tax does not apply to the transaction. The sourcing principles in G.S. 105-164.4B determine whether a local sales tax or a local use tax applies to a transaction. A "local sales tax" is a tax imposed under Chapter 1096 of the 1967 Session Laws or by Subchapter VIII of this Chapter, and a local use tax is a use tax imposed under that act or Subchapter. (1957, c. 1340, s. 5; 1987 (Reg. Sess., 1988), c. 1096, s. 4; 1991, c. 45, s. 16; 2001-347, s. 2.10; 2003-402, s. 13; 2003-416, s. 24(b), (c); 2009-451, s. 27A.3(a).)

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