

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 261
House Committee Substitute Favorable 5/21/14

Short Title: Sales Tax on Private Res. Rented by Broker.

(Public)

Sponsors:

Referred to:

March 13, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO RESTORE THE DEPARTMENT OF REVENUE'S INTERPRETATION OF
3 THE APPLICATION OF SALES TAX ON PRIVATE RESIDENCES RENTED FOR
4 FEWER THAN FIFTEEN DAYS WHEN RENTED THROUGH A REAL ESTATE
5 AGENT OR BROKER.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 105-164.4(a) reads as rewritten:

8 "(a) A privilege tax is imposed on a retailer at the following percentage rates of the
9 retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and
10 three-quarters percent (4.75%).

11 ...

12 (3) ~~A tax at the~~ The general rate applies to the gross receipts derived from the
13 rental of an accommodation. These rentals are taxed in accordance with
14 G.S. 105-164.4F. ~~The tax does not apply to (i) a private residence or cottage~~
15 ~~that is rented for fewer than 15 days in a calendar year; (ii) an~~
16 ~~accommodation rented to the same person for a period of 90 or more~~
17 ~~continuous days; or (iii) an accommodation arranged or provided to a person~~
18 ~~by a school, camp, or similar entity where a tuition or fee is charged to the~~
19 ~~person for enrollment in the school, camp, or similar entity.~~

20 ~~Gross receipts derived from the rental of an accommodation include the~~
21 ~~sales price of the rental of the accommodation. The sales price of the rental~~
22 ~~of an accommodation is determined as if the rental were a rental of tangible~~
23 ~~personal property. The sales price of the rental of an accommodation~~
24 ~~marketed by a facilitator includes charges designated as facilitation fees and~~
25 ~~any other charges necessary to complete the rental.~~

26 ~~A person who provides an accommodation that is offered for rent is~~
27 ~~considered a retailer under this Article. A facilitator must report to the~~
28 ~~retailer with whom it has a contract the sales price a consumer pays to the~~
29 ~~facilitator for an accommodation rental marketed by the facilitator. A retailer~~
30 ~~must notify a facilitator when an accommodation rental marketed by the~~
31 ~~facilitator is completed and the facilitator must send the retailer the portion~~
32 ~~of the sales price the facilitator owes the retailer and the tax due on the sales~~
33 ~~price no later than 10 days after the end of each calendar month. A facilitator~~
34 ~~that does not send the retailer the tax due on the sales price is liable for the~~
35 ~~amount of tax the facilitator fails to send. A facilitator is not liable for tax~~
36 ~~sent to a retailer but not remitted by the retailer to the Secretary. Tax~~



1 payments received by a retailer from a facilitator are held in trust by the
 2 retailer for remittance to the Secretary. A retailer that receives a tax payment
 3 from a facilitator must remit the amount received to the Secretary. A retailer
 4 is not liable for tax due but not received from a facilitator. The requirements
 5 imposed by this subdivision on a retailer and a facilitator are considered
 6 terms of the contract between the retailer and the facilitator.

7 A person who, by written contract, agrees to be the rental agent for the
 8 provider of an accommodation is considered a retailer under this Article and
 9 is liable for the tax imposed by this subdivision. The liability of a rental
 10 agent for the tax imposed by this subdivision relieves the provider of the
 11 accommodation from liability. A rental agent includes a real estate broker, as
 12 defined in G.S. 93A-2.

13 The following definitions apply in this subdivision:

- 14 a. Accommodation. — A hotel room, a motel room, a residence, a
 15 cottage, or a similar lodging facility for occupancy by an individual.
 16 b. Facilitator. — A person who is not a rental agent and who contracts
 17 with a provider of an accommodation to market the accommodation
 18 and to accept payment from the consumer for the accommodation.
 19

20"

21 **SECTION 2.** Article 5 of Chapter 105 of the General Statutes is amended by
 adding a new section to read:

22 "**§ 105-164.4F. Accommodation rentals.**

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

- 24 (1) Accommodation. — A hotel room, a motel room, a residence, a cottage, or a
 25 similar lodging facility for occupancy by an individual.
 26 (2) Facilitator. — A person who is not a rental agent and who contracts with a
 27 provider of an accommodation to market the accommodation and to accept
 28 payment from the consumer for the accommodation.
 29 (3) Rental agent. — The term includes a real estate broker, as defined in
 30 G.S. 93A-2.

31 (b) Tax. — The gross receipts derived from the rental of an accommodation are taxed at
 32 the general rate set in G.S. 105-164.4. Gross receipts derived from the rental of an
 33 accommodation include the sales price of the rental of the accommodation. The sales price of
 34 the rental of an accommodation is determined as if the rental were a rental of tangible personal
 35 property. The sales price of the rental of an accommodation marketed by a facilitator includes
 36 charges designated as facilitation fees and any other charges necessary to complete the rental.

37 (c) Facilitator Transactions. — A facilitator must report to the retailer with whom it has a
 38 contract the sales price a consumer pays to the facilitator for an accommodation rental
 39 marketed by the facilitator. A retailer must notify a facilitator when an accommodation rental
 40 marketed by the facilitator is completed, and the facilitator must send the retailer the portion of
 41 the sales price the facilitator owes the retailer and the tax due on the sales price no later than 10
 42 days after the end of each calendar month. A facilitator that does not send the retailer the tax
 43 due on the sales price is liable for the amount of tax the facilitator fails to send. A facilitator is
 44 not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax
 45 payments received by a retailer from a facilitator are held in trust by the retailer for remittance
 46 to the Secretary. A retailer that receives a tax payment from a facilitator must remit the amount
 47 received to the Secretary. A retailer is not liable for tax due but not received from a facilitator.
 48 The requirements imposed by this section on a retailer and a facilitator are considered terms of
 49 the contract between the retailer and the facilitator.

50 (d) Rental Agent. — A person who, by written contract, agrees to be the rental agent for
 51 the provider of an accommodation is considered a retailer under this Article and is liable for the

1 tax imposed by this section. The liability of a rental agent for the tax imposed by this section
2 relieves the provider of the accommodation from liability.

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

4 (1) A private residence, cottage, or similar accommodation that is rented for
5 fewer than 15 days in a calendar year other than a private residence, cottage,
6 or similar accommodation listed with a real estate broker or agent.

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

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

12 **SECTION 3.** A retailer is not liable for an overcollection or undercollection of
13 sales tax or occupancy tax if the retailer has made a good-faith effort to comply with the law
14 and collect the proper amount of tax and has, due to the change under this act, overcollected or
15 undercollected the amount of sales tax or occupancy tax that is due. This section applies only to
16 the period beginning June 14, 2012, and ending July 1, 2014.

17 **SECTION 4.** This act becomes effective June 1, 2014, and applies to gross receipts
18 derived from the rental of an accommodation that a person occupies or has the right to occupy
19 on or after that date.