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 .0115

RECOMMENDATION DATE: September 18, 2023

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

X Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff recommends objection to this rule as unnecessary. Secondarily, staff recommends objection to this rule as ambiguous. Finally, staff notes that if the Commission disagrees and approves the rule, there are technical corrections to the history note that should be made.[1]

I. Necessity

G.S. 150B-21.9(a)(3) charges the Commission with determining whether a rule: "is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed."

The department is implementing G.S. 105-164.4(a)(1), which states in relevant part: "The general rate of tax applies to the following items sold at retail: . . . The sales price of each article of tangible personal property that is not subject to tax under another subdivision in this section. A sale of a freestanding appliance is a retail sale of tangible personal property."

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1 Note that staff issued a request for changes on September 11 with a deadline to respond by September 15. The Department has not responded to the request for changes. In describing the Department's position, staff is relying on communications with the department from a September 7 video call and a September 14 email.

Seth Ascher
Commission Counsel

The rule at issue reads: "Sales of scientific or research equipment, or an attachment or repair part for scientific or research equipment, for use in performing research services are subject to the general State and applicable local and transit rates of sales or use tax, unless exempt by statute."

The Department asserted in a call with staff that this rule is interpreting a law administered by the Secretary, an authority granted by G.S. 105-264(a), which reads in full:

> *It is the duty of the Secretary to interpret all laws administered by the Secretary. The Secretary's interpretation of these laws shall be consistent with the applicable rules. An interpretation by the Secretary is prima facie correct. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive on the law, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes an interpretation, a taxpayer who relied on it before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the interpretation was changed and was not paid by reason of reliance upon the interpretation.*

G.S. 105-264(a) establishes the Secretary's duty to interpret certain laws and acknowledges that such interpretations might be contained in rules, bulletins, or directives. It does not excuse the Secretary from the APA's requirement that only "reasonably necessary" rules be approved by this Commission and put in the code.

Staff's opinion is that this rule is not necessary. Assuming arguendo that this rule is "interpreting" specific statutory language, it appears to be stating that "scientific or research equipment" is "tangible personal property." This interpretation is trivially obvious and something with which no reasonable person could disagree. As a result, the rule is unnecessary.

Put another way, if this rule were repealed, it appears that nothing would change about the actual sales tax implementation in this State. Given such an effect, it could not be said that this rule is "necessary to implement or interpret" an enactment of the General Assembly.

II. Clarity

G.S. 150B-21.9(a)(2) charges the Commission with determining whether a rule is "clear and unambiguous." This rule also presents three clarity problems.

First, this rule, like many rules currently pending at the Commission from the Department of Revenue, establishes discrete categories of personal property and buyers which are subject to sales tax. When these categories are already covered by broad rules or statutes with an obvious application, as discussed in the necessity section, the negative implication created by leaving other categories out introduces legal ambiguity. To give a concrete example of this problem, there is no rule which makes the sales of toys for use in the amusement of children subject to sales tax. Someone reading the rules and seeing this level of granularity for "research equipment" could be misled into believing the lack of rules about toys excuses them from sales tax, contrary to the statute.

Second, the rule suggests that the Department of Revenue is "subjecting" certain categories of purchase to sales tax. This is outside the scope of the Department's authority, and the Department agreed in a call with staff that this is not the authority which is being asserted by this rule. As

discussed above, the Department appears to be enacting this rule under the Secretary's authority to interpret laws administered by the Secretary. Facially the rule is unclear on this point.

As written, this rule appears to be a statement of law enacted by the Department as opposed to an interpretation of law enacted by the General Assembly. This distinction is important because G.S. 105-264(a) establishes that "an interpretation by the Secretary is prima facie correct," a different standard than would be applied to a rule enacting a new requirement. Given this statutory language, taxpayers and judges reading the rule should be given a clear indication of the nature of the Department's enactment of the rule.

Third, this rule includes language indicating that sales are subject to "applicable local and transit rates of sales or use tax, unless exempt by statute." The question of what local and transit taxes are applicable is left unanswered by the rule and the Department has not identified other rules or statutes that would determine the issue.

III. Technical Correction

Finally, if the Commission disagrees on the above grounds and approves this rule, the Commission should require technical corrections to the history note. The Department has included references to entire articles in the authority section of the history note: "Chapter 105, Articles 39, 40, 42, 43, and 46." These articles give counties a means of approving increases to local sales tax.

The inclusion of articles (as opposed to pinpoint citations) is contrary to the Commission's style guide. Further it does not advance the statutory purpose of the authority section of the history note, to "cite the law under which the rule is adopted," G.S. 150B-21.19. These articles also do not seem to be part of "the authority for the rule," as is required by 26 NCAC 02C .0406(a).

Seth Ascher
Commission Counsel

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

17 NCAC 07B .0115 RESEARCH SERVICES

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

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

RRC STAFF OPINION

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AGENCY: North Carolina Department of Revenue

RULE CITATION: 17 NCAC 07B .3101

RECOMMENDATION DATE: September 18, 2023

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

X Unclear or ambiguous

X Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Based on the changes made to this rule, staff believes a fiscal note may be necessary. However, it does not appear that the Department has prepared one. Therefore, staff recommends that the Commission ask OSBM to determine if a fiscal note is necessary.

Additionally, staff recommends objection to this rule as ambiguous. Because of this ambiguity there are also potential authority problems in the rule. Secondarily, there are sections of this rule which appear to merit objection as unnecessary. Finally, staff notes that if the Commission disagrees and approves the rule, there are technical corrections to the rule that should be made.[1]

I. Fiscal note

Per G.S. 150B-1(d)(4), the Department of Revenue is exempt from the notice and hearing requirements contained in Part 2 of Article 2A, which arguably could include the fiscal note requirements in the APA. However, the statute granting the Secretary of Revenue authority to make rules contains a more specific provision regarding fiscal notes. G.S. 105-262(c) provides that "the Secretary must ask the Office of State Budget and Management to prepare a fiscal note

1 Note that staff issued a request for changes on September 11 with a deadline to respond by September 15. The Department has not responded to the request for changes. In describing the Department's position, staff is relying on communications with the department from a September 7 video call and a September 14 email.

Seth Ascher
Commission Counsel

for a proposed new rule or a proposed change to a rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The Secretary shall not take final action on a proposed rule change that has a substantial economic impact until at least 60 days after the fiscal note has been prepared." Under this statute, it is clear that if a required fiscal note was not prepared, the Secretary would lack authority to adopt a rule.

Per G.S. 150B-21.4(b1), " 'substantial economic impact' means an aggregate financial impact on all persons affected of at least one million dollars ($1,000,000) in a 12-month period." In relevant part, changes to paragraph (b) of this rule appear to eliminate an exception from sales tax for the gross receipts of movie theater admission charges. The Department did not provide any information about the potential economic impact of this change. However, it appears from generally available internet sources that the nationwide annual gross for movie ticket sales was in excess of 7 billion dollars.[2] Given the relative size of North Carolina, it is likely that our state makes up more than 1/50th of annual ticket sales. However, even if North Carolina only made up 1/50th of ticket sales, that would amount to one hundred and forty million dollars, and applying only the state rate of sales tax would amount to over 6.5 million dollars. To be clear, this is likely an underestimate of the annual sales tax revenue from ticket sales based on these numbers, but it is already in excess of 1 million dollars and would require a fiscal note under the statute.

Per G.S. 150B-21.9(a), "The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note." Under the circumstances, staff believes the appropriate course of action would be to make this request of OSBM.

II. Clarity

G.S. 150B-21.9(a)(2) charges the Commission with determining whether a rule is "clear and unambiguous."

Paragraph (a) is unclear. Staff is unsure what "receipts of radio and television companies derived from the broadcasting or telecasting of programs" is meant to cover. At minimum it is unclear whether this covers receipts from purchases or sales. Additionally, the phrase "broadcasting or telecasting" does not appear to be defined in rule or statute and could be subject to multiple interpretations.

Paragraphs (b) and (c) include language indicating that sales are subject to "applicable local and transit rates of sales or use tax, unless exempt by statute." The question of what local and transit taxes are applicable is left unanswered by the rule and the Department has not identified other rules or statutes that would determine the issue.

Finally, it is unclear whether this entire rule is meant to create new regulations imposed by the Department or serve as an interpretation of existing rules or statutes. The rule is written as though it is a regulation imposed by the Department, but this is potentially inconsistent with information provided by the Department about their rules generally in a call with staff. This distinction is important because G.S. 105-264(a) establishes that "an interpretation by the Secretary is prima facie correct," a different standard than would be applied to a rule enacting a new requirement. Given this statutory language, taxpayers and judges reading the rule should be given a clear indication of the nature of the Department's enactment of the rule.

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2 See, e.g., https://www.boxofficemojo.com/year/

III. Authority

G.S. 150B-21.9(a)(2) charges the Commission with determining whether a rule is "within the authority delegated to the agency by the General Assembly."

Because of the clarity problems identified above, staff is limited in their ability to opine on the Department's authority to make this rule. However, staff has several initial concerns.

If this rule imposes taxes and creates exceptions, the Department does not appear to have the authority to do so. The Secretary's authority under G.S. 105-262(a) is to "adopt rules need to administer a tax collected by the Secretary or to fulfill another duty delegated to the Secretary." That authority does not extend to determining what is and is not taxed.

If this rule is interpreting statutes imposing taxes, it is unclear how these interpretations relate to statutory taxes. Paragraph (a) describes an exception to sales tax that staff has been unable to locate elsewhere in rule or statute. Changes to paragraph (b) eliminate an exception to sales tax and staff has been unable to locate the basis for this exception or its elimination in rule or statute.

As a result of these issues related to clarity, staff recommends that the Commission object on the grounds of authority because the Commission is unable to determine whether the Department has authority to make this rule.

IV. Necessity

G.S. 150B-21.9(a)(3) charges the Commission with determining whether a rule: "is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed."

Although paragraph (a) of the rule is unclear, it appears that an exception in the paragraph would eliminate most of the rule, rendering it unnecessary. Paragraph (a) provides that "receipts of radio and television companies derived from the broadcasting or telecasting of programs are not subject to sales or use tax, unless the receipts are derived from certain digital property, video programming, or satellite digital audio radio service."

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, it would appear that all receipts of television companies derived from broadcasting or telecasting programs would be video programming. As a result, the exception seems to eliminate most of the rule.

Paragraph (c) states that "Tangible personal property, including food, prepared food, and beverages, sold by movie theatres through concession stands or otherwise are subject to the general State, and applicable local and transit rates of sales and use tax."

It appears that the Department is implementing G.S. 105-164.4(a)(1), which states in relevant part: "The general rate of tax applies to the following items sold at retail: . . . The sales price of each article of tangible personal property that is not subject to tax under another subdivision in this section. A sale of a freestanding appliance is a retail sale of tangible personal property."

While the Department has not responded to a request for changes to this rule, the necessity issue raised by paragraph (c) is similar to the necessity issue raised by 17 NCAC 07B .0115.

Regarding .0115, the Department asserted in a call with staff that the rule was interpreting a law administered by the Secretary, an authority granted by G.S. 105-264(a), which reads in full:

> *It is the duty of the Secretary to interpret all laws administered by the Secretary. The Secretary's interpretation of these laws shall be consistent with the applicable rules. An interpretation by the Secretary is prima facie correct. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive on the law, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes an interpretation, a taxpayer who relied on it before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the interpretation was changed and was not paid by reason of reliance upon the interpretation.*

G.S. 105-264(a) establishes the Secretary's duty to interpret certain laws and acknowledges that such interpretations might be contained in rules, bulletins, or directives. It does not excuse the Secretary from the APA's requirement that only "reasonably necessary" rules be approved by this Commission and put in the code.

Staff's opinion is that paragraph (c) is not necessary. Assuming arguendo that this paragraph is "interpreting" specific statutory language, it appears to be stating that sales of tangible personal property through movie theater concession stands are retail sales of tangible personal property. This interpretation is trivially obvious and something with which no reasonable person could disagree. As a result, the paragraph is unnecessary.

Put another way, if this paragraph were repealed, it appears that nothing would change about the actual sales tax implementation in this State. Given such an effect, it could not be said that this portion of the rule is "necessary to implement or interpret" an enactment of the General Assembly.

V. Technical corrections

Finally, if the Commission disagrees on the above grounds and approves this rule, the Commission should require technical corrections to the history note. The Department has included references to entire articles in the authority section of the history note: "Chapter 105, Articles 39, 40, 42, 43, and 46." These articles give counties a means of approving increases to local sales tax.

The inclusion of articles (as opposed to pinpoint citations) is contrary to the Commission's style guide. Further it does not advance the statutory purpose of the authority section of the history note, to "cite the law under which the rule is adopted," G.S. 150B-21.19. These articles also do not seem to be part of "the authority for the rule," as is required by 26 NCAC 02C .0406(a).

Seth Ascher
Commission Counsel

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

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

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

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

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

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

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

RRC STAFF OPINION

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AGENCY: North Carolina Department of Revenue

RULE CITATION: 17 NCAC 07B .3107

RECOMMENDATION DATE: September 21, 2023

RECOMMENDED ACTION:

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

X Unclear or ambiguous

X Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Based on the changes made to this rule, staff believes a fiscal note may be necessary. However, it does not appear that the Department has prepared one. Therefore, staff recommends that the Commission ask OSBM to determine if a fiscal note is necessary.

Additionally, staff recommends objection to this rule as ambiguous. Because of this ambiguity there are also potential authority problems in the rule. Secondarily, there are sections of this rule which appear to merit objection as unnecessary. Finally, staff notes that if the Commission disagrees and approves the rule, there are technical corrections to the rule that should be made.[1]

I. Fiscal note

Per G.S. 150B-1(d)(4), the Department of Revenue is exempt from the notice and hearing requirements contained in Part 2 of Article 2A, which arguably could include the fiscal note requirements in the APA. However, the statute granting the Secretary of Revenue authority to make rules contains a more specific provision regarding fiscal notes. G.S. 105-262(c) provides that "the Secretary must ask the Office of State Budget and Management to prepare a fiscal note for a proposed new rule or a proposed change to a rule that has a substantial economic impact,

1 Note that staff issued a request for changes on September 11 with a deadline to respond by September 15. The Department has not responded to the request for changes. In describing the Department's position, staff is relying on communications with the department from a September 7 video call and a September 14 email.

Seth Ascher
Commission Counsel

as defined in G.S. 150B-21.4(b1). The Secretary shall not take final action on a proposed rule change that has a substantial economic impact until at least 60 days after the fiscal note has been prepared." Under this statute, it is clear that if a required fiscal note was not prepared, the Secretary would lack authority to adopt a rule.

Per G.S. 150B-21.4(b1), " 'substantial economic impact' means an aggregate financial impact on all persons affected of at least one million dollars ($1,000,000) in a 12-month period." In relevant part, changes to paragraph (a) of this rule appear to eliminate a sales tax exemption for 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. The Department provided no information about the economic impact of these changes and staff is unable to provide an estimate for the financial impact of these change, but it reasonably could be over one million dollars.

Per G.S. 150B-21.9(a), "The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note." Under the circumstances, staff believes the appropriate course of action would be to make this request of OSBM.

II. Clarity

G.S. 150B-21.9(a)(2) charges the Commission with determining whether a rule is "clear and unambiguous."

Paragraph (a) indicates in part that "Sales to a production company, as defined in G.S. 105-164.3, of items including cameras, machinery, equipment, film, and props or building materials used in the construction of sets are subject to the general State, and applicable local and transit rates of sales and use tax." It is unclear what other items would be "included" in the sales covered here.

Paragraph (a) also includes language in two places indicating that sales are subject to "applicable local and transit rates of sales or use tax, unless exempt by statute." The question of what local and transit taxes are applicable is left unanswered by the rule and the Department has not identified other rules or statutes that would determine the issue.

The second sentence of paragraph (a) states that "chemicals . . . used to develop and edit film that produce release prints" are taxable. The second sentence of paragraph (b) states that "chemicals . . . used to develop release prints" are not taxable. This appears to be a contradiction leaving it unclear what taxes apply to these puchases.

Finally, it is unclear whether this entire rule is meant to create new regulations imposed by the Department or serve as an interpretation of existing rules or statutes. The rule is written as though it is a regulation imposed by the Department, but this is potentially inconsistent with information provided by the Department about their rules generally in a call with staff. This distinction is important because G.S. 105-264(a) establishes that "an interpretation by the Secretary is prima facie correct," a different standard than would be applied to a rule enacting a new requirement. Given this statutory language, taxpayers and judges reading the rule should be given a clear indication of the nature of the Department's enactment of the rule.

III. Authority

Seth Ascher
Commission Counsel

G.S. 150B-21.9(a)(2) charges the Commission with determining whether a rule is "within the authority delegated to the agency by the General Assembly."

Because of the clarity problems identified above, staff is limited in their ability to opine on the Department's authority to make this rule. However, staff has several initial concerns.

If this rule imposes taxes and creates exceptions, the Department does not appear to have the authority to do so. The Secretary's authority under G.S. 105-262(a) is to "adopt rules need to administer a tax collected by the Secretary or to fulfill another duty delegated to the Secretary." That authority does not extend to determining what is and is not taxed.

If this rule is interpreting statutes imposing taxes, it is unclear how these interpretations relate to statutory taxes. Staff has been unable to locate statutes specific to taxation of production companies that these rules could be interpreting.

As a result of these issues related to clarity, staff recommends that the Commission object on the grounds of authority because the Commission is unable to determine whether the Department has authority to make this rule.

IV. Necessity

G.S. 150B-21.9(a)(3) charges the Commission with determining whether a rule: "is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed."

It is possible that this rule is interpreting G.S. 105-164.4(a)(1), which states in relevant part: "The general rate of tax applies to the following items sold at retail: . . . The sales price of each article of tangible personal property that is not subject to tax under another subdivision in this section. A sale of a freestanding appliance is a retail sale of tangible personal property."

While the Department has not responded to a request for changes to this rule, the necessity issue may be similar to the necessity issue raised by 17 NCAC 07B .0115.

Regarding .0115, the Department asserted in a call with staff that the rule was interpreting a law administered by the Secretary, an authority granted by G.S. 105-264(a), which reads in full:

> *It is the duty of the Secretary to interpret all laws administered by the Secretary. The Secretary's interpretation of these laws shall be consistent with the applicable rules. An interpretation by the Secretary is prima facie correct. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive on the law, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes an interpretation, a taxpayer who relied on it before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the interpretation was changed and was not paid by reason of reliance upon the interpretation.*

G.S. 105-264(a) establishes the Secretary's duty to interpret certain laws and acknowledges that such interpretations might be contained in rules, bulletins, or directives. It does not excuse

the Secretary from the APA's requirement that only "reasonably necessary" rules be approved by this Commission and put in the code.

If this rule is interpreting G.S. 105-164.4(a)(1), staff believes this rule is unnecessary. Assuming arguendo that this rule is "interpreting" that specific statutory language, it appears to be stating that sales of certain items of tangible personal property to production companies are retail sales of tangible personal property. This interpretation is trivially obvious and something with which no reasonable person could disagree. As a result, the rule is unnecessary.

However, staff is unaware of the origin of the exception being repealed and the Department has not provided that information. Under these circumstances, staff recommends objection because the Department has not provided sufficient information for the Commission to determine if the rule is necessary.

V. Technical corrections

Finally, if the Commission disagrees on the above grounds and approves this rule, the Commission should require technical corrections to the text and history note.

Per the Commission's style guide, the word "paragraph" on line 10 should be capitalized.

The Department has included references to entire articles in the authority section of the history note: "Chapter 105, Articles 39, 40, 42, 43, and 46." These articles give counties a means of approving increases to local sales tax.

The inclusion of articles (as opposed to pinpoint citations) is contrary to the Commission's style guide. Further it does not advance the statutory purpose of the authority section of the history note, to "cite the law under which the rule is adopted," G.S. 150B-21.19. These articles also do not seem to be part of "the authority for the rule," as is required by 26 NCAC 02C .0406(a)

Seth Ascher
Commission Counsel

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

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

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

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

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

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