

Questions from NCDOR Presentation Various Sales Tax Changes HB 1079/ SL 2020-6 June 17 & December 2, 2020

- Q. Please explain 'contemporaneously' in layman's terms.
- A. The dictionary defines contemporaneously as, "existing, occurring, or originating during the same time." In the context of the new exemption authorized in N.C. Gen. Stat. § 105-164.13(73), legislative staff provided an example of a live-streamed music lesson presented via Zoom.

Sourcing Questions:

- Q. Regarding county tax: Are we required to determine the North Carolina county for each viewer of a recorded webinar and report/pay taxes in up to 100 separate counties accordingly?

Do we have to pay state and county tax?

Are we required to collect local sales tax based on the county/city of the association?

If the tax is based on the source, i.e., where the digital property is sold, why do we have to determine the county of each viewer and pay taxes to each county? If we are located in Wake and sell a prerecorded webinar, wouldn't we just pay Wake county tax?

Does this only apply to purchasers who are in North Carolina? We are an international organization with members across the country.

- A. You must source the taxable sale of taxable items including certain digital property to the appropriate location of the North Carolina sale. The Department has provided detailed guidance on how you should source the sale of certain digital property. The Department distributes the local sales tax to the counties.

For additional information, you may review:

Important Notice: Sourcing for Certain Digital Property Subject to Sales and Use Tax at <https://www.ncdor.gov/documents/important-notice-sourcing-certain-digital-property-subject-sales-and-use-tax>

SUTB 4-4 and 23-4

<https://www.ncdor.gov/documents/sales-and-use-tax-bulletins>

There are companies that provide address boundaries and tax calculation plug-ins that integrate with e-commerce shopping carts. A list of companies that may be of assistance is available at <https://www.streamlinedsalestax.org/certified-service-providers/certified-service-providers-about>. Depending on your needs, the plug-ins may be offered free of charge.

Written Determination Questions:

- Q. Most of the education that we provide our members and their staff is a hybrid of in-person and online education as part of a certification program. Based on another person's question during the webinar, I believe I need to request a PLR. On the website I found Form NC-481, which is a written determination request that would be \$500 for each ruling. Is this a PLR? Is there a less expensive way to seek help or advice? As a nonprofit we have a very limited budget, especially at this specific time of COVID.

- A. For general questions about tax rates or issues *specifically* addressed in a statute, regulation, technical bulletin, or Department or IRS publication, you may call the Sales and Use Tax Division or request a letter of general applicability free of charge. This information is not fact-specific and is not binding on the Department. Based on your description of the question, the Department will not be able to answer your question using these methods.

Instead, for the Department to rule on your question, you will need to request a private letter ruling. The minimum fee for a private letter ruling is \$500. To request a private letter ruling, you should mail form NC-481 and the required fee to the Department. For additional information, you may review the Department's Written Determination Policy at <https://www.ncdor.gov/documents/written-determinations-and-letters-general-applicability>.

- Q. If a national trade association, not based in NC, offers a recorded instruction for a fee, and a member in NC purchases the recorded educational content, is it taxable?

NCDOR will need more information to adequately respond. In addition, you should review the Department's Written Determination Policy for more information about how to obtain a ruling. <https://www.ncdor.gov/documents/written-determinations-and-letters-general-applicability>.

- Q. Would education that is pre-recorded but offered only at a specific time taxable or non-taxable?

- A. NCDOR will need more information to adequately respond. In addition, you should review the Department's Written Determination Policy for more information about how to obtain a ruling. <https://www.ncdor.gov/documents/written-determinations-and-letters-general-applicability>.

- Q. How does the levy on digital property apply to virtual trade shows? Is a virtual trade show non-tax if saved to view later?

- A. NCDOR will need more information regarding virtual trade shows to adequately respond. In addition, you should review the Department's Written Determination Policy for more information about how to obtain a ruling. <https://www.ncdor.gov/documents/written-determinations-and-letters-general-applicability>.

Various Questions:

- Q. We let anyone watch videos at no charge but we charge them to take a quiz and get the CEU. Do we need to collect tax for the CEU? Can we just collect the state and Wake County tax or do we have to ask what county they are watching from to pay that tax? What about out of state? To clarify, the watching of the video is free. They pay for the continuing education hours once they pass a quiz. Are we supposed to charge tax on the online quiz?

- A. Generally, if a sale is subject to tax, you will need to collect the appropriate amount of tax for the location to which the sale is sourced, which may be different from your business location. For additional information, refer to the Sourcing section above. For sales involving out-of-State customers, you will need to review the North Carolina sourcing laws and the tax laws of the applicable taxing jurisdiction.

The remaining portion of your question seeks a ruling on a specific factual situation. NCDOR will need more information to adequately respond. In addition, you should review the Department's Written Determination Policy for more information about how to obtain a ruling. <https://www.ncdor.gov/documents/written-determinations-and-letters-general-applicability>.

- Q. Bottom line; must a nonprofit trade association pay tax if we sell access to a recorded webinar?
- A. Generally yes. The sale is subject to tax if the item meets the definition of certain digital property or tangible personal property, the sale is sourced to NC, and a statutory exemption does not apply to the sale.
- Q. If there is an assigned date/time, no tax, but if the recorded material is saved in order to view later, the fee to view is taxable?
- A. Generally yes. The sale is subject to tax if the item meets the definition of certain digital property or tangible personal property, the sale is sourced to NC, and a statutory exemption does not apply to the sale. N.C. Gen. Stat. § 105-164.13(73)
- Q. To clarify, if an educational offering is available on-demand to all members (but you have to be a member), the transaction is taxable?
- A. Generally yes. The sale is subject to tax if the item meets the definition of certain digital property or tangible personal property, the sale is sourced to NC, and a statutory exemption does not apply to the sale.
- Q. Would fee-based vendor sponsored activity, whether recorded or other digital content, be taxable in addition to the tax on access for a fee by individual purchasers?
- If the on-demand, later viewing is only available to attendees of real time event, is it taxable?
- A. NCDOR will need more information in order to adequately respond. In addition, you should review the Department's Written Determination Policy for more information about how to obtain a ruling. <https://www.ncdor.gov/documents/written-determinations-and-letters-general-applicability>.
- Q. We have a live online course where most of the presenters present live but some of the presenters have pre-recorded their presentation, but are online for Q&A. How would we handle this mixed format?
- For your examples that include in-person and virtual components, is it still not subject to tax if only virtual but IRT?
- A. NCDOR will need more information in order to adequately respond. In addition, you should review the Department's Written Determination Policy for more information about how to obtain a ruling. <https://www.ncdor.gov/documents/written-determinations-and-letters-general-applicability>.
- Q. We have our video, handouts, and presentation free on our website for anyone to watch. If they want CEUs they have to go to an outside company, pay and take a test and get their CEU certificate. Since all the content is free, we don't need to collect tax, correct?
- A. NCDOR will need more information in order to adequately respond. In addition, you should review the Department's Written Determination Policy for more information about how to obtain a ruling. <https://www.ncdor.gov/documents/written-determinations-and-letters-general-applicability>.
- Q. If it is retroactive to 2019, do we go back to that point and time, determine revenue received for "online recorded classes provided" and remit tax?
- A. North Carolina adopted a grace period if you meet certain conditions:

N.C. Gen. Stat. “§ 105-244.4A. Grace period from sales and use tax enforcement actions with respect to the sale of certain digital property by certain continuing education and professional development providers.

The Department shall take no action to assess a person for any sales and use tax due for a filing period beginning on or after October 1, 2019, and ending prior to August 1, 2020, with respect to the retail sale of digital audio works or digital audiovisual that meet either of the conditions listed in this section. This section does not apply to a person that received specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable period or to a person that collected tax and failed to remit it to the Department. The conditions are:

- (1). The digital audio works or digital audiovisual works consist of continuing education instruction approved by an occupational licensing board.
- (2). The digital audio works or digital audiovisual works consist of professional development instruction for school board members, administrators, or staff."

- Q. To clarify - our association is eligible for the grace period as all of our education is approved by the occupational board. That means I have until August 1, 2020 to get our software and everything communicated for the requirement of the addition to sales tax, correct?
- A. You should review the grace period adopted in N.C. Gen. Stat. § 105-244.4A to determine your eligibility. If you and the sales at issue qualify for the grace period, the Department will not assess sales and use tax due for a filing period beginning on or after October 1, 2019, and ending prior to August 1, 2020.

Educational Service Question:

- Q. Would a registered Apprenticeship Program with the USDOL qualify as an "educational entity"?
- A. To be a "qualifying educational entity" the entity must be listed below. For purposes of this definition, references to the United States Code mean the United States Code as enacted as of January 1, 2020. The entities are:
- a. An elementary or secondary school, as defined in 20 U.S.C. § 7801.
 - b. An institution of higher education, as defined in 20 U.S.C. § 1002.
- Q. Does the entity have to be a "qualifying educational entity" for the education service exclusion to apply?
- A. An "educational service" is excluded from the definition of "certain digital property and therefore not subject to sales and use tax. An "educational service" is defined as "[t]he delivery of instruction or training, whether provided in real time, on demand, or at another set time, by or on behalf of a qualifying educational entity where at least one of the following conditions applies:
- a. The instruction or training is part of the curriculum for an enrolled student.
 - b. The instruction or training is encompassed within the institution's accreditation or prepares an enrolled student for gainful employment in a recognized occupation.
 - c. The participant is evaluated by an instructor. 'Evaluated by an instructor' does not include being graded by, scored by, or evaluated by a computer program or an interactive, automated method.
 - d. The participant is connected to the presenter or instructor via the Internet or other networks, allowing the participant to provide, receive, or discuss information through live interaction, contemporaneous with the presentation."

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- a. An elementary or secondary school, as defined in 20 U.S.C. § 7801.
- b. An institution of higher education, as defined in 20 U.S.C. § 1002.

Exemption Questions:

Q. Is there any exemption for 501(c)(3) organizations?

Are there exemptions for any type of nonprofit?

A. Generally, nonprofit and 501(c)(3) organizations are not exempt from collecting and paying sales and use tax. Nonprofit entities that make retail sales must register with the Department and collect and remit the applicable sales and use tax due unless specifically exempt by statute. Nonprofit entities purchasing taxable items must pay the tax due. For additional information, you may review:

SUTB 62

<https://www.ncdor.gov/documents/sales-and-use-tax-bulletins>

General sales and use tax exemptions found in N.C. Gen. Stat. § 105-164.13
https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-164.13.pdf

Remote Seller Questions:

Q. What about continuing education providers that reside outside of North Carolina? Will they be responsible for charging sales tax for their on-demand offerings to NC residents?

How are organizations who are outside of NC supposed to know about this? They are now responsible for paying these North Carolina state and county taxes?

A. Every remote seller engaged in business in the State is required to collect and remit State and local sales tax on taxable sales. Additional information regarding Remote Sales and Remote Sellers can be found in SUTB 2-2, <https://www.ncdor.gov/documents/sales-and-use-tax-bulletins>

Q. What about an international association based in NC with members outside NC. Are we only charging tax to those who consume digital content for NC residents?

A. You are only required to collect and remit North Carolina State and local sales tax on sales that are sourced to North Carolina. You may review the Sourcing section above for more information. You will need to review other jurisdictions tax laws to determine whether you have tax obligations in other states.

Assistance:

If you have questions pertaining to this document and need individual assistance, contact Ed Strickland with the Sales and Use Tax Division at (919) 814-1082. Members of the Taxpayer Assistance Level 3 Team are also available at (919) 754-2500; Select Sales and Use Tax Option.

This email response offers general information about tax issues. It is not specific advice and cannot be relied on as such. If you would like to obtain specific tax advice which is binding on the Department, you may follow the procedure for requesting a letter ruling, which is located at <https://www.ncdor.gov>.