



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

November 20, 2023

Laura Lansford, Rule-making Coordinator  
N.C. Department of Revenue  
**Sent via email only to: [Lauralansford@ncdor.gov](mailto:Lauralansford@ncdor.gov)**

Re: Objection to 17 NCAC 07B .3101

Dear Ms. Lansford:

This letter will serve as the written notice of objection pursuant to G.S. 150B-21.12(a).

At its meeting on November 16, 2023, the Rules Review Commission continued its objection to the above captioned rule finding that the rule did not satisfy G.S. 150B-21.9(a). Specifically, the Commission adopted the written opinion of staff attached hereto.

Please respond to these objections pursuant to G.S. 150B-21.12(a)(1) or (2), and (b).

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

/s/ Seth Ascher  
Seth Ascher  
Commission Counsel

Attachment

**Donald Robert van der Vaart**, Director  
Chief Administrative Law Judge

**John C. Evans**  
Senior Administrative Law Judge

*An Equal Employment Opportunity Employer*  
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## RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Department of Revenue

RULE CITATION: 17 NCAC 07B .3101

RECOMMENDATION DATE: November 14, 2023

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
  - Lack of statutory authority
  - Unclear or ambiguous
  - X Unnecessary
    - Failure to comply with the APA
  - Extend the period of review

COMMENT:

*The Commission objected to this rule at its September 2023 meeting for lack of necessity and lack of clarity. The agency has revised the rule and staff believes that these revisions have resolved the clarity objection, but have not resolved the necessity objection. Therefore, staff recommends continuing objection on the grounds of necessity.*

### *I. Clarity*

*Staff believes that the final revised version of this rule has also resolved the prior clarity objections. The agency has rewritten the rule to reference a specific statutory term that is potentially ambiguous. The agency has also removed ambiguous language about "applicable taxes" and "unless exempt by statute".*

### *II. Necessity*

*Staff believes that the agency has not resolved the necessity objections to paragraphs (b) and (c) in their revised version of the rules.*

*In sum, the agency has added statutory references to paragraphs (b) and (c). However, the statutes referenced in those paragraphs are not ambiguous in application to the circumstances described. As stated in the September 19, 2023 staff opinion recommending objection: "To the*

Seth Ascher  
Commission Counsel

*extent that paragraphs (b) and (c) of this rule are interpreting statutory language, paragraph (b) is stating that going to the movie theater is an entertainment activity and paragraph (c) is stating that sales through movie theater concession stands are retail sales. These “interpretations” appear to be plain on the face of the statute. As a result, paragraphs (b) and (c) of this rule are unnecessary.”*

*Therefore, staff believes that the agency has not resolved the necessity objection to paragraphs (b) and (c), as fully described in the September 19, 2023 staff opinion.*