

17 NCAC 07B .0106 CERTIFICATES OF EXEMPTION: SALES FOR RESALE

(a) A purchaser of tangible personal property who is properly registered with the Sales and Use Tax Division of the North Carolina Department of Revenue or in a taxing jurisdiction outside this State and is engaged in the business of selling tangible personal property at retail or wholesale and makes purchases of tangible personal property for the purpose of resale shall furnish to his vendors as their authority for not collecting the tax, either:

- (1) Streamlined Sales Tax Agreement Certificate of Exemption, Form E-595E, or
- (2) other evidence in writing adequate to support the conclusion that he is registered with the Department of Revenue or in a taxing jurisdiction outside this State for sales and use tax purposes and that the property is being purchased for the purpose of resale.

Such certificates or other written evidence shall be completed in duplicate and a copy retained by both the vendor and the vendee in their files. In the absence of such certificates or other adequate written evidence, vendors selling taxable tangible personal property to wholesale and retail merchants shall be deemed to be making retail sales and shall be liable for collecting and paying the tax thereon at the applicable rate.

(b) Certificates of exemption being issued for the purpose of resale shall not be used to purchase tangible personal property which is to be used or consumed by the purchaser. The Secretary may revoke the license of any licensed merchant who makes such use of the certificate of exemption. Vendors shall charge the applicable rate of tax on sales to registered merchants when the property sold is for use by the purchaser and not for resale. Merchants purchasing tangible personal property for resale on a regular basis from a vendor shall only be required to furnish one certificate of exemption or other written evidence to the vendor for such purchases. Whenever a person makes purchases of tangible personal property for resale and the property is not generally and ordinarily the type of property the purchaser will resell, the vendor shall require certificates of exemption or other written evidence in connection with individual purchases supporting that the property is being purchased for resale.

(c) Persons who issue certificates of exemption to vendors to obtain property without payment of tax when due are subject to assessment of the penalties set out in G.S. 105-236(5) and (5a) and may be guilty of a Class H felony. The penalty for misuse of a certificate of exemption is applicable only to a purchaser. The act of executing a certificate of exemption by a vendee and furnishing the document to a vendor does not constitute a use or misuse of the certificate. The actual use or misuse occurs when a purchase is made and the vendor, relying on the certificate furnished by the vendee, does not charge sales or use tax thereon on the basis that the sale is a "wholesale sale" as defined in G.S. 105-164.3(24). A single purchase is considered to be the tangible personal property purchased at one time as reflected on the bill of sale. The penalty shall be applied only once to each invoice or bill of sale for which a misuse of the certificate has occurred. This penalty is subject to the discretionary authority of the Secretary of Revenue pursuant to G.S. 105-237.

(d) The Secretary may extend to a registered merchant written permission to make purchases for his own use pursuant to the certificate of exemption and assume liability for payment of the applicable tax to the Department when the character of the business of the purchaser is such that it would impose undue hardship upon the vendor and vendee to determine the transactions upon which the vendor would ordinarily be required to impose the tax. The purchaser shall furnish written evidence of such assumption of liability to the purchaser's vendors; the vendors must retain the documentation in their files.

(e) This rule applies to sales to resident and nonresident retail or wholesale merchants. Reference is made to 17 NCAC 7B .2301 for the treatment of sales to nonresident retail or wholesale merchants.

*History Note: Authority G.S. 105-164.28; 105-236; 105-262;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; February 1, 1988; May 11, 1979.*