

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0901

DEADLINE FOR RECEIPT: November 7, 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:

What is the significance of the phrase “professional services”? I don’t see it in statute or other rules. Or is it just a definition for this rule?

Is “advertising” or “advertising agency” defined somewhere?

Lines 16 through 24 appear disconnected from the remainder of paragraph (a). Why is this language part of the rule? Why is it necessary?

On lines 17 through 24, the phrase “usually agreements . . . have the following characteristics:” is impermissibly vague. How many of the characteristics must exist to constitute an agreement? Can an unusual circumstance exist where an agreement has none of the characteristics? Who decides and on what basis?

In paragraph (e), what is the significance of being “users or consumers of items”? It seems like you are suggesting that “users and consumers of items” are taxable in distinction from “resellers” of items, but I do not see a statute or general rule that makes reference to these terms.

You have something like paragraph (f) in many rules. Consider whether the rules would be improved by a general rule: “Tax exempt items purchased for resale include items that become a part of or are fully incorporated into an item for sale. Items which are used or consumed to produce an item for sale are not exempt as items purchased for resale.”

Fix the history note to include specific statutory references rather than articles.

This rule contains vague language about “applicable” local taxes and “unless” exempt by statute. Is there a reason that this wouldn’t be subject to the same objection as was made at the 10/20/23 RRC meeting?

Seth Ascher
Commission Counsel
Date submitted to agency: October 24, 2023

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: October 24, 2023

1 17 NCAC 07B .0901 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 **SECTION .0900 – ADVERTISING AND ADVERTISING AGENCIES: PUBLIC RELATIONS FIRMS**
5

6 **17 NCAC 07B .0901 ADVERTISING AND ADVERTISING AGENCIES**

7 (a) ~~Professional Services.~~Services to Produce Advertising. -- Advertising agencies are engaged in the business of
8 rendering professional services when they produce advertising, such as radio and television spots or newspaper,
9 magazine, or billboard advertising, and contract ~~in-on~~ their own behalf with radio and television stations, newspaper
10 or magazine publishers, outdoor advertising companies, or other media for time or space to televise, broadcast, publish,
11 or otherwise display their advertising. ~~Receipts derived~~Charges by advertising agencies ~~from-for~~ furnishing ~~these~~
12 such professional services are not subject to sales or use tax-tax if the charges are separately stated on the invoice or
13 similar billing document given to the purchaser at the time of sale. ~~However, their purchases of taxable tangible~~
14 ~~personal property for use in producing the advertising are subject to the applicable statutory state and local sales or~~
15 ~~use tax.~~

16 Advertising Agencies~~agencies~~ rendering professional services rely on expertise in advertising strategy, media buying,
17 and in graphic arts production in their specialized fields to secure and retain clients. Usually agreements to provide
18 professional advertising services ~~also~~ have the following characteristics:

- 19 (1) The agency selects or advises the client on the different kinds of advertising to be used.
- 20 (2) The agency is primarily responsible for developing the concept or design of the advertising.
- 21 (3) The agency produces or arranges for the production of the advertising.
- 22 (4) The agency places or arranges for the placement of the advertising on radio or television stations or
23 in newspapers, magazines, or other media and the agency ~~has purchased~~purchases time or space in
24 the media to display the advertising instead of delivering it to the client for placement or distribution.

25 (b) Professional Services to Produce a Report. -- Advertising agencies are also engaged in the business of rendering
26 professional services when they contract to do market research, consulting, statistical analysis, or other services that
27 result only in a report of their findings to the client. Charges by advertising agencies for furnishing such services are
28 not subject to sales and use tax if the charges are separately stated on the invoice or similar billing document given to
29 the purchaser at the time of sale.

30 ~~The tax is due on all tangible personal property purchased by these agencies for use in the performance of the services~~
31 ~~in this Paragraph regardless of whether the property is acquired in the name or account of the advertising agencies or~~
32 ~~their clients. Advertising agencies that, in performing these services, purchase paper, ink, printing plates, positives,~~
33 ~~negatives, color separations, photographs, filmed or recorded commercials that are not exempt audiovisual masters,~~
34 ~~and any other tangible personal property from suppliers in North Carolina or from out of state suppliers who charge~~
35 ~~the applicable tax must pay the tax due directly to their suppliers. Advertising agencies that purchase tangible personal~~
36 ~~property, from out of state suppliers who do not charge and remit the applicable tax must remit the use tax due directly~~

1 ~~to the Department on the purchase price of the property without any deduction on account of the cost of the materials~~
2 ~~used, labor or service costs, transportation charges, or any expenses whatsoever.~~

3 ~~(b)(c)~~ Retail Sales. -- Advertising agencies are ~~considered to be~~ retailers when they produce, cause to be produced,
4 fabricate, purchase, or otherwise acquire items, as the term item is defined in G.S. 105-164.3, that they sell at retail
5 for any use or purpose other than for resale. Items sold by advertising agencies include: catalogs, magazines, handbills,
6 brochures, programs, pamphlets, or similar printed matter materials, signs, paintings, portraits, negatives, photographs,
7 vinyl wraps, certain digital property, or taxable services or any other tangible personal property they sell and deliver
8 to their clients or to others on behalf of their clients for delivery or distribution as advertising material or for any use
9 or purpose other than for resale. Advertising agencies making retail sales of ~~tangible personal property, other than~~
10 ~~exempt audiovisual masters, must~~ items shall collect collect, report, and remit the general State, and applicable local
11 and transit rates of statutory state and local sales or and use tax on the sales price of the property such items unless the
12 item is specifically exempt by statute, whether it is prepared by the agency or acquired from outside sources.

13 The sales price to which the tax applies is the total amount for which the ~~tangible personal property~~ item is sold
14 including all charges for services rendered in the production, fabrication, manufacture, or delivery of the ~~property, item,~~
15 such as charges for creative time, commissions, supervision, research, transportation charges, transportation,
16 installation, postage, telephone and telegraph electronic messages, copy, models' fees, stage props, printing, printing
17 plates, film, positives, negatives, transparencies and color separations, even though the agency may separately state
18 the charges on the invoice or similar billing document given to the purchaser at the time of sale. rendered to the client
19 and in the agency's records.

20 ~~(e)(d)~~ Retainer and Consultation Fees.

21 (1) Retainer. -- A retainer is generally collected in advance for future services to be rendered. Charges by
22 advertising agencies to their clients for a retainer fees that are is directly related to the purchase, acquisition,
23 fabrication, or production and retail sale of tangible personal property taxable items are part of the sales price and are
24 subject to the general State, and applicable local and transit rates of sales or and use tax, tax, whether the retainer is
25 separately stated on the customer's invoice or not. A retainer charged to clients is not subject to sales and use tax
26 when it is solely in connection with the performance of professional services that are not subject to sales and use
27 tax. ~~Charges by advertising agencies for retainer fees to their clients are generally paid in advance to cover future~~
28 ~~services and if no sale of tangible personal property is involved are not subject to sales or use tax.~~

29 (2) Consultation fees. -- Charges by advertising agencies to their clients for consultation fees directly related
30 to the purchase, acquisition, fabrication, or production and retail sale of taxable items are a part of the sales price and
31 are subject to the general State, and applicable local and transit rates of sales and use tax whether the consultation fees
32 are separately stated on the customer's invoice or not. Consultation fees charged to clients are not subject to sales and
33 use tax when they are solely in connection with the performance of professional services that are not subject to sales
34 and use tax. ~~oral or written reports only and not in connection with the sale of tangible personal property are also~~
35 ~~exempt from sales or use tax. Consultation fees directly involved in transactions that require the purchase, acquisition,~~
36 ~~fabrication or production and sale of tangible personal property, such as pamphlets and brochures, are a part of the~~
37 ~~sales price and are subject to sales and use tax even though the fees may be separately stated on the customer's invoice.~~

1 If an advertising agency is retained to perform market research, analyze statistics, and develop an advertising concept
2 on which a report is presented, either orally or in writing to the client, the charges for these services are not taxable.
3 After considering the report, if the client decides to pursue the advertising concept and contracts with the same agency
4 to develop and produce advertising material to be placed on radio or television spots or in space in newspapers,
5 magazines, or on billboards, the agency must remit sales or use tax on its purchase of all taxable tangible personal
6 property used in producing the advertising material. If the advertising concept calls for the production, fabrication,
7 purchase, or acquisition of catalogs, magazines, handbills, brochures, programs, pamphlets, or similar printed matter
8 or any other tangible personal property they sell and deliver to their clients or to others for their clients, the advertising
9 agency is making retail sales subject to sales and use tax on the sales price of the property. The sales price to which
10 the tax applies includes all the items and services described in Paragraph (b) of this Rule.

11 (c) Purchases for Use in Rendering Professional Services. -- Advertising agencies are the users or consumers of items
12 purchased by them for use in rendering professional services regardless of whether the items purchased are acquired
13 in the name or account of the advertising agency or their client. Purchases by advertising agencies of film, printing
14 plates, photographs, positives, negatives, transparencies, color separations, and similar items used in rendering
15 professional services are subject to the applicable rates of sales and use tax on the purchase price of the items without
16 any deduction for the cost of the materials used, labor or service costs, transportation charges, or any expenses
17 whatsoever. Advertising agencies that purchase taxable items sourced to this State from suppliers who do not charge
18 and remit the applicable sales and use tax shall remit the use tax due directly to the Department.

19 ~~(d)~~(f) Purchases for Resale. -- Purchases by advertising agencies of items for resale, or of paper, ink, and other tangible
20 personal property, certain digital property, or services that become a part of tangible personal property or
21 certain digital property sold by advertising agencies at retail or wholesale, including purchases for resale in the same
22 form, are exempt from sales or use taxes-tax when the purchases are supported by properly a completed Streamlined
23 Sales Tax Agreement Certificates of Exemption, Form E-595E, Certificate of Exemption in accordance with 17 NCAC
24 07B .0106, or other evidence in writing adequate to support the conclusion that the property is being purchased by a
25 registered merchant for the purpose of resale. The term "part of tangible personal ~~property~~"property or certain digital
26 property" includes only those items that are incorporated into and become a part of property sold and does not include
27 those items that are merely used or ~~incidentally~~ consumed in its production. Purchases by advertising agencies of
28 items used or consumed in the production of items for sale are subject to the applicable rates of sales and use tax. For
29 example, a photograph, transparency, printing plate, positive, negative, or color separation does not become an
30 ingredient or component part of property sold even though the image thereon is reproduced as a part of the property
31 ~~sold, sold and the purchase of such items is subject to the general State, and applicable local and transit rates of sales~~
32 and use tax.

33 (e) Purchasing for Use. -- Purchases by advertising agencies of film, printing plates, photographs, positives, negatives,
34 transparencies, color separations, and similar tangible personal property for use in the production of advertising
35 material are subject to the applicable statutory state and any local sales or use tax because the property does not become
36 incorporated into or become a component part of the property produced for sale. When advertising agencies purchase
37 items for use in the production of property for sale, they are the users or consumers of the property and must pay the

1 ~~state and local sales or use tax on the cost price without regard to the disposition that may be made of the items by the~~
2 ~~advertising agency.~~

3 ~~(f) Acting as Agent. — An agent is one who represents another, called the principal, with third parties. For sales and~~
4 ~~use tax purposes, to establish that a particular acquisition is made by an agency as agent for its client and not on the~~
5 ~~agency's own behalf, all of the following must apply:~~

6 ~~(1) — The agency must disclose to the supplier the name of the principal for whom the agency is acting as~~
7 ~~agent and establish that it has the authority to bind the principal with respect to the purchase.~~

8 ~~(2) — The agency must be able to document that its status as agent existed prior to the acquisition.~~

9 ~~(3) — The price billed by the agency to the principal for the personal property, exclusive of any agency~~
10 ~~fee, must be the same as the amount paid to the supplier.~~

11 ~~(4) — The agency may make no use of the property for its own account.~~

12 ~~An advertising agency must remit the tax due on its purchases to suppliers within this state and suppliers outside this~~
13 ~~state who collect and remit the applicable tax. An advertising agency that purchases tangible personal property on~~
14 ~~behalf of a principal from out of state suppliers who do not charge and remit the applicable tax must remit the use tax~~
15 ~~due, as agent for its principal, directly to the Department on the purchase price of the tangible personal property~~
16 ~~without any deduction on account of the cost of the materials used, labor or service costs, transportation charges, or~~
17 ~~any expenses whatsoever. All acquisitions by advertising agencies of tangible personal property such as catalogs,~~
18 ~~brochures, pamphlets, and the like are regarded as purchases by agencies on their own behalf for resale or for use~~
19 ~~unless the agency establishes with respect to any acquisition that it is acting as agent for its principal pursuant to a~~
20 ~~prior express contract. An advertising agency purchasing tangible personal property as an agent on behalf of its client~~
21 ~~for the client's use may not issue its certificate of exemption to the supplier. An advertising agency that issues its~~
22 ~~certificate of exemption to its supplier is presumed to be purchasing tangible personal property in its own behalf for~~
23 ~~resale rather than acting as agent for its principal.~~

24
25 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13(22a); 105-164.28; 105-164.28A;*
26 *105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and 46; Article 39; Article 40; Article 42;*
27 *Article 43; Article 44;*
28 *Eff. February 1, 1976;*
29 *Amended Eff. April 1, 2006; August 1, 1998; October 1, 1993; October 1, 1991;*
30 *December 1, 1984; May 11, 1979-1979;*
31 *Readopted Eff. January 1, 2024.*
32

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0902

DEADLINE FOR RECEIPT: November 7, 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:

Is advertising artist defined somewhere?

As in the previous rule, what is the significance of the phrases “professional services” and “users and consumers?”

Fix the history note to include specific statutory references rather than articles.

This rule contains vague language about “applicable” local taxes and “unless” exempt by statute. Is there a reason that this wouldn’t be subject to the same clarity objection as was made at the 10/20/23 RRC meeting?

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

1 17 NCAC 07B .0902 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 .0902 ADVERTISING ARTISTS**

5 (a) Sales by Advertising Artists. -- Advertising artists are retailers when they who actually produce, cause to be
6 produced, fabricate, purchase, or otherwise acquire items, as the term item is defined in G.S. 105-164.3, that they sell
7 at retail for any use or purpose other than for resale. Items sold by advertising artists include catalogs, magazines,
8 handbills, brochures, programs, pamphlets, or similar printed materials; other tangible personal property such as signs,
9 paintings, portraits, negatives, photographs, vinyl wraps, certain digital property, or other tangible artistic creations
10 creations. Advertising artists making retail sales of items and sell them to users or consumers shall collect, report, and
11 remit are liable for collecting and remitting the applicable statutory state and local rates of sales or and use tax on the
12 sales price of such articles-item unless specifically exempt by statute.

13 The sales price to which the tax applies is the total amount for which the item is sold including all charges for services
14 rendered in the production fabrication, manufacture, installation, postage, telephone and electronic messages, copy,
15 models' fees, stage props, printing, printing plates, film, positives, negatives, transparencies, and color separations,
16 even though the artist may separately state the charges on the invoice or similar billing document given to the purchaser
17 at the time of sale.

18 (b) Purchases for Use in Rendering Professional Services. -- Advertising artists are the users or consumers of the
19 items purchased by them for use in rendering professional services, regardless of whether the items are acquired in
20 the name or account of the artist or their client. Purchases by advertising artists of items used in rendering professional
21 services are subject to the applicable rates of sales and use tax on the purchase price of the item without any deduction
22 for the cost of the material used, labor or service costs, transportation charges, or other expenses. Advertising artists
23 that purchase taxable items sourced to this State from suppliers who do not charge and remit the applicable sales tax
24 shall remit the use tax due directly to the Department.

25 (c) Purchases for Resale. -- Purchases by advertising artists of items for resale that become a part of tangible personal
26 property or certain digital property sold by the advertising artist at retail or wholesale are exempt from sales or use tax
27 when the purchases are supported by a completed Certificate of Exemption in accordance with 17 NCAC 07B .0106.
28 The term "part of tangible personal property or certain digital property" includes only those items that are incorporated
29 into and become a part of property sold and does not include those items that are merely used or consumed in its
30 production. Purchases by advertising artists of items used or consumed in the production of items for sale are subject
31 to the applicable rates of sales and use tax.

32
33 *History Note:* *Authority G.S. 105-164.3; 105-164.4; 105-164.4B; 105-164.6; 105-164.13; 105-164.28; 105-262;*
34 *105-264; Chapter 105, Articles 39, 40, 42, 43, and 46; Article 39; Article 40; Article 42; Article 43;*
35 *Article 44;*
36 *Eff. February 1, 1976;*
37 *Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991; July 5, ~~1980~~ 1980;*

1 Readopted Eff. January 1, 2024.
2

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0904

DEADLINE FOR RECEIPT: November 7, 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:

Is public relations firm defined somewhere?

Regarding paragraph (a), what is DOR's authority for excepting this kind of work from sales or use taxes? Or what statutory language are paragraphs (a) and (b) interpreting?

On line 23 and 24, are "repair, maintenance, and installation services" taxable if they are unrelated to "taxable items"? As written, it would appear so, but I do not see why that would be the case.

Consider if the cost of repair, maintenance, installation services would be more clearly expressed as part of the sales price in the remainder of the paragraph. I.e. on line 29 ". . . separations, separations and fees for repair, maintenance, and installation of items even though. . ."

Fix the history note to include specific statutory references rather than articles.

This rule contains vague language about "unless" exempt by statute. Is there a reason that this wouldn't be subject to the same clarity objection as was made at the 10/20/23 RRC meeting?

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: October 24, 2023

17 NCAC 07B .0904 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 .0904 PUBLIC RELATIONS FIRMS

(a) ~~Public Relations Firm~~ Rendering Professional ~~Services~~: ~~Services~~. -- ~~If Charges by~~ a public relations firm ~~is retained~~ to plan and conduct a public relations program ~~which that~~ requires it to conduct research, opinion polls and surveys, compile data, ~~analyze all of the foregoing~~ perform analysis, and present a ~~written or oral~~ written, oral, or electronic report of its findings to its client, ~~the charges for these services are not subject to sales or use tax.~~

(b) Purchases in Rendering Professional Services. -- ~~The Purchases by~~ a public relations firm shall ~~pay be~~ subject to the applicable ~~statutory state and local~~ rates of sales or use tax on the ~~cost purchase~~ price of any ~~tangible personal property item~~, as the term item is defined in G.S. 105-164.3, sourced to this State, and purchased for use in ~~performing the aforementioned services~~ rendering professional services or carrying out the goals or objectives of the plan or concept. If the client decides to pursue the plan or concept developed by the public relations firm and such action results in the development or acquisition of tangible personal property by the public relations firm for its use in carrying out the goals or objectives of the plan or concept, it is liable for paying the applicable statutory state and local sales or use tax on such purchases.

~~(b)(c) Public Relations Agency-Making Retail Sales~~: Sales. -- If the plan or concept calls for the production, fabrication, purchase or acquisition of tangible personal property by the public relations firm which it sells and delivers to its client or sells to its client and delivers to others on behalf of its client, the public relations firm is making retail sales which are subject to sales or use tax on the sales price of such property. Retail sales by public relations firms of taxable items are subject to sales or use tax unless exempt by statute. Taxable items sold by public relations firms include tangible personal property and certain digital property produced, fabricated, purchased, or acquired by the public relations firm and sold to its client and delivered to the client or to others on behalf of its client. Taxable items sold by public relations firms also include repair, maintenance, and installation services. ~~Tax shall apply to the~~ The sales price of ~~the property and shall include an item includes~~ fees charged for costs directly involved in the production of the ~~property item~~ and those charges specifically associated with the fabrication, ~~manufacture-manufacture~~, or delivery of the ~~property item~~, such as charges for commissions, supervision, research, transportation charges, postage, telephone and ~~telegraph~~ electronic messages, ~~copy~~ copying, models' fees, stage props, printing, printing plates, ~~film, films~~, positives, negatives, ~~transparencies-transparencies~~, and color separations even though the firm may separately state such charges on the ~~invoice invoice, similar billing document, rendered to the client and/or~~ in the firm's records.

~~Note: For Retainer and Consultation Fees: See 17 NCAC 7B .0901(c).~~

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4B; 105-164.6; 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and 46; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. October 1, 1993; Amended Eff. April 1, 2006-2006;

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1101

DEADLINE FOR RECEIPT: November 7, 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:

On line 9, how are “other persons” covered by this rule? Items (1), (2), and (4) appear to require the purchaser to be a farmer.

On line 14, add “and,” at the end of item (a)(4).

*On p.2, line 16, (a), (b), and (c), are paragraphs, not subsections. Change to: “~~subsections~~ **paragraphs** (a), (b), and (c)”*

Fix the history note to include specific statutory references rather than articles.

This rule contains vague language about “applicable” local taxes and “unless” exempt by statute. Is there a reason that this wouldn’t be subject to the same clarity objection as was made at the 10/20/23 RRC meeting?

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

17 NCAC 07B .1101 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 .1100 - SALES OF TOBACCO ITEMS: FARM MACHINES AND MACHINERY QUALIFYING AND CONDITIONAL FARMERS

17 NCAC 07B .1101 FARM MACHINES: MACHINERY: MACHINERY: EQUIPMENT: TOBACCO ITEMS SERVICES

~~(a) Sales to farmers of farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery for use by them in planting, cultivating, harvesting or curing of farm crops including nursery or greenhouse stock and products of the forest, or to dairy operators, poultry farmers, egg producers, and commercial producers of animals are exempt from sales and use tax. Sales of farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery to farmers for any purpose or use not defined in this Rule, or to any person other than a farmer as herein defined, even though for a use or purpose herein defined, are subject to the applicable statutory state and local sales or use tax without limitation. In other words, to qualify for the exemption from sales and use tax, the transaction must be a sale of farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery to a farmer for one of the uses or purposes herein defined and unless all three conditions are met, the sale is subject to the applicable statutory state and local sales or use tax without limit.~~

~~(b) Form E 595E, Streamlined Sales Tax Agreement Certificate of Exemption, may be completed by a farmer or producer and accepted by a vendor as the authority for exempting from the sales and use tax the following:~~

- ~~(1) farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery for use in planting, cultivating, harvesting or curing farm crops, including nursery or greenhouse stock and products of the forest, or for use in the production of dairy products, poultry, eggs, livestock, fish or aquatic plants.~~
- ~~(2) The lease or rental of tobacco sheets used in handling tobacco in the warehouse and transporting tobacco to and from the warehouse.~~
- ~~(3) A metal flue sold for use in curing tobacco, whether the flue is attached to a handfired furnace or used in connection with a mechanical burner.~~
- ~~(4) A bulk tobacco barn or rack, parts and accessories attached to the tobacco barn or rack, and any similar apparatus, part, or accessory used to cure or dry tobacco or another crop.~~
- ~~(5) A grain, feed, or soybean facility, and parts and accessories attached to the facility.~~
- ~~(6) Containers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of products when such containers do not go with and become a part of the sale of products.~~
- ~~(7) Wrapping paper, labels, wrapping twine, paper, cloth, plastic bags, cartons, packages and containers, wooden boxes, baskets, coops, barrels, and like articles sold to farmers and producers when such~~

1 materials are used for packaging, shipment or delivery of tangible personal property which is sold
2 either at wholesale or retail and when such articles constitute a part of the sale of such tangible
3 personal property and are delivered with it to the customer.

4 ~~(e) When a customer makes a purchase and executes a Form E-595E, Streamlined Sales Tax Agreement Certificate~~
5 ~~of Exemption which is then furnished to the vendor, the vendor is relieved of the liability for any additional tax that~~
6 ~~is subsequently determined to be due and the purchaser has assumed liability for the tax if the vendor has a fully~~
7 ~~completed Form E-595E on file. In the absence of the certificate or other documentation to support an exemption~~
8 ~~from tax, the vendor is liable for any additional tax determined to be due on a transaction.~~

9 (a) Sales of items, as the term item is defined in G.S. 105-164.3, to farmers or other persons are exempt from tax
10 when all of the following requirements are met:

- 11 (1) The farmer is a qualified or conditional farmer.
- 12 (2) The farmer has a current exemption certificate number.
- 13 (3) The item is listed in G.S. 105-164.13E(a).
- 14 (4) The farmer primarily uses the item in farming operations.
- 15 (5) The seller complies with the certificate of exemption requirements in G.S. 105-164.28

16 ~~(d)(b) The following are examples~~Examples of sales of farm machinery, attachment and repair parts for farm
17 machinery, and lubricants applied to farm machinery which are exempt when sold to that are exempt from sales and
18 use tax when purchased by qualifying or conditional farmers and used primarily in farming operations include the
19 following: for use by them in planting, cultivating, harvesting or curing farm crops:

- 20 (1) ~~tractors,~~tractors;
- 21 (2) ~~plows,~~plows;
- 22 (3) ~~harrows,~~harrows;
- 23 (4) ~~cultivators,~~cultivators;
- 24 (5) ~~mowers,~~mowers;
- 25 (6) ~~planters,~~planters;
- 26 (7) ~~corn pickers and snappers,~~corn pickers and snappers;
- 27 (8) ~~manure spreaders,~~manure spreaders;
- 28 (9) ~~manure loaders,~~manure loaders;
- 29 (10) ~~harvester threshers,~~harvester threshers;
- 30 (11) ~~rotary tillers,~~rotary tillers;
- 31 (12) ~~fertilizer distributors,~~fertilizer distributors;
- 32 (13) ~~wind-rows,~~wind-rows;
- 33 (14) ~~forage blowers,~~forage blowers;
- 34 (15) ~~stalk cutters,~~stalk cutters;
- 35 (16) ~~seeders,~~seeders;
- 36 (17) ~~grain loaders,~~grain loaders;
- 37 (18) ~~harvesters,~~harvesters;

- 1 (19) ~~cotton pickers~~, cotton pickers;
- 2 (20) ~~rotary hoes~~, rotary hoes;
- 3 (21) ~~corn and hay elevators~~, corn and hay elevators;
- 4 (22) ~~tobacco curers~~, tobacco curers;
- 5 (23) ~~tobacco flues~~, tobacco flues;
- 6 (24) ~~tobacco trucks or slides~~, tobacco trucks or slides;
- 7 (25) ~~wagons~~, wagons;
- 8 (26) ~~non-highway trailers~~, non-highway trailers;
- 9 (27) ~~mechanical rakes~~, mechanical rakes;
- 10 (28) ~~balers~~, balers;
- 11 (29) ~~rod weeders~~, rod weeders;
- 12 (30) ~~combines~~, combines;
- 13 (31) ~~tobacco transplanters~~, tobacco transplanters;
- 14 (32) ~~shredders for corn stalks~~, shredders for corn stalks;
- 15 (33) ~~power loader lifts~~, power loader lifts;
- 16 (34) ~~platform carriers~~, platform carriers;
- 17 (35) ~~portable insecticide sprayers~~, portable insecticide sprayers;
- 18 (36) ~~chain saws~~, chainsaws;
- 19 (37) ~~motor oils, greases, lubricants and anti-freeze~~, motor oils, greases, lubricants, and anti-freeze; and
- 20 (38) hydraulic fluids.

21 (c) Examples of commercially manufactured equipment, and parts and accessories for equipment, that are
22 exempt from sales and use tax when used, placed, or installed in a commercially manufactured
23 facility, enclosure, or structure for housing, raising, or feeding animals include:

- 24 ____ (1) animal clippers and parts for animal clippers;
- 25 ____ (2) cooling fans;
- 26 ____ (3) egg cooling cabinets for housing, raising, or feeding poultry;
- 27 ____ (4) feed mills;
- 28 ____ (5) mechanical barn cleaners;
- 29 ____ (6) scales; and
- 30 ____ (7) silo unloaders.

31 (d) Examples of repair, maintenance, and installation services that are exempt from sales and use tax when purchased
32 by a qualifying or conditional farmer include:

- 33 ____ (1) Repair or maintenance of a tractor that is used primarily in farming operations.
- 34 ____ (2) Repair of a roof for a chicken house used for housing, raising, or feeding chickens.
- 35 ____ (3) Repair or maintenance for any of the items listed in subsection (b) of this Rule.
- 36 ____ (4) Repair of a fence used for housing, raising, or feeding animals.

(e) Examples of items ~~which are purchased by a qualifying or conditional farmer from a retailer that are subject to the applicable statutory state general State, and applicable local and transit rates of sales or use tax when sold to farmers for general purposes; include:~~

- (1) lawn mowers;
- (2) snow plows;
- (3) oil and fuel storage ~~tanks~~ tanks, mobile or stationery, and their fittings;
- (4) drainage tile;
- (5) paint, cleaning compounds and brushes;
- (6) ~~baler twine; snap bean graders;~~
- (7) ~~tobacco sticks and tobacco twine;~~ all-terrain vehicles not used primarily in farming operations;
- (8) tools for maintaining machinery and ~~equipment~~ equipment;
- (9) sickle grinders;
- (10) tobacco balers; and
- (11) ventilators that are part of a building or structure that have no moving parts and are installed in tobacco barns, other than bulk tobacco barns.

(f) ~~The items listed in subsections (a), (b), and (c) or this Rule must be purchased in accordance with G.S. 105-164.13E and G.S. 105-164.28A in order to be exempt from sales and use tax; otherwise, the items purchased are subject to the general State, and applicable local and transit rates of sales and use tax. The lists in Paragraphs (d) and (e) of this Rule are not intended to be exclusive, but are for illustrative purposes only. If there is any question as to the tax status of any item which does not appear therein, such question shall be submitted to the secretary, together with a detailed statement of the business of the purchaser, the design and structure of the article, and its use, to the end that the applicable rate of tax may be correctly determined.~~

~~(g) The word farmer as used in this Rule includes crop farmers, dairy operators, poultry farmers, egg producers, livestock farmers, nurserymen, greenhouse operators, farmers who raise fish or water plants, orchardmen and other persons coming within the generally accepted definition of the word. It does not include a person who merely cultivates a garden for personal use.~~

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; ~~105-164.13; 105-164.13E; 105-164.28; 105-164.28A; 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and 46; Article 39; Article 40; Article 42; Article 43; Article 44;~~
Eff. February 1, 1976;
Amended Eff. June 1, 2006; August 1, 1996; April 1, 1995; July 1, 1994; October 1, 1993; June 1, 1992-1992;
Readopted Eff. January 1, 2024.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1301

DEADLINE FOR RECEIPT: November 7, 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:

On line 7, for clarity consider including the subsections this rule is implementing. I.e., "G.S. 105-164.13(33a)".

Fix the history note to include specific statutory references rather than articles.

This rule contains vague language about "applicable" local taxes and "unless" exempt by statute. Is there a reason that this wouldn't be subject to the same clarity objection as was made at the 10/20/23 RRC meeting?

In addition to the already objected to issue with "applicable," on line 23, how would someone determine what the applicable rates were if the item were delivered out of state? That is, if it were delivered out of state and the sender did not maintain documentation, what local and transit rates would the seller be subject to?

Consider something like "A retailer is liable for the rate of sales or use tax as though the delivery was made at the seller's address if it does not maintain documentation. ."

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: October 24, 2023

1 17 NCAC 07B .1301 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 **SECTION .1300 - SALES IN INTERSTATE COMMERCE**

5
6 **17 NCAC 07B .1301 OUT-OF-STATE DELIVERIES**

7 (a) To qualify for the exemption from sales or use tax on out-of-State deliveries set out in G.S. 105-164.13, a retailer
8 who Sales within the State of tangible personal property that the vendor delivers items, as the term item is defined in
9 G.S. 105-164.3, to the purchaser at a point outside the State, or that the vendor delivers to causes items to be delivered
10 by a common carrier or the United States Postal Service to the mails for transportation and delivery to the purchaser
11 at a point outside the State, are not subject to the applicable state and local sales or use tax if the property is not
12 returned to a point within the State and the vendor furnishes acceptable proof of shall maintain documentation
13 substantiating the transportation and delivery to a point outside the State. The most acceptable proof of Documentation
14 substantiating the transportation and delivery to a point outside the State is shall be any of the following:

- 15 (1) A waybill or bill of lading made out to the seller's order calling for delivery.
16 (2) An insurance or registry receipt issued by the United States Postal Service, or a postal service ~~or~~
17 receipt.
18 (3) A trip sheet that is signed by the ~~seller's~~ retailer's delivery agent ~~and agent~~, shows the signature and
19 address of the person who received the delivered goods outside the ~~state~~ State, and states the location
20 and time of delivery.
21 (4) Retailer's records kept in the ordinary course of business substantiating that a sale of certain digital
22 property is sourced to a location outside North Carolina.

23 (b) A retailer is liable for the applicable rates of sales or use tax due on the sale if it does not maintain documentation
24 substantiating the transportation and delivery of an item to a point outside the State.

25
26 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4B; 105-164.6; 105-164.13; 105-164.22; 105-262;*
27 *105-264; Chapter 105, Articles 39, 40, 42, 43, and 46;*
28 *Eff. February 1, 1976;*
29 *Amended Eff. July 1, 1999; August 1, 1998; October 1, 1993; October 1, ~~1991~~ 1991;*
30 *Readopted Eff. January 1, 2024.*

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1302

DEADLINE FOR RECEIPT: November 7, 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:

Fix the history note to include specific statutory references rather than articles.

This rule contains vague language about “applicable” local taxes and “unless” exempt by statute. Is there a reason that this wouldn’t be subject to the same clarity objection as was made at the 10/20/23 RRC meeting?

In addition to the already objected to issue with “applicable,” are the local taxes charged based on the point of sale, or point of delivery?

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: October 24, 2023

1 17 NCAC 07B .1302 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 .1302 IN-STATE DELIVERIES**

5 ~~Sales of tangible personal property delivered in this state to the buyer or his agent, if such agent is not a common~~
6 ~~carrier, are subject to the applicable statutory state and local sales or use tax, notwithstanding that the buyer may~~
7 ~~subsequently transport, or employ someone else to transport, the property out of this state, except as provided by G.S.~~
8 ~~105-164.13. The sales price of items, as the term item is defined in G.S. 105-164.3, sold at retail that are delivered to~~
9 ~~a purchaser or the purchaser's agent in this State are subject to the applicable State, local, and transit rates of sales and~~
10 ~~use tax, unless exempt by statute. Tax is due even if the purchaser or the purchaser's agent may subsequently transport,~~
11 ~~or employ someone else to transport the item out of this State.~~

12
13 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; Chapter 105,*
14 *Articles 39, 40, 42, 43, and 46; Article 39; Article 40; Article 42; Article 43; Article 44;*
15 *Eff. February 1, 1976;*
16 *Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991; January 1, 1982;*
17 *February 8, ~~1981~~.1981;*
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 .1305

DEADLINE FOR RECEIPT: November 7, 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:

Insert your proposed effective date on line 29.

Fix the history note to include specific statutory references rather than articles.

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: October 24, 2023

1 17 NCAC 07B .1305 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 .1305 FOREIGN COMMERCE: PURCHASES FOR EXPORT**

5 (a) Tangible personal property purchased for export and exempt from sales or use tax pursuant to G.S. 105-164.13(33)
6 will lose its exemption if:

7 (1) the purchaser of the tangible personal property fails to submit Form E-599C, Purchaser's Affidavit
8 of Export, to the seller and comply with the terms and conditions listed on the form; and

9 (2) the tangible personal property is not exported within 90 days of purchase. ~~Such property would~~
10 ~~then become subject to the applicable state and local use tax payable directly to the Department.~~

11 (b) Form E-599C requires the following information:

12 (1) name of vendor;

13 (2) address of vendor;

14 (3) name of affiant;

15 (4) title of affiant, if applicable;

16 (5) name of vendee;

17 (6) address of vendee;

18 (7) name of foreign country;

19 (8) identification of property purchased;

20 (9) signature of affiant; and

21 (10) signature, date, seal, and commission expiration date of Notary Public.

22 (c) A separate Form E-599C, Purchaser's Affidavit of Export, is required for each transaction.

23 (d) This exemption from sales and use tax does not extend to property acquired for personal use or consumption by
24 the purchaser, including gifts.

25
26 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; Chapter 105,*
27 *Articles 39, 40, 42, 43, and 46;*

28 *Eff. October 1, ~~1993~~ 1993;*

29 *Readopted Eff. [Insert date].*

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1602

DEADLINE FOR RECEIPT: November 7, 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:

*On line 14, add: “or **are** annexed to”.*

On p.3, lines 15 through 19, the explanation of why the refund provision does not apply to employee purchases does not meet the definition of a rule under 150B-2(8a). Delete starting from “The expenses” on line 15 through line 19.

If you want to include some of the information from these sentences, consider something like: “The refund provisions of this Rule do not apply when a non-profit entity reimburses a personal expense of the employee. This includes purchases paid for by the employee of food, lodging, or other personal taxable travel expenses.”

Fix the history note to include specific statutory references rather than articles.

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: October 24, 2023

1 17 NCAC 07B .1602 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 .1602 REFUNDS TO NONPROFIT ENTITIES**

5 (a) ~~Eligibility-Eligibility.~~ -- A nonprofit entity listed in G.S. 105-164.14(b) may file ~~a claim for~~ Form E-585, Nonprofit
6 ~~and Governmental Entity Claim for Refund State, County and Transit Sales and Use Taxes, to obtain a refund for of~~
7 ~~sales or and use tax paid by it on the following purchases when used in carrying on the work of the nonprofit entity:~~

8 (1) Direct purchases of an item, as the term item is defined in G.S. 105-164.3, including reimbursement
9 by the nonprofit entity for purchases by an authorized person of tangible personal property and
10 services on behalf of the nonprofit entity. For purposes of this Rule, an authorized person is a person
11 designated by a nonprofit entity, within its records, to purchase tangible personal property and
12 services on behalf of the nonprofit entity.

13 (2) ~~Indirect purchases of items purchased for its use and for sales and use tax paid indirectly by it on~~
14 ~~building materials, supplies, fixtures, and equipment that become part of or annexed to any a~~
15 ~~building or structure if the entity owns or leases leases, and is being erected, altered, or repaired for~~
16 ~~use by the entity in carrying on its nonprofit activities, and uses to conduct its nonprofit activity.~~
17 ~~A claim for refund must be filed on a form provided by the Department.~~ A claim for refund applies to ~~taxes sales and~~
18 ~~use tax~~ paid during the period for which the claim for refund is filed. Taxes for which a refund is allowed under G.S.
19 105-164.14(b) are not an overpayment of tax and do not accrue interest.

20 (b) Form E-585, requires the following information:

- 21 (1) name and address of entity requesting the refund;
22 (2) Federal Employer Identification Number;
23 (3) account number;
24 (4) refund period beginning and ending dates;
25 (5) contact person name and telephone number;
26 (6) designation as either a nonprofit entity or governmental entity;
27 (7) National Taxonomy of Exempt Entities (NTEE) number for nonprofit entities;
28 (8) name of taxing county if taxes were paid in only one county. Where more than one county's sales
29 and use tax has been paid, attach Form E-536E, Schedule of County Sales and Use Taxes for Claims
30 for Refund, and show the amount paid for each county's applicable local and transit rates of tax.
31 (9) total purchases of items for use on which State, food, county and transit sales or use tax was paid
32 directly to the retailer;
33 (10) amount of sales and use tax paid directly to retailers on purchases;
34 (11) amount of sales and use tax paid indirectly to retailers on purchases;
35 (12) amount of use tax paid directly to the Department on purchases;
36 (13) total tax paid;
37 (14) total refund amount requested;

1 (15) allocation of food, county and transit tax amounts; and

2 (16) signature of person authorized to legally bind entity and date form signed.

3 (c) Records -- A claim for refund shall be supported by documentation showing the amount of sales and use tax paid.
4 Records shall be maintained by the nonprofit entity on a county-by-county basis to identify local and transit sales and
5 use tax paid by the nonprofit entity. A claim for refund shall be denied if a nonprofit entity fails to produce
6 documentation supporting a direct or indirect purchase upon request by the Department.

7 ~~(b)(d) Proof-Documentation for Direct Purchases-Purchases. -- A claim for refund must be supported by~~
8 ~~documentation showing the amount of tax paid. For items purchased by a nonprofit entity for its use, adequate~~
9 ~~documentation~~ Documentation to substantiate sales or use tax paid directly to a retailer or the Department is an invoice
10 or copy of an invoice that sets out identifies the item purchased, the date of the purchase, the cost-purchase price of the
11 item, and the amount of sales or use tax paid-paid, and a record reflecting the date of payment. Documentation to
12 substantiate an authorized person is designated to make purchases on behalf of the nonprofit entity shall include the
13 name and address of the designee and the effective date of the designation.

14 ~~(e)(c) Proof-Documentation for Contractor Indirect Purchases-Purchases. -- A claim for refund for~~ Documentation to
15 substantiate sales or use tax paid indirectly on purchases of building materials, supplies, fixtures, and equipment by
16 the nonprofits' real property contractor or other person, must be supported by adequate documentation showing the
17 amount paid. Adequate documentation is a certified statement from the real property contractor or subcontractor-other
18 person that purchased the items.

19 (1) The certified statement must shall include the following information:

20 (A) indicate the date the item was purchased;

21 (B) the type of item purchased,purchased;

22 (C) the vendor name of the retailer or other person from whom it the item was
23 purchased,purchased;

24 (D) the invoice or order reference number of the purchase,purchase;

25 (E) the cost-purchase price of the item, and item;

26 (F) the amount of sales or use tax paid-paid to this State with the applicable local and transit
27 rates of tax shown separately from the State rate of tax.

28 (G) the project for which the item was used;

29 (H) if the item was purchased in this State, the county in North Carolina in which the item was
30 delivered and a copy of the sales invoice;

31 (I) if the item was not purchased in this State, the county in North Carolina in which the item
32 was used; and

33 (J) the signature of the real property contractor or corporate officer or employee of the real
34 property contractor who is authorized to provide the information.

35 (2) In the event the real property contractor or other person makes several purchases from the same
36 retailer, the certified statement shall indicate the invoice numbers, the inclusive dates of the invoices,

the total amount of the invoices, and the general State, and applicable local and transit rates of sales or use tax paid.

(3) If items are withdrawn from a real property contractor or other person's warehouse stock, the certified statement shall include the purchase price of the items and the amount of the general State, and applicable local and transit rates of sales and use tax paid.

(4) ~~Only items that become part of a building the nonprofit entity owns or leases and uses to conduct its nonprofit activity are eligible for a refund.~~ A real property contractor or other person ~~may shall~~ not include in its certified statement sales or use tax paid on items ~~the contractor~~ purchased and used to fulfill the real property contract ~~but that~~ did not become part of ~~or annexed to~~ the building constructed. Examples of items that ~~are shall~~ not to be included in the ~~contractor's~~ certified statement are scaffolding, forms for concrete, fuel ~~for the operation of to operate~~ machinery and equipment, tools, equipment repair parts, ~~and equipment rentals, and blueprints, rentals.~~

~~(d)(f) Items Taxes Not Eligible for Refundable Refund.~~ -- The refund provisions of this Rule do not apply to sales and use ~~taxes tax~~ incurred by employees on purchases of food, lodging, or other taxable travel expenses paid by employees and reimbursed by a nonprofit entity listed in G.S. 105-164.14(b). These expenses are personal to the employee because the contract for food, shelter, and travel is between the employee and the provider and payment of the tax is by the employee individually and personally. In this circumstance, a nonprofit entity has not incurred any sales or use tax liability and has not paid any sales tax; instead, ~~it the nonprofit entity~~ has chosen to reimburse a personal expense of the employee.

The refund provisions of this Rule do not apply to ~~any of the following:~~ following taxes:

- (1) ~~Charges for electricity and telecommunications services;~~ Sales or use tax remitted on taxable sales made by nonprofit entities.
- (2) Sales or use tax paid on the purchase of "alcoholic beverages" as defined in G.S. 18B-101.
- (3) Sales or use tax paid on electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan.
- ~~(2)(4) Occupancy~~ Local occupancy taxes levied ~~and administered by~~ paid to certain counties and cities in this State; State.
- ~~(3)(5) Prepared~~ Local prepared food and beverage taxes levied ~~by~~ paid to various local governments in this State; State.
- ~~(4)(6)~~ Highway use ~~taxes tax~~ or alternate highway use tax paid on the purchase, vehicle subscription, lease, or rental of motor ~~vehicles; vehicles.~~
- ~~(5)(7) The white~~ White goods disposal tax levied paid on purchases of new white goods; goods.
- ~~(6)(8) The scrap~~ Scrap tire disposal tax levied paid on purchases of new tires; or tires.
- ~~(7)(9) The dry cleaning~~ Dry-cleaning solvent tax levied paid on dry-cleaning solvent purchased by a dry cleaning facility.
- (10) Solid waste disposal tax.
- (11) 911 service charge for prepaid wireless telecommunications service.

1 (12) Other states' sales or use taxes paid to those states.

2 (g) The provisions of G.S. 105-164.14(b) and this Rule apply to out-of-state nonprofit entities to the extent the out-
3 of-state nonprofit entity pays North Carolina sales or use tax on purchases for use in carrying on the entities nonprofit
4 activities, whether those activities occur in or outside this State.

5
6 *History Note:* *Authority* *G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.14; 105-241.7; 105-262; 105-264;*
7 *Chapter 105, Articles 39, 40, 42, 43, and 46; ~~Article 39; Article 40; Article 42; Article 43; Article~~*
8 *44;*
9 *Eff. February 1, 1976;*
10 *Amended Eff. April 1, 2006; July 1, 2000; July 1, 1999; August 1, 1998; April 1, 1997;*
11 *August 1, 1996; October 1, 1993; March 1, 1993; June 1, 1992; October 1, ~~1991~~1991;*
12 *Readopted Eff. January 1, 2024.*
13

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1701

DEADLINE FOR RECEIPT: November 7, 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:

*On line 25, consider adding the subsection to improve clarity: “~~G.S. 105-164.14~~ **G.S. 105-164.14(c)**”.*

Why is paragraph (c) necessary? Isn't DOT already covered by paragraph (a)?

To the extent this differs from paragraph (a), what is the authority for paragraph (c) regarding sales to just NCDOT?

This rule contains vague language about “applicable” local taxes. Is there a reason that this wouldn't be subject to the same clarity objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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

1 17 NCAC 07B .1701 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 **SECTION .1700 - SALES TO OR BY THE STATE: COUNTIES: CITIES: AND OTHER POLITICAL**
5 **SUBDIVISIONS**
6

7 **17 NCAC 07B .1701 GOVERNMENTAL SALES AND PURCHASES**

8 (a) General Sales to and Purchases by Governmental Entities. -- With the exception of ~~electricity and~~
9 ~~telecommunication~~ electricity, telecommunications service, and ancillary service, sales to North Carolina State
10 agencies are exempt from State and local sales or use taxes tax pursuant to G.S. 105-164.13(52), if all of the conditions
11 set out in G.S. 105-164.13(52) are met, and from the privilege tax pursuant to Article 5F of Chapter 105 of the General
12 Statutes. The items must be purchased by the State agency for its own use pursuant to a valid purchase order issued
13 by the agency that contains its exemption number and a description of the property purchased, or the items must be
14 paid for with a State issued check, electronic deposit, credit card, procurement card, or credit account of the agency.
15 For all purchases other than by an agency issued purchase order, the agency must provide to or have on file with the
16 retailer the agency's exemption number. The ~~This~~ exemption does not apply to sales of tangible personal
17 property items, as the term item is defined in G.S. 105-164.3, to contractors a person, including a real property
18 contractor, for use in the performance of contracts a contract with State agencies or to sales of tangible personal
19 property items to employees of State agencies. Sales to counties, cities, and other political subdivisions are subject to
20 the applicable State and applicable local and transit rates of tax.

21 (b) Taxable Sales by Governmental Entities. -- A governmental ~~unit~~ entity, including a State agency that sells tangible
22 personal property items at retail is considered to be a retailer. A governmental entity that is a retailer shall register
23 with the Department, in accordance with 17 NCAC 07B .0104, and report, collect, and remit the applicable sales and
24 use tax due on retail sales unless exempt by statute. The annual refund for certain governmental entities, as provided
25 by G.S. 105-164.14, does not apply to the tax due on retail sales made by a governmental entity. Governmental entities
26 registered with the Department may purchase items for resale without paying sales tax to the seller by providing a
27 completed Certificate of Exemption in accordance with 17 NCAC 07B .0106. The reporting, payment, and other
28 requirements that apply to a nongovernmental entity apply to a governmental entity unless a law exempts the
29 governmental entity from the requirement.

30 (c) ~~DOT~~ Sales to the North Carolina Department of Transportation. -- Sales of items to the Department of
31 Transportation are exempt from State and local State, local, and transit rates of sales and use tax. This exemption does
32 not apply to sales of tangible personal property items to contractors a person, including a real property contractor, for
33 use in the performance of contracts a contract with the Department of Transportation nor or to sales of tangible
34 personal property items to employees an employee of the Department of Transportation.
35

1 *History Note:* *Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; ~~105-187.52; 105-262; 105-264;~~*
2 *Chapter 105, Articles 39, 40, 42, 43, and 46; ~~Article 39; Article 40; Article 42; Article 43; Article~~*
3 *44; Article 46;*
4 *Eff. February 1, 1976;*
5 *Amended Eff. October 1, 2009; August 1, 1998; August 1, 1996; October 1, 1993; October 1, 1991;*
6 *May 1, 1990; February 1, ~~1987~~1987;*
7 *Readopted Eff. January 1, 2024.*
8

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1702

DEADLINE FOR RECEIPT: November 7, 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:

On line 10, add: "are annexed to".

Fix the history note to include specific statutory references rather than articles.

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: October 24, 2023

17 NCAC 07B .1702 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 .1702 REFUNDS TO COUNTIES, CITIES, AND OTHER GOVERNMENTAL ENTITIES

(a) Eligibility. -- A governmental entity listed in G.S. 105-164.14(c) may file Form E-585, Nonprofit and Governmental Entity Claim for Refund for State, County and Transit Sales and Use Taxes, to obtain a refund of sales and use tax paid by it on the following purchases:

(1) Direct purchases of items, as the term item is defined in G.S. 105-164.3.

(2) Indirect purchases of building materials, supplies, fixtures, and equipment that become part of or annexed to any building or structure the entity owns or leases, and is being erected, altered, or repaired for use by the entity.

A claim for refund applies to sales and use tax paid during the period for which the claim for refund is filed. Taxes for which a refund is allowed under G.S. 105-164.14(c) are not an overpayment of tax and do not accrue interest.

(b) Claims for refund by governmental entities shall be filed on Form E-585, and requires all the information set out in 17 NCAC 07B .1602(b).

(c) Records. -- A claim for refund shall be supported by documentation showing the amount of sales and use tax paid. Records shall be maintained by the governmental entity on a county-by-county basis to identify local and transit sales and use tax paid by the governmental entity.

(d) Documentation for Direct Purchases. -- Documentation to substantiate sales or use tax paid directly to a retailer or the Department is an invoice or copy of an invoice that identifies the item purchased, the date of the purchase, the purchase price of the item, the amount of sales or use tax paid, and a record reflecting the date of payment.

(e) Documentation for Indirect Purchases by a Real Property Contractor or Other Person. -- Documentation to substantiate sales or use tax paid indirectly on purchases of building materials, supplies, fixtures, and equipment by the governmental entity's real property contractor or other person, is a certified statement from the real property contractor or other person that purchased the items.

(1) A certified statement shall contain the information set out in G.S. 105-164.14(e)(1) through (6).

(2) If the item was purchased in this State, the person shall attach a copy of the sales invoice.

(3) In the event the real property contractor or other person makes several purchases from the same retailer, the certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the general State, and applicable local and transit rates of sales or use tax paid.

(4) If items are withdrawn from a real property contractor or other person's warehouse stock, the certified statement shall include the purchase price of the items and the amount of the general State, and applicable local and transit rates of sales or use tax paid.

(5) A real property contractor or other person shall not include in its certified statement sales or use tax paid on items purchased and used to fulfill the real property contract that did not become part of or annexed to the building constructed. Examples of items that shall not be included in the certified

statement are scaffolding, forms of concrete, fuel to operate machinery and equipment, tools, equipment repair parts, temporary fencing/netting, and equipment rentals.

(f) Taxes not Eligible for Refund – The refund provisions of this Rule do not apply to the following taxes:

- (1) Sales or use tax remitted on taxable sales made by the governmental entity.
- (2) Sales or use tax paid on the purchase of “alcoholic beverages” as defined in G.S. 18B-101.
- (3) Sales or use tax paid on electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan.
- (4) Local occupancy taxes paid to certain counties and cities in this State.
- (5) Local prepared food and beverage taxes paid to various local governments in this State.
- (6) Highway use tax or alternate highway use tax paid on the purchase, vehicle subscription, lease, or rental of motor vehicles.
- (7) White goods disposal tax paid on purchases of new white goods.
- (8) Scrap tire disposal tax paid on purchases of new tires.
- (9) Dry-cleaning solvent tax paid on dry-cleaning solvent purchased by a dry cleaning facility.
- (10) Solid waste disposal tax.
- (11) 911 service charge for prepaid wireless telecommunications service.
- (12) Other states’ sales or use taxes paid to those states.

G.S. 105-164.14(c) lists the governmental entities that are allowed an annual refund of sales and use taxes as well as the sales and use taxes for which a refund is allowed. The entities listed are eligible for refunds of sales and use taxes paid on their purchases to the same extent as other nonprofit entities. Rule 17 NCAC 7B .0602 addresses refunds for nonprofit entities. Governmental entities must file an annual claim for refund, however, instead of a semiannual claim for refund. The annual claim requirement does not apply to a hospital or another medical facility that is an agency of a county or city and has received approval from the Secretary to file a claim for refund on a semiannual basis. Rule 17 NCAC 7B .1802 explains this approval process.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.14; 105-241.7; 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and 46; Eff. February 1, 1976; Amended Eff. July 1, 2000; August 1, 1998; April 1, 1997; August 1, 1996; October 1, 1993; October 1, 1991; May 1, 1990; February 1, 1997; Readopted Eff. January 1, 2024.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1704

DEADLINE FOR RECEIPT: November 7, 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:

In G.S. 105-164.14(c), there is a list 26 types of entities that are eligible for refund. On lines 8 through 11, this rule singles out four entities that are not eligible for a refund. Are there particular ambiguities that make this rule necessary for these four entities?

If so, what are those ambiguities?

By way of example, it looks like (c)(3) and (c)(4) (sewerage districts and water and sewer authority) could be ambiguous as to whether it includes a drainage district. The function of this rule is then to clarify this ambiguity. Is this correct?

If there are not ambiguities, why is this rule necessary?

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

17 NCAC 07B .1704 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 .1704 GOVERNMENTAL ENTITIES NOT ELIGIBLE FOR REFUNDS

G.S. 105-164.14(c) lists the governmental entities ~~that are~~ eligible for annual refunds of sales and use ~~taxes-tax paid~~ on certain direct purchases. A governmental entity ~~that is~~ not listed in that subsection is not eligible for ~~a~~ an annual refund. The governmental entities that are not eligible for ~~a~~ an annual refund include the following:

- (1) An alcoholic beverage control board.
- (2) A community college established under G.S. 115D.
- (3) A drainage district.
- (4) A housing authority.
- ~~(5) The North Carolina Civil Air Patrol, a State agency created by G.S. 143B-490.~~

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.14; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. April 1, 1999; October 1, 1993; May 1, 1990; July 5, ~~1980~~ 1980;
Readopted Eff. January 1, 2024.*

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1801

DEADLINE FOR RECEIPT: November 7, 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:

Fix the history note to include specific statutory references rather than articles.

This rule contains vague language about “applicable” local taxes and “unless” exempt by statute. Is there a reason that this wouldn’t be subject to the same clarity objection as was made at the 10/20/23 RRC meeting?

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

1 17 NCAC 07B .1801 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 .1801 SALES TO AND PURCHASES BY HOSPITALS AND SIMILAR INSTITUTIONS**

5 (a) ~~General~~ General. -- ~~Hospitals, sanitariums, nursing homes, and rest homes~~ Hospitals and similar institutions are
6 primarily engaged in rendering services and are ~~considered the users or consumers of all tangible personal~~
7 ~~property items, as the term item is defined in G.S. 105-164.3, they purchase for use in connection with these~~
8 ~~institutions the operation of the hospital or similar institutions.~~ Hospitals and similar institutions purchasing items for
9 use, such as linens, soap, toilet paper, facial tissues, and other supplies, shall pay sales or use tax due on the purchase
10 of the items, unless exempt from tax by statute. For purposes of this Rule, similar institutions include nursing homes,
11 ambulatory surgical facilities, psychiatric hospitals, chemical dependency facilities, and other institutions primarily
12 engaged in providing a health service, as the term is defined in G.S. 131E-176(9a). ~~These institutions are liable for~~
13 ~~payment of sales or use tax on their purchases of tangible personal property except as explained in this Rule.~~

14 (b) Purchases of Drugs for Use. -- Hospitals and similar institutions are the consumers of drugs and over-the-counter
15 drugs used in administering treatment to patients. Purchases of drugs and over-the-counter drugs by hospitals or similar
16 institutions are subject to the general State, and applicable local and transit rates of sales or use tax, unless exempt
17 from tax by statute.

18 ~~(b)(c)~~ Purchases and Sales of Food—Food:

19 (1) Hospitals and similar institutions are the consumers of food they purchase to furnish meals to
20 patients. Purchases of food used to furnish meals to patients by hospitals and similar institutions are
21 subject to the applicable rates of sales and use tax, unless exempt by statute. ~~Purchases of food by~~
22 ~~hospitals, sanitariums, nursing homes, or rest homes for use in furnishing meals to patients are~~
23 ~~exempt from State tax, but not the 2% local tax, if the food could be purchased under the Food~~
24 ~~Stamp Program.~~

25 (2) Hospitals and similar institutions that make sales of ~~If food purchased by an institution could not be~~
26 ~~purchased under that Program, the food is subject to both State and local sales or use tax. If, in~~
27 ~~addition to furnishing meals to patients, one of these institutions operates a cafeteria from which it~~
28 ~~makes sales of prepared meals or food to guests, visitors, employees, staff, or students, patients~~
29 ~~when the sale of food is not part of their health care services, or other persons, persons the institution~~
30 ~~must shall~~ register with the Department of Revenue ~~Department~~, in accordance with 17 NCAC 07B
31 .0104, and collect and remit the applicable rates of sales and use tax on its the sales.

32 (3) If the food purchased by the a hospital or similar institution for use in furnishing meals to patients
33 cannot be distinguished from the food purchased for resale through the cafeteria to other persons,
34 the hospital or similar institution may purchase all the food exempt from sales or use tax under a
35 certificate of resale exemption, in accordance with 17 NCAC 07B .0106. ~~An A hospital or similar~~
36 ~~institution that does this purchases food under a certificate of exemption assumes liability for~~

1 payment of sales or use tax due on the purchase price of food used in furnishing meals to its patients
2 and on sales of meals by the cafeteria at the applicable State, local, and transit rates of tax.

3 ~~(e)(d) Meals to Students~~Gift Shops and Other Retail Sales. -- A hospital or similar institution that operates a gift shop
4 or other business making retail sales shall register with the Department and collect and remit the sales and use tax due
5 on its retail sales. The tax due shall be computed at the applicable rates on the sales price or purchase price of the item
6 sold. If, at the time of sale, a hospital or similar institution cannot distinguish whether an item will be used or resold,
7 the hospital or similar institution may purchase the item exempt from sales and use tax under a certificate of exemption.
8 A hospital or similar institution that purchases an item under a certificate of exemption which is subsequently used by
9 the hospital, including items used to provide services to patients, must pay the sales or use tax due on the purchase
10 price of the item. Meals and food products sold by a hospital operated by a State or private educational institution to
11 student nurses are exempt from tax in accordance with G.S. 105-164.13(27).

12 ~~(d)(c) Purchases for Consumption~~Use of a Certificate of Exemption. -- Except as provided by ~~Paragraph (b)~~sections
13 ~~(c) and (d) of this Rule, a Certificate of Resale, Form E-590, Exemption~~ may not be used by ~~hospitals, sanitariums,~~
14 ~~nursing homes, or rest homes~~hospitals or similar institutions when making taxable purchases of ~~tangible personal~~
15 ~~property items~~ for use or consumption. The sales or use tax due on taxable purchases from North Carolina suppliers
16 ~~or out of state suppliers who charge~~retailers that collect North Carolina sales or use tax must shall be paid to the
17 ~~suppliers, retailer.- An institution that makes~~Hospitals and similar institutions that make taxable purchases from an
18 ~~out of state supplier who does~~suppliers that do not collect and remit North Carolina sales or use tax must shall register
19 with the department Department and remit monthly the tax due on the purchases.purchase price of items purchased
20 for use or consumption.

21
22 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; 405-467; 105-264; Chapter 105, Articles*
23 *39, 40, 42, 43, and 46;*
24 *Eff. February 1, 1976;*
25 *Amended Eff. July 1, 2000; May 1, 1999; August 1, 1998; October 1, 1993; October 1, 1991; July*
26 *1, 1989, 1989;*
27 *Readopted Eff. January 1, 2024.*
28

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1905

DEADLINE FOR RECEIPT: November 7, 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:

You cannot import a definition from a bulletin on lines 30 through 31. If the definition is necessary, it needs to be adopted as part of a rule. Otherwise, the meaning of the rule can be changed by changing the bulletin, which is contrary to the structure of the APA.

Fix the history note to include specific statutory references rather than articles.

This rule contains vague language about “applicable” local taxes and “unless” exempt by statute. Is there a reason that this wouldn’t be subject to the same clarity objection as was made at the 10/20/23 RRC meeting?

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: October 24, 2023

17 NCAC 07B .1905 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 .1905 ~~SALES TO TIRE RECAPPERS~~RETREADERS

(a) Sales by Tire Retreaders:

(1) Sales of Retreaded Tires. -- The sales price of a retreaded tire is subject to the general State, and applicable local and transit rates of sales and use tax on the sales price of the retreaded tire, without any deduction for any trade-in credit or allowance.

(2) Tire Retreading Services. -- The gross receipts derived from tire retreading services are subject to the general State, and applicable local and transit rates of sales and use tax, without any deduction for any trade-in credit or allowance.

(3) Sales of Other Parts or Services. -- The sales price of other items sold by a tire retreader including shoes, valves, dust caps, and repair, maintenance, and installation services are subject to the general State, and applicable local and transit rates of sales and use tax unless exempt by statute.

(b) Purchases by Tire Retreaders:

(1) Purchases of Ingredient or Component Parts. -- A tire retreader may purchase exempt from sales and use tax tangible personal property that enters into or becomes an ingredient or component part of retreaded tires that are resold. Such items may include ~~Sales to tire recappers of camelback or other rubber products, cement and rubber solvent, cord fabric, wheel weights-weights, and other items similar items, of a similar nature which enter into or become an ingredient or component part of the recapped tires or are attached to and delivered with the tires to the customer are exempt from tax.~~

~~(b) The gross receipts derived by a utility from sales of electricity to tire recappers for use in connection with the operation of the recapping plant are subject to tax at the rate set in G.S. 105-164.4. Sales of other fuel, except piped natural gas, to tire recappers for use in connection with the operation of the recapping plant are exempt from sales tax. Sales of piped natural gas are exempt from sales tax and are subject to the excise tax imposed by Article 5E of G.S. 105.~~

~~(c)(2) Purchases of Mill Machinery or Mill Machinery Parts or Accessories. -- Sales to~~Purchases by tire recappers-retreaders of mill machinery, or mill machinery parts and or accessories therefor, for use exclusively used primarily in the recapping-“production” phase, as defined in section 57 of the Department’s Sales and Use Tax Bulletin, of the retreading process are exempt from sales and use tax. Sales to contractors and subcontractors of mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts encompassed in such contracts with manufacturing industries and plants are exempt from sales tax. Such mill machinery or mill machinery parts and accessories must be for use by tire recappers in the production process, as the term “production” is

defined in 17 NCAC 07D .0102(a)(1), to qualify for the exemption from sales and use tax when purchased by such contractors or subcontractors. Contractors and subcontractors may obtain Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E, from the Taxpayer Assistance Division, North Carolina Department of Revenue, to be executed by them and furnished to their vendors in connection with such purchases as the vendor's authority to apply the exemption. The following items when sold to tire recappers retreaders for use exclusively primarily in the recapping retreading process are considered to be mill machinery or mill machinery parts and or accessories within the meaning of the Sales and Use Tax Article: exempt from sales and use tax.

This is not an all-inclusive list:

- (1) — wire brushes;
- (2) — mold lube;
- (3) — curing tubes and rims;
- (4) — molds and matrices;
- (5) — buffing equipment;
- (6) — buffing discs;
- (7) — buffing rasps;
- (8) — rasp teeth;
- (9) — crayons for marking tires;
- (10) — tire trimmers;
- (11) — boilers;
- (12) — tire handling equipment used exclusively between the beginning and ending steps of the recapping process;
- (13) — inspection spreaders used exclusively to inspect casings being recapped;
- (14) — spinners used for applying cement used on casings being recapped;
- (15) — pre-condensing tanks for air lines used for applying cement, dusting buffed casings, and inflating curing tubes;
- (16) — casing balancers used exclusively in balancing casings to be recapped;
- (17) — tread builders used to apply tread rubber to casings being recapped;
- (18) — air compressors used exclusively in retreading or recapping process;
- (19) — dust collectors;
- (20) — knives, stitchers, rollers, shears, awls, and splicing tools used to perform work on the ingredient material or the manufactured product;
- (21) — thermometers, pyrometers, and durometers used in testing mold heat and cure hardness of the rubber used in the recapping process;
- (22) — bagging and debagging equipment;
- (23) — sprayers used exclusively in the recapping process;
- (24) — matrix loaders;

- 1 ~~(25) — steam traps and valves used in steam lines for curing molds; and~~
2 ~~(26) — mold cleaners.~~
3 (A) Air compressors.
4 (B) Bagging and debagging equipment.
5 (C) Boilers.
6 (D) Buffing discs.
7 (E) Buffing equipment.
8 (F) Buffing rasps.
9 (G) Casing balancers and balancing casings to be retreaded.
10 (H) Crayons for marking tires.
11 (I) Curing tubes and rims.
12 (J) Dust collectors.
13 (K) Inspection spreaders used to inspect casings being retreaded.
14 (L) Knives, stitchers, rollers, shears, awls, and splicing tools used to perform work on the
15 ingredient material or the manufactured product.
16 (M) Matrix loaders.
17 (N) Mold cleaners.
18 (O) Mold lube.
19 (P) Molds and matrices.
20 (Q) Pre-condensing tanks for air lines used for applying cement, dusting buffed casings, and
21 inflating curing tubes.
22 (R) Rasp teeth.
23 (S) Spinners used for applying cement used on casings being retreaded.
24 (T) Sprayers.
25 (U) Steam traps and valves used in steam lines for curing molds.
26 (V) Thermometers, pyrometers, and durometers used in testing mold heat and cure hardness of
27 the rubber used in the retreading process.
28 (W) Tire handling equipment used between the beginning and ending steps for the retreading
29 process.
30 (X) Tire trimmers.
31 (Y) Tread builders used to apply tread rubber to casings being retreaded.
32 (Z) Wire brushes.

33 ~~(d)(c)~~ Purchases of items used or consumed. -- Purchases by tire retreaders of items used or consumed by them are
34 subject to the general State, and applicable local and transit rates of sales and use tax. The following are examples of
35 items which used or consumed by tire retreaders that are subject to the applicable statutory state and local sales or use
36 tax when sold to tire recappers for use or consumption: tax. This is not an all-inclusive list:

- 37 ~~(1) — motor vehicle jacks;~~

- (2) ~~tire tools not used between the beginning and ending recapping processes;~~
(3) ~~balancing machinery used after recapping process is completed;~~
(4) ~~equipment used to remove tires from the rim before the recapping process begins;~~
(5) ~~administrative equipment such as office supplies, file cabinets and other office equipment;~~
(6) ~~cleaning compounds for janitorial and sanitary purposes;~~
(7) ~~uniforms for employees;~~
(8) ~~advertising materials;~~
(9) ~~lubricants, repair parts and accessories for motor vehicles;~~
(10) ~~inspection bags; and~~
(11) ~~gloves.~~

- (1) Administrative equipment such as office supplies, file cabinets, and other office equipment.
(2) Advertising materials.
(3) Balancing machinery used after the retreading process is completed.
(4) Cleaning compounds for janitorial and sanitary purposes.
(5) Equipment used to remove tires from the rim before the retreading process begins.
(6) Gloves.
(7) Inspection bags.
(8) Motor vehicle jacks.
(9) Tire tools not used between the beginning and end of the retreading process.
(10) Uniforms for employees.

~~(e) The lists in Paragraphs (c) and (d) of this Rule are not intended to be exclusive but are for illustrative purposes only. If there is any question as to the tax status of any item not on the lists, it may be submitted to the Secretary of Revenue for a determination as to the applicable rate of tax.~~

(d) Purchases of Other Items for Resale. -- Tire retreaders making purchases of items for resale may purchase such items exempt from sales and use tax in accordance with 17 NCAC 07B .0106.

*History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; 105-264; ~~Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;~~Chapter 105, Articles 39, 40, 42, 43, and 46;
Eff. February 1, 1976;
Amended Eff. October 1, 2009; July 1, 1999; October 1, 1993; June 1, 1992; October 1, 1991; May 1, ~~1985~~,1985;
Readopted Eff. January 1, 2024.*

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1907

DEADLINE FOR RECEIPT: November 7, 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:

On line 7, G.S. 20-4.01(44) cross references 105-164.3. Consider referencing G.S. 105 164.3 instead.

Put the statutes in the history note (line 9) in numerical order.

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

17 NCAC 07B .1907 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 .1907 SCRAP TIRE DISPOSAL TAX

(a) The scrap tire disposal tax applies to the sale or purchase of new tires including new tires for motor vehicles, aircraft, construction equipment, maintenance and industrial equipment, and implements of husbandry, farm tractors, special mobile equipment as defined in G.S. 20-4.01, or vehicles designed primarily for use in non-highway work.

(b) Lessors of vehicles shall pay the scrap tire disposal tax to the retailer or wholesale merchant when they purchase a new tire.

~~(a)(c) Lessors of tires shall pay the scrap tire disposal tax to the retailer or wholesale merchant when they purchase a new tire. The taxable event for tires that are purchased for the purpose of lease or rental occurs at the time the tires are purchased and the scrap tire tax is due at that time. The receipts from the lease or rental of tires are not subject to the scrap tire tax but they are subject to the sales or use tax. The scrap tire tax shall be computed on the selling price of the tire including the federal excise tax but excluding the sales tax.~~

~~(b)(d) The scrap tire disposal tax applies to Purchases purchases of new tires from inside or outside of North Carolina for storage, use or consumption in North Carolina or to be placed Carolina, including for placement on a vehicle offered for sale, lease or rental in this State. are subject to tax at the rate established in G.S. 105-187.16(b).~~

(c) Tire retailers shall separately state and charge the scrap tire disposal tax on the invoice or similar billing document given to purchasers at the time of sale except where the retailer displays a statement indicating the sales price includes the scrap tire disposal tax.

(f) The sales price on which the scrap tire disposal tax is computed includes the federal excise tax on new tires. The sales price on which the scrap tire disposal tax is computed does not include the sales and use tax due on the sale. The sales price on which the sales and use tax is computed does not include the scrap tire disposal tax due on the sale.

~~(e)(g) The scrap tire disposal tax is not to be reported on a tire vendor's sales and use tax report but it is to be reported on the Scrap Tire Disposal Tax Report, Form E-500G. Taxpayers who are making sales or purchases of tires that are subject to the tax in accordance with the above information must register for this purpose. Persons required to collect and remit the scrap tire disposal tax shall register with the Department in accordance with 17 NCAC 07B .0104. The scrap tire disposal tax shall be paid and reported on Form E-500G, Scrap Tire Disposal Tax Return, which shall contain the following information:~~

- (1) name and address of entity filing return;
- (2) beginning and ending dates of return period;
- (3) account number;
- (4) amount of gross receipts;
- (5) amount of sales for resale;
- (6) amount of exempt sales by type;
- (7) total exempt sales;
- (8) total taxable sales;

- 1 (9) amount of receipts or purchases for tires with a bead diameter of less than 20 inches;
2 (10) amount of tax due for receipts or purchases for tires with a bead diameter of less than 20 inches;
3 (11) amount of receipts or purchases for tires with a bead diameter of at least 20 inches;
4 (12) amount of tax due for receipts or purchases for tires with a bead diameter of at least 20 inches;
5 (13) amount of total tax for all tires;
6 (14) amount of total tax due; and
7 (15) signature of person authorized to legally bind entity and date form signed.

8
9 *History Note: Authority G.S. 105-187.15; 105-187.16; 105-187.17; 105-164.29; 105-262; 105-264;*
10 *Eff. October 1, 1991;*
11 *Amended Eff. October 1, 1993; June 1, ~~1992~~; 1992;*
12 *Readopted Eff. January 1, 2024.*

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2101

DEADLINE FOR RECEIPT: November 9, 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:

This rule contains vague language about “applicable” local taxes and “unless” exempt by statute. Is there a reason that this wouldn’t be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

17 NCAC 07B .2101 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 .2100 – ELECTRICITY: PIPED NATURAL GAS: BOTTLED GAS: COAL: COKE: FUEL OIL:
OXYGEN: ACETYLENE: HYDROGEN: LIQUEFIED PETROLEUM GAS AND OTHER
COMBUSTIBLES**

17 NCAC 07B .2101 ~~ELECTRICITY~~ ELECTRICITY, PIPED NATURAL GAS, AND OTHER FUEL

(a) Gross Receipts. -- For purposes of this Rule, “gross receipts” means the total amount or consideration for which the item subject to tax is sold or purchased and includes:

- (1) All charges, costs, credits, and discounts included in the “sales price” as defined in G.S. 105-164.3;
- (2) All charges for items provided in the production and delivery of the taxable item to customers, even if some charges are billed separately from the charge for metered services;
- (3) Separately stated charges billed to customers for repair, maintenance, and installation services or contribution in aid of construction; and
- (4) The amount actually charged to customers for the taxable item consumed during the billing period, even if a customer participates in an equal pay agreement.

~~(a)~~(b) Electricity. -- Electricity is tangible personal property and ~~its sale~~ the gross receipts derived from the retail sales, including any separately stated charges billed to customers for repair, maintenance, and installation services or contribution in aid of construction, is subject to ~~tax at the rates set in G.S. 105-164.4,~~ the combined general rate of sales and use tax, unless exempt by statute. Sales tax is computed on the gross receipts after any allowance for conservation or load control discounts on metered electric service for residential customers.- Local and transit rates of sales and use taxes tax not included in the combined general rate do not apply to sales or purchases of electricity.

(c) Piped Natural Gas. -- Piped natural gas is tangible personal property and the gross receipts derived from the retail sales, including any separately stated charges billed to customers for repair, maintenance, and installation services or contribution in aid of construction, is subject to the combined general rate of sales and use tax, unless exempt by statute. Local and transit rates of sales and use tax not included in the combined general rate do not apply to sales or purchases of piped natural gas.

~~(b)~~(d) Other Fuel. -- The sale of fuels including bottled gas, coal, coke, fuel oil, oxygen, acetylene, hydrogen, liquefied petroleum gas, or ~~another other~~ combustible to a user or consumer is subject to the general applicable statutory ~~state~~ State, and applicable local and transit rates of sales and use ~~tax tax,~~ tax, unless ~~the sale is exempt from tax under G.S. 105-164.13 by statute.~~ Sales of piped natural gas are exempt from sales tax and are subject to the excise tax imposed by G.S. 105, Article 5E.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; ~~105-164.13; 105-164.16; 105-262; 105-264; 105-467; Chapter 105 Articles 39, 40, 42, 43, and 46; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;~~

1 *Eff. February 1, 1976;*
2 *Amended Eff. October 1, 2009; July 1, 2000; August 1, 1998; October 1, 1993; October 1, 1991;*
3 *May 1, 1990; August 1, ~~1986-1986~~;*
4 *Readopted Eff. January 1, 2024.*
5

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2105

DEADLINE FOR RECEIPT: November 9, 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:

This rule contains vague language about “applicable” local taxes and “unless” exempt by statute. Is there a reason that this wouldn’t be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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

1 17 NCAC 07B .2105 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 .2105 AVIATION FUEL**

5 The gross receipts derived from the retail sale of aviation gasoline and jet fuel are subject to the combined general rate
6 of sales and use tax, unless specifically exempt by statute. For purposes of this Rule, gross receipts include any federal
7 excise tax imposed on the retailer, even if the federal excise tax is listed separately on the invoice, bill of lading, or
8 similar billing document. Gross receipts do not include federal excise taxes imposed directly on a consumer if the tax
9 is separately stated on the invoice, bill of sale, or similar document given to the customer. Sales of aviation gasoline
10 and other aviation fuel to users or consumers in this state are subject to the applicable statutory state and local sales
11 or use tax. The federal tax on aviation gasoline or other aviation fuels which is levied by Chapter 32, Section 4081, of
12 the Internal Revenue Code and the federal super fund tax are imposed on gasoline sold by any producer, terminal
13 operator or importer of gasoline and shall be included in the sales price of aviation gasoline on which North Carolina
14 sales tax is due. The federal tax on noncommercial aviation gasoline and the federal tax on liquids sold for use or
15 used for fuel in noncommercial aviation as levied by the provisions of Chapter 31, Section 4041, of the Internal
16 Revenue Code, are taxes imposed at the retail level and these taxes are not includable in the sales price upon which
17 North Carolina sales tax is due.
18

19 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; 105-264; Article 39; Article 40; Article*
20 *42; Article 43; Article 44; Article 46;*
21 *Eff. February 1, 1976;*
22 *Amended Eff. May 1, 2009; October 1, 1993; October 1, 1991; October 1, 1990; January 3,*
23 *1984-1984;*
24 *Readopted Eff. January 1, 2024.*
25

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2201

DEADLINE FOR RECEIPT: November 9, 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:

Note that the reference to articles in rules text (such as paragraph (a)) are fine, when clear. But as we've discussed, are not appropriate for history notes. I note this only so there is no confusion about the requested changes to the history note.

On line 9, is 2% correct across the board? It appears that the local tax articles allow a county to vote for a range of possible tax rates.

*On lines 21, the phrase "Schools making purchases of food exempt" is grammatically unclear. Consider "Schools making purchases of food **that is** exempt" or "Schools making **tax-exempt** purchases of food ~~exempt~~".*

On line 31, either change "may" to "is" or provide an explanation for how the department will determine if the food is subject to tax.

This rule contains vague language about "applicable" local taxes. Is there a reason that this wouldn't be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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

17 NCAC 07B .2201 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 .2200 - FOOD AND FOOD PRODUCTS FOR HUMAN CONSUMPTION

17 NCAC 07B .2201 FOOD AND FOOD PRODUCTS

(a) ~~General.~~ Retail sales and purchases of food or food products not included in subsection (b) of this Rule are subject to applicable statutory State and local sales or use tax unless a statute exempts the sales from tax, the two percent (2%) local food rate of sales and use tax, imposed by Articles 39, 40, and 42 of Chapter 105 of the North Carolina General Statutes, and are exempt from the general State rate of sales and use tax. The local and transit taxes imposed by Articles 43 and 46 of Chapter 105, do not apply to food and food products that are exempt from the State rate of sales and use tax.

~~(b) G.S. 105-164.13B lists the food that is exempt from State tax, but not the two percent local tax. The following food and food products are subject to the general State, and applicable local and transit rates of sales and use tax:~~

- (1) Dietary supplements.
- (2) Food sold through a vending machine.
- (3) Prepared food, other than bakery items sold without eating utensils by an artisan bakery.
- (4) Soft drinks.
- (5) Candy.
- (6) Food or prepared food provided by prepaid meal plans.

~~(b)(c) Exempt Cafeteria Food. The schools, institutions, and organizations whose sales of food and meals are Schools making purchases of food exempt under G.S. 105-164.13(26), (26a), or (27)G.S. 105-164.13(26) and G.S. 105-164.13(26a), are not required to register with the Department. Therefore, unless one of these entities is otherwise required to register with the Department by reason of making other sales or purchases subject to the sales or use tax, it cannot furnish their suppliers a Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E, to its suppliers or the required data elements, in accordance with 17 NCAC 07B .0106. When making purchases of food to be sold, one of these entities that is not registered must give the supplier information to the effect that the food purchased is to be sold by the entity's school cafeteria or dining room, and the supplier must enter this Failure to provide a Certificate of Exemption or other documentation to the supplier, for entry of the information on its in their records and on the sales invoices, invoice identifying the food purchased as food to be sold exempt by the school. Otherwise, the transactions may be subject to the tax, transaction to sales and use tax. Registered schools, institutions, and organizations must furnish a properly executed Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E, to a supplier to purchase food without paying tax on the purchase.~~

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4L; 105-164.6; 105-164.13; 105-164.13B; 105-164.28; 105-262; 105-264; 105-467; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; Chapter 105, Articles 39, 40, 42, 43, and 46;

1 *Eff. February 1, 1976;*
2 *Amended Eff. May 1, 2009; August 1, 2002; May 1, 1999; August 1, 1998; October 1, 1993; October*
3 *1, 1991; February 1, 1986; May 11, ~~1979~~1979;*
4 *Readopted Eff. January 1, 2024.*
5

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

AGENCY: State Human Resources Commission

RULE CITATION: 17 NCAC 07B .2205

DEADLINE FOR RECEIPT: November 9, 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:

This rule contains vague language about “applicable” local taxes. Is there a reason that this wouldn’t be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

1 17 NCAC 07B .2205 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 .2205 ~~CATERERS~~CATERING**

5 (a) Catering is the retail sale of food, prepared food, beverages, and other tangible personal property or services at a
6 location designated by the customer or another person. ~~All charges by persons~~A person engaged in the catering
7 ~~business-business, including a personal chef that provides and prepares food for consumers, is a retailer. A location~~
8 ~~may include the caterer's banquet facility, a hotel, a restaurant, the customer's home, or any other location. All charges~~
9 ~~that are~~connected with the furnishing, preparing or serving of ~~meals, foods, food, prepared food, beverages,~~ and other
10 tangible personal property or services to ~~users or~~consumers are part of the sales price subject to the general State, and
11 applicable ~~statutory state and~~ local and transit rates of sales or and use tax.

12 (b) Charges for services, including bartending or carving services, connected with the sale of catered food or drink
13 are part of the sales price subject to sales tax even if the charges for the services are separately stated on an invoice or
14 similar billing document. Separately stated bartending charges, including corkage fees, for service of beverages owned
15 or provided by the caterer's customer are not part of the sales price subject to sales tax.

16 (c) Charges for a venue by a caterer that are connected with the furnishing, preparing, and serving food or drink are
17 part of the sales price subject to sales and use tax even if the charges are separately stated on the invoice or similar
18 billing document.

19 (d) Charges by a caterer for chairs, linens, tables, flatware, and similar items used to provide catering are subject to
20 sales and use tax even if the charges are separately stated on the invoice or similar billing document. In addition, a
21 caterer shall pay the applicable rates of sales and use tax on the purchase price of such items as they are not resold to
22 their customers.

23 ~~(e) If such persons perform other~~Charges for nontaxable services that are not a part of the ~~charges for~~sales price and
24 ~~are not connected with the furnishing, preparing-preparing, or serving of meals, foods, food, prepared food, beverages,~~
25 and other tangible personal property, the charges for such services rendered are exempt from taxproperty are not
26 subject to sales tax, provided such the charges are separately stated from the charges for the tangible personal property
27 on the invoice or similar billing document given to the customer at the time of the sale and in the vendor's catering
28 business' records; otherwise, the ~~total amount~~non-separately stated charges are part of the sales price and is subject to
29 the sales tax.

30
31 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4L; 105-164.6; 105-164.22; 105-262; 106-264;*
32 *Chapter 105, Articles 39, 40, 42, 43, and 46; ~~Article 39; Article 40; Article 42; Article 43; Article~~*
33 *44; Article 46;*
34 *Eff. February 1, 1976;*
35 *Amended Eff. May 1, 2009; October 1, 1993; October 1, 1991; July 5, ~~1980.~~1980;*
36 *Readopted Eff. January 1, 2024.*
37

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2209

DEADLINE FOR RECEIPT: November 9, 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:

Correct the introductory language to reflect the right rule.

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: October 30, 2023

1 17 NCAC 07B .4204 is repealed pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4)
2 as follows:

3
4 **17 NCAC 07B .2209 SCHOOL STORES' SALES**

5
6 *History Note: Authority G.S. 105-164.4; 105-164.6; 105-262;*
7 *Eff. February 1, 1976;*
8 *Amended Eff. October 1, ~~1993-1993~~;*
9 *Repealed Eff. January 1, 2024.*
10

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2210

DEADLINE FOR RECEIPT: November 9, 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:

On line 7, is "Similar camps" meant to require providing the same facilities and programming? As written, this could be read to allow camps that do not provide such programming exemption during other school breaks.

On line 7, is "services" meant to encompass "facilities and programming"? Or any services?

Consider something like "Similar camps are camps that provide such facilities and programming to children and adolescents during other school breaks or to persons with special needs at any time."

Regarding line 11, is there a potentially "applicable sales tax" on summer camp fees? And if so what is the authority to except summer camps from payment?

If I understand correctly, this rule is acknowledging that "summer camp fees" are not a taxed fee and is interpreting that if food is provided the camp is a user and not reseller of food. If so, deleting "applicable" from line 11 resolves the previous question.

Is paragraph (d) meant to apply to accommodations that are rented to participants in the summer camp? Or just to people who are not participants in the summer camp?

This rule contains vague language about "applicable" local taxes. Is there a reason that this wouldn't be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

17 NCAC 07B .2210 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 .2210 MEALS AT SUMMER CAMPS AND SIMILAR CAMPS

(a) For purposes of this Rule, a summer camp is a program primarily providing children and adolescents recreational, athletic, or educational facilities and programming for a limited period of time during the summer vacation period. Similar camps include camps that operate during other school breaks or that provide services to persons with special needs.

(b) A Summer campssummer camp or similar camp that make charges a weekly or monthly charge to persons who are fee for campers enrolled in the courses or activities carried on offered by the summer camps arecamp is not liable for collecting the applicable sales tax on such charges, charges, even if the fee includes food and prepared food provided to campers during time spent at the camp.

Summer camps and similar camps purchasing food, prepared food, or other tangible personal property that is used to provide food and prepared food to campers as part of the operation of the camp shall pay the applicable rates of sales and use tax on the purchases. Such organizations are liable for payment of the tax on their purchases of food and other tangible personal property for use in the operation of the camps.

(b)(c) Camps Summer camps and similar camps that operate cafeterias or restaurants where theycafeterias, restaurants, snack stands, or similar places that make retail sales of meals and food, prepared food, or other tangible personal property to students campers or other users or consumerspersons shall register and collect and remit the applicable rates of sales tax on the sales price of such property retail sales.

(d) A person who, in addition to operating a summer camp or similar camp, rents Camps where rooms, lodgings or accommodations are regularly furnished to transients for a consideration are deemed to be retailers and mustshall collect and remit the applicable sales and use tax on such receipts the gross receipts derived from such rentals of accommodations.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4F; 105-164.6; 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and 46;
Eff. February 1, 1976;
Amended Eff. October 1, 1993; July 5, 1980-1980;
Readopted Eff. January 1, 2024.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2212

DEADLINE FOR RECEIPT: November 9, 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:

On line 9, what "other exemptions"?

What is the 2% food rate on line 11 referring to?

This rule contains vague language about "applicable" local taxes. Is there a reason that this wouldn't be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

1 17 NCAC 07B .2212 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 .2212 SALES OF FISH AND OTHER SEAFOODS**

5 (a) A person who purchases making retail sales of fish or other seafood and sells them at retail is liable for collecting
6 the two percent local sales or use tax on the sales unless the sales are considered prepared food as defined in G.S. 105-
7 164.3(28). Prepared food is subject to the applicable statutory state and local sales and use tax shall collect and remit
8 the applicable rates of sales tax on the sales price of the fish or other seafood unless exempt under subsection (b) of
9 this Rule or other exemption. The rates of sales tax on fish and other seafood are as follows:

10 (1) Fish or other seafood sold for ingestion or chewing by humans and that is consumed for its taste or
11 nutritional value is subject to the two percent (2%) food rate of sales tax, unless the fish or other
12 seafood is prepared food.

13 (2) Fish or other seafood meeting the definition of prepared food in G.S. 105-164.4L is subject to the
14 general State, and applicable local and transit rates of sales tax.

15 (3) Live fish or other seafood not intended for human consumption, such as pet fish or fish for ponds,
16 is subject to the general State, and applicable local and transit rates of sales tax.

17 (4) Fish or other seafood sold for bait is subject to the general State, and applicable local and transit
18 rates of sales tax.

19 (5) Other sales of fish or other seafood are subject to the general State, and applicable local and transit
20 rates of sales tax.

21 (b) Sales of fish and or other seafood are exempt when sold in their its original or unmanufactured state by a person
22 selling in the capacity of a producer, such as an angler or fisherman fisher selling in his capacity as a fisherman that
23 capacity, are exempt from sales tax.

24
25 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4L; 105-164.13; 105-262; 105-264; 105-467;*
26 *Article 39; Article 40; Article 42; Chapter 105, Articles 39, 40, 42, 43, and 46;*
27 *Article 43; Article 44; Article 46;*
28 *Eff. February 1, 1976;*
29 *Amended Eff. August 1, 2009; May 1, 1999; August 1, 1998; October 1, 1993; October 1,*
30 *1991-1991;*
31 *Readopted Eff. January 1, 2024.*
32

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2213

DEADLINE FOR RECEIPT: November 9, 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:

The examples in paragraph (e) would be more appropriate in a bulletin or similar publication. They may be confusing as presented in a rule. Consider omitting, on p. 3 from line 11-17, 20-27, and 29-37.

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

17 NCAC 07B .2213 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 .2213 SERVICE CHARGES IMPOSED ON FOOD, BEVERAGES, OR
PREPARED FOOD**

A service charge is exempt from sales tax under G.S. 105-164.13A only if it meets the conditions in that statute. If a service charge does not exceed 20% of the sales price and personnel who are not directly involved in the service of food, beverages, or meals receive part of the service charge, then none of the service charge is exempt. If a service charge exceeds 20% of the sales price and personnel who are directly involved in the service of food, beverages, or meals receive an amount equal to 20% of the sales price, the amount received by them is exempt if the service charge is separately stated as required by G.S. 105-164.13A. In this circumstance, if the personnel who are directly involved do not receive an amount equal to 20% of the service charge, then none of the charge is exempt. The amount of a service charge that exceeds 20% of the sales price is subject to tax.

(a) Service Charges Up To Twenty Percent (20%). -- A service charge imposed by a retailer for the service of food, beverages, or prepared food, is considered a tip and not subject to sales and use tax if it meets all of the following requirements:

(1) The service charge does not exceed twenty percent (20%) of the sales price.

(2) The service charges is separately stated in the price list, menu, or written proposal and also in the invoice or similar billing document.

(3) The service charge is turned over to the personnel directly involved in the service of the food, beverages, or prepared food, in accordance with G.S. 95-25.6.

(b) Service Charges Over Twenty Percent (20%). -- If a service charge imposed by a retailer for the service of food, beverages, or prepared food, exceeds twenty percent (20%) of the sales price, the portion of the service charge that equals twenty percent (20%) of the sales price is considered a tip and not subject to sales and use tax if it meets all of the following requirements:

(1) The service charge is separately stated in the price list, menu, or written proposal and also in the invoice or similar billing document.

(2) A portion of the service charge that is at least twenty percent (20%) of the sales price is turned over to personnel directly involved in the service of the food, beverages, or prepared food in accordance with G.S. 95-25.6.

(c) Service charges imposed on food, beverages, or prepared food include:

(1) Automatic gratuity charged to large dining parties.

(2) Service charges for delivery of room service.

(3) Service charges for bottle service in nightclubs.

(4) Service charges for banquet room catering.

(d) Personnel not directly involved in the service of food, beverages, or prepared food include:

(1) Hosts.

- 1 (2) Maître d's.
- 2 (3) Valets.
- 3 (4) Manager and supervisors.
- 4 (5) Chefs.
- 5 (6) Bartenders that prepare, but do not regularly serve food or drinks.
- 6 (7) Dishwashers.
- 7 (8) Bussers.

8 (e) Service charges subject to the applicable State, local, and transit rates of sales and use tax include:

- 9 (1) For service charges of twenty percent (20%) or less of the sales price, the full amount of a service
10 charge if any portion of the service charge is paid to personnel not directly involved in service of
11 food, beverages, or prepared food. For example, a caterer separately states a twenty percent (20%)
12 service charge on its written contract and invoice. The caterer turns the service charge over as
13 follows: fifteen percent (15%) of the sales price to waiters who deliver prepared food and beverages;
14 and five percent (5%) of the sales price to bussers. The caterer maintains sufficient records. In this
15 scenario, the entire service charge is subject to sales and use tax because personnel directly involved
16 in the service of prepared food and beverages do not receive the full amount of the twenty percent
17 (20%) service charge.
- 18 (2) For service charges that exceed twenty percent (20%) of the sales price, the full amount of a service
19 charge if any portion of the service charge that is less than twenty percent (20%) of the sales price
20 is paid to personnel not directly involved in service of food, beverages, or prepared food. For
21 example, a restaurant separately states a twenty five percent (25%) automatic gratuity on its menu
22 and bills. The restaurant turns the gratuity over as follows: fifteen percent (15%) of the sales price
23 to waiters who deliver prepared food and beverages; five percent (5%) of the sale prices to hosts;
24 and five percent (5%) of the sales price to bussers. The restaurant maintains sufficient records. In
25 this case, the entire service charge is subject to sales and use tax because personnel directly involved
26 in the service of prepared food and beverages do not receive the full amount of the twenty percent
27 (20%) service charge.
- 28 (3) The full amount of a service charge that is not separately stated as set out in G.S. 105-164.13A.
- 29 (4) The portion of any service charge that exceeds twenty percent (20%). For example, a nightclub
30 separately states a thirty percent (30%) service charge for bottle service on its menu and bills. The
31 nightclub turns the service charge over as follows: twenty five percent (25%) of the sales price to
32 waiters who deliver beverages; and five percent (5%) of the sales price to barbacks and other support
33 staff. The nightclub maintains sufficient records. In this case, the amount of the service charge that
34 equals twenty percent (20%) of the sales price is considered a tip and not subject to sales and use
35 tax because servers receive an amount of the service charge that is at least twenty percent (20%) of
36 the sales price. The remaining portion of the service charge is subject to sales and use tax because
37 it exceeds twenty percent (20%) of the sales price.

1 (f) Record Keeping. -- Failure of a retailer to keep records that establish that a service charge meets the requirements
2 in paragraph (a) or (b) subjects the retailer to liability for sales and use tax on the full amount of the service charge.

3
4 *History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13A; 105-164.22; 105-262; 105-264; Chapter 105,*
5 *Articles 39, 40, 42, 43, and 46;*
6 *Eff. January 3, 1984;*
7 *Amended Eff. July 1, 2000; October 1, ~~1993-1993~~;*
8 *Readopted Eff. January 1, 2024.*

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2301

DEADLINE FOR RECEIPT: November 9, 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:

Correct the introductory language to reflect the right rule.

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: October 30, 2023

1 17 NCAC 07B .4204 is repealed pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4)
2 as follows:

3
4 **SECTION .2300 - SALES TO OUT-OF-STATE MERCHANTS FOR RESALE**

5
6 **17 NCAC 07B .2301 IN GENERAL**

7
8 *History Note: Authority G.S. 105-164.3; 105-164.5; 105-262;*
9 *Eff. February 1, 1976;*
10 *Amended Eff. May 1, 2009; February 1, ~~1988~~ 1988;*
11 *Repealed Eff. January 1, 2024.*
12
13

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2401

DEADLINE FOR RECEIPT: November 9, 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:

On lines 11-13, is the intent that any times listed in the cross-referenced rule, .1404, would also be subject to tax if sold to veterinarians? If so, that should be made explicit.

On line 19, change "because" to "when".

On line 22, "certain items" sounds ambiguous in the context of the rule. Consider sales of "qualifying items", which more closely matches the language of the statute.

This rule contains vague language about "applicable" local taxes. Is there a reason that this wouldn't be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

17 NCAC 07B .2401 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 .2401 SALES OF MEDICAL SUPPLIES AND EQUIPMENT TO VETERINARIANS

(a) ~~A veterinarian is a physician.~~ Veterinarians are the consumer of items, as the term item is defined in G.S. 105-164.3, that they use in rendering professional services. ~~Therefore, Retail sales to a veterinarian~~ veterinarians of medical instruments, ~~laboratory equipment, medical supplies, animal blood, and medical equipment~~ other tangible personal property used to test, diagnose, prevent, treat, or cure disease in animals are subject to applicable State and local rates of sales or use tax, unless exempt in accordance with paragraph (d) or (e) of this Rule or other statute. Medical instruments and equipment include knives, needles, scissors, microscopes, X-ray machines, and other laboratory equipment. Medical supplies include cotton, gauze, adhesive tape, bandages, and other dressings. Rule 17 NCAC 7B .1404 lists additional medical items that are subject to tax, the general State, and applicable local and transit rates of sales and use tax.

(b) Retail sales of dietary pet food, vitamins, joint supplements, flea and tick treatments, soap, collars, toys, and identification tags used by a veterinarian in the treatment of an animal or in the course of rendering professional services are subject to the general State, and applicable local and transit rates of sales and use tax, unless exempt in accordance with paragraph (d) or (e) of this rule or other statute.

(c) Retail sales to veterinarians of durable medical equipment are subject to the general State, and applicable local and transit rates of sales and use tax because the equipment is not sold pursuant to a prescription.

(d) Sales to veterinarians of drugs required by federal law to be dispensed only on prescription are exempt from sales and use tax.

(e) In accordance with G.S. 105-164.13E, sales of certain items to veterinarians to fulfill a service for a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate are exempt from sales and use tax.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-164.13E; 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and 46;

Eff. February 1, 1976;

Amended Eff. July 1, 2000; August 1, 1996; April 1, 1995; October 1, 1993; October 1, 1991; August 1, 1986-1986;

Readopted Eff. January 1, 2024.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2603

DEADLINE FOR RECEIPT: November 9, 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:

Are “asphalt plants” or “concrete plants” defined somewhere? Does this mean a building that manufactures asphalt or concrete?

Are this rule and the following two (.2604 and .2605) the entirety of what is exempt under .4H? Or just examples?

This rule contains vague language about “applicable” local taxes. Is there a reason that this wouldn’t be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

1 17 NCAC 07B .2603 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 .2603 ASPHALT PLANTS: CONCRETE PLANTS: WEIGH HOPPERS SOLD TO**
5 **CONTRACTORS**

6 ~~Sales-Purchases~~ of asphalt plants, concrete plants, weigh ~~hoppers-hoppers~~, or other equipment ~~to contractors who by~~
7 ~~real property contractors, retail-contractors, subcontractors, or other consumers to produce concrete or asphalt for use~~
8 in fulfilling their contracts are ~~taxable at~~ subject to the applicable statutory ~~state~~ general State, and applicable local and
9 transit rates of sales or and use tax, and no maximum tax is applicable thereto. tax.

10
11 *History Note: Authority G.S. 105-164.4; 105-164.4H; 105-164.6; 105-262; 105-264; ~~Article 39; Article 40;~~
12 ~~Article 42; Article 43; Article 44; Article 46;~~ Chapter 105, Articles 39, 40, 42, 43, and 46;
13 Eff. February 1, 1976;
14 Amended Eff. May 1, 2009; October 1, 1993; October 1, 1991; December 1, 1984; July 5,
15 1980-1980;
16 Readopted Eff. January 1, 2024.*

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

AGENCY: State Human Resources Commission

RULE CITATION: 17 NCAC 07B .2604

DEADLINE FOR RECEIPT: November 9, 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:

Clarify what statutes these rules are interpreting in the text of the rule. My best guess is that this rule is clarifying two potentially conflicting factual situations regarding sales of sand, G.S. -164.13(4b) and G.S. 164.4H, but that is not clear from the text of the rule.

On line 11, what does “in the capacity of a producer” mean?

This rule contains vague language about “applicable” local taxes and “unless” exempt by statute. Is there a reason that this wouldn’t be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

1 17 NCAC 07B .2604 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 .2604 SAND: DIRT; STONE SOLD TO CONTRACTORS**

5 (a) ~~Sales~~ Retail sales of sand, dirt, and stone to ~~contractors or other users or consumers or to nonregistered~~
6 ~~merchants~~ consumers, including real property contractors, retailer-contractors, or subcontractors for use in fulfilling
7 their contracts, are subject to the ~~applicable statutory state~~ the general State, and applicable local and transit rates of
8 sales ~~or and~~ use tax unless such property is sold in its original or unmanufactured state by the producer in his capacity
9 as a producer, exempt in accordance with paragraph (b) of this Rule or other statute.

10 (b) Sales of sand, dirt, and stone from mines are exempt from sales and use tax when sold in their original or
11 unmanufactured state by the producer in the capacity of producer.

12
13 *History Note: Authority G.S. 105-164.4; 105-164.4H; 105-164.6; 105-164.13; 105-262; 105-264; ~~Article 39~~;*
14 *~~Article 40; Article 42; Article 43; Article 44; Article 46; Chapter 105, Articles 39, 40, 42, 43, and~~*
15 *46;*

16 *Eff. February 1, 1976;*

17 *Amended Eff. May 1, 2009; October 1, 1993; October 1, ~~1991~~ 1991;*

18 *Readopted Eff. January 1, 2024.*
19

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2605

DEADLINE FOR RECEIPT: November 9, 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 necessary? It appears that it is describing one narrow circumstance covered by both G.S. 105-164.4H and 17 NCAC 07B .2604, but it is unclear what statutory language this rule is interpreting.

This rule contains vague language about “applicable” local taxes and “unless” exempt by statute. Is there a reason that this wouldn’t be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

1 17 NCAC 07B .2605 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 .2605 SANDBLAST SAND SOLD TO CONTRACTORS**

5 ~~Sales-Retail sales~~ of sandblast sand to ~~contractors~~ consumers, including real property contractors, retailer-contractors,
6 ~~or subcontractors~~ for use in ~~the performance of contracts to clean ships, buildings, etc.,~~ fulfilling their contracts, are
7 subject to the ~~applicable statutory state~~ general State, and applicable local and transit rates of sales or and use tax.

8
9 *History Note: Authority G.S. 105-164.4; 105-164.4H; 105-164.6; 105-262; 105-264; ~~Article 39; Article 40;~~
10 ~~Article 42; Article 43; Article 44; Article 46;~~ Chapter 105, Articles 39, 40, 42, 43, and 46;
11 *Eff. February 1, 1976;*
12 *Amended Eff. May 1, 2009; October 1, 1993; October 1, ~~1991~~ 1991;*
13 *Readopted Eff. January 1, 2024.**

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2701

DEADLINE FOR RECEIPT: November 9, 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:

On line 14, replace "because" with "when".

On line 16, add "Pursuant to 105-164.13(12), sales Sales to".

On line 26, add "Pursuant to 105-164.13(13), sales Sales to".

This rule contains vague language about "applicable" local taxes. Is there a reason that this wouldn't be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

17 NCAC 07B .2701 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 .2700 - DENTISTS: DENTAL LABORATORIES AND DENTAL SUPPLY HOUSES

17 NCAC 07B .2701 SALES TO DENTISTS AND ORTHODONTISTS

(a) ~~Dentists and orthodontists are deemed to be the users or consumers of items, as the term item is defined in G.S. 105-164.3, tangible personal property which that they purchase for use in rendering professional services. With the exception of false teeth and orthopedic appliances which are specifically exempt from tax, all~~ Retail sales of tangible personal property to dentists and orthodontists, including orthodontists of dental supplies, equipment, furnishings, and other property, such as materials which dentists fabricate into false teeth, tangible personal property that does not become part of a dental prostheses, are subject to the four percent state tax and any applicable local rates of sales or and use tax. Retail sales to dentists and orthodontists of durable medical equipment for use in rendering professional services are subject to the general State, and applicable local and transit rates of sales and use tax because the durable medical equipment is not sold pursuant to a prescription.

(b) Sales to dentists and orthodontists of prosthetic devices for human use are exempt from sales and use tax. The term prosthetic device includes the following items when purchased to become a component part of a prosthetic device worn on or in the body: The term "false teeth" includes dentures and artificial restoration of teeth; however, as stated in this Rule, the exemption for false teeth does not apply to sales of materials to dentists which they use in fabricating false teeth. The term "orthopedic appliances" includes headgear, bows, neckstraps, neck straps, wires, bands, brackets, rubber bands and jackscrews bands, jackscrews, bonding agents used to attach the prosthetic device to teeth, and other similar tangible person property. A prosthetic device also includes a dental prosthesis. A dental prosthesis includes an artificial replacement of one or more teeth and bridges, crowns, and dentures, when such items are purchased by orthodontists to be assembled into various types of appliances to be worn on the person of the owner or user and other orthopedic appliances when the same are designed to be worn on the person of the owner or user.

(c) Sales to dentists and orthodontists of drugs required by federal law to be dispensed only on prescription are exempt from sales and use tax.

*History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and 46;
Eff. February 1, 1976;
Amended Eff. October 1, 1993; October 1, 1991; January 3, 1984; November 1, 1982-1982;
Readopted Eff. January 1, 2024.*

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2702

DEADLINE FOR RECEIPT: November 9, 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 paragraph(a) necessary?

This rule overall appears to be interpreting how specific statutory exemptions are applied to dental laboratories. If that is the case, consider rephrasing paragraph (a) to be something like "Sales to dental laboratories do not qualify for the exception in N.C.G.S. 105-164.13(12) unless they are identified in paragraphs (b) or (c) of this rule."

If you do not add a reference to the exception in paragraph (a), add one at the beginning of paragraph (b).

What is the authority for paragraphs (c) and (d)? That is, if the "machinery, equipment, parts, or accessories" do not become a part of the prosthesis, why are they exempt?

This rule contains vague language about "applicable" local taxes. Is there a reason that this wouldn't be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

Why is G.S. 105-164.28 in the history note?

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: October 30, 2023

17 NCAC 07B .2702 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 .2702 SALES TO DENTAL LABORATORIES

(a) Sales to dental laboratories of ~~tangible personal property which becomes a component part of false teeth, dentures or artificial restoration of teeth being fabricated by such laboratories are not~~ items not identified in paragraphs (b) or (c) of this Rule are subject to the applicable rates of sales or and use tax.

(b) Sales to dental laboratories of tangible personal property that becomes a component part of a dental prosthesis manufactured by the dental laboratories are exempt from sales and use tax.

(c) Sales to dental laboratories of ~~machinery and equipment, and~~ machinery, equipment, parts, or accessories thereto ~~for use~~ used directly in manufacturing a dental prosthesis are exempt from sales and use tax. ~~the fabricating of false teeth are subject to the one percent rate of sales or use tax with a maximum tax of eighty dollars (\$80.00) per article.~~

(d) Sales to contractors and subcontractors ~~purchasing such machinery and equipment or parts and~~ of machinery, equipment, parts, or accessories thereto ~~for use by them in the performance of contracts with dental laboratories and sales to subcontractors of such machinery and equipment or parts and accessories thereto for use by them in the performance of contracts encompassed in such contracts with dental laboratories are taxable at the one percent rate of sales or use tax, subject to a maximum tax of eighty dollars (\$80.00) per article where applicable when the machinery and equipment or parts and accessories thereto are~~ are exempt from sales and use tax if the machinery, equipment, parts, or accessories will be used by such the dental laboratories directly in the fabricating of false teeth. ~~manufacturing dental prostheses. Contractors and subcontractors may obtain Contractor's and Subcontractor's Certificate, Form E-580, from the Office Services Division, Taxpayer Assistance Section, North Carolina Department of Revenue, to be executed by them and furnished to their vendors in connection with such purchases as the vendor's authority to apply the one percent rate of tax thereto.~~

(e) Sales to dental laboratories of ~~tangible personal property which does not become a component part of false teeth, or which is not used directly in the fabricating of the false teeth are subject to the four percent state and any applicable local sales or use tax.~~

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-164.28; 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and 46;
Eff. February 1, 1976;
Amended Eff. October 1, 1993; June 1, 1992; October 1, 1991; January 1, 1982-1982;
Readopted Eff. January 1, 2024.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2801

DEADLINE FOR RECEIPT: November 9, 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:

On line 9, what are “other similar items”? Would it be accurate to say “other plants”?

On line 13, “by statute” is potentially ambiguous. What statute?

On line 19, “the article is a product of the farm” is unclear. Do you mean something like “the article is a product of a farm for the purposes of G.S. 164.13(4b)”?

Does “season” in (d)(2) mean calendar season? If not, what does it mean? Consider clarifying to be a definitive time period (i.e. 3 months) if that is consistent with the agency’s intent.

On p. 2 line 17, what is a regular basis? Is there a schedule for reconsideration?

On p. 3, line 3, who determines if the records are kept accurately or conveniently? By what standard?

This rule contains vague language about “applicable” local taxes. Is there a reason that this wouldn’t be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

17 NCAC 07B .2801 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 .2800 – FLORIST: ~~NURSERYMEN;~~NURSERIES; GREENHOUSE GREENHOUSES
OPERATORS AND FARMERS**

**17 NCAC 07B .2801 FLORISTS: ~~NURSERYMEN;~~NURSERY AND GREENHOUSE OPERATORS
AND FARMERS**

(a) “Nursery Stock” means flowers, trees, potted plants, shrubbery, and other similar items grown by nurseries and greenhouse operators.

~~(b) Retail sales of wreaths, bouquets and similar items~~nursery stock are subject to the ~~applicable statutory state~~general State, and applicable local and transit rates of sales or and use tax-tax, unless exempt pursuant to paragraph (f) of this Rule or by statute.

~~(b)(c) Retail sales of flowers, potted plants, shrubbery and similar nursery stock and retail sales of fruits, vegetables and other farm products~~planters, hoses, nozzles and sprayers, rain barrels, sprinklers and timers, fertilizer, insect and weed control, garden tools, birdbaths, and other tangible personal property are subject to the ~~applicable statutory state~~general State, and applicable local and transit rates of sales or and use tax unless exempt by statute.

(d) Producer of Nursery Stock. -- If a nursery or greenhouse operator is the producer of an article of nursery stock, the article the product in question is a product of the farm farm, and is sold in its original state by the producer of the product who is not primarily a retail merchant at the location where the product is sold. A nursery or greenhouse operator is the producer of nursery stock in either of the following circumstances:

(1) The operator owns the article and grows the article from seed, cutting, or other similar propagation.

~~(e) For the purpose of the exemption afforded by G.S. 105-164.13(4b), nurserymen and greenhouse operators are considered to be farmers.~~

(2) The operator purchases the article of Nursery stocknursery stock, which isdoes not sold-sell the article during the season in which it was purchased by the nurserymen,purchased, greenhouse operators and other farmers but is retainedretains the article until at least the next season-season, and growth is added thereto to the article by virtue of such retention is considered to be a product of the farm and is exempt from sales and use taxes when sold by such nurserymen, greenhouse operators or farmers who are not selling primarily as retail merchants.retention.

~~(d) Nurserymen, greenhouse operators and other types of farmers that make retail sales of farm products that they have produced which are in their original state are not liable for collecting and remitting sales tax on these sales unless they are selling primarily in their capacity as retail merchants. Such vendors are selling primarily as producers when the total dollar sales volume of their produced farm products in the original state regularly exceeds fifty percent of the total dollar sales volume of their purchased products and their produced products. Such vendors are selling primarily in their capacity as retail merchants when their total dollar sales volume of purchased products regularly exceeds fifty percent of the total dollar sales volume of their purchased and produced products. Such classification shall remain in~~

1 ~~effect until either category of sales on a regular basis has changed to another principal type. If such producer vendors~~
2 ~~operate more than one location, the preceding is applicable to the total dollar sales volume of each location separately.~~
3 ~~The total dollar sales volume to be used in determining the classification of "producer" or "retail merchant" shall~~
4 ~~include all sales of tangible personal property without regard to any items or sales that might otherwise be exempt~~
5 ~~from tax by the Sales and Use Tax Statutes.~~

6 (c) Determining Primary Business. -- A producer shall determine whether it is primarily a retail merchant as follows:

7 (1) Determine the producer's total gross sales of products of a farm produced by the producer of nursery
8 stock.

9 (2) Determine the producer's total gross sales from sales not included in subsection (1).

10 (3) If the producer's gross sales determined in subsection (2) are greater than the gross sales determined
11 in subsection (1), the producer is primarily a retail merchant.

12 (4) Producers that have more than one location shall determine if it is primarily a retail merchant for
13 each location separately.

14 (5) The total gross sales used to determine the classification as primarily a retail merchant shall include
15 all sales without regard to any sales exempt from sales and use tax.

16 (6) The classification shall remain in effect until the primary business determination has changed on a
17 regular basis.

18 ~~(e)(f) Exempt Sales of Nursery Stock by a Producer. -- If such vendors are not classified primarily as retail merchants~~
19 ~~on the basis of the total dollar sales volume, sales of their produced products Nursery stock sold in the its original state~~
20 ~~by the producer of the nursery stock are is exempt from tax; sales and use tax unless the producer is however, retail~~
21 ~~sales of any farm products or any other taxable merchandise acquired by purchase are subject to any applicable tax.~~
22 ~~If such vendors are classified primarily as a retail merchants merchant, on the basis of the total dollar sales volume,~~
23 ~~they shall be liable for tax accordingly; i.e., all retail sales of both types of products shall be subject to the tax unless~~
24 ~~specific sales are statutorily exempt from tax.~~

25 (g) Sales by a Person that is Primarily a Retail Merchant. -- A person that is primarily a retail merchant shall collect
26 and remit the general State, and applicable local and transit rates of sales and use tax on all retail sales of purchased
27 and produced nursery stock unless the sales are specifically exempt by statute.

28 (h) Real Property Contracts:

29 (1) A person classified as primarily a retail merchant that withdraws nursery stock from their inventory
30 to fulfill a real property contract to perform landscaping shall pay the general State, and applicable
31 local and transit rates of use tax on the nursery stock.

32 (2) A producer not classified as primarily a retail merchant that withdraws nursery stock from their
33 inventory to fulfill a real property contract to perform landscaping does not owe use tax if they are
34 the producer of the nursery stock. If the person is not the producer of the nursery stock, the person
35 shall pay the general State, and applicable local and transit rates of use tax on the nursery stock.

36 ~~(f)(i) Record Keeping for Producers. -- When vendors who are not primarily retail merchants make sales of farm~~
37 ~~products produced by them and products acquired by purchase, Producers that make exempt sales and taxable sales~~

1 ~~shall maintain~~ separate records ~~must be maintained of sales of products produced by them of each.~~ ~~Records of~~
2 ~~purchased products, as well as sales thereof, must be kept and maintained in a manner that can be~~ ~~Failure to keep~~
3 ~~separate records in a manner that can be~~ accurately and conveniently checked by the agents of the Secretary of
4 ~~Revenue; otherwise, all sales are subject to the tax.~~ ~~Revenue subjects all sales to the general State, and applicable local~~
5 ~~and transit rates of sales and use tax.~~

6 ~~(g) Producers making taxable sales must register with the Department of Revenue for the purpose of collecting and~~
7 ~~remitting the tax due thereon.~~

8 ~~(h) When nurserymen, greenhouse operators, florists or other persons make taxable sales of shrubbery, young trees~~
9 ~~or similar items, and as a part of the transaction transplant them to the land of the purchaser for a lump sum or a flat~~
10 ~~rate, the entire amount of the transaction is subject to the applicable statutory state and local sales or use tax unless~~
11 ~~such vendors segregate on the invoice that portion of the charge which is for the property sold and that portion of the~~
12 ~~charge which is for transplanting.~~

13 ~~(i)(j) Exempt Purchases. -- A nursery or greenhouse operator, including an operator that is primarily a retail merchant,~~
14 ~~that meets the requirements of a qualifying or conditional farmer is eligible for the exemption provided in G.S. 105-~~
15 ~~164.13E. For the purpose of the exemption afforded by G.S. 105-164.13(4b), nurserymen and greenhouse operators~~
16 ~~are considered to be farmers; therefore, the fact that they may be selling tangible personal property primarily as a~~
17 ~~retailer and not as a producer does not preclude their purchases of tangible personal property for use from any~~
18 ~~exemption listed in G.S. 105-164.13. 17 NCAC 07B .1101 provides additional information regarding exemptions.~~

19
20 *History Note: Authority G.S. 105-164.3; 105-164.4; ~~105-164.4A; 105-164.4H;~~ 105-164.6; 105-164.13; 105-*
21 *164.13E; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; Chapter 105,*
22 *Articles 39, 40, 42, 43, and 46;*
23 *Eff. February 1, 1976;*
24 *Amended Eff. June 1, 2006; July 1, 2000; October 1, 1993; June 1, 1992; October 1, 1991;*
25 *March 1, ~~1987;~~ 1987;*
26 *Readopted Eff. January 1, 2024.*
27

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2802

DEADLINE FOR RECEIPT: November 9, 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:

Paragraph (a) appears to restate the definition from G.S. 105-164.4B. If so, consider clarifying by replacing “For purposes of this Rule” with “Pursuant to G.S. 105-164.4B”.

What is the department’s authority for the exemption on paragraph (c) (lines 26 and 27)?

*If this is an interpretation related to selling items for resale, consider adding on line 27: “North Carolina **is selling items for resale** and is not liable”.*

This rule contains vague language about “applicable” local taxes. Is there a reason that this wouldn’t be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

17 NCAC 07B .2802 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 .2802 ~~FLORISTS' DELIVERY ASSOCIATIONS~~ FLORIST WIRE SALES

(a) For purposes of this Rule, a florist wire sale is a sale in which a retail florist takes a customer's order and transmits the order to another retail florist to be filled and delivered.

(b) A retail florist in North Carolina that accepts a customer's order as part of a florist wire sale and transmits the order to another retail florist located inside or outside North Carolina shall collect and remit the general State, and applicable local and transit rates of sales tax on the sales price of the order. The sales price of a florist wire sale includes charges for delivery, relay charges, and charges for other services. Charges are a part of the sales price regardless of whether the florist keeps the charges or forwards them to other florists through a florist delivery association or other person. The sales price is subject to sales and use tax even if the florist separately states the charges on an invoice or other similar billing document given to the purchaser at the time of sale.

~~The tax due on transactions conducted through a florists' delivery association must be collected and remitted to the Department pursuant to the following principles:~~

~~(1) — All delivery and service charges associated with taxable sales of flowers or other tangible personal property in North Carolina, whether delivered to the purchaser or to a person other than the purchaser, are considered to be a part of the sales price and subject to the applicable statutory state and local sales or use tax.~~

~~(2) — Service or relay charges to purchasers for orders accepted in North Carolina and forwarded to other florists through a florist delivery association, regardless of whether the charges are separately stated on the bill to the purchaser, constitute a part of the sales price and are subject to the applicable statutory state and local sales or use tax.~~

~~(3) — A North Carolina florist receiving orders from other florists within or without North Carolina for delivery within or without North Carolina is not liable for any tax on the receipts derived from these transactions.~~

(c) A retail florist in North Carolina that receives a florist wire sale from another retail florist located inside or outside North Carolina is not liable for sales tax on the receipts derived from the transactions.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4B; 105-164.6; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Chapter 105, Articles 39, 40, 42, 43, and 46; Article 44;
Eff. February 1, 1976;
Amended Eff. June 1, 2006; April 1, 1999; October 1, 1993; October 1, 1991; March 1, ~~1987-1987;~~
Readopted Eff. January 1, 2024.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC .2901

DEADLINE FOR RECEIPT: November 9, 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:

What is the authority for the differing tax rates in paragraph (b)? It might be 105-164.13(50).

If that's correct, consider adding the statutory reference on line 11, "Pursuant to G.S. 105-164.13(50), tobacco ~~Tobacco~~ products".

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

17 NCAC 07B .2901 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 .2900 – VENDING MACHINES

17 NCAC 07B .2901 SALES THROUGH VENDING MACHINES

(a) ~~Requirement~~ Requirement. -- A person who sells tangible personal property through a vending machine is a retailer and shall ~~must~~ register with the Department in accordance with 17 NCAC 07B .0104, and remit sales and use tax on the sales price of the ~~items sold. property sold, unless the sale is exempt from tax. The sale of an item in a vending machine for one cent is exempt from tax.~~

(b) Sales Price Subject to Tax. -- Tobacco products and newspapers sold through a vending machine are taxed on one hundred percent (100%) of the sales price for which the property is sold. Other tangible personal property sold through a coin-operated vending machine are taxed on fifty percent (50%) of their sales price. All items sold through a vending machine that is not coin-operated are taxed on one hundred percent (100%) of the sales price for which the property is sold. ~~The "sales price" of an item sold in a vending machine differs depending on the item. For tobacco products sold through vending machines, the sales price is 100% of the price at which the item is sold in the vending machine. For all other items, the sales price is 50% of the price at which the item is sold in the vending machine. A vending machine retailer may calculate receipts from items sold, separate the receipts from items that are taxable at 100% of their price from those that are taxable at 50% of their price, and then divide the receipts by the appropriate number to determine the amount of receipts on which sales tax is due.~~

(c) Failure of a retailer to keep records that establish which vending machine sales are taxable at fifty percent (50%) of the sales price subjects the retailer to liability of one hundred percent (100%) of the sales price for sale tax on the sale.

*History Note: Authority G.S. 105-164.3; 105-164.4; ~~105-164.13; 105-164.22;~~ 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and 46; ~~Article 39; Article 40; Article 42; Article 43; Article 44;~~
Eff. February 1, 1976;
Amended Eff. April 1, 2006; July 1, 2000; October 1, 1993; June 1, 1992; July 1, ~~1989;~~ 1989;
Readopted Eff. January 1, 2024.*

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .3004

DEADLINE FOR RECEIPT: November 9, 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:

What is a “nonrecourse endorsement” on line 14?

What is the significance of paragraph (c)? As written, I believe there is a clarity issue, but I am unsure what this paragraph is meant to do. Are the purchases described “retail sales”? Or is this meant to establish the timing of “when” a purchase occurs?

This rule contains vague language about “applicable” local taxes and “unless” exempt by statute. Is there a reason that this wouldn’t be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

17 NCAC 07B .3004 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 .3004 SECONDHAND-USED PROPERTY

(a) ~~Tax Status~~General. -- ~~The original stock in trade of a retailer is~~Taxable sales are not limited to sales of newly manufactured articles-items. ~~Therefore, the~~The fact that property is used or secondhand does not exempt it from sales or use tax.

(b) ~~Retail sales of secondhand-used tangible personal property acquired by any means other than repossession are~~subject to the applicable rates of sales or use tax-tax, except as provided in 17 NCAC 07B .3002 or other statutory exemption.

~~(b)(c) Purchases~~Purchases. -- Property is considered purchased ~~When when a vendor-retailer acquires property in any of the following circumstances, the property is considered to have been purchased and is therefore subject to tax-circumstances:~~

- (1) ~~the vendor-retailer reacquires property that is collateral for a nonrecourse endorsement given by the vendor-retailer to a financial institution; or~~
- (2) ~~the vendor-retailer accepts secondhand-used, secondhand, or other property in lieu of commissions.~~other consideration.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and 46;
Eff. February 1, 1976;
Amended Eff. July 1, 2000; October 1, 1993; October 1, 1991; January 3, 1984-1984;
Readopted Eff. January 1, 2024.*

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

AGENCY: State Human Resources Commission

RULE CITATION: 17 NCAC 07B .3009

DEADLINE FOR RECEIPT: November 9, 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:

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

1 17 NCAC 07B .3009 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 .3009 TRANSFER OF ~~REPOSSESSED ITEMS~~INVENTORY HELD FOR RESALE TO**
5 **NEW BUSINESS**

6 (a) When a business acquires another business or converts to a new type of entity, such as through a change in
7 ownership or entity type, and the inventory held for resale of the previous business is sold or transferred to the new
8 business for resale, sales and use tax is not due on the transaction. The new business is liable for collecting and
9 remitting the applicable rates of sales and use tax on its retail sales of items, as the term item is defined in G.S. 105-
10 164.3, acquired from the previous business, including any articles repossessed by the previous business that would be
11 exempt from tax under G.S. 105-164.13(16) if they had been resold by the previous business. A repossessed item that
12 is in the inventory of a business and would be exempt under G.S. 105-164.13(16) if sold by the business becomes
13 taxable when the business dissolves and transfers its inventory to a successor business entity. This applies to all
14 business reformulations except a merger of two or more business entities in which the inventory is transferred to the
15 surviving business entity.

16 (b) When one or more corporations merge into a surviving or other corporation pursuant to the provisions of G.S. 55-
17 11-01, and the inventory held for resale by the predecessor corporation is transferred to a surviving or other corporation
18 for resale, sales and use tax is not due on the transaction. When one or more corporations merge into a surviving or
19 other corporation the exemption from sales and use tax for articles repossessed by a predecessor corporation is
20 applicable to the sale of the repossessed articles when they are sold by the surviving or other corporation.

21
22 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; Chapter 105,*
23 *Articles 39, 40, 42, 43, and 46;*
24 *Eff. February 1, 1976;*
25 *Amended Eff. July 1, 2000; October 1, 1993; October 1, 1991; November 1, ~~1982~~1982;*
26 *Readopted Eff. January 1, 2024.*

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .3106

DEADLINE FOR RECEIPT: November 9, 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:

Paragraph (c) does not appear to specify what "purchases" it is discussing.

Regarding paragraph (c), I see that G.S. 105-64.13 provides an exemption for "lease or rental of films, motion picture films, transcriptions and recordings to radio stations and television stations operating under a certificate from the Federal Communications Commission." Where does the secretary get authority to exempt purchases?

As written, it is unclear how to resolve conflicts between paragraph (d) and other paragraphs. For example, it is not immediately clear if a piece of broadcasting equipment or computer software were also "tangible personal property" whether it would be taxable or not. Assuming it is the department's meaning, it might help clarity to switch paragraphs (d) and (e) and begin what is currently paragraph (d) with "Purchases of other tangible personal property".

It looks like this rule is just summarizing a variety of exceptions in G.S. 105-164.13. Why is this rule necessary?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

17 NCAC 07B .3106 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 .3106 CABLE SERVICE PROVIDERS

(a) For purposes of this Rule, cable service provider means a cable television company that:

(1) receives payment or other consideration from its subscribers for cable service;

(2) uses broadcasting equipment, parts and accessories attached to the equipment, and a tower to receive and prepare signals for transmission over its cable systems; and

(3) is regulated and supervised by the Federal Communications Commission.

(b) Sales-Purchases of broadcasting equipment and parts and accessories attached to the equipment to by a cable service provider are exempt from sales and use tax. Examples of exempt broadcasting equipment include towers and antenna. Broadcasting equipment does not include cable for purposes of the exemption. The term "cable service provider," as used in this Rule, means a cable television company that receives consideration from its subscribers and uses broadcasting equipment and parts and accessories and a tower to receive and prepare signals for transmission over their cable systems and also is regulated and supervised by the Federal Communications Commission.

(b)(c) Purchases, including the lease or rental, of motion picture films, transcriptions, and recordings The sale of developed movie film to cable service providers which that operate under the regulation and supervision of the Federal Communications Commission for use by them in broadcasting and telecasting programs isare exempt from sales and use tax.

(e)(d) Purchases of tangible personal property by cable service providers, including Antenna-antenna cable, transmission cable, trunk, feeder and drop cable, and tangible personal property purchased by cable service providers other than towers, antennas and purchases of broadcasting equipment and parts and accessories thereto are subject to the applicable statutory stategeneral State, and applicable local and transit rates of sales or use tax.

(e) Purchases of computer software by cable service providers, that is used to provide ancillary service, cable service, Internet access service, telecommunications service, or video programming, is exempt from sales and use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13;105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;Chapter 105, Articles 39, 40, 42, 43, and 46;
Eff. March 1, 1984;
Amended Eff. August 1, 2009; April 1, 1997; October 1, 1993; October 1, 1991; August 1, 1986;
December 1, 1984-1984;
Readopted Eff. January 1, 2024.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .3301

DEADLINE FOR RECEIPT: November 9, 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:

On lines 10 and 11, you cannot incorporate a bulletin into the rule unless that bulletin was also adopted as a rule. You could put an example list in the rule, similar to lines 17-20.

The cross references in paragraph (c) does not seem to be accomplishing anything. Per our style guide: "Include a cross-reference to clarify the meaning of a rule or to create limits or exceptions to the rule." Consider omitting.

This rule contains vague language about "applicable" local taxes. Is there a reason that this wouldn't be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

17 NCAC 07B .3301 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 .3300 - ORTHOPEDIC APPLIANCES

17 NCAC 07B .3301 EXEMPT PROSTHETIC DEVICES

(a) ~~Exemption.~~ Medical Prosthetic Devices. -- ~~G.S. 105-164.13(12) exempts from sales and use tax~~ Sales of prosthetic devices as defined in G.S. 105-164.3(30b)-105-164.3, for human use are exempt from sales and use tax. Prosthetic devices for human use are exempt from sales and use tax whether or not the prosthetic device is sold on prescription. The Department's Sales and Use Tax Bulletin contains a non-exclusive list of examples of exempt medical prosthetic devices. An item not included in the list may also be exempt if it meets the definition of a prosthetic device. The exemption includes orthodontic materials that are purchased by an orthodontist for assembly into an appliance to be worn by a patient. Prosthetic devices are exempt regardless of whether they are sold on prescription.

(b) ~~Specific Items.~~ Dental Prosthetic Devices. -- ~~The Sales and Use Tax Technical Bulletins contain a list of exempt prosthetic devices and a list of orthodontic materials that are considered to be exempt prosthetic devices when they are purchased by an orthodontist for assembly into an appliance. An item that is not included in these lists may also be exempt.~~ Sales of dental prosthetic devices are exempt from sales and use tax. The term prosthetic device includes headgear, bows, neck straps, wires, bands, brackets, rubber bands, jackscrews, bonding agents used to attach prosthetic devices to teeth, and other appliances when purchased by orthodontists to assemble into various types of appliances to be worn on or in the body. Dental prosthesis also includes an artificial replacement of one or more teeth and includes bridges, crowns, and dentures.

(c) Optical Prosthetic Devices. -- Reference 17 NCAC 07B .5001 and 17 NCAC 07B .5002 for optical prosthetics.

(d) Records. -- A retailer that sells prosthetic devices for human use shall keep sales records that clearly identify the prosthetic device, repair or replacement parts, and all other items included in the sales price of the device. Failure of a retailer to keep records that establish a sale of a prosthetic device is exempt from sales and use tax subjects the retailer to liability at the general State, and applicable local and transit rates of sale and use tax on the sale.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-164.22; 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and 46; Eff. February 1, 1976; Amended Eff. October 1, 2009; April 1, 1999; August 1, 1998; October 1, 1993; October 1, 1991; July 1, 1989; February 1, 1986-1986; Readopted Eff. January 1, 2024.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .3302

DEADLINE FOR RECEIPT: November 9, 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:

On lines 8 through 10, you cannot incorporate a bulletin into the rule unless that bulletin was also adopted as a rule.

On lines 13 through 15, you cannot incorporate a bulletin into the rule unless that bulletin was also adopted as a rule.

This rule contains vague language about “applicable” local taxes. Is there a reason that this wouldn’t be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

17 NCAC 07B .3302 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 .3302 EXEMPT DURABLE MEDICAL EQUIPMENT AND DURABLE MEDICAL SUPPLIES

(a) ~~Devices.~~ Durable Medical Equipment. -- G.S. 105-164.13(12) ~~exempts from sales and use tax~~ Sales of durable medical equipment as the term is defined under G.S. 105-164.3(8b) when sold on prescription in G.S. 105-164.3 are exempt from sales and use tax, when sold on prescription. The Department's Sales and Use Tax ~~Technical Bulletin~~ Bulletin ~~contains a~~ contains a non-exclusive list of items that ~~are exempt from tax~~ qualify as durable medical equipment when sold on prescription. An item not included in the list ~~in the Bulletin~~ may also be exempt from tax when sold on ~~prescription~~ prescription if it meets the definition of durable medical equipment.

(b) Durable Medical Supplies. -- Sales of durable medical supplies as the term is defined in G.S. 105-164.3 are exempt from sales and use tax, when sold on prescription. The Department's Sales and Use Tax Bulletin contains a non-exclusive list of items that qualify as durable medical supplies. An item not included in the list may also be exempt from sales and use tax when sold on prescription if it meets the definition of durable medical supplies.

~~(b)(c)~~ (c) Records. -- A ~~vendor who~~ retailer that sells durable medical equipment or durable medical supplies, pursuant to a ~~written prescription~~ prescription, ~~must~~ shall keep sales records that ~~segregate these sales~~ clearly identify the sales price, the prescription, and the durable medical equipment or supplies. The ~~vendor must~~ retailer shall keep the original prescription for inspection by the Secretary of Revenue or an agent of the Secretary. Failure of a retailer to keep records that establish that a sale of durable medical equipment or durable medical supplies is exempt from sales and use tax subjects the retailer to liability at the general State, and applicable local and transit rates of sales and use tax on the sale.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-164.22; 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and 46;
Eff. February 1, 1976;
Amended Eff. October 1, 2009; April 1, 1999; August 1, 1998; October 1, 1993; June 1, 1992; October 1, 1991; February 1, ~~1986~~ 1986;
Readopted Eff. January 1, 2024.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .3801

DEADLINE FOR RECEIPT: November 9, 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:

Clarify the authority for paragraphs (a) and (b). It what this rule is intended to interpret, is that such purchases are not for resale, add language to that effect. Consider, i.e., on line 8 “or gifts are not purchases for resale and are subject” and something similar on line 13.

This rule contains vague language about “applicable” use taxes. Is there a reason that this wouldn’t be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

17 NCAC 07B .3801 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 .3800 - ~~PREMIUMS;~~PROMOTIONAL ITEMS; GIFTS ~~AND TRADING STAMPS~~

17 NCAC 07B .3801 ~~PREMIUMS~~PROMOTIONAL ITEMS AND GIFTS

(a) ~~Sales to~~Purchases by a ~~retailer person~~ of ~~tangible personal property~~ items, as the term item is defined in G.S. 105-164.3, for use by the ~~retailer person~~ as ~~premiums~~ promotional items or gifts are subject to the applicable ~~statutory state and local~~ rates of sales or use ~~tax tax~~, and the purchaser shall remit the tax on the purchases to his suppliers. If the suppliers are located outside this state and ~~the seller~~ does not collect the North Carolina sales ~~or~~ and use tax on the purchases, such sales, the purchaser shall remit ~~such the~~ applicable use tax directly to the Department.

(b) Purchases by a person of items for use in satisfying a customer's redemption of reward points or items earned by the customer through a rewards program are subject to the applicable rates of sales or use tax. If the seller does not collect North Carolina sales and use tax on such sales, the purchaser shall remit the applicable use tax directly to the Department.

(c) If the ~~property item~~ purchased is of the ~~type or~~ character customarily sold by ~~the a~~ retailer, ~~he the~~ retailer may purchase the ~~same item~~ without payment of the sales tax if he furnishes his supplier with a Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E, when the retailer complies with 17 NCAC 07B .0106. In this case, ~~the~~ The retailer ~~must shall~~ remit the use tax to the Department ~~the tax on all taxable articles items~~ withdrawn from stock inventory and used as ~~premiums~~ promotional items or gifts. The provisions of this Rule do not apply to any purchases of property to be used in redeeming trading stamps or other media.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.28; 105-262; 105-264; ~~Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; Chapter 105, Articles 39, 40, 42, 43, and 46;~~
Eff. February 1, 1976;
Amended Eff. August 1, 2009; October 1, 1993; October 1, ~~1991~~1991;
Readopted Eff. January 1, 2024.

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

AGENCY: State Human Resources Commission

RULE CITATION: 17 NCAC 07B .3804

DEADLINE FOR RECEIPT: November 9, 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:

This rule contains vague language about “applicable” taxes and “unless” exempt by statute. Is there a reason that this wouldn’t be subject to the same objection as was made at the 10/20/23 RRC meeting?

Applicable in this rule is potentially unclear, but I think you mean something slightly different than other rules. Consider on lines 7 and 8 something like, “the transaction is subject to the same taxes applicable to the item as if it were purchased without a gift card or gift certificate.”

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

1 17 NCAC 07B .3804 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 .3804 GIFT CERTIFICATES AND GIFT CARDS**

5 Charges ~~by vendors~~ for gift certificates or gift cards ~~which can be exchanged for merchandise~~ are not subject to sales
6 and use tax. When the holder of ~~such a gift certificates~~ certificate or gift card ~~exchanges~~ redeems the gift certificate
7 or gift card for ~~merchandise items~~, as the term item is defined in G.S. 105-164.3, the transaction is subject to the
8 applicable ~~statutory state and local rates of sales or and use tax~~ tax unless specifically exempt by statute. ~~The basis for~~
9 ~~the tax is the sales price of the property.~~

10
11 *History Note:* *Authority G.S. 105-164.3; 105-164.4; 105-262; 105-264; Article 39; Article 40; Article 42; Article*
12 *43; Article 44; Article 46; Chapter 105, Articles 39, 40, 42, 43, and 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 .3907

DEADLINE FOR RECEIPT: November 9, 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:

On line 6: “for reuse ~~and~~ when the amount charged is refundable or creditable to the purchaser, purchaser ~~is~~ are not”.

This rule contains vague language about “applicable” taxes. Is there a reason that this wouldn’t be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

1 17 NCAC 07B .3907 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 .3907 DEPOSITS FOR REUSABLE CONTAINERS**

5 (a) Deposits charged by ~~vendors~~ a retailer or wholesale merchant for a beverage container that is returnable to the
6 retailer or wholesale merchant for reuse and the amount charged is refundable or creditable to the purchaser, is not
7 subject to sales and use tax, whether or not the deposit is separately stated on the invoice or similar billing document.

8 (b) Deposits charged by a retailer or wholesale merchant for reusable containers, other than those described in G.S.
9 ~~105-164.13(47) and (48)~~ beverage containers, are subject to the general State, and applicable local and transit rates of
10 sales ~~or and~~ use tax when the ~~purchasers~~ purchaser of the property contained therein can, during the period the
11 containers are in their possession, exercise such packaged within a reusable container exercises control over the
12 containers container as is ordinarily associated with ownership ownership, while the container is in their possession.
13 Such amounts are a part of the sales price even though designated as a deposit for the containers.

14 (b)(c) When the ~~vendors retain~~ a retailer or wholesale merchant retains title to such reusable containers and the ~~vendors~~
15 retain the right to control the use which ~~vende~~ the purchaser makes of the containers, the containers are not considered
16 to be a part of the sale of the ~~property property~~ packaged within the reusable container. In such cases, amounts charged
17 to the ~~customers~~ purchasers as security for the return of the containers are not subject to sales ~~or and~~ use tax if such
18 charges are shown separately from the sales price of the property on the ~~customers' invoices~~ invoice or similar billing
19 document given to the purchaser at the time of sale. If such amounts are not separately ~~stated~~ stated on the invoice or
20 similar billing document given to the purchaser at the time of sale, the total charge is subject to the ~~tax~~ the general
21 State, and applicable local and transit rates of sales and use tax.
22

23 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.13; 105-262; 105-264; Chapter 105, Articles 39, 40,*
24 *42, 43, and 46;*
25 *Eff. February 1, 1976;*
26 *Amended Eff. August 1, 2002; January 1, 1982; July 5, ~~1980~~ 1980;*
27 *Readopted Eff. January 1, 2024.*
28

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .3910

DEADLINE FOR RECEIPT: November 9, 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:

What is a “demurrage period” on line 7? From my brief research, it appears to apply to storage fees in admiralty situations, but in the context of the rule, I do not understand.

What is the authority to make this rule? Consider clarifying if you mean that such fees are “not part of the sales” price, or they are not taxable for some other reason.

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

1 17 NCAC 07B .3910 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 .3910 RETURNABLE CONTAINERS**

5 When a ~~vendor person~~ sells tangible personal property in returnable containers without ~~a charge being made~~ charging
6 for the use of the containers for a specified time but, at the expiration of the specified time, the containers enter a
7 demurrage period and a penalty ~~charge is made as an inducement for~~ charged to encourage the return of the containers,
8 the ~~charges are incidental to the sale of the property and are~~ charge is not subject to the sales and use tax. If a container
9 ~~is used by the owner of the container or another person to enclose tangible personal property for delivery to a purchaser~~
10 ~~of the property and is required to be returned to its owner for reuse, it is exempt from tax in accordance with G.S. 105-~~
11 ~~164.13(23)b.~~

12
13 *History Note: Authority G.S. 105-164.4; 105-164.13; 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and*
14 *46;*
15 *Eff. February 1, 1976;*
16 *Amended Eff. August 1, ~~1998-1998;~~*
17 *Readopted Eff. January 1, 2024.*
18

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .4102

DEADLINE FOR RECEIPT: November 9, 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:

Clarify the authority for the first sentence, or if it is just a brief restatement of existing statute.

This rule contains vague language about “applicable” taxes. Is there a reason that this wouldn’t be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

17 NCAC 07B .4102 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 .4102 SALES OF PHOTOGRAPHS AND VIDEOS

(a) Photographs. -- The ~~sale~~ sales price of photographs, whether the photographs are transferred electronically or as tangible personal property, are including all charges for developing or printing, is subject to the applicable statutory ~~state~~ general State, and applicable local and transit rates of sales or and use tax. The sales price of photographs include sitting fees charged to a customer who ultimately purchases photographs, and all charges for developing or printing. When transferred electronically, the sale of a photograph includes a photograph provided by email, electronic storage device, access through a website owned by the photographer, access through a website owned by a third-party, or by other electronic means.

A copyright fee that entitles a purchaser the right to reproduce a photograph does not constitute part of the sales price of the photograph and is not subject to sales and use tax when the charge is separately stated.

(b) Videos. -- The sales price of videos, whether the videos are transferred electronically or as tangible personal property, are subject to the general State, and applicable local and transit rates of sales and use tax. When transferred electronically, the sale of a video includes a video provided by email, electronic storage device, access through a website owned by the videographer, access through a website owned by a third-party, or by other electronic means.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .4105

DEADLINE FOR RECEIPT: November 9, 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:

Clarify the interaction between paragraph (a) and (b). Paragraph (a) by itself would be unnecessary for similar reasons to previously objected to rules. The first sentence of paragraph (b) seems to overlap with paragraph (a). The second sentence of paragraph (b) would clearer if it was phrased to say that items which become “an ingredient or component part” of a finished product are items purchased for resale which are exempt from tax.

On lines 20 and 21, you cannot incorporate a bulletin into the rule unless that bulletin was also adopted as a rule.

What is the department’s authority to exempt tools of “production” from sales tax?

This rule contains vague language about “applicable” taxes. Is there a reason that this wouldn’t be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

17 NCAC 07B .4105 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 .4105 PHOTO SUPPLIES AND MATERIALS

(a) Sales of items, as the term item is defined in G.S. 105-164.3, such as frames, ~~films~~ films, storage media, and other articles by photographers, photo ~~finishers~~ finishers, videographers, or others to users or consumers are subject to the general State, and applicable statutory state and local and transit rates of sales or and use tax. Gross receipts from sales of photographs by commercial or portrait photographers or others are subject to the applicable statutory state and local sales or use tax; however, sales to

(b) Purchases of items by a commercial or portrait ~~photographers~~ photographer or videographer for use or consumption are subject to the general State, and applicable local and transit rates of sales and use tax. However, purchases by commercial or portrait photographers of materials which become an ingredient or component part of the finished picture are not subject to the tax. Mounts, items including mounts, frames, and ~~paper~~ paper, which become an ingredient or component part of the finished picture and the sales of such materials to commercial or portrait ~~photographers~~ product are not subject to the tax sales and use tax when purchased for resale.

(c) Purchases by a commercial or portrait photographers of mill machinery or mill machinery parts or accessories Materials such as films, chemicals, proof paper, cameras, trays, and similar items that are used in the manufacture or fabrication of such pictures are exempt from the sales and use tax and subject to the privilege tax under the provisions of G.S. 105-187.51 when such materials are purchased by commercial or portrait photographers; the mill machinery or mill machinery parts or accessories are for use in the “production” phase, as defined in section 57 of the Department’s Sales and Use Tax Bulletin of the manufacture of such pictures.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-187.50; 105-187.51; 105-187.52; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; Chapter 105, Articles 39, 40, 42, 43, and 46;
Eff. February 1, 1976;
Amended Eff. September 1, 2006; October 1, 1993; October 1, ~~1991~~ 1991;
Readopted Eff. January 1, 2024.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .4106

DEADLINE FOR RECEIPT: November 9, 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:

On lines 6 and 7, you cannot incorporate a bulletin into the rule unless that bulletin was also adopted as a rule.

What is the department's authority to exempt tools of "production" from sales tax?

This rule contains vague language about "applicable" taxes. Is there a reason that this wouldn't be subject to the same objection as was made at the 10/20/23 RRC meeting?

Fix the history note to include specific statutory references rather than articles.

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: October 30, 2023

17 NCAC 07B .4106 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 .4106 PHOTOENGRAVINGS: ELECTROTYPES: ETC.

(a) Purchases by commercial printers and publishers of an item, as the term item is defined in G.S. 105-164.3, including photoengravings, electrotypes and lithographs, lithographs used in the “production” phase, as production is defined in section 57 of the Department’s Sales and Use Tax Bulletin, to produce items for sale, when the same are not for resale, but which the purchaser uses in printing tangible personal property for sale are exempt from the sales and use tax and subject to the privilege tax under the provisions of G.S. 105-187.51-tax. Lithographic and gravure plates and dies, including custom made plates and dies and tangible personal property used to fabricate plates and dies for use in the “production” of printed matter for sale, are exempt from sales and use tax when title to the plates and dies do not pass to the printers’ customers.

(b) ~~Sales-Purchases~~ of photoengravings, electrotypes and lithographs, electrotypes, lithographs, paper, ink, and all other printing equipment and supplies, supplies including paper and ink, to consumer by consumers or captive in-house printers are subject to the applicable statutory state general State, and applicable local and transit rates of sales or and use tax.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-187.50; 105-187.51; 105-187.52; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; Chapter 105, Articles 39, 40, 42, 43, and 46;
Eff. February 1, 1976;
Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991; 1991;
Readopted Eff. January 1, 2024.