

IMPORTANT NOTICE: AUCTIONEERS

Effective February 1, 2020, an auctioneer that meets the definition of a marketplace facilitator and either of the thresholds described below must collect and remit sales and use tax on the sales price of marketplace-facilitated sales pursuant to N.C. Gen. Stat. § 105-164.4J. The issues addressed herein are based on law changes effective February 1, 2020 and apply to sales occurring on or after that date.

N.C. Gen. Stat. § 105-164.4J provides that a marketplace facilitator that makes sales, including all marketplace-facilitated sales for all marketplace sellers, sourced to this State for the previous or current calendar year that meets the threshold of either (1) gross sales in excess of \$100,000 or (2) 200 or more separate transactions is required to collect and remit sales and use tax.

Definitions

N.C. Gen. Stat. § 105-164.3 provides the following terms and definitions:

“Marketplace” is defined as “[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.”

“Marketplace-facilitated sale” is defined as “[t]he sale of an item by a marketplace facilitator on behalf of a marketplace seller that occurs through a marketplace.”

“Marketplace facilitator” is defined as “[a] person that, directly or indirectly and whether through one or more affiliates, does both of the following:

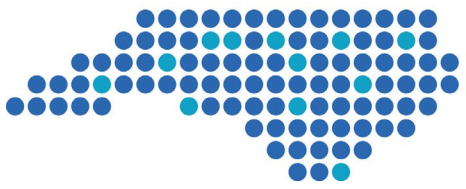
- a. Lists or otherwise makes available for sale a marketplace seller's items through a marketplace owned or operated by the marketplace facilitator.
- b. Does one or more of the following:
 1. Collects the sales price or purchase price of a marketplace seller's items or otherwise processes payment.
 2. Makes payment processing services available to purchasers for the sale of a marketplace seller's items.”

“Marketplace seller” is defined as “[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.”

“Retailer” is defined as “[a]ny of the following persons:

- e. A marketplace facilitator that is subject to the requirements of [N.C. Gen. Stat. §] 105-164.4J or a facilitator that is required to collect and remit the tax under this Article.”



“**Sales price**” is defined as “[t]he total amount or consideration for which tangible personal property, digital property, or services are sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.

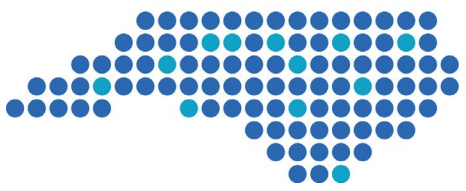
- a. The term includes all of the following:
 - 1. The retailer's cost of the property sold.
 - 2. The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer.
 - 3. Charges by the retailer for any services necessary to complete the sale.
 - 4. Delivery charges.
 - 5. Installation charges.
 - ...
 - 7. Credit for trade-in. The amount of any credit for trade-in is not a reduction of the sales price.
 - 8. The amount of any discounts that are reimbursable by a third party and can be determined at the time of sale through any of the following:
 - I. Presentation by the consumer of a coupon or other documentation.
 - II. Identification of the consumer as a member of a group eligible for a discount.
 - III. The invoice the retailer gives the consumer.
- b. The term does not include any of the following:
 - 1. Discounts that are not reimbursable by a third party, are allowed by the retailer, and are taken by a consumer on a sale.
 - 2. Interest, financing, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale, or a similar document given to the consumer.
 - 3. Any taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer.”

Auctioneer as a Marketplace Facilitator

Effective February 1, 2020, an auctioneer is a marketplace facilitator and liable for sales and use tax on marketplace-facilitated sales pursuant to N.C. Gen. Stat. § 105-164.4J when the auctioneer 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, and
- 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.

An auctioneer that does not meet the definition of a marketplace facilitator, such as one who does not: (1) make payment processing services available to purchasers for the sale of a marketplace seller's items, (2) collect the sales price of a marketplace seller's items, or (3) otherwise process payments, is not acting as a marketplace facilitator.



Tax Due on Marketplace-facilitated Sales by an Auctioneer

An auctioneer that is a marketplace facilitator that makes sales of tangible personal property, digital property, and services sourced to this State and that meets either the gross sales or separate transaction threshold is considered the retailer of each marketplace-facilitated sale it makes and is liable for collecting and remitting the sales and use tax due on all such sales. A marketplace facilitator is required to comply with the same requirements and procedures as all other retailers who are required to be registered to collect and remit North Carolina sales and use tax. A marketplace facilitator is required to collect and remit sales tax as required by N.C. Gen. Stat. § 105-164.4J regardless of whether a marketplace seller for whom it makes a marketplace-facilitated sale meets any of the following conditions:

- a. Has a physical presence in this State.
- b. Is required to be registered to collect and remit sales and use tax in this State.
- c. Would have been required to collect and remit sales and use tax in this State had the sale not been made through a marketplace.
- d. 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.

Refer to [Directive SD-20-1, Marketplace Facilitators and Marketplace Sellers](#), for additional details.

Registration

North Carolina is a full member of the Streamlined Sales and Use Tax Governing Board (“SSTGB”). Marketplace facilitators can register for all 24 Streamlined member states (AR, GA, IN, IA, KS, KY, MI, MN, NE, NV, NJ, NC, ND, OH, OK, RI, SD, TN, UT, VT, WA, WV, WI, and WY) by completing one online application through the Streamlined Sales Tax Registration System (“SSTRS”). There is no fee to complete and submit this online registration form that is available at www.sstregister.org/.

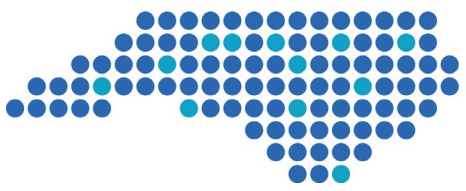
Marketplace facilitators can also register with North Carolina specifically by using the Department’s [online business registration portal](#) or by submitting a completed [Form NC-BR](#), Business Registration Application for Income Tax Withholding, Sales and Use Tax, and Other Taxes and Service Charge, available on the Department’s website, www.ncdor.gov. There is no fee to apply for a certificate of registration in North Carolina. General questions about business registrations may be directed to 1-877-252-3052.

An auctioneer already registered to collect and remit sales and use tax does not need to register a second time. The auctioneer must include any marketplace-facilitated sales on the Form E-500, Sales and Use Tax Return.

Additional Information

An overview of sales and use taxes with detailed information regarding the taxability of products sourced to North Carolina is located on the Department’s website at www.ncdor.gov/taxes-forms/sales-and-use-tax/overview-sales-and-use-taxes.

Detailed information regarding North Carolina sales and use tax rates, is located on the Department’s website at www.ncdor.gov/taxes/sales-and-use-tax/sales-and-use-tax-rates-other-information.



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Electronic Tax Updates

To receive electronic notifications (E-Alerts) regarding North Carolina bulletins, directives, and other important notices about law changes and related tax matters, subscribe to the Department's Tax Update Email List at <https://www.ncdor.gov/file-pay/eservices/e-alerts>.

Assistance

If you have questions about this notice, you may call the Department at 1-877-252-3052 (8:00 am until 5:00 pm EST, Monday through Friday).

To the extent there is any change in the rate or amount of tax, change to a statute or regulation, or new case law subsequent to the date of this notice, the provisions in this important notice may be superseded or voided. To the extent that any provisions in any other notice, directive, bulletin, or published guidance regarding the subject of this notice and issued prior to the date of this notice conflict with this important notice, the provisions contained in this important notice supersede the previous guidance.