

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 .4206

RECOMMENDATION DATE: September 18, 2023

RECOMMENDED ACTION:

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

COMMENT:

I.

AS WRITTEN, IT IS UNCLEAR WHETHER THE SECRETARY INTENDS THE LANGUAGE OF THE RULE TO BE A RESTATEMENT OF EXISTING LAW, AN ATTEMPT TO IMPOSE REGULATION, OR AN INTERPRETATION OF EXISTING LAW. ACCORDINGLY, STAFF RECOMMENDS OBJECTION TO THE RULE PURSUANT TO G.S. 150B-21.9(A)(2).

ASSUMING ARGUENDO THAT THE COMMISSION FINDS THE LANGUAGE TO BE CLEAR AND UNAMBIGUOUS REGARDING THE SECRETARY'S INTENT, STAFF RECOMMENDS OBJECTION ON THE FOLLOWING BASES:

II.

IF THE RRC FINDS THAT THE LANGUAGE IS A RESTATEMENT OF EXISTING LAW, STAFF RECOMMENDS OBJECTION AS THE RULE IS NOT REASONABLY NECESSARY PURSUANT TO G.S. 150B-21.9(A)(3). THE LANGUAGE DOES NOT, AS A RESTATEMENT OF EXISTING LAW, IMPLEMENT OR INTERPRET EXISTING LAW, AND TO THE EXTENT THAT IT DOES, IT IS UNNECESSARY. IN ITS REQUEST FOR CHANGES DATED SEPTEMBER 11, 2023, STAFF INQUIRED ABOUT THE NECESSITY OF THE RULE. THE SECRETARY WAS UNRESPONSIVE. ACCORDINGLY, STAFF RECOMMENDS OBJECTION PURSUANT TO G.S. 150B-21.9(A)(3).

III.

IF THE RRC FINDS THAT THE LANGUAGE WAS AN ATTEMPT TO REGULATE, THE SECRETARY DOES NOT HAVE THE AUTHORITY TO "SUBJECT" ANYONE TO A TAX, WHETHER THE TAX IS "APPLICABLE" OR

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NOT. IN ITS REQUEST FOR CHANGES DATED SEPTEMBER 11, 2023, STAFF INQUIRED ABOUT THE SECRETARY'S AUTHORITY TO IMPOSE A TAX. THE SECRETARY WAS UNRESPONSIVE. ACCORDINGLY, STAFF RECOMMENDS OBJECTION PURSUANT TO G.S. 150B-21.9(A)(1).

IV.

PURSUANT TO G.S. 150B-2(8A), A "RULE" IS DEFINED INTER ALIA AS "STATEMENTS OF GENERAL APPLICABILITY THAT IMPLEMENTS OR INTERPRETS AN ENACTMENT OF THE GENERAL ASSEMBLY OR CONGRESS OR A REGULATION ADOPTED BY A FEDERAL AGENCY OR THAT DESCRIBES THE PROCEDURE OR PRACTICE REQUIREMENTS OF AN AGENCY."

BASED UPON THE AGENCY'S RESPONSES¹ TO QUESTIONS ABOUT THE STATUTORY AUTHORITY FOR OTHER RULES, STAFF BELIEVES THE SECRETARY IS INTENDING TO MAKE AN INTERPRETATION OF EXISTING LAW; HOWEVER AS PREVIOUSLY STATED THE LANGUAGE EMPLOYED BY THE SECRETARY IS AMBIGUOUS.

IN THE RULE'S HISTORY NOTE, THE SECRETARY ALSO CITES INTER ALIA FIVE ENTIRE ARTICLES OF CHAPTER 105 OF THE NORTH CAROLINA GENERAL STATUTES WITHOUT ANY GREATER SPECIFICITY.

IN THE RULE'S HISTORY NOTE, THE SECRETARY ALSO CITES G.S. 105-264.26, WHICH DOES NOT EXIST.

IN THE RULE'S HISTORY NOTE, THE SECRETARY CITES 12 U.S.C. 1464(H) WHICH STATES, "NO STATE, COUNTY, MUNICIPAL, OR LOCAL TAXING AUTHORITY MAY IMPOSE ANY TAX ON FEDERAL SAVINGS ASSOCIATIONS OR THEIR FRANCHISE, CAPITAL, RESERVES, SURPLUS, LOANS, OR INCOME GREATER THAN THAT IMPOSED BY SUCH AUTHORITY ON OTHER SIMILAR LOCAL MUTUAL OR COOPERATIVE THRIFT AND HOME FINANCING INSTITUTIONS."

IN THE RULE'S HISTORY NOTE, THE SECRETARY ALSO CITES 12 U.S.C. 548 WHICH STATES, "FOR THE PURPOSES OF ANY TAX LAW ENACTED UNDER AUTHORITY OF THE UNITED STATES OR ANY STATE, A NATIONAL BANK SHALL BE TREATED AS A BANK ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OR OTHER JURISDICTION WITHIN WHICH ITS PRINCIPAL OFFICE IS LOCATED."

IT IS UNCLEAR WHETHER AND TO WHAT EXTENT THE SECRETARY IS MAKING AN INTERPRETATION, AND IF SO OF WHAT, OR WHETHER THE INTERPRETATION MEETS THE STANDARDS OF G.S. 150B-21.9. AGAIN, THE SECRETARY WAS UNRESPONSIVE TO THE REQUEST FOR CHANGES AND THE QUESTIONS POSED THEREIN WHICH MAY HAVE PROVIDED CLARITY.

PURSUANT TO G.S. 150B-21.9 THE COMMISSION "MUST DETERMINE WHETHER A RULE MEETS" ALL OF THE CRITERIA IN SECTION (A). IT APPEARS TO STAFF THAT THE COMMISSION IS UNABLE TO MAKE THAT DETERMINATION BASED UPON THE LANGUAGE OF THE RULE. ACCORDINGLY, STAFF RECOMMENDS OBJECTION TO THE RULE PURSUANT TO G.S. 150B-21.9(A)(1)-(3).

V.

AS WRITTEN, BOTH PARAGRAPH (A) AND (B) ARE FACIALLY UNNECESSARY AND AMBIGUOUS. THE RULE STATES THE CERTAIN SALES ARE SUBJECT TO APPLICABLE TAX RATES, "UNLESS EXEMPT". THIS IS TANTAMOUNT TO STATING THAT A SALE IS SUBJECT TO A TAX RATE UNLESS IT IS NOT. ACCORDINGLY, STAFF RECOMMENDS OBJECTION TO G.S. 150B-21.9(A)(2) & (3).

¹ SEE THE EMAIL FROM DOR DIVISION DIRECTOR ANDREW FURUSETH DATED SEPTEMBER 6, 2023.

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - **The Commission must determine whether a rule meets all of the following criteria:**

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It 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.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

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. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

§ 150B-2. Definitions.

As used in this Chapter, the following definitions apply:

- (1) Administrative law judge. - A person appointed under G.S. 7A-752, 7A-753, or 7A-757.
- (1a) Adopt. - To take final action to create, amend, or repeal a rule.
- (1b) Agency. - An agency or an officer in the executive branch of the government of this State. The term includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.
- (1c) Codifier of Rules. - The person appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings pursuant to G.S. 7A-760(b).
- (1d) Commission. - The Rules Review Commission.
- (2) Contested case. - An administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. The term does not include rulemaking, declaratory rulings, or the award or denial of a scholarship, a grant, or a loan.
- (2a) Repealed by Session Laws 1991, c. 418, s. 3.
- (2b) Hearing officer. - A person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article.
- (3) License. - Any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes, occupational licenses, and certifications of electronic poll books, ballot duplication systems, or voting systems under G.S. 163-165.7.
- (4) Licensing. - Any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. The term does not include controversies over whether an examination was fair or whether the applicant passed the examination.
- (4a) Occupational license. - Any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.
- (4b) Occupational licensing agency. - Any board, commission, committee, or other agency of the State that is established for the primary purpose of regulating the entry of persons into, or the conduct of persons within a particular profession, occupation, or field of endeavor, and that is authorized to issue and revoke licenses. The term does not include State

agencies or departments that may as only a part of their regular function issue permits or licenses.

- (5) Party. - Any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate.
- (5a) Person. - Any natural person, partnership, corporation, body politic, and any unincorporated association, organization, or society that may sue or be sued under a common name.
- (6) Person aggrieved. - Any person or group of persons of common interest directly or indirectly affected substantially in his, her, or its person, property, or employment by an administrative decision.
- (7) Recodified as subdivision (5a) of this section by Session Laws 2021-88, s. 16(a), effective July 22, 2021.
- (7a) Policy. - Any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency that is intended and used purely to assist a person to comply with the law, such as a guidance document.
- (8) Residence. - Domicile or principal place of business.
- (8a) Rule. - Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
 - a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
 - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
 - c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
 - d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
 - e. Statements of agency policy made in the context of another proceeding, including:

1. Declaratory rulings under G.S. 150B-4.
 2. Orders establishing or fixing rates or tariffs.
- f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
 - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
 - h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.
 - i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
 - j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
 - k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
 - l. Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.
- (8b) Repealed by Session Laws 2011-398, s. 61.2, effective July 25, 2011.
- (8c) Substantial evidence. - Relevant evidence a reasonable mind might accept as adequate to support a conclusion.
- (9) Repealed by Session Laws 1991, c. 418, s. 3. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, ss. 61, 62; 1977, c. 915, s. 5; 1983, c. 641, s. 1; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(2)-1(5); 1987, c. 878, ss. 1, 2, 21; 1987 (Reg. Sess., 1988), c. 1111, s. 17; 1991, c. 418, s. 3; c. 477, ss. 3.1, 3.2, 9; 1995, c. 390, s. 29; 1996, 2nd Ex. Sess., c. 18, s. 7.10(g); 1997-456, s. 27; 2003-229, s. 12; 2007-491, s. 44(1)b; 2011-13, s. 2; 2011-398, ss. 15, 61.2; 2013-188, s. 7; 2013-382, s. 9.1(c); 2013-413, s. 1; 2015-2, s. 2.2(c); 2015-241, ss. 7A.3, 30.16(a); 2017-6, s. 3; 2018-13, s. 3.8(b); 2018-146, ss. 3.1(a), (b), 4.5(b); 2021-88, s. 16(a), (b).)

§ 105-264. Effect of Secretary's interpretation of revenue laws.

(a) **Interpretation.** - 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.

(b) **Advice.** - If a taxpayer requests specific advice from the Department and receives erroneous advice in response, the taxpayer is not liable for any penalty or additional assessment attributable to the erroneous advice furnished by the Department to the extent that the following conditions are all satisfied:

- (1) The advice was reasonably relied upon by the taxpayer.
- (2) The penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information.
- (3) The Department provided the advice in writing or the Department's records establish that the Department provided erroneous verbal advice.

(c) **Revised Interpretations.** - This section does not prevent the Secretary from changing an interpretation, and it does not prevent a change in an interpretation from applying on and after the effective date of the change. An interpretation that revises a prior interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due may not become effective sooner than the following:

- (1) For a tax that is payable on a monthly or quarterly basis, the first day of a month that is at least 90 days after the date the revised interpretation is issued.
- (2) For a tax that is payable on an annual basis, the first day of a tax year that begins after the date the revised interpretation is issued.

(d) **Fee.** - The Secretary may charge a fee for providing a written determination at the request of a taxpayer. The fee is a receipt of the Department and must be applied to the costs of providing the written determination. The proceeds of the fee must be credited to a special account within the Department and do not revert but remain in the special account until spent by the Department for the costs of providing the written determination. The Secretary may adopt a tiered fee structure based on the taxpayer's income or gross receipts, the relative complexity of the advice requested, or the tax schedule for which advice is requested. The fee shall not be less than one hundred dollars (\$100.00) or more than five thousand dollars (\$5,000). The fee may be waived by the Secretary. The term "written determination" has the same meaning as defined in G.S. 105-264.2. (1939, c. 158, s. 933; 1955, c. 1350, s. 4; 1957, c. 1340, s. 14; 1973, c. 476, s. 193;

1991, c. 45, s. 29; 1993, c. 532, s. 9; 1998-98, s. 21; 2008-107, s. 28.16(e); 2010-31, s. 31.7A(a); 2011-390, s. 6; 2016-103, s. 6.)

From: [Andrew O. Furuseth](#)

To: [Ascher, Seth M](#); [Peaslee, William W](#); [Lansford, Laura L](#)

Cc: [Burgos, Alexander N](#); [Jacobs, Tenisha S](#)

Subject: RE: [External] RE: DOR Rules

Date: Wednesday, September 6, 2023 4:47:01 PM

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Mr. Peaslee and Mr. Ascher,

We look forward to meeting with you tomorrow morning. We have included specific statute support and a brief explanation for each rule mentioned in your emails below. In addition, we want to provide a brief general explanation for the industry specific rules. While each of these industry specific rules have existed for a long time, it is my understanding that they were adopted to provide the interpretation for how sales and use tax applies to industries that have had questions or disputes about the application of sales and use tax to the industry. The objective is to provide the Secretary's interpretation of the law to the specific industry so they can comply with the law.

These types of interpretations are important because retailers become liable for sales and use tax that is incorrectly calculated. For example, if a business thinks an item they are selling is not subject to tax and does not collect tax from its customer, the business becomes liable for the tax. In the inverse situation, a retailer that collects tax on an item that is not subject to tax, can become liable to civil actions by its customers including class actions. See G.S. 105-164.11(c).

We also want to address the question about the articles referenced in the rules. We have 75 rules that where the Secretary has cited "Chapter 105, Articles 39, 40, 42, 43, and 46." The existing rules cite these articles for the authority to impose the local and transit rates of sales and use tax. The following citations provide the specific authority for those tax levies and the administration of those taxes: 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538.

17 NCAC 07B .4415 - SKATING RINK AND BOWLING ALLEY RENTAL FEES
Statutes – G.S. 105-105-164.4(a)(1) and 164.4G(e)(1)

The rule interprets the exemption allowed per 105-164.4G(e)(1) which excepts from tax "[a]n amount paid solely for the right to participate, other than to be a spectator, in sporting activities. Examples of these types of charges include bowling fees...." In addition, the rule interprets the imposition of tax on tangible personal property for the rental of shoes etc.

.4201 US Government Exemption
Statute - G.S. 105-164.13(17)

Explanation – The rule interprets the exemption for sales which the states are without power to tax. The United States Constitution does not expressly provide that the federal government is immune from state taxation, however, numerous Supreme Court cases have held that the United State is generally exempt from direct state taxation.

.4202 US Government Exemption
Statute - G.S. 105-164.13(17)

Explanation – The rule interprets the exemption for sales which the states are without power to tax. The United States Constitution does not expressly provide that the federal government is immune from state taxation, however, numerous Supreme Court cases have held that the United State is generally exempt from direct state taxation.

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.4203 US Government Contractor's Exemption
Statute - G.S. 105-164.13(17)

Explanation – The rule interprets the exemption for sales which the states are without power to tax. In the Supreme Court opinion of *United States v. County of Allegheny*, 322 U.S. 174 (1944), the court found that in instances where contractor purchases of property to which title passes to United States are exempt from state taxation. This was also applied in *General Dynamics v. NCDOR*, 09 REV 05695.

.4614 Recreational vehicles exemption
Statutes - G.S. 105-164.4(a)(1), 105-164.13(32), 105-164.3(149).

Explanation – This rule provides the interpretation for certain recreational vehicles being classified as motor vehicles which qualify for exemption from sales and use tax or taxable tangible personal property. Motor vehicles are defined in G.S. 105-164.3(149) and subject to the highway use tax or alternate highway use tax, not the sales and use tax.

.4700 Commercial printers and publishers' exemptions Statutes
- G.S. 105-164(a)(1), 105-164.13(5e) & (39)

Explanation - This rule covers all different types of transactions that a commercial printer or publisher may encounter and provides taxability information on items purchased and whether those items purchased are used or resold to a customer. The rule also covers commercial printers and publishers being classified as a manufacturing industry or plant and covers the taxability with respect to many items that fall under that exemption.

.4707 Printing Chemicals exemption
Statute- 105-164.13(8)

Explanation - Exemption allowed for chemicals that become ingredient and component part of printed materials and 105-164.13(5e) which is the mill machinery and mill machinery parts and accessories exemption for chemicals to clean printing machinery.

.4708 Postage Charges by printers exemption
Statute - 105-164.13(17) and 18 USC 8

Explanation - The rule interprets the exemption for sales which the states are without power to tax. 18 USC 8 states that stamps are an obligation of the US government and the states generally cannot tax the face value of an obligation of the US government.

.5002 Eyeglass frames and repair parts exemption Statutes
- 105-164.13(12)(a) and 164.4D(a)(1)c

Explanation - The rule interprets the exemption for prosthetic devices and bundled transactions on medical devices.

.5001 Eyeglass and contact lens exemption
Statutes - 105-164.13(12) and 105-164.3(192)

Explanation - The rule interprets the exemption for prosthetic devices and the definition of prosthetic devices.

.5004 Optical supply exemption.
Statutes - G.S. 105-164.4(a)(1) and 105-164.13(12)a

Explanation - The rule interprets the exemption for prosthetic devices and the tax imposed on tangible personal property.

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.0112(c) Exemption for Business engaged in occasional and isolated sales
Statutes - 105-164.3(25) and 105-164.4(4b)

Explanation – The rule interprets the imposition of tax and the following exclusion in 105-164.3, “[t]he term does not include an occasional and isolated sale or transaction by a person who does not claim to be engaged in business.” In addition, G.S. 105-164.4(4b) differentiates between a person who sells TPP at a specialty market, who is considered a retailer, from a person who sells their own household items.

.0901 (a), (b) Advertising services
Statutes – 105-164.3(237), 105-164.4(a)(1) and 105-164.13.

Explanation – Generally, this rule interprets the imposition of tax on tangible personal property and the lack of imposition on professional services as it relates to advertising agencies. The rule interprets when a sale of tangible personal property takes place versus when a sale is of professional services and the tax consequences of those determinations. The rule also interprets the definition of sales prices for various charges by an advertising agency and the purchase for resale exemption.

.0902 Advertising artists
Statutes – 105-164.3(237), 105-164.4(a)(1) and 105-164.13.

Explanation – Generally, this rule interprets the imposition of tax on tangible personal property and the lack of imposition on professional services as it relates to advertising artists. The rule interprets when a sale of tangible personal property takes place versus when a sale is of professional services and the tax consequences of those determinations. The rule also interprets the definition of sales prices for various charges and the purchase for resale exemption.

.0904 Public relations firms
Statutes – 105-164.3(237), 105-164.4(a)(1) and 105-164.13.

Explanation – Generally, this rule interprets the imposition of tax on tangible personal property and the lack of imposition on professional services as it relates to public relations firms. The rule interprets when a sale is of tangible personal property versus when a sale is of professional services and the tax consequences of those determinations. The rule also interprets the definition of sales prices for various charges by a public relations firm and the purchase for resale exemption.

.0115 Research Services Statute –
105-164.4(a)(1)

Explanation - The rule interprets the imposition of tax on research equipment used by research firms.

.1202 Supplies and Equipment for an Accommodation
Statutes - GS 105-164.4(a)(1), GS 105-164.6, 105-164.13.

Explanation – The rule interprets the imposition of tax on items purchased by an accommodation provider and used in the accommodation. This has been an area of confusion in the past and the legislature gave relief from assessments in G.S. 105-244.4 for a period of time.

.1302 In-state deliveries
Statutes - G.S. 105-164.4(a)(1) and G.S. 105-164.13(33a)

Explanation - This rule interprets the imposition of tax on items sold at retail to the purchaser or purchaser’s agent even when they may be taken about of State. Even though these items could be transported out of this State, because they are delivered

in this State to the purchaser or purchaser's agent in this State, they are subject to North Carolina use tax.

.1303 Gifts to donees

Statutes - G.S. 105-164.4(a)(1) and 105-164.4B.

Explanation - This rule interprets the imposition of tax on items that are sold to a purchaser to be given to a donee or given directly to the donee.

.1404 Medical supplies, instruments, and equipment

Statutes - G.S. 105-164.3(229), 105-164.3(227), 105-164.3(43), 105-164.4(a)(1), 105-164.6.

Explanation - This rule interprets the treatment of sales to and purchases by hospitals and other institutions. For an example of disputes related to medical supplies, see *Feeling Great, Inc. and Sleep Medical Center, Inc. v. N.C. Department of Revenue*, 14 CVS 11139, Wake County Superior Court Division.

.1601 Sales to or purchases by nonprofit entities

Statutes - G.S. 105-164.4 and 105-164.14

Explanation - This rule interprets how the sales and use tax applies to purchases by and for non-profits. North Carolina is one of very few States that does not provide an exemption for these sales.

.1605 Sales by nonprofit entities

Statutes - G.S. 105-164.4 and 105-164.3(229)

Explanation - The rule interprets the imposition of tax on nonprofits that act as retailers. The rule makes clear that nonprofits making retail sales are retailers.

.1705 Housing authorities

Statutes - G.S. 105-164.4 and 105-164.14(c)

Explanation - This rule interprets the imposition of tax on housing and authorities and the non-profits eligible for refund. The housing authorities listed in the statute do not meet the requirements of 105-164.14(c) and thus are not eligible for a refund.

.1801 Sales to hospitals

Statutes - G.S. 105-164.4 and 105-164.13(12) and -(13).

Explanation - The rule interprets various impositions and exemptions and how they apply to hospitals. The rule interprets which items are purchased for use, which items are purchased for resale, and which items are subject to exemption.

.1905 Tire retreaders

Statutes - G.S. 105-164.4(a)(1)a., G.S. 105-164.4(a)(1)c.

Explanation - The rule interprets the imposition of tax on tangible personal property and repair, maintenance and installation services as they relate to tire retreaders. In addition, the rule interprets which items purchased by tire retreaders are subject to the exemption provided in G.S. 105-164.13(61b)

.2001 Sales to employees Statutes -

G.S. 105-164.4

Explanation - The rule interprets the imposition of tax on sales by employers to employees. This rule explains an employer engaged in business in this State that makes retail sales of items to their employees is a retailer. Therefore, the employer must collect and remit the sales and use tax due on its retail sales to employees.

.2002 Gifts to employees Statutes
– GS 105-164.4

Explanation - The rule interprets the imposition of tax on gifts to employees. This rule explains an employer that purchases items provided to an employee or other person as a gift or as compensation is the consumer of the items.

Thank You,

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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:
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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.~~

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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.*
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