

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0115

DEADLINE FOR RECEIPT: September 15, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Why is this rule “reasonably necessary to implement or interpret an enactment of the General Assembly,” per G.S. 150B-21.9(a)(3)? Stated another way, without this rule wouldn’t the sale of any item, including scientific or research equipment, be subject to taxes unless exempted by statute?

On line 7, how does one determine what the “applicable local and transit rates of sales or use tax” are? “Applicable” is ambiguous without a rule or statute that fills in that detail.

Regarding the history note, do not include entire articles in the authority section (on lines 11 and 12, “Chapter 105, Articles 39, 40, 42, 43, and 46”). I am not sure that the subject matter of those articles (imposition of local taxes) is necessary for this history note at all, since it does not appear to provide “the authority for the rule,” per 26 NCAC 02C .0406(a), or “cite the law under which the rule is adopted,” per G.S. 150B-21.19.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher
Commission Counsel

Date submitted to agency: September 11, 2023

1 17 NCAC 07B .0115 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

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4 **17 NCAC 07B .0115 RESEARCH SERVICES**

5 Sales of scientific or research ~~equipment~~equipment, or an attachment or repair part for scientific or research
6 ~~equipment, to independent contract research organizations~~equipment, for use in performing research services for clients are
7 subject to the ~~applicable statutory state~~general State, and ~~applicable local and transit~~ rates of sales or use ~~tax, tax, unless~~
8 ~~exempt by statute. If a contract research organization qualifies under G.S. 105-187.51B(a)(2), then research~~
9 ~~equipment that meets the requirements of that subsection are exempt from sales and use tax.~~

10

11 *History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; ~~105-164.13~~; 105-264; Chapter 105,*
12 *Articles 39, 40, 42, 43, and 46; ~~Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;~~*
13 *Eff. February 1, 1976;*
14 *Amended Eff. October 1, 2009; April 1, 2006; October 1, 1993; October 1, ~~1991~~1991;*
15 *Readopted Eff. January 1, 2024.*

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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .3101

DEADLINE FOR RECEIPT: September 15, 2023

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

What is paragraph (a) referring to? Purchases by radio and television companies? Sales by radio and television companies?

On line 8, what is the definition of "broadcasting or telecasting"?

G.S. 105-164.3(277) defines "video programming" as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of method of delivery." As a result, wouldn't all receipts of television companies derived from broadcasting or telecasting of programs be video programming? If so, the exception seems to eliminate the majority of the rule.

What is the authority to create the exception or impose the tax in paragraph (a)?

It looks like the changes to (b) change gross receipt of movie theaters from non-taxable to taxable. What was the authority to make these receipts non-taxable and what is the authority to now impose a tax?

Per G.S. 105-164.4G(b), "The gross receipts derived from an admission charge to an entertainment activity are taxed at the general rate." Assuming there are not other statutes at play from the previous question, why is paragraph (b) "reasonably necessary to implement or interpret an enactment of the General Assembly," per G.S. 150B-21.9(a)(3)?

Does the department know how much the "gross receipts of movie theaters derived from admissions charges" are statewide? If so, how much is it?

Similarly, does the department have an estimate for the monetary impact of the change to paragraph (b)? If so, what is it?

On line 13, I believe you are missing a word. Should it be something like "Sales of tangible personal property" or "tangible personal property sales"?

Seth Ascher

Commission Counsel

Date submitted to agency: September 12, 2023

Why is paragraph (c) “reasonably necessary to implement or interpret an enactment of the General Assembly,” per G.S. 150B-21.9(a)(3)? Doesn’t the statute make all sales of tangible personal property subject to taxation?

On lines 12 and 15-16, how does one determine what the “applicable local and transit rates of sales or use tax” are? “Applicable” is ambiguous without a rule or statute that fills in that detail.

Regarding the history note, do not include entire articles in the authority section (on lines 11 and 12, “Chapter 105, Articles 39, 40, 42, 43, and 46”). I am not sure that the subject matter of those articles (imposition of local taxes) is necessary for this history note at all, since it does not appear to provide “the authority for the rule,” per 26 NCAC 02C .0406(a), or “cite the law under which the rule is adopted,” per G.S. 150B-21.19.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher
Commission Counsel

Date submitted to agency: September 12, 2023

1 17 NCAC 07B .3101 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

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4 **SECTION .3100 - RADIO AND TELEVISION STATIONS: ~~MOTION PICTURE~~MOVIE THEATRES**

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6 **17 NCAC 07B .3101 ~~RADIO AND TELEVISION: ETC.~~RADIO, TELEVISION, MOVIE THEATRES**
7 **RECEIPTS**

8 (a) Receipts of radio and television companies ~~for derived from~~ the broadcasting or telecasting of programs are not
9 subject to sales or use ~~tax-tax~~, unless the receipts are derived from certain digital property, video programming, or
10 satellite digital audio radio service.

11 (b) ~~Receipts~~The gross receipts of ~~motion picture~~movie theatres derived from admission charges are ~~not~~ subject to
12 the general State, and applicable local and transit rates of sales ~~or~~ and use tax.

13 (c) ~~Motion picture theatres making taxable sales of tangible~~Tangible personal ~~property~~ property, including food,
14 prepared food, and beverages, sold by movie theatres through concession stands or otherwise ~~must register with the~~
15 department and ~~must collect and remit the applicable statutory state~~are subject to the general State, and applicable
16 local ~~and transit rates of sales or~~ and use ~~tax on such sales~~.tax.

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18 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4G; 105-262; 105-264; Chapter 105, Articles 39,*
19 *40, 42, 43, and 46; ~~Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;~~*
20 *Eff. February 1, 1976;*
21 *Amended Eff. May 1, 2009; October 1, 1993; October 1, ~~1991~~.1991;*
22 *Readopted Eff. January 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .3107

DEADLINE FOR RECEIPT: September 15, 2023

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

It looks like the changes to paragraph (a) change cameras, props, building materials used in set construction, chemicals, and equipment used to develop and edit film to produce release prints from non-taxable to taxable. What was the authority to make these goods non-taxable and what is the authority to now impose a tax?

Does the department know how much the sales to production companies of cameras, props, building materials used in set construction, chemicals, and equipment used to develop and edit film to produce release prints are statewide? If so, how much is it?

Similarly, does the department have an estimate for the monetary impact of the change to paragraph (a)? If so, what is it?

What other items are included in the list on lines 5 and 6? As written, this rule appears ambiguous.

On line 10, the p in Paragraph (b) should be capitalized: "Paragraph paragraph (b)".

What is the department's authority to impose the taxes listed in paragraph (a)?

It appears that all of the sales in paragraph (a) are sales of tangible personal property that would be subject to sales tax under G.S. 105-164.4(a)(1)a. Why is paragraph (a) "reasonably necessary to implement or interpret an enactment of the General Assembly," per G.S. 150B-21.9(a)(3)?

On line 10, how does one determine what the "applicable local and transit rates of sales or use tax" are? "Applicable" is ambiguous without a rule or statute that fills in that detail.

What is the department's authority to exempt the items in paragraph (b) from sales tax?

Seth Ascher
Commission Counsel

Date submitted to agency: September 12, 2023

The second sentence of paragraph (a) (lines 8 to 11) states that “chemicals . . . used to develop and edit film that produce release prints” are taxable. The second sentence of paragraph (b) (lines 17 to 18) states that “chemicals . . . used to develop release prints” are not taxable. This appears to be a contradiction. Please clarify and explain how this is not.

Regarding the history note, do not include entire articles in the authority section (on lines 21 and 22, “Chapter 105, Articles 39, 40, 42, 43, and 46”). I am not sure that the subject matter of those articles (imposition of local taxes) is necessary for this history note at all, since it does not appear to provide “the authority for the rule,” per 26 NCAC 02C .0406(a), or “cite the law under which the rule is adopted,” per G.S. 150B-21.19.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher
Commission Counsel

Date submitted to agency: September 12, 2023

1 17 NCAC 07B .3107 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

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4 **17 NCAC 07B .3107 ~~MOTION PICTURE PRODUCTION FIRMS~~PRODUCTION COMPANIES**

5 (a) Sales to ~~motion picture production firms~~a production company, as defined in G.S. 105-164.3, of items including
6 cameras, ~~film~~ machinery, equipment, film, and props or building materials used in the construction of sets ~~which are~~
7 ~~used in the actual filming of movies for sale, lease or rental are exempt from~~ are subject to the general State, and
8 applicable local and transit rates of sales and use tax. ~~The sale~~Sales of ~~chemicals~~chemicals, film, and equipment used
9 to develop and edit film ~~which is used to~~that produce release prints ~~is exempt from~~are subject to the general State, and
10 applicable local and transit rates of sales and use tax unless exempt by paragraph (b) of this Rule or other
11 exemption.

12 (b) ~~Sales of machinery and equipment and other property to motion picture production firms for use in receiving~~
13 ~~tangible personal property and other activities such as raw materials storage, finished goods storage, distribution or~~
14 ~~administration is subject to the applicable statutory state and local sales or use tax.~~

15 (c)(b) ~~The purchase~~Sales of film by a movie to a production company ~~which that~~ becomes an ingredient or a
16 component part of release prints that are actually produced and sold, ~~leased~~leased, or rented to its customers are
17 exempt from sales and use tax. ~~Also,~~Sales of chemicals ~~which are~~used to develop release prints ~~that are~~ for sale,
18 lease-lease, or rental ~~that become an ingredient or a component part of the release prints~~ are exempt from tax.

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20 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; ~~105-164.13;~~*
21 *Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;Chapter 105, Articles 39, 40,*
22 *42, 43, and 46;*
23 *Eff. June 1, 1992;*
24 *Amended Eff. October 1, 2009; October 1, ~~1993~~1993;*
25 *Readopted Eff. January 1, 2024.*
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