

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .4206

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:

Generally, to the Rule: Explain the Secretary's authority to impose a tax.

Generally, to the Rule: Explain why this Rule is necessary pursuant to G.S. 150B-21.9(a)(3). The Rule basically states that sales to federal savings and loan associations, national banks, state banks, and chartered credit unions are subject to "applicable" tax. When would they not be subject to the tax if the tax were applicable?

The Rule then goes on to state that sales to federal savings and loan associations, national banks, state banks and chartered credit unions are subject to a "applicable" tax "unless exempt by statute." If the sale was exempt, how would the tax be applicable?

Line 13: Please cite the specific statutes within the Articles listed.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: September 11, 2023

1 17 NCAC 07B .4206 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:

3
4 **17 NCAC 07B .4206 FED SAVINGS/LOAN ASSOC, NATL ~~BANKS/ST~~ BANKS/ST AND STATE**
5 **BANKS, CHARTERED CREDIT UNIONS**

6 (a) Sales ~~of tangible personal property to~~, or purchases by, federal savings and loan associations and national banks
7 ~~for use or consumption of items~~, as the term item is defined in G.S. 105-164.3, are subject to the applicable statutory
8 ~~state~~State and local ~~rates of sales or and use tax-tax~~, unless exempt by statute. See 12 U.S.C. § 1464(h) and 548.

9 (b) Sales ~~of tangible personal property to~~, or purchases by, state banks and state chartered credit unions ~~for use or~~
10 ~~consumption of items~~ are subject to the applicable statutory ~~state~~State and local ~~rates of sales or and use tax-tax~~, unless
11 ~~exempt by statute.~~

12
13 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-264.26; 105-262; 105-264; Article 39;*
14 *Article 40; Article 42; Article 43; Article 44; Chapter 105, Articles 39, 40, 42, 43, and 46; 12 U.S.C.*
15 *1464(h); 12 U.S.C. 548;*
16 *Eff. February 1, 1976;*
17 *Amended Eff. September 1, 2006; January 1, 1995; October 1, 1993; October 1, ~~1991-1991~~;*
18 *Readopted Eff. January 1, 2024.*

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .4415

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:

Lines 5-6: Pursuant to G.S. 105-164.4G(b), admission charges to an entertainment activity are taxed.

Pursuant to G.S. 105-164.4G(e)(1), amounts paid “solely to participate” in “sporting activities” are excepted from the tax. The subsection further provides “bowling fees, golf fees, and gym memberships” as examples of the types of charges which are not subject to the tax.

These lines appear to be a mere restatement of the statute regarding bowling fees. Given that the statute specifically addresses “bowling fees” explain why it is reasonably necessary, pursuant to G.S. 150B-21.9(a)(3), that they included in the rule?

Line 6-8: Explain the Secretary’s authority to subject anyone to a tax.

Lines 6-8: If a sale is subject to a tax pursuant to a statute, why is it reasonably necessary to restate, pursuant to G.S. 150B-21.9(a)(3), that the sale is subject to a tax in a rule?

Lines 8-9: Explain the Secretary’s authority to subject anyone to a tax.

Lines 8-9: If a sale is subject to a tax pursuant to a statute, why is it reasonably necessary to restate, pursuant to G.S. 150B-21.9(a)(3), that the sale is subject to a tax in a rule?

Lines 11-12: Please cite the specific statutes within the Articles listed.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: September 11, 2023

1 17 NCAC 07B .4415 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 .4415 SKATING RINK AND BOWLING ALLEY RENTAL FEES**

5 ~~Charges-Admission charges~~ for the use of a skating rink or bowling alley to skate or bowl are not subject to sales or
6 use ~~taxes;tax.~~ ~~however, if such businesses rent~~Charges for the rental of tangible personal property, such as skates and
7 ~~shoes, charges for same~~shoes are subject to the general State, and applicable local and transit rates of sales and use
8 tax. ~~Sales-Retail sales of tangible personal property items~~ by such businesses are subject to the applicable ~~statutory~~
9 ~~state and local~~rates of sales or use tax.

10

11 *History Note: Authority G.S. ~~105-164.3; 105-164.4; 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and~~*
12 *~~46; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;~~*
13 *Eff. February 1, 1976;*
14 *Amended Eff. May 1, 2009; October 1, 1993; October 1, ~~1991; 1991;~~*
15 *Readopted Eff. January 1, 2024.*

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .5002

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:

Lines 5-12, Paragraph (a): If it meets the Secretary's intention, consider:

- (a) Pursuant to G.S. 105-164.3(191), prosthetic devices include eye glass frames and the component parts thereof, when sold for the repair or replacement of corrective eyeglasses for human use.*
- (b) Any seller claiming that a sale is exempt pursuant to Paragraph (a) shall maintain sales records of the sale for X years after the sale. (Or perhaps in accordance with 17 NCAC 07B .4801, but if .4801 already requires the records, why do you need lines 8-12?)*

Line 7, Paragraph (a): "similar items" is ambiguous.

Line 7, Paragraph (a): "considered" by whom? Using what criteria? Consider striking language.

Lines 13-15, Paragraph (b): Explain why this Paragraph is necessary pursuant to G.S. 150B-21.9(3). If there is a statute which makes the sale subject to tax, it does not need to be restated in a rule. That which is not exempt is already subject to tax and the Secretary does not have the authority to make anything subject to a tax which is not already subject to a tax.

Lines 16-18, Paragraph (c): Explain the Secretary's authority to make items sold at wholesale exempt when G.S. 105-164.13 states "the sale at retail."

Line 17, Paragraph (c): "registered" how? Pursuant to what?

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

William W. Peaslee
Commission Counsel

Date submitted to agency: September 12, 2023

1 17 NCAC 07B .5002 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 .5002 EYEGLASS FRAMES AND REPAIR PARTS**

5 (a) Eyeglass frames sold in connection with the repair or replacement of corrective eyeglasses for human use ~~ground~~
6 on prescription of physicians, oculists, or optometrists are not subject to the tax-exempt from sales and use tax as
7 prosthetic devices. Sales of temples and similar items that are considered repair or replacement parts for prosthetic
8 devices are also exempt from sales and use tax. A person who sells corrective eyeglass frames and repair parts for
9 corrective eyeglasses for human use shall keep sales records that clearly separate its sales of corrective eyeglass frames
10 and repair parts for corrective eyeglasses for human use from sales of other items. Failure of a person to keep records
11 that establish a sale is exempt from sales and use tax subjects the person to liability for the general State, and applicable
12 local and transit rates of sales and use tax on the sale.

13 (b) Eyeglass frames or other parts sold in connection with the repair or replacement of non-corrective eyeglasses for
14 human use that do not meet the definition of a prosthetic device in G.S. 105-164.3, or are not specifically exempt by
15 statute, are subject to the general State, and applicable local and transit rates of sales and use tax.

16 ~~(b)(c)~~ (c) Sales of eyeglass frames, repair parts for eyeglasses, cases, optical ~~merchandise~~ merchandise, and optical
17 supplies by optical supply houses and opticians to registered merchants, including oculists and optometrists, retailers
18 or wholesale merchants for resale are not subject to the tax-exempt from sales and use tax.

19
20 *History Note: Authority G.S. 105-164.3; 105-164.4; ~~105-164.5; 105-164.6; 105-164.13; 105-164.22; 105-262;~~*
21 *105-264; Chapter 105, Articles 39, 40, 42, 43, and 46;*
22 *Eff. February 1, ~~1976~~1976;*
23 *Readopted Eff. January 1, 2024.*
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