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The **NORTH CAROLINA REGISTER**

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ISSUE DATE: SEPTEMBER 30, 1991

Volume 6 • Issue 13 • Pages 784-923



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any amendment which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

North Carolina Register. Published bi-monthly by the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, pursuant to Chapter 150B of the General Statutes. Subscriptions one hundred and five dollars (\$105.00) per year.

North Carolina Administrative Code. Published in looseleaf notebooks with supplement service by the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, pursuant to Chapter 150B of the General Statutes. Subscriptions seven hundred and fifty dollars (\$750.00). Individual volumes available.

NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER

Publication Schedule

(October 1991 - December 1992)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	* Earliest Effective Date
10/01/91	09/10/91	09/17/91	10/31/91	10/31/91	11/20/91	02/01/92
10/15/91	09/24/91	10/01/91	10/30/91	11/14/91	11/20/91	01/01/92
11/01/91	10/11/91	10/18/91	11/16/91	12/01/91	12/20/91	02/01/92
11/15/91	10/24/91	10/31/91	11/30/91	12/15/91	12/20/91	02/01/92
12/02/91	11/07/91	11/14/91	12/17/91	01/01/92	01/20/92	03/01/92
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12/01/92	11/06/92	11/13/92	12/16/92	12/31/92	01/20/93	03/01/93
12/15/92	11/24/92	12/01/92	12/30/92	01/14/93	01/20/93	03/01/93

* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st of the next calendar month.

CHAPTER 150B

THE ADMINISTRATIVE PROCEDURE ACT

[The following excerpt contains the statutory provisions of the Administrative Procedure Act as amended by the 1991 Regular Session of the General Assembly effective October 1, 1991, except 150B-1(d)(5) and 150B-1(e)(10), effective July 16, 1991.]

Article 1.

General Provisions.

§ 150B-1. Policy and scope.

(a) Purpose. -- This Chapter establishes a uniform system of administrative rule making and adjudicatory procedures for agencies. The procedures ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) Rights. -- This Chapter confers procedural rights.

(c) Full Exemptions. -- This Chapter applies to every agency except:

- (1) The North Carolina National Guard in exercising its court-martial jurisdiction.
- (2) The Department of Human Resources in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
- (3) The Utilities Commission.
- (4) The Industrial Commission.
- (5) The Employment Security Commission.

(d) Exemptions From Rule Making. -- Article 2A of this Chapter does not apply to the following:

- (1) The Commission.
- (2) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-10 and G.S. 104G-11.
- (3) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-13 and G.S. 130B-14.
- (4) The Department of Revenue, except that Parts 3 and 4 of Article 2A apply to the Department.
- (5) The North Carolina Air Cargo Airport Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(e) Exemptions From Contested Case Provisions. -- The contested case provisions of this Chapter apply to all agencies and all proceedings

not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

- (1) The Department of Human Resources and the Department of Environment, Health, and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).
- (2) The Governor's Waste Management Board in administering the provisions of G.S. 104E-6.2 and G.S. 130A-293.
- (3) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.
- (4) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.
- (5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.
- (6) The Department of Revenue.
- (7) The Department of Correction.
- (8) The Department of Transportation, except as provided in G.S. 136-29.
- (9) The Occupational Safety and Health Review Board in all actions that do not involve agricultural employers.
- (10) The North Carolina Air Cargo Airport Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.
- (f) Exemption From All But Judicial Review. -- No Article in this Chapter except Article 4 applies to the University of North Carolina.

§ 150B-2. Definitions. -- As used in this Chapter,

- (01) "Administrative law judge" means a person appointed under G.S. 7A-752, 7A-753, or 7A-757.
- (1) "Agency" means an agency or an officer in the executive branch of the government of this State and includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.
- (1a) "Adopt" means to take final action to create, amend, or repeal a rule.
- (1b) "Codifier of Rules" means the Chief Administrative Law Judge of the Office of Administrative Hearings or a designated representative of the Chief Administrative Law Judge.
- (1c) "Commission" means the Rules Review Commission.
- (2) "Contested case" means an administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. "Contested case" does not include rulemaking, declaratory rulings, or the award or denial of a scholarship or grant.
- (2a) Repealed.
- (2b) "Hearing officer" means a person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article.
- (3) "License" means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes and occupational licenses.
- (4) "Licensing" means any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. "Licensing" does not include controversies over whether an examination was fair or whether the applicant passed the examination.
- (4a) "Occupational license" means any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.
- (4b) "Occupational licensing agency" means any board, commission, committee or other agency of the State of North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within a particular profession, occupation or field of endeavor, and which is authorized to issue and revoke licenses. "Occupational licensing agency" does not include State agencies or departments which may as only a part of their regular function issue permits or licenses.
- (5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.
- (6) "Person aggrieved" means any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.
- (7) "Person" means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.
- (8) "Residence" means domicile or principal place of business.
- (8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
 - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as

defined by G.S. 93B-1, or by the State Board of Elections.

- c. Nonbinding interpretive statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
- d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
- e. Statements of agency policy made in the context of another proceeding, including:
 1. Declaratory rulings under G.S. 150B-4;
 2. Orders establishing or fixing rates or tariffs.
- f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
- g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
- h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.
- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Personnel Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.1 and the variable component of the excise tax on motor fuel under G.S. 105-434.

(8b) "Substantial evidence" means relevant evidence a reasonable mind might accept as adequate to support a conclusion.

(9) Repealed.

§ 150B-3. Special provisions on licensing.

(a) When an applicant or a licensee makes a timely and sufficient application for issuance or renewal of a license or occupational license, including the payment of any required license fee, the existing license or occupational license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license or occupational license are limited, until the last day for applying for judicial review of the agency order. This subsection does not affect agency action summarily suspending a license or occupational license under subsections (b) and (c) of this section.

(b) Before the commencement of proceedings for the suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of any license other than an occupational license, the agency shall give notice to the licensee, pursuant to the provisions of G.S. 150B-23. Before the commencement of such proceedings involving an occupational license, the agency shall give notice pursuant to the provisions of G.S. 150B-38. In either case, the licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license or occupational license.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license or occupational license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to February 1, 1976, which provide for the summary suspension of a license.

§ 150B-4. Declaratory rulings.

(a) On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

(b) This section does not apply to the Department of Correction.

Article 2.
Rule Making.
Repealed.

Article 2A.
Rules.

Part 1. General Provisions.

§ 150B-18. Scope and effect.

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article.

§ 150B-19. Restrictions on what can be adopted as a rule.

An agency may not adopt a rule that does one or more of the following:

- (1) Implements or interprets a law unless that law or another law specifically authorizes the agency to do so.
- (2) Enlarges the scope of a profession, occupation, or field of endeavor for which an occupational license is required.
- (3) Imposes criminal liability or a civil penalty for an act or omission, including the violation of a rule, unless a law specifically authorizes the agency to do so or a law declares that violation of the rule is a criminal offense or is grounds for a civil penalty.
- (4) Repeats the content of a law, a rule, or a federal regulation.
- (5) Establishes a reasonable fee or other reasonable charge for providing a service in fulfillment of a duty unless a law specifically authorizes the agency to do so or the fee or other charge is for one of the following:
 - a. A service to a State, federal, or local governmental unit.
 - b. A copy of part or all of a State publication or other document, the cost of mailing a document, or both.
 - c. A transcript of a public hearing.
 - d. A conference, workshop, or course.
 - e. Data processing services.
- (6) Allows the agency to waive or modify a requirement set in a rule unless a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement.

§ 150B-20. Petitioning an agency to adopt a rule.

(a) Petition. -- A person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition requesting the adoption. A person may submit written comments with a rule-making petition. If a rule-making petition requests the agency to create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change. Each agency must establish by rule the

procedure for submitting a rule-making petition to it and the procedure the agency follows in considering a rule-making petition.

(b) Time. -- An agency must grant or deny a rule-making petition submitted to it within 30 days after the date the rule-making petition is submitted, unless the agency is a board or commission. If the agency is a board or commission, it must grant or deny a rule-making petition within 120 days after the date the rule-making petition is submitted.

(c) Action. -- If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If the agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-making petition requesting the creation or amendment of a rule, the notice of rule making it publishes in the North Carolina Register may state that the agency is initiating rule-making proceedings as the result of a rule-making petition, state the name of the person who submitted the rule-making petition, set out the text of the requested rule change submitted with the rule-making petition, and state whether the agency endorses the proposed rule change.

(d) Review. -- Denial of a rule-making petition is a final agency decision and is subject to judicial review under Article 4 of this Chapter. Failure of an agency to grant or deny a rule-making petition within the time limits set in subsection (b) is a denial of the rule-making petition.

(e) Exception. -- This section does not apply to the Department of Correction.

§ 150B-21. Agency must designate rule-making coordinator.

Each agency must designate one or more rule-making coordinators to oversee the agency's rule-making functions. The coordinator must prepare notices of public hearings, coordinate access to the agency's rules, and serve as the liaison between the agency, other agencies, and the public in the rule-making process.

Part 2. Adoption of Rules.

§ 150B-21.1. Procedure for adopting a temporary rule.

(a) Adoption. -- An agency may adopt a temporary rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical when it finds that adherence to the notice and hearing requirements of this Part would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

- (1) A serious and unforeseen threat to the public health, safety, or welfare.
- (2) The effective date of a recent act of the General Assembly or the United States Congress.
- (3) A recent change in federal or State budgetary policy.
- (4) A federal regulation.
- (5) A court order.

An agency must prepare a written statement of its findings of need for a temporary rule. The statement must be signed by the head of the agency adopting the rule.

An agency must begin rule-making proceedings for a permanent rule by the day it adopts a temporary rule. An agency begins rule-making proceedings for a permanent rule by submitting to the codifier written notice of its intent to adopt a permanent rule.

(b) Review. -- When an agency adopts a temporary rule it must submit the rule, the agency's written statement of its findings of need for the rule, and the notice of intent to adopt a permanent rule to the Codifier of Rules. Within one business day after an agency submits a temporary rule, the Codifier of Rules must review the agency's written statement of findings of need for the rule to determine whether the statement of need meets the criteria listed in subsection (a). In reviewing the statement, the Codifier of Rules may consider any information submitted by the agency or another person. If the Codifier of Rules finds that the statement meets the criteria, the Codifier of Rules must notify the head of the agency and enter the rule in the North Carolina Administrative Code.

If the Codifier of Rules finds that the statement does not meet the criteria, the Codifier of Rules must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Codifier of Rules must review the additional findings or new statement within one business day after the agency submits the additional findings or new statement. If the Codifier of Rules again finds that the statement does not meet the criteria listed in subsection (a), the Codifier of Rules must immediately notify the head of the agency.

If an agency decides not to provide additional findings or submit a new statement when notified by the Codifier of Rules that the agency's findings of need for a rule do not meet the required criteria, the agency must notify the Codifier of Rules of its decision. The Codifier of Rules must then enter the rule in the North Carolina Administrative Code on the sixth busi-

ness day after receiving notice of the agency's decision.

(c) Standing. -- A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) and whether the rule meets the standards in G.S. 150B-21.9 that apply to review of a permanent rule. The court may not grant an *ex parte* temporary restraining order.

Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. -- A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the date specified in the rule or 180 days from the date the rule becomes effective, whichever comes first.

§ 150B-21.2. Procedure for adopting a permanent rule.

(a) Notice. -- Before an agency adopts a permanent rule, it must publish notice of its intent to adopt a permanent rule in the North Carolina Register and as required by any other law. The notice published in the North Carolina Register must include all of the following:

- (1) Either the text of the proposed rule or a statement of the subject matter of the proposed rule making.
- (2) A short explanation of the reason for the proposed action.
- (3) A citation to the law that gives the agency the authority to adopt the proposed rule, if the notice includes the text of the proposed rule, or a citation to the law that gives the agency the authority to adopt a rule on the subject matter of the proposed rule making, if the notice includes only a statement of the subject matter of the proposed rule making.
- (4) The proposed effective date of the proposed rule, if the notice includes the text of the proposed rule, or the proposed effective date of a rule adopted on the subject matter of the proposed rule making, if the notice includes only a statement of the subject matter of the proposed rule making.

- (5) The date, time, and place of any public hearing scheduled on the proposed rule or subject matter of the proposed rule making.
- (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (c) requires the agency to hold a public hearing on the proposed rule when requested to do so.
- (7) The period of time during which and the person to whom written comments may be submitted on the proposed rule or subject matter of the proposed rule making.
- (8) If a fiscal note has been prepared for the proposed rule or will be prepared when a rule is proposed on the subject matter of the proposed rule making, a statement that a copy of the fiscal note can be obtained from the agency.
 - (b) Mailing List. -- An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes a rule-making notice in the North Carolina Register, it must mail a copy of the notice to each person on the mailing list who has requested notice of rule-making proceedings on the rule or the subject matter for rule making described in the notice. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.
 - (c) Hearing. -- An agency must hold a public hearing on a rule it proposes to adopt in two circumstances and may hold a public hearing in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published.

An agency must hold a public hearing on a rule it proposes to adopt in the following two circumstances:

 - (1) The agency publishes a statement of the subject matter of the proposed rule making in the notice in the North Carolina Register.
 - (2) The agency publishes the text of the proposed rule in the notice in the North Carolina Register and all the following apply:
 - a. The notice does not schedule a public hearing on the proposed rule.
 - b. Within 15 days after the notice is published, the agency receives a written request for a public hearing on the proposed rule.
 - c. The proposed rule is not part of a rule-making proceeding the agency initiated by publishing a statement of the subject matter of proposed rule making.
 - d. The proposed text is not a changed version of proposed text the agency previously published in the course of rule-making proceedings but did not adopt.
 - (d) Text After Subject-Matter Notice. -- When an agency publishes notice of the subject matter of proposed rule making in the North Carolina Register, it must subsequently publish in the North Carolina Register the text of the rule it proposes to adopt as a result of the public hearing and of any comments received on the subject matter. An agency may not publish the proposed text of a rule for which it published a subject-matter notice before the public hearing on the subject matter.
 - (e) Comments. -- An agency must accept comments on the text of a proposed rule published in the North Carolina Register for at least 30 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must accept comments on a statement of the subject matter of proposed rule making until the public hearing on the subject matter. An agency must consider fully all written and oral comments received.
 - (f) Adoption. -- An agency may not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and may not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. An agency may not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (e).

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

 - (1) Affects the interests of persons who, based on the notice published in the North Carolina Register or the proposed text of the rule, could not reasonably have determined that the rule would affect their interests.

- (2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.
- (3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it may not take subsequent action on the rule without following the procedures in this Part.

(g) Explanation. -- An agency must issue a concise written statement explaining why the agency adopted a rule if, within 30 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule.

(h) Record. -- An agency must keep a record of a rule-making proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, and any written explanation made by the agency for adopting the rule.

§ 150B-21.3. Effective date of rules.

(a) Temporary Rule. -- A temporary rule becomes effective on the date the Codifier of Rules enters the rule in the North Carolina Administrative Code.

(b) Permanent Rule. -- A permanent rule approved by the Commission becomes effective five business days after the Commission delivers the rule to the Codifier of Rules, unless the agency adopting the rule specifies a later effective date. If the agency specifies a later effective date, the rule becomes effective on that date.

A permanent rule that is not approved by the Commission becomes effective five business days after the agency adopting the rule delivers the rule to the Codifier of Rules, unless the agency adopting the rule specifies a later effective date. If the agency specifies a later effective date, the rule becomes effective on that date.

(c) OSHA Standard. -- A permanent rule concerning an occupational safety and health standard that is adopted by the Occupational Safety and Health Division of the Department of Labor and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor becomes effective on the date the Division delivers the rule to the Codifier of Rules, unless the Division specifies a later effective date. If the Division specifies a later effective date, the rule becomes effective on that date.

§ 150B-21.4. Fiscal notes on rules.

(a) State Funds. -- Before an agency publishes in the North Carolina Register the proposed text

of a permanent rule change that would require the expenditure or distribution of funds subject to the Executive Budget Act, Article 1 of Chapter 143, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Director of the Budget and obtain certification from the Director that the funds that would be required by the proposed rule change are available. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Director of the Budget must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(b) Local Funds. -- Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Fiscal Research Division of the General Assembly, the Office of State Budget and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note must state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed.

(c) Errors. -- An erroneous fiscal note prepared in good faith does not affect the validity of a rule.

§ 150B-21.5. Circumstances when notice and rule-making hearing not required.

(a) Amendment. -- An agency is not required to publish a notice of rule making in the North Carolina Register or hold a public hearing when it proposes to amend a rule, without changing the substance of the rule, to do one of the following:

- (1) Reletter or renumber the rule or subparts of the rule.
- (2) Substitute one name for another when an organization or position is renamed.
- (3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.
- (4) Change information that is readily available to the public, such as an address or a telephone number.
- (5) Correct a typographical error made in entering the rule in the North Carolina Administrative Code.

(6) Change a rule in response to a request or an objection by the Commission.

(b) Repeal. -- An agency is not required to publish a notice of rule making in the North Carolina Register or hold a public hearing when it proposes to repeal a rule as a result of any of the following:

- (1) The law under which the rule was adopted is repealed.
- (2) The law under which the rule was adopted or the rule itself is declared unconstitutional.
- (3) The rule is declared to be in excess of the agency's statutory authority.

(c) OSHA Standard. -- The Occupational Safety and Health Division of the Department of Labor is not required to publish a notice of rule making in the North Carolina Register or hold a public hearing when it proposes to adopt a rule that concerns an occupational safety and health standard and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor. The Occupational Safety and Health Division is not required to submit to the Commission for review a rule for which notice and hearing is not required under this subsection.

§ 150B-21.6. Incorporating material in a rule by reference.

An agency may incorporate the following material by reference in a rule without repeating the text of the referenced material:

- (1) Another rule or part of a rule adopted by the agency.
- (2) All or part of a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association.
- (3) Material adopted to meet a requirement of the federal government.

In incorporating material by reference, the agency must designate in the rule whether or not the incorporation includes subsequent amendments and editions of the referenced material. The agency can change this designation only by a subsequent rule-making proceeding. The agency must have copies of the incorporated material available for inspection and must specify in the rule both where copies of the material can be obtained and the cost on the date the rule is adopted of a copy of the material.

A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(b) is a statement that the rule does not include subsequent amendments and editions of the referenced material. A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(c) is a

statement that the rule includes subsequent amendments and editions of the referenced material.

§ 150B-21.7. Effect of transfer of duties or termination of agency on rules.

When a law that authorizes an agency to adopt a rule is repealed and another law gives the same or another agency substantially the same authority to adopt a rule, the rule remains in effect until the agency amends or repeals the rule. When a law that authorizes an agency to adopt a rule is repealed and another law does not give the same or another agency substantially the same authority to adopt a rule, a rule adopted under the repealed law is repealed as of the date the law is repealed.

When an executive order abolishes part or all of an agency and transfers a function of that agency to another agency, a rule concerning the transferred function remains in effect until the agency to which the function is transferred amends or repeals the rule. When an executive order abolishes part or all of an agency and does not transfer a function of that agency to another agency, a rule concerning a function abolished by the executive order is repealed as of the effective date of the executive order.

The Director of Fiscal Research of the General Assembly must notify the Codifier of Rules when a rule is repealed under this section. When notified of a rule repealed under this section, the Codifier of Rules must enter the repeal of the rule in the North Carolina Administrative Code.

Part 3. Review by Commission.

§ 150B-21.8. Review of rule by Commission.

(a) Temporary Rule. -- The Commission does not review a temporary rule.

(b) Permanent Rule. -- An agency must submit a permanent rule adopted by it to the Commission before the rule can be included in the North Carolina Administrative Code. The Commission reviews a permanent rule in accordance with the standards in G.S. 150B-21.9 and follows the procedure in this Part in its review of a permanent rule.

(c) Scope. -- When the Commission reviews an amendment to a rule, it may review the entire rule that is being amended. The procedure in G.S. 150B-21.12 applies when the Commission objects to a part of a rule that is within its scope of review but is not changed by a rule amendment.

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

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

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to fulfill a duty delegated to the agency by the General Assembly.

The Commission may determine if a rule submitted to it was adopted in accordance with Part 2 of this Article. The Commission must notify the agency that adopted the rule if it determines that a rule was not adopted in accordance with Part 2 of this Article and must return the rule to the agency. Entry of a rule in the North Carolina Administrative Code after review by the Commission is conclusive evidence that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. -- The Commission must review a rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month.

§ 150B-21.10. Commission action on permanent rule.

At the first meeting at which a permanent rule is before the Commission for review, the Commission must take one of the following actions:

- (1) Approve the rule, if the Commission determines that the rule meets the standards for review.
- (2) Object to the rule, if the Commission determines that the rule does not meet the standards for review.
- (3) Extend the period for reviewing the rule, if the Commission determines it needs additional information on the rule to be able to decide whether the rule meets the standards for review.

In reviewing a new rule or an amendment to an existing rule, the Commission may request an agency to make technical changes to the rule and may condition its approval of the rule on the agency's making the requested technical changes.

§ 150B-21.11. Procedure when Commission approves permanent rule.

When the Commission approves a permanent rule, it must notify the agency that adopted the rule of the Commission's approval and must deliver the approved rule to the Codifier of Rules. The Commission must deliver an approved rule by the end of the month in which the Commission approved the rule, unless the agency asks the Commission to delay the delivery of the rule.

§ 150B-21.12. Procedure when Commission objects to a permanent rule.

(a) Action. -- When the Commission objects to a permanent rule, it must send the agency that adopted the rule a written statement of the ob-

jection and the reason for the objection. The agency that adopted the rule must take one of the following actions:

- (1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.
- (2) Submit a written response to the Commission indicating that the agency has decided not to change the rule.

An agency that is not a board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection. A board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting whichever comes later.

When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection.

A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it may send to the President of the Senate and each member of the General Assembly a report of its objection to the rule.

(b) Entry in Code. -- When the Commission returns a rule to which it has objected to the agency that adopted the rule, the Commission must notify the Codifier of Rules of its action and of the basis of the Commission's objection. An agency whose rule is returned may file the rule with the Codifier of Rules. When the Codifier of Rules enters in the North Carolina Administrative Code a rule to which the Commission objected, the entry must reflect the Commission's objection and must state the standard on which the Commission based its objection.

§ 150B-21.13. Procedure when Commission extends period for review of permanent rule.

When the Commission extends the period for review of a permanent rule, it must notify the agency that adopted the rule of the extension and the reason for the extension. After the Commission extends the period for review of a rule, it may call a public hearing on the rule. Within

70 days after extending the period for review of a rule, the Commission must decide whether to approve the rule, object to the rule, or call a public hearing on the rule.

§ 150B-21.14. Public hearing on a rule.

The Commission may call a public hearing on a rule when it extends the period for review of the rule. At the request of an agency, the Commission may call a public hearing on a rule that is not before it for review. Calling a public hearing on a rule not already before the Commission for review places the rule before the Commission for review. When the Commission decides to call a public hearing on a rule, it must publish notice of the public hearing in the North Carolina Register.

After a public hearing on a rule, the Commission must approve the rule or object to the rule in accordance with the standards and procedures in this Part. The Commission must make its decision of whether to approve or object to the rule within 70 days after the public hearing.

§ 150B-21.15. Declaratory judgment action authorized when Commission objects to a permanent rule.

(a) Standing. -- A person aggrieved by a permanent rule entered in the North Carolina Administrative Code with an objection by the Commission based on a lack of statutory authority may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency exceeded its authority in adopting the rule.

A declaratory judgment action under this section must be filed within 90 days after the rule that is the subject of the action is entered in the Code. Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this section. A person who files an action for declaratory judgment under this section must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(b) Record. -- Within 10 days after a declaratory judgment action is filed under this section, the agency that adopted the rule that is the subject of the action must send to the court the original or a certified copy of the record in the Commission's review of the rule. The record consists of the rule, the Commission's letter of objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule.

(c) Effect. -- A rule remains in effect during the pendency of an action for declaratory judgment under this section unless the court suspends the rule after finding that the agency that adopted the rule has no substantial likelihood of prevailing in the action.

(d) Changes. -- While a rule is the subject of a declaratory judgment action under this section, the agency that adopted the rule may submit to the Commission changes in the rule to satisfy the Commission's objection. If the Commission determines that changes submitted to it satisfy its objection, the Commission must accept the changes and file the revised rule with the Codifier of Rules. The Codifier must then enter the rule in the North Carolina Administrative Code. When the Commission determines that changes submitted to it satisfy its objection, the agency that submitted the changes must notify the court of the changes and of the Commission's action.

Part 4. Publication of Code and Register.

§ 150B-21.17. North Carolina Register.

(a) Content. -- The Codifier of Rules must publish the North Carolina Register. The North Carolina Register must be published at least two times a month and must contain the following:

- (1) Notices of proposed adoptions of rules.
- (2) Notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165.
- (3) Executive orders of the Governor.
- (4) Final decision letters from the United States Attorney General concerning changes in laws that affect voting in a jurisdiction subject to § 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.91H.
- (5) Orders of the Tax Review Board issued under G.S. 105-241.2.
- (6) Other information the Codifier determines helpful to the public.

(b) Form. -- When an agency publishes notice in the North Carolina Register of the proposed text of a new rule, the Codifier of Rules must publish the complete text of the proposed new rule. In publishing the text of a proposed new rule, the Codifier must indicate the rule is new by underlining the proposed text of the rule.

When an agency publishes notice in the North Carolina Register of the proposed text of an amendment to an existing rule, the Codifier must publish the complete text of the rule that is being amended unless the Codifier determines that publication of the complete text of the rule being amended is not necessary to enable the reader to understand the proposed amendment. In publishing the text of a proposed amendment to a

rule, the Codifier must indicate deleted text with overstrikes and added text with underlines.

When an agency publishes notice in the North Carolina Register of the proposed repeal of an existing rule, the Codifier must publish the complete text of the rule the agency proposes to repeal unless the Codifier determines that publication of the complete text is impractical. In publishing the text of a rule the agency proposes to repeal, the Codifier must indicate the rule is to be repealed.

§ 150B-21.18. North Carolina Administrative Code.

The Codifier of Rules must compile all rules into a Code known as the North Carolina Administrative Code. The format and indexing of the Code must conform as nearly as practical to the format and indexing of the North Carolina General Statutes. The Codifier must publish printed copies of the Code and may publish the Code in other forms. The Codifier must keep the Code current by publishing the Code in a loose-leaf format and periodically providing new pages to be substituted for outdated pages, by publishing the Code in volumes and periodically publishing cumulative supplements, or by another means. The Codifier must keep superseded rules.

§ 150B-21.19. Requirements for including rule in Code.

To be acceptable for inclusion in the North Carolina Administrative Code, a rule must:

- (1) Cite the law under which the rule is adopted.
- (2) Be signed by the head of the agency or the rule-making coordinator for the agency that adopted the rule.
- (3) Be in the physical form specified by the Codifier of Rules.
- (4) Have been reviewed by the Commission, if the rule is a permanent rule.

§ 150B-21.20. Codifier's authority to revise form of rules.

(a) Authority. -- After consulting with the agency that adopted the rule, the Codifier of Rules may revise the form of a rule submitted for inclusion in the North Carolina Administrative Code within 10 business days after the rule is submitted to do one or more of the following:

- (1) Rearrange the order of the rule in the Code or the order of the subsections, subdivisions, or other subparts of the rule.
- (2) Provide a catch line or heading for the rule or revise the catch line or heading of the rule.
- (3) Reletter or renumber the rule or the subparts of the rule in accordance with a uniform system.

- (4) Rearrange definitions and lists.

- (5) Make other changes in arrangement or in form that do not change the substance of the rule and are necessary or desirable for a clear and orderly arrangement of the rule.

(b) Effect. -- Revision of a rule by the Codifier of Rules under this section does not affect the effective date of the rule or require the agency to readopt or resubmit the rule. When the Codifier of Rules revises the form of a rule the Codifier of Rules must send the agency that adopted the rule a copy of the revised rule. The revised rule is the official rule.

§ 150B-21.21. Publication of rules of North Carolina State Bar and exempt agencies.

(a) State Bar. -- The North Carolina State Bar must submit a rule adopted or approved by it and entered in the minutes of the North Carolina Supreme Court to the Codifier of Rules for inclusion in the North Carolina Administrative Code. The State Bar must submit a rule within 15 days after it is entered in the minutes of the Supreme Court. The Codifier of Rules must compile, make available for public inspection, and publish a rule included in the North Carolina Administrative Code under this subsection in the same manner as other rules in the Code.

(b) Exempt Agencies. -- Notwithstanding G.S. 150B-1, the North Carolina Utilities Commission must submit to the Codifier of Rules those rules of the Utilities Commission that are published from time to time in the publication titled "North Carolina Utilities Laws and Regulations." The Utilities Commission must submit a rule required to be included in the Code within 15 days after it is adopted. The Codifier of Rules must publish the rules submitted by the Utilities Commission in the North Carolina Administrative Code in the same format as they are submitted.

Notwithstanding G.S. 150B-1, an agency other than the Utilities Commission that is exempted from this Article by that statute must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative Code. One of these exempt agencies must submit a rule to the Codifier of Rules within 15 days after it adopts the rule. The Codifier of Rules must compile, make available for public inspection, and publish a rule of one of these agencies in the North Carolina Administrative Code in the same manner as other rules in the Code.

§ 150B-21.22. Effect of inclusion in Code.

Official or judicial notice can be taken of a rule in the North Carolina Administrative Code and shall be taken when appropriate. Codification

of a rule in the North Carolina Administrative Code is *prima facie* evidence of compliance with this Article.

§ 150B-21.23. Rule publication manual.

The Codifier of Rules must publish a manual that sets out the form and method for publishing a notice of rule making in the North Carolina Register and for filing a rule in the North Carolina Administrative Code.

§ 150B-21.24. Free copies of Register and Code.

(a) Register. -- The Codifier of Rules must distribute copies of the North Carolina Register as soon after publication as practical, without charge, to the following:

- (1) A person who receives a free copy of the North Carolina Administrative Code.
- (2) Upon request, one copy to each member of the General Assembly.

(b) Code. -- The Codifier of Rules must distribute copies of the North Carolina Administrative Code as soon after publication as practical, without charge, to the following:

- (1) One copy to the board of commissioners of each county, to be placed at the county clerk of court's office or at another place selected by the board of commissioners.
- (2) One copy to the Commission.
- (3) One copy to the Clerk of the Supreme Court and to the Clerk of the Court of Appeals of North Carolina.
- (4) One copy to the Supreme Court Library and one copy to the library of the Court of Appeals.
- (5) One copy to the Administrative Office of the Courts.
- (6) One copy to the Governor.
- (7) Five copies to the Legislative Services Commission for the use of the General Assembly.
- (8) Upon request, one copy to each State official or department to whom or to which copies of the appellate division reports are furnished under G.S. 7A-343.1.
- (9) Five copies to the Division of State Library of the Department of Cultural Resources pursuant to G.S. 125-11.7.

§ 150B-21.25. Paid copies of Register and Code.

A person who is not entitled to a free copy of the North Carolina Administrative Code or North Carolina Register may obtain a copy by paying a fee set by the Codifier of Rules. The Codifier must set separate fees for the North Carolina Register and the North Carolina Administrative Code in amounts that cover publication, copying, and mailing costs. All monies

received under this section must be credited to the General Fund.

Article 3.

Administrative Hearings.

§ 150B-22. Settlement; contested case.

It is the policy of this State that any dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty, should be settled through informal procedures. In trying to reach a settlement through informal procedures, the agency may not conduct a proceeding at which sworn testimony is taken and witnesses may be cross-examined. If the agency and the other person do not agree to a resolution of the dispute through informal procedures, either the agency or the person may commence an administrative proceeding to determine the person's rights, duties, or privileges, at which time the dispute becomes a "contested case."

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

(a) A contested case shall be commenced by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party or a representative of the party and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

- (1) Exceeded its authority or jurisdiction;
- (2) Acted erroneously;
- (3) Failed to use proper procedure;
- (4) Acted arbitrarily or capriciously; or
- (5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the Office of Administrative Hearings in the same manner as other contested cases under this Article, except that the

decision of the State Personnel Commission shall be advisory only and not binding on the local appointing authority, unless (1) the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or (2) applicable federal standards require a binding decision. In these two cases, the State Personnel Commission's decision shall be binding.

(a1) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1022, s. 1(9), effective July 15, 1986.

(a2) An administrative law judge assigned to a contested case may require a party to the case to file a prehearing statement. A party's prehearing statement must be served on all other parties to the contested case.

(b) The parties to a contested case shall be given a notice of hearing not less than 15 days before the hearing by the Office of Administrative Hearings. If prehearing statements have been filed in the case, the notice shall state the date, hour, and place of the hearing. If prehearing statements have not been filed in the case, the notice shall state the date, hour, place, and nature of the hearing, shall list the particular sections of the statutes and rules involved, and shall give a short and plain statement of the factual allegations.

(c) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) Any person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. In addition, any person interested in a contested case may intervene and participate in that proceeding to the extent deemed appropriate by the administrative law judge.

(e) All hearings under this Chapter shall be open to the public. Hearings shall be conducted in an impartial manner. Hearings shall be conducted according to the procedures set out in this Article, except to the extent and in the particulars that specific hearing procedures and time standards are governed by another statute.

(f) Unless another statute or a federal statute or regulation sets a time limitation for the filing of a petition in contested cases against a specified agency, the general limitation for the filing of a petition in a contested case is 60 days. The time limitation, whether established by another statute, federal statute, or federal regulation, or this section, shall commence when notice is given of

the agency decision to all persons aggrieved who are known to the agency by personal delivery or by the placing of the notice in an official depository of the United States Postal Service wrapped in a wrapper addressed to the person at the latest address given by the person to the agency. The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition. When no informal settlement request has been received by the agency prior to issuance of the notice, any subsequent informal settlement request shall not suspend the time limitation for the filing of a petition for a contested case hearing.

§ 150B-24. Venue of hearing.

(a) The hearing of a contested case shall be conducted:

- (1) In the county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence;
- (2) In the county where the agency maintains its principal office if the property or rights that are the subject matter of the hearing do not affect any person or if the subject matter of the hearing is the property or rights of residents of more than one county; or
- (3) In any county determined by the administrative law judge in his discretion to promote the ends of justice or better serve the convenience of witnesses.

(b) Any person whose property or rights are the subject matter of the hearing waives his objection to venue by proceeding in the hearing.

§ 150B-25. Conduct of hearing; answer.

(a) If a party fails to appear in a contested case after proper service of notice, and if no adjournment or continuance is granted, the administrative law judge may proceed with the hearing in the absence of the party.

(b) Repealed.

(c) The parties shall be given an opportunity to present arguments on issues of law and policy and an opportunity to present evidence on issues of fact.

(d) A party may cross-examine any witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. Any party may submit rebuttal evidence.

§ 150B-26. Consolidation.

When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending, the Director of the Office of Administrative Hearings may order a joint hearing of any mat-

ters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings.

§ 150B-27. Subpoena.

After the commencement of a contested case, subpoenas may be issued and served in accordance with G.S. 1A-1, Rule 45. In addition to the methods of service in G.S. 1A-1, Rule 45, a State law enforcement officer may serve a subpoena on behalf of an agency that is a party to the contested case by any method by which a sheriff may serve a subpoena under that Rule. Upon a motion, the administrative law judge may quash a subpoena if, upon a hearing, the administrative law judge finds that the evidence the production of which is required does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, or for any other reason sufficient in law the subpoena may be quashed. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6.

§ 150B-28. Depositions and discovery.

(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in contested cases may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) On a request for identifiable agency records, with respect to material facts involved in a contested case, except records related solely to the internal procedures of the agency or which are exempt from disclosure by law, an agency shall promptly make the records available to a party.

§ 150B-29. Rules of evidence.

(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by

the administrative law judge in making a recommended decision, by the agency in making a final decision, or by the court on judicial review.

(b) Evidence in a contested case, including records and documents, shall be offered and made a part of the record. Factual information or evidence not made a part of the record shall not be considered in the determination of the case, except as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

§ 150B-30. Official notice.

Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument.

§ 150B-31. Stipulations.

(a) The parties in a contested case may, by a stipulation in writing filed with the administrative law judge, agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable.

(b) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties.

§ 150B-32. Designation of administrative law judge.

(a) The Director of the Office of Administrative Hearings shall assign himself or another administrative law judge to preside over a contested case.

(b) On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of an administrative law judge, the administrative law judge shall determine the matter as a part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When an administrative law judge is disqualified or it is impracticable for him to continue the hearing, the Director shall assign another administrative law judge to continue with the case unless it is shown that substantial prejudice to any party will result, in which event

a new hearing shall be held or the case dismissed without prejudice.

§ 150B-33. Powers of administrative law judge.

(a) An administrative law judge shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

(b) An administrative law judge may:

- (1) Administer oaths and affirmations;
- (2) Sign, issue, and rule on subpoenas in accordance with G.S. 150B-27 and G.S. 1A-1, Rule 45;
- (3) Provide for the taking of testimony by deposition and rule on all objections to discovery in accordance with G.S. 1A-1, the Rules of Civil Procedure;
- (3a) Rule on all prehearing motions that are authorized by G.S. 1A-1, the Rules of Civil Procedure;
- (4) Regulate the course of the hearings, including discovery, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;
- (5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties;
- (6) Stay the contested action by the agency pending the outcome of the case, upon such terms as he deems proper, and subject to the provisions of G.S. 1A-1, Rule 65;
- (7) Determine whether the hearing shall be recorded by a stenographer or by an electronic device; and
- (8) Enter an order returnable in the General Court of Justice, Superior Court Division, to show cause why the person should not be held in contempt. The Court shall have the power to impose punishment as for contempt for any act which would constitute direct or indirect contempt if the act occurred in an action pending in Superior Court.
- (9) Determine that a rule as applied in a particular case is void because (1) it is not within the statutory authority of the agency, (2) is not clear and unambiguous to persons it is intended to direct, guide,

or assist, or (3) is not reasonably necessary to enable the agency to fulfill a duty delegated to it by the General Assembly.

- (10) Impose the sanctions provided for in G.S. 1A-1 or Chapter 3 of Title 26 of the North Carolina Administrative Code for non-compliance with applicable procedural rules.

§ 150B-34. Recommended decision or order of administrative law judge.

(a) Except as provided in G.S. 150B-36(c), in each contested case the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law.

(b) Repealed.

§ 150B-35. No ex parte communication; exceptions.

Unless required for disposition of an ex parte matter authorized by law, neither the administrative law judge assigned to a contested case nor a member or employee of the agency making a final decision in the case may communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate.

§ 150B-36. Final decision.

(a) Before the agency makes a final decision, it shall give each party an opportunity to file exceptions to the decision recommended by the administrative law judge, and to present written arguments to those in the agency who will make the final decision or order. If a party files in good faith a timely and sufficient affidavit of personal bias or other reason for disqualification of a member of the agency making the final decision, the agency shall determine the matter as a part of the record in the case, and the determination is subject to judicial review at the conclusion of the case.

(b) A final decision or order in a contested case shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. If the agency does not adopt the administrative law judge's recommended decision as its final decision, the agency shall state in its decision or order the specific reasons why it did not adopt the administrative law judge's recommended decision. The agency may consider only the official record prepared pursuant to G.S. 150B-37 in making a final decision or order, and the final decision or order shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given

by the party to the agency, and a copy shall be furnished to his attorney of record and the Office of Administrative Hearings.

(c) The following decisions made by administrative law judges in contested cases are final decisions:

- (1) A determination that the Office of Administrative Hearings lacks jurisdiction.
- (2) An order entered pursuant to the authority in G.S. 7A-759(e).
- (3) An order entered pursuant to a written prehearing motion that either dismisses the contested case for failure of the petitioner to prosecute or grants the relief requested when a party does not comply with procedural requirements.
- (4) An order entered pursuant to a prehearing motion to dismiss the contested case in accordance with G.S. 1A-1, Rule 12(b) when the order disposes of all issues in the contested case.

§ 150B-37. Official record.

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

- (1) Notices, pleadings, motions, and intermediate rulings;
- (2) Questions and offers of proof, objections, and rulings thereon;
- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and
- (5) The administrative law judge's recommended decision or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the official record to the agency making the final decision and shall forward a copy of the recommended decision to each party.

Article 3A.

Other Administrative Hearings.

§ 150B-38. Scope; required; notice; venue.

(a) The provisions of this Article shall apply to the following agencies:

- (1) Occupational licensing agencies;
- (2) The State Banking Commission, the Commissioner of Banks, the Savings Institutions Division of the Department of Economic and Community Development, and the Credit Union Division of the De-

partment of Economic and Community Development; and

- (3) The Department of Insurance and the Commissioner of Insurance.

(b) Prior to any agency action in a contested case, the agency shall give the parties in the case an opportunity for a hearing without undue delay and notice not less than 15 days before the hearing. Notice to the parties shall include:

- (1) A statement of the date, hour, place, and nature of the hearing;
- (2) A reference to the particular sections of the statutes and rules involved; and
- (3) A short and plain statement of the facts alleged.

(c) Notice shall be given personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the delivery date appearing on the return receipt. If notice cannot be given personally or by certified mail, then notice shall be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) A party who has been served with a notice of hearing may file a written response with the agency. If a written response is filed, a copy of the response must be mailed to all other parties not less than 10 days before the date set for the hearing.

(e) All hearings conducted under this Article shall be open to the public. A hearing conducted by the agency shall be held in the county where the agency maintains its principal office. A hearing conducted for the agency by an administrative law judge requested under G.S. 150B-40 shall be held in a county in this State where any person whose property or rights are the subject matter of the hearing resides. If a different venue would promote the ends of justice or better serve the convenience of witnesses, the agency or the administrative law judge may designate another county. A person whose property or rights are the subject matter of the hearing waives his objection to venue if he proceeds in the hearing.

(f) Any person may petition to become a party by filing with the agency or hearing officer a motion to intervene in the manner provided by G.S. 1A-1, Rule 24. In addition, any person interested in a contested case under this Article may intervene and participate to the extent deemed appropriate by the agency hearing officer.

(g) When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before an agency, the agency may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings.

(h) Every agency shall adopt rules governing the conduct of hearings that are consistent with the provisions of this Article.

§ 150B-39. Depositions; discovery; subpoenas.

(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in a contested case may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) Upon a request for an identifiable agency record involving a material fact in a contested case, the agency shall promptly provide the record to a party, unless the record relates solely to the agency's internal procedures or is exempt from disclosure by law.

(c) In preparation for, or in the conduct of, a contested case subpoenas may be issued and served in accordance with G.S. 1A-1, Rule 45. Upon a motion, the agency may quash a subpoena if, upon a hearing, the agency finds that the evidence, the production of which is required, does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, or for any other reason sufficient in law the subpoena may be quashed. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to any witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6.

§ 150B-40. Conduct of hearing; presiding officer; ex parte communication.

(a) Hearings shall be conducted in a fair and impartial manner. At the hearing, the agency and the parties shall be given an opportunity to present evidence on issues of fact, examine and cross-examine witnesses, including the author of a document prepared by, on behalf of or for the use of the agency and offered into evidence, submit rebuttal evidence, and present arguments on issues of law or policy.

If a party fails to appear in a contested case after he has been given proper notice, the agency may continue the hearing or proceed with the hearing and make its decision in the absence of the party.

(b) Except as provided under subsection (e) of this section, hearings under this Article shall be conducted by a majority of the agency. An agency shall designate one or more of its members to preside at the hearing. If a party files in good faith a timely and sufficient affidavit of the

personal bias or other reason for disqualification of any member of the agency, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding. If a presiding officer is disqualified or it is impracticable for him to continue the hearing, another presiding officer shall be assigned to continue with the case, except that if assignment of a new presiding officer will cause substantial prejudice to any party, a new hearing shall be held or the case dismissed without prejudice.

(c) The presiding officer may:

- (1) Administer oaths and affirmations;
- (2) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;
- (3) Provide for the taking of testimony by deposition;
- (4) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;
- (5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties; and
- (6) Apply to any judge of the superior court resident in the district or presiding at a term of court in the county where a hearing is pending for an order to show cause why any person should not be held in contempt of the agency and its processes, and the court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.

(d) Unless required for disposition of an ex parte matter authorized by law, a member of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case under this Article shall not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually-related case. This section does not apply to an agency employee or party representative with professional training in accounting,

actuarial science, economics or financial analysis insofar as the case involves financial practices or conditions.

(e) When a majority of an agency is unable or elects not to hear a contested case, the agency shall apply to the Director of the Office of Administrative Hearings for the designation of an administrative law judge to preside at the hearing of a contested case under this Article. Upon receipt of the application, the Director shall, without undue delay, assign an administrative law judge to hear the case.

The provisions of this Article, rather than the provisions of Article 3, shall govern a contested case in which the agency requests an administrative law judge from the Office of Administrative Hearings.

The administrative law judge assigned to hear a contested case under this Article shall sit in place of the agency and shall have the authority of the presiding officer in a contested case under this Article. The administrative law judge shall make a proposal for decision, which shall contain proposed findings of fact and proposed conclusions of law.

An administrative law judge shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

The agency may make its final decision only after the administrative law judge's proposal for decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the agency.

§ 150B-41. Evidence; stipulations; official notice.

(a) In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available. It shall not be necessary for a party or his attorney to object to evidence at the hearing in order to preserve the right to object to

its consideration by the agency in reaching its decision, or by the court of judicial review.

(b) Evidence in a contested case, including records and documents shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

(c) The parties in a contested case under this Article by a stipulation in writing filed with the agency may agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable. Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties.

(d) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. An agency may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it.

§ 150B-42. Final agency decision; official record.

(a) After compliance with the provisions of G.S. 150B-40(e), if applicable, and review of the official record, as defined in subsection (b) of this section, an agency shall make a written final decision or order in a contested case. The decision or order shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150B-41. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the

latest address given by the party to the agency and a copy shall be furnished to his attorney of record.

(b) An agency shall prepare an official record of a hearing that shall include:

- (1) Notices, pleadings, motions, and intermediate rulings;
- (2) Questions and offers of proof, objections, and rulings thereon;
- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
- (5) Proposed findings and exceptions; and
- (6) Any decision, opinion, order, or report by the officer presiding at the hearing and by the agency.

(c) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests.

Article 4.

Judicial Review.

§ 150B-43. Right to judicial review.

Any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article.

§ 150B-44. Right to judicial intervention when decision unreasonably delayed.

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. An agency that is subject to Article 3 of this Chapter and is not a board or commission has 90 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 90 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 90 days from the day it receives the official record in a contested case from the Office of Administrative

Hearings or 90 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 90 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's recommended decision as the agency's final decision. Failure of an agency subject to Article 3A of this Chapter to make a final decision within 180 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or, if the case was heard by an administrative law judge, by the administrative law judge.

§ 150B-45. Procedure for seeking review; waiver.

To obtain judicial review of a final decision under this Article, the party seeking review must file a petition in the Superior Court of Wake County or in the superior court of the county where the person resides.

The person seeking review must file the petition within 30 days after the person is served with a written copy of the decision. A person who fails to file a petition within the required time waives the right to judicial review under this Article. For good cause shown, however, the superior court may accept an untimely petition.

§ 150B-46. Contents of petition; copies served on all parties; intervention.

The petition shall explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the party seeking the review shall serve copies of the petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the administrative proceeding is a party to the review proceedings unless the party withdraws by notifying the court of the withdrawal and serving the other parties with notice of the withdrawal. Other parties to the proceeding may file a response to the petition within 30 days of service. Parties, including agencies, may state exceptions to the decision or procedure and what relief is sought in the response.

Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

§ 150B-47. Records filed with clerk of superior court; contents of records; costs.

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency that made the final decision in the contested case shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under review together with: (i) any exceptions, proposed findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

§ 150B-48. Stay of decision.

At any time before or during the review proceeding, the person aggrieved may apply to the reviewing court for an order staying the operation of the administrative decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65.

§ 150B-49. New evidence.

An aggrieved person who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a recommended decision in the case, the court shall remand the case to the agency that conducted the administrative hearing. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made a recommended decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and recommended decision. The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision. The additional evidence and any affirmation or modification of a recommended decision or final decision shall be made part of the official record.

§ 150B-50. Review by superior court without jury.

The review by a superior court of agency decisions under this Chapter shall be conducted by the court without a jury.

§ 150B-51. Scope of review.

(a) Initial Determination in Certain Cases. In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision, the court shall make two initial determinations. First, the court shall determine whether the agency heard new evidence after receiving the recommended decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. Second, if the agency did not adopt the recommended decision, the court shall determine whether the agency's decision states the specific reasons why the agency did not adopt the recommended decision. If the court determines that the agency did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the agency to enter the specific reasons.

(b) Standard of Review. After making the determinations, if any, required by subsection (a), the court reviewing a final decision may affirm the decision of the agency or remand the case for further proceedings. It may also reverse or modify the agency's decision if the substantial rights of the petitioners may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
- (6) Arbitrary or capricious.

§ 150B-52. Appeal; stay of court's decision.

A party to a review proceeding in a superior court may appeal to the appellate division from the final judgment of the superior court as provided in G.S. 7A-27. Pending the outcome of an appeal, an appealing party may apply to the court that issued the judgment under appeal for a stay of that judgment or a stay of the administrative decision that is the subject of the appeal, as appropriate.

Article 5.

Publication of Administrative Rules.

Repealed.

EXECUTIVE ORDERS

EXECUTIVE ORDER NUMBER 149 RESCISSION OF EXECUTIVE ORDER NUMBER 79 WHICH ESTABLISHED THE NORTH CAROLINA SMALL BUSINESS COUNCIL

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Executive Order Number 79 establishing the North Carolina Small Business Council is hereby rescinded.

Done this the 15th day of August, 1991.

EXECUTIVE ORDER NUMBER 150 NORTH CAROLINA HUMAN SERVICE TRANS- PORTATION COUNCIL

WHEREAS, the North Carolina Departments of Transportation, Human Resources, and Economic and Community Development administer State and Federal funding programs which may be used by local human service agencies to provide necessary client transportation services; and

WHEREAS, the administrative policies and procedures of these departments greatly affect vehicle usage and the provision of transportation services at the local level; and

WHEREAS, the Interagency Transportation Review Committee was established in 1978 to review the transportation components of all applications or plans requesting transportation funding when the funds are administered by a State department or agency; and

WHEREAS, the Interagency Transportation Review Committee process has led to a much more coordinated and cost effective use of transportation resources, both capital and operating, by local human service transportation providers; and

WHEREAS, the General Assembly has appropriated funds for the Elderly and Handicapped Transportation Assistance Program based on the assurance of cost-effectiveness provided by implementation of the local Transportation Development Plan; and

WHEREAS, Title XIX Medicaid transportation funds are to be expended in a manner consistent with the local Transportation Development Plan; and

WHEREAS, there is a need for a statement of policy on coordination of transportation resources and these State departments and agencies are in a position to facilitate the more efficient use of these resources.

THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of this State IT IS ORDERED:

Section 1. POLICY

That, wherever practical, existing transportation resources, public and private, should be utilized before any new resources will be made available through public funds;

That the locally prepared and adopted Transportation Development Plan shall continue to be the means by which to determine the most cost effective and efficient use of transportation resources; and

That the Department of Transportation shall provide, to the extent that funds are available and equipment is used consistent with the local Transportation Development Plan, capital equipment for the provision of local human service transportation while the transportation funds from other departments are used primarily for operating assistance.

Section 2. ESTABLISHMENT

- (1) There is hereby created the North Carolina Human Service Transportation Council. The Council will be composed of representatives from the North Carolina Departments of Transportation, Human Resources, and Economic and Community Development. The Secretaries of the respective departments shall determine those divisions to be represented on the Council. Representation should include all divisions which administer federal and state funds used to provide human service transportation at the local level. Division directors will be responsible for selecting a staff person as the division's council representative. Council appointees should be in policy making positions and have authority over subrecipient budget review and approval.
- (2) Departments, agencies or programs which are outside the jurisdiction of the Executive Order are encouraged to join the Council and agree to adopt the policies, procedures and decisions of the Council.
- (3) The State departments shall cooperate in the formation, follow the policies, procedures and decisions of, and support the Human Service Transportation Council as described herein. Council representatives

shall assist the Department of Transportation in encouraging local agencies to participate in transportation development planning efforts and in subsequent plan implementation, and to operate vehicles in a manner consistent with the local plan.

- (4) The Director of the Public Transportation and Rail Division shall chair the Council.

Section 3. DUTIES OF COUNCIL

The Council shall have the following duties:

- (1) to implement policy and apply criteria as developed by the Council;
- (2) to provide written notice of recommendations based upon review of applications or plans to the appropriate State agency;
- (3) to review the transportation components of all applications or plans requesting transportation funding when funds are administered by a member agency;
- (4) to provide approval for the purchase of all human service transportation vehicles financed by State administered programs; and
- (5) to advise and make recommendations to the Department of Transportation concerning human service transportation policy.

Section 4. ADMINISTRATION

The Department of Transportation - Public Transportation & Rail Division shall provide the administrative support for the Council.

Section 5. TRANSPORTATION FUNDING DECISIONS

In case of disputes, the local and/or State agency shall have the opportunity to address the Council. When the Council decision is appealed or

when the Council cannot reach consensus, the Secretary of the Department of Transportation, after conferring with the appropriate Department Secretary, shall have authority on all transportation funding decisions under the jurisdiction of the Council.

Section 6. AGENCY RESPONSIBILITIES

- (1) To further the objectives of the Executive Order, all departments and agencies under the Executive Order shall immediately draft directives and procedures necessary to implement these policies. Such drafts shall be submitted to the Secretary of Transportation for review and approval within 60 days of the signing of this Executive Order. Public Transportation & Rail Division staff assistance shall be made available as necessary.
- (2) There shall be a signed statement of policy for each agency under the jurisdiction of this Executive Order. The statement should be signed by the respective Department Secretary and each of the division directors within the department that come under the jurisdiction of this Executive Order. The statement will address the agency's commitment to the objectives of this Executive Order and the policies and procedures of the Council.

Section 7. EFFECTIVE DATE

This order shall be effective immediately and shall remain in effect until July 1, 1993.

Done in the Capital City of Raleigh, North Carolina this the 21st day of August, 1991.

VOTING RIGHTS ACT FINAL DECISION LETTER

[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice
Civil Rights Division

JRD:MAP:SAL:lrj
DJ 166-012-3
91-2474

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

September 12, 1991

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to the adoption of a limited voting system with seven commissioners elected to four year, staggered terms, with a plurality-win requirement in the primary, and the implementation schedule for the board of commissioners in Beaufort County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on July 15, 1991.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 26D .0016; 26H .0107, .0508; and adopt rule(s) cited as 10 NCAC 26H .0209.

The proposed effective date of this action is February 1, 1992.

The public hearing will be conducted at 1:30 p.m. on October 31, 1991 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, N.C. 27603.

Comment Procedures: Written comments concerning these rules must be submitted by October 31, 1991, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

Editor's Note: 10 NCAC 26H .0107, .0209 and .0508 have been filed as temporary rules effective August 1, 1991 for a period of 180 days to expire on January 31, 1992.

10 NCAC 26D .0016 has been filed as a temporary rule effective August 15, 1991 for a period of 180 days to expire on February 15, 1992.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26D - LIMITATIONS ON AMOUNT; DURATION; AND SCOPE

.0016 CO-PAYMENT

(a) Co-payment Requirements. The following requirements are imposed on all Medicaid recipients for the following services:

- (1) Outpatient Hospital Services. Co-payment will be charged at the rate of one dollar (\$1.00) per outpatient visit.
- (2) Chiropractic Services. Co-payment will be charged at the rate of fifty cents (\$.50) per chiropractic visit.
- (3) Podiatric Services. Co-payment will be charged at the rate of one dollar (\$1.00) per podiatric visit.
- (4) Optometric Services. Co-payment will be charged at the rate of one dollar (\$1.00) per optometric visit.

- (5) Optical Supplies and Services. Co-payment will be charged at the rate of two dollars (\$2.00) per item. Co-payment for repair of eyeglasses and other optical supplies will be charged at the rate of two dollars (\$2.00) per repair exceeding five dollars (\$5.00).
- (6) Prescribed Drugs. Co-payment will be charged at the rate of Effective August 15, 1991, the recipient co-payment amount for prescription drugs will increase from fifty cents (\$.50) per prescription to one dollar (\$1.00) per prescription including refills.
- (7) Dental Services. Co-payment will be charged at the rate of two dollars (\$2.00) per visit, except when more than one visit is required. If more than one visit is required but the service is billed under one procedure code with one date of service, then only one co-payment shall be collected. Full and partial dentures are examples.
- (8) Physicians. Co-payment will be charged at the rate of Effective August 15, 1991, the recipient co-payment amount for a physician visit will increase from fifty cents (\$.50) per visit to two dollars (\$2.00) per visit.
- (9) Hospital Inpatient Services. No co-payment will be charged for hospital inpatient services.
- (10) Rural Health Clinics. No co-payment will be charged for rural health clinic services.
- (11) Clinics (Other than Rural Health). Co-payment will be charged at the rate of fifty cents (\$.50) per visit.
- (12) Non-Hospital Dialysis Facility Services. No co-payment will be charged for non-hospital dialysis facility services.
- (13) Home Health Services. No co-payment will be charged for home health services.
- (14) Hearing Aid Dispensers. No co-payment will be charged for services rendered by hearing aid dispensers.
- (15) Ambulance. No co-payment will be charged for ambulance services.
- (b) Co-payment Exemptions. No co-payment will be charged for the following services:
 - (1) EPSDT related services;
 - (2) Family Planning Services;
 - (3) Services in state owned mental hospitals;
 - (4) Services covered by both Medicare and Medicaid;
 - (5) Services to children under age 18;
 - (6) Services related to pregnancy;

- (7) Services provided to residents of ICF, ICF-MR, SNF, Mental Hospitals; and
- (8) Hospital emergency room services.

Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.230(d); Tax Equity and Fiscal Responsibility Act of 1982, Subtitle B; Section 95 of Chapter 689, 1991 Session Laws.

SUBCHAPTER 2611 - REIMBURSEMENT PLANS

SECTION .0100 - REIMBURSEMENT FOR NURSING FACILITY SERVICES

.0107 PAYMENT ASSURANCE

(a) The state will pay each provider of nursing care services, who furnishes the services in accordance with the requirements of the State Plan and the participation agreement, the amount determined under the plan. In addition, Skilled Nursing Facilities must be enrolled in the Title XVIII Program.

(b) In no case shall the payment rate for services provided under the plan exceed the facility's customary charges to the general public for such services.

(c) The payment methods and standards set forth herein are designed to enlist the participation of any provider who operates a facility both economically and efficiently. Participation in the program shall be limited to providers of service who accept, as payment in full, the amounts paid in accordance with the State Plan. This reimbursement plan is effective consistent with and on approval of the State Plan for Medical Assistance.

(d) In all circumstances involving third party payment, Medicaid is the payor of last resort. No payment will be made for a Medicaid recipient who is also eligible for Medicare, Part A, for the first 20 days of care rendered to skilled nursing patients. Medicaid payments for co-insurance for such patients will be made for the subsequent 21st through the 100th day of care. The Division of Medical Assistance will pay an amount for Medicare Part A deductibles and co-insurance, the total of which will equal the facility's Medicaid per diem rate less any Medicare Part A payment, effective August 1, 1991. In the case of ancillary services providers are obligated to:

- (1) maintain detailed records or charges for all patients;
- (2) bill the appropriate Medicare Part B carrier for all services provided to Medicaid patients that may be covered under that program; and
- (3) allocate an appropriate amount of ancillary costs, based on these charge records

adjusted to reflect Medicare denials of coverage, to Medicare Part B in the annual cost report.

(e) The state may withhold payments to providers under the following circumstances:

- (1) If the state has a reasonable expectation that the provider will not expend its direct rate for reasonable and allowable direct patient care costs, the state may, at its discretion, withhold a portion of each payment so as to avoid a large amount due back to the state upon reimbursement settlement pursuant to the provision of Paragraph .0104(e) of this Section.
- (2) Upon provider termination the state may withhold a sum of money from provider payments that it reasonably expects will be due when final reimbursement settlements for all previous periods, including the period in which the termination occurred, are completed.
- (3) Upon determination of any sum due the Medicaid Program or upon instruction from a legally authorized agent of the State or Federal Government the state may withhold sums to meet the obligations identified.
- (4) The state may arrange repayment schedules within the limits set forth in federal regulations in lieu of withholding funds.
- (5) The state may charge reasonable interest or overpayments from the date that the overpayment occurred.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; Section 95 of Chapter 689, 1991 Session Laws; 42 C.F.R. 447, Subpart C.

SECTION .0200 - HOSPITAL INPATIENT REIMBURSEMENT PLAN

.0209 PAYMENT OF MEDICARE PART A DEDUCTIBLES

In regard to payment of Medicare Part A deductibles, the Division of Medical Assistance will pay the Medicaid median per diem inpatient rate for one day in lieu of the Medicare Part A inpatient deductible, effective August 1, 1991. The median rate will be determined as of July 1 each year.

Authority G.S. 108A-25(b); 108A-54; 108A-55; Section 95 of Chapter 689, 1991 Session Laws; 42 C.F.R. 447, Subpart C.

SECTION .0500 - REIMBURSEMENT FOR SERVICES

.0508 DURABLE MEDICAL EQUIPMENT AND RELATED SUPPLIES

(a) Effective August 1, 1991, payment for each claim for durable medical equipment and associated supplies will be equal to the lower of the supplier's usual and customary billed charges or the maximum fee established for each item of durable medical equipment or related supply. The maximum fees are set at 100 percent of the Medicare Part B fees as of January 1 of each year, the Medicaid fee schedule in effect on July 1, 1991. Fees for added equipment will be set at Medicare Part B fees. If a Medicare fee cannot be obtained, for a particular equipment item, the fee will be based on estimates of reasonable costs, and updated each January 1 by the forecasted percentage increase in medical supplies and equipment prices. The maximum allowable fee will be updated each August 1, beginning August 1, 1991, based on the Gross National Product (GNP) Implicit Price Deflator, but not to exceed the percentage increase approved by the North Carolina State Legislature. There will be no retroactive payment adjustments for fee changes.

(b) Each equipment item will be assigned to one of the following categories of payment methods:

- (1) Purchase fee paid for inexpensive, routinely purchased, and customized equipment.
- (2) Monthly rental paid up to purchase price but for no more than 15 continuous months.
- (3) Monthly rental payment for oxygen and oxygen equipment without any limitations.
- (4) Servicing and repair fees will be established for appropriate items.

Authority G.S. 108A-25(b); 42 C.F.R. 447, Subpart D; Section 95 of Chapter 689, 1991 Session Laws.

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources/Division of Medical Assistance intends to repeal rule(s) cited as 10 NCAC 2611 .0402.

The proposed effective date of this action is February 1, 1992.

The public hearing will be conducted at 1:30 p.m. on November 14, 1991 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, N.C. 27603.

Comment Procedures: Written comments concerning this repeal must be submitted by November 14, 1991, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 2611 - REIMBURSEMENT PLANS

SECTION .0400 - PROVIDER FEE SCHEDULES

.0402 DENTIST FEE SCHEDULE (REPEALED)

Statutory Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86.

TITLE 14A - DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Crime Control and Public Safety/Division of State Highway Patrol intends to adopt rule(s) cited as 14A NCAC 9H .0304.

The proposed effective date of this action is February 1, 1992.

The public hearing will be conducted at 10:00 a.m. on October 31, 1991 at the Library, Second Floor, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27611.

Comment Procedures: Any interested person may present comments relevant to the action proposed at the public hearing either in writing or oral form. Written statements not presented at the public hearing may be directed prior to the hearing to Wanda D. Goodson, Administrative Procedures Coordinator, First Floor, Archdale Building, 512 N. Salisbury Street, P. O. Box 27687, Raleigh, NC 27611-7687.

CHAPTER 9 - STATE HIGHWAY PATROL

SUBCHAPTER 9H - ENFORCEMENT REGULATIONS

SECTION .0300 - WRECKER SERVICE

.0304 NOTIFYING REGISTERED OWNER

A member who authorizes the towing and/or storage of a vehicle in the absence of the owner

shall, as soon as practicable, attempt to notify the owner of such towing and/or storage. The member shall attempt to contact the owner by telephone or request a telecommunicator to attempt to contact the owner by telephone and provide the owner with the location of the vehicle. At least three attempts must be made for vehicles registered in North Carolina and one attempt for vehicles registered out of state. A member must record the person contacted or the attempts made.

Statutory Authority G.S. 20-219.11.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the EHNHR - Division of Land Resources intends to amend rule(s) cited as 15A NCAC 4A .0005; 4B .0006, .0009, .0016, .0018, .0025; and 4C .0007.

The proposed effective date of this action is February 1, 1992.

The public hearing will be conducted at 10:00 a.m. on November 5, 1991 at the Hearing Room - Archdale Building, 512 N. Salisbury Street, Raleigh, N.C.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during, or within six (6) days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information, contact Mell Nevils, Division of Land Resources, P.O. Box 27687, Raleigh, N.C. 27611 (919) 733-4574.

CHAPTER 4 - SEDIMENTATION CONTROL

SUBCHAPTER 4A - SEDIMENTATION CONTROL COMMISSION ORGANIZATION

.0005 DEFINITIONS

As used in this Chapter, the following terms shall have these meanings:

- (1) "Accelerated Erosion" means any increase over the rate of natural erosion, as a result of land-disturbing activities.
- (2) "Adequate Erosion Control Measure, Structure, or Device" means one which

controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

- (3) "Borrow" means fill material which is required for on-site construction and is obtained from other locations.
- (4) "Buffer Zone" means the strip of land adjacent to a lake or natural watercourse. ~~the width of which is measured from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.~~
- (5) "Ground Cover" means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.
- (6) "Lake or Natural Watercourse" means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.
- (7) "Natural Erosion" means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.
- (8) "Person Responsible for the Violation", as used in G.S. 113A-64, means:
 - (a) the developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity; ~~and~~ or
 - (b) the landowner or person in possession or control of the land when he has directly or indirectly allowed the land-disturbing activity or has benefitted from it or he has failed to comply with any provision of the Act, these Rules, or any order or local ordinance adopted pursuant to this Act as imposes a duty upon him.
- (9) "Person Conducting Land Disturbing Activity" means any person who may be held responsible for a violation unless expressly provided otherwise by the Act, these Rules, or any order or local ordinance adopted pursuant to the Act.
- (10) "Phase of Grading" means one of two types of grading, rough or fine.
- (11) "Plan" means an erosion control plan.
- (12) "Sedimentation" means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

- (13) "Storm Water Runoff" means the direct runoff of water resulting from precipitation in any form.
- (14) ~~"Tract" means all contiguous land and bodies of water in one ownership, or contiguous land and bodies of water in diverse ownership being developed as a unit, although not necessarily all at one time.~~ "Being Conducted" means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.
- (15) "Uncovered" means the removal of ground cover from, on, or above the soil surface.
- (16) "Undertaken" means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.
- (17) "Waste" means surplus materials resulting from on-site construction and disposed of at other locations.
- (18) "Energy Dissipator" means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.
- (19) "Storm Drainage Facilities" means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.
- (20) "Ten Year Storm" means the surface runoff resulting from a rainfall of an intensity expected to be equalled or exceeded, on the average, once in 10 years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.
- (21) "Velocity" means the average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.
- (22) "Discharge Point" means that point at which runoff leaves a tract of land.
- (23) "Completion of Construction or Development" means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.
- (24) "High Quality Waters" means those classified as such in 15A NCAC 2B .0101(e)(5) - General Procedures, which is incorporated herein by reference to include further amendments pursuant to G.S. 150B-14(c).
- (25) "High Quality Water (HQW) Zones" means areas in the Coastal Counties that are within 575 feet of High Quality Waters and for the remainder of the state areas that are within one mile of and drain to HQW's.
- (26) "Director" means the Director of the Division of Land Resources of the Department of Environment, Health, and Natural Resources.
- (27) "Coastal counties" means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington.
- (28) "Twenty-five Year Storm" means the surface runoff resulting from a rainfall of an intensity expected to be equalled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

Statutory Authority G.S. 113A-52; 113A-54.

SUBCHAPTER 4B - EROSION AND SEDIMENT CONTROL

.0006 BASIC CONTROL OBJECTIVES

An erosion and sedimentation control plan may be disapproved pursuant to 15A NCAC 4B .0018 if the plan fails to address the following control objectives:

- (1) Identify Critical Areas. Identify site areas subject to severe erosion, and off-site areas especially vulnerable to damage from erosion and sedimentation.
- (2) Limit Exposed Areas. Limit the size of the area exposed at any one time.
- (3) Limit Time of Exposure. Limit exposure to the shortest feasible time.
- (4) Control Surface Water. Control surface water run-off originating upgrade of exposed areas in order to reduce erosion and sediment loss during exposure.
- (5) Control Sedimentation. All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
- (6) Manage Storm Water Runoff. When the increased velocity of storm water runoff resulting from a land-disturbing activity causes

PROPOSED RULES

accelerated erosion of the receiving watercourse, plans shall include measures to control the velocity ~~at~~ to the point of discharge.

Statutory Authority G.S. 113A-54(d)(4); 113A-54.1.

.0009 STORM WATER OUTLET PROTECTION

(a) Persons shall conduct land disturbing activity so that the post construction velocity of the ten year storm run off in the receiving watercourse to the discharge point does not exceed the greater of:

- (1) the velocity established by the table in Paragraph (d) of this Rule; or
- (2) the velocity of the ten year storm run off in the receiving watercourse prior to development.

If conditions (1) or (2) of this Paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by ten percent.

(b) **Acceptable Management Measures.** The commission recognizes that management of storm water run off to control downstream erosion constitutes a developing technology and consequently invites the use of innovative techniques shown to produce successful results. Alternatives include:

- (1) Compensate for increased run off from areas rendered impervious by designing measures to promote infiltration.
- (2) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and paved sections.
- (3) Provide energy dissipators at storm drainage outlets to reduce flow velocities ~~at~~ to the discharge points.
- (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.

(c) **Exceptions.** This Rule shall not apply when storm water discharge velocities will not create an erosion problem in the receiving watercourse.

(d) The following table sets maximum permissible velocity for storm water discharges:

<u>Material</u>	<u>Maximum Permissible Velocities For</u>	
	F.P.S.	M.P.S.
Fine Sand (noncolloidal)	2.5	.8
Sandy Loam (noncolloidal)	2.5	.8
Silt Loam (noncolloidal)	3.0	.9
Ordinary Firm Loam	3.5	1.1
Fine Gravel	5.0	1.5
Stiff Clay (very colloidal)	5.0	1.5
Graded, Loam to Cobbles (noncolloidal)	5.0	1.5
Graded, Silt to Cobbles (colloidal)	5.5	1.7
Alluvial Silts (noncolloidal)	3.5	1.1
Alluvial Silts (colloidal)	5.0	1.5
Coarse Gravel (noncolloidal)	6.0	1.8
Cobbles and Shingles	5.5	1.7
Shales and Hard Pans	6.0	1.8

Source: Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

Statutory Authority G.S. 113A-54(b)(c).

.0016 EXISTING UNCOVERED AREAS

(a) All uncovered areas which:

- (1) existed on the effective date of these rules;
- (2) resulted from land disturbing activity;
- (3) exceed one ~~contiguous~~ acre;

- (4) are experiencing continued accelerated erosion; and
- (5) causing off-site damage from sedimentation, shall be provided with ground cover or other protective measures, structures, or devices sufficient to

restrain accelerated erosion and control off-site sedimentation.

(b) The commission or local government shall serve a notice to comply upon the landowner or other person in possession or control of the land by registered or certified mail or other means reasonably calculated to give actual notice such as service by the sheriff's department or hand delivery. The notice shall state the measures needed and the time allowed for compliance. The commission or local government issuing the notice shall consider the economic feasibility, technological expertise and quantity of work required, and shall establish reasonable time limits for compliance.

(c) State agency erosion and sedimentation control programs submitted to the commission for delegation of authority to administer such programs shall contain provisions for the treatment of existing exposed areas. Such provisions shall consider the economic feasibility, existing technology, and quantity of work required.

(d) This Rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

Statutory Authority G.S. 113A-54.

.0018 APPROVAL OF PLANS

(a) Persons conducting land-disturbing activity on a tract which covers one or more contiguous acres shall file three copies of the erosion and sedimentation control plan with the local government having jurisdiction or with the Commission if no local government has jurisdiction, at least 30-days prior to beginning such activity and shall keep another copy of the plan on file at the job site. After approving a plan, if the Commission or local government determines, either upon review of such plan or on inspection of the job site, that a significant risk of accelerated erosion or off-site sedimentation exists, the Commission or local government shall require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority.

(b) Commission Approval

(1) The Commission shall review plans for all land-disturbing activity over which the Commission has exclusive jurisdiction by statute and all other land-disturbing activity if no local government has jurisdiction.

(2) The Commission shall complete its review of any completed plan within 30 days of receipt and shall notify the person sub-

mitting the plan in writing that it has been:

- (A) approved,
- (B) approved with modification,
- (C) approved with performance reservations, or
- (D) disapproved.

(3) The Commission's disapproval, modification, or performance reservations of any proposed plan, shall entitle the person submitting the plan to an administrative hearing in accordance with the provisions of G. S. 150B-23. (This section does not modify any other rights to a contested case hearing which may arise under G.S. 150B-23).

(4) Subparagraph (b)(3) of this Rule shall not apply to the approval or modification of plans reviewed by the Commission pursuant to G.S. 113A-61(c).

(5) Any plan submitted for a land disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act shall be deemed incomplete until a complete environmental document is available for review. The Commission shall promptly notify the person submitting the plan that the 30 day time limit for review of the plan pursuant to Subparagraph (b)(2) of this Rule shall not begin until a complete environmental document is available for review.

(c) Erosion and sedimentation control plans may also be disapproved unless they include an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents.

(d) Local Government Approval

(1) Local Governments administering erosion and sedimentation control programs shall develop and publish procedures for approval of plans. Such procedures shall respect applicable laws, ordinances, and rules shall contain procedures for appeal consistent with the local government's organization and operations.

(2) The secretary shall appoint such employee(s) of the department as he deems necessary to consider appeals from the local government's final disapproval or modification of a plan. Within 30 days following receipt of notification of the

appeal, such departmental employee shall complete the review and shall notify the local government and the person appealing the local government's decision that the plan should be approved, approved with modifications, approved with performance reservations, or disapproved.

- (3) If either the local government or the person submitting the plan disagrees with the decision reached by an employee of the Department then he may appeal the decision to the Commission by filing notice within 15 days with the Director of the Division of Land Resources. The director shall make the proposed erosion control plan and the records relating to the local government's and departmental employees review, available to an appeals review committee consisting of three members of the Commission appointed by the chairman. Within 10 days following receipt of the notification of appeal, the appeals review committee shall notify the local government and the person submitting the plan of a place and time for consideration of the appeal, and shall afford both parties an opportunity to present written or oral arguments. The appeals review committee shall notify both parties of its decision concerning the approval, disapproval, or modification of the proposed plan within 30 days following such hearing.

Statutory Authority G.S. 113A-2; 113A-54; 113A-54.1; 113A-60(a); 113A-61(b); 113A-61(c); 150B-23.

.0025 BUFFER ZONE REQUIREMENTS

(a) Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

(b) ~~(a)~~ The 25 foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.

(c) ~~(b)~~ Where a temporary and minimal disturbance is permitted as an exception by G.S. 113A-57(1), land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1000 linear

feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.

~~(d)~~ ~~(e)~~ No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15A NCAC 2B .0211 "Fresh Surface Water Classification and Standards", in these waters.

Statutory Authority G. S. 113A-54(b); 113A-54(c)(1); 113A-57(1).

**SUBCHAPTER 4C - SEDIMENTATION
CONTROL CIVIL PENALTIES**

.0007 PROCEDURES: NOTICES

(a) Prior to the assessment of any civil penalty pursuant to G.S. 113A-64(a)(1) and 113A-64(a)(4), notice of the violation shall be given the alleged violator(s) or his (their) agent(s) by registered or certified mail or other means reasonably calculated to give actual notice, such as service by the sheriff's department or hand delivery, describing the violation with reasonable particularity, specifying a time period for compliance and stating that upon failure to comply the person responsible for the violation shall become subject to the assessment of a civil penalty, provided that no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties.

(b) If, after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the date of receipt of the notice of violation. Notice of the assessment shall be by registered or certified mail or other means reasonably calculated to give actual notice such as service by the sheriff's department or hand delivery.

(c) The stop work order provided in G.S. 113A-65.1 shall serve as the notice of violation for purposes of assessment of a civil penalty pursuant to G.S. 113A-64(a)(5). No time period for compliance need to be given for failure to stop work pursuant to a stop work order issued under G.S. 113A-65.1. Copies of the stop work order shall be delivered to persons the Department has reason to believe may be responsible for the violation by registered or certified mail or other means reasonably calculated to give actual notice.

Statutory Authority G.S. 113A-54; 113A-64; 113A-65.1; 143B-10.

PROPOSED RULES

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Health Services, Department of Environment, Health, and Natural Resources intends to amend rule(s) cited as 15A NCAC 13A .0006, .0009, and .0010.

The proposed effective date of this action is February 1, 1992.

The public hearing will be conducted at 10:00 a.m. on October 31, 1991 at the Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, NC.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to John P. Barkley, DEHNR, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-7247. If you desire to speak at the public hearing, notify John P. Barkley at least 3 days prior to the public hearing. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. At the discretion of the Chairman, the public may also be allowed to comment on the rules at the Commission Meeting.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS, OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION FOR HEALTH SERVICES MAY ADOPT MORE OR LESS STRINGENT STANDARDS OR REQUIREMENTS THAT MAY DIFFER FROM THOSE BEING NOTICED HEREIN, WITHOUT RENOTICE OR REHEARING, IF THE COMMISSION FOR HEALTH SERVICES DETERMINES THAT THE FINAL ADOPTED RULES ARE A LOGICAL OUTGROWTH OF THE NOTICE, PUBLIC HEARINGS AND THE HEARING COMMENTS RECEIVED.

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT

.0006 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261 (d) 40 CFR 261.30 through ~~261.33~~ 261.35 (Subpart D), "Lists of Hazardous Wastes" have been adopted by reference in accordance with G.S. 150B-14(c).

Statutory Authority G.S. 130A-294(c).

.0009 STANDARDS FOR OWNERS/ OPERATORS OF HWTSD FACILITIES - PART 264 (s) 40 CFR 264.570 through 264.575 (Subpart W), "Drip Pads", have been adopted by reference in accordance with G.S. 150B-14(c).

(t) ~~(s)~~ 40 CFR 264.600 through 264.603 (Subpart X), "Miscellaneous Units", have been adopted by reference in accordance with G.S. 150B-14(c).

(u) ~~(t)~~ 40 CFR 264.1030 through 264.1049 (Subpart AA), "Air Emission Standards for Process Vents", have been adopted by reference in accordance with G.S. 150B-14(c).

(v) ~~(u)~~ 40 CFR 264.1050 through 264.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks", have been adopted by reference in accordance with G.S. 150B-14(c).

(w) ~~(v)~~ Appendices to 40 CFR Part 264 have been adopted by reference in accordance with G.S. 150B-14(c).

Statutory Authority G.S. 130A-294(c).

.0010 INTERIM STATUS STDS FOR OWNERS-OP OF HWTSD FACILITIES - PART 265 (r) 40 CFR 265.440 through 265.445 (Subpart W), "Drip Pads" have been adopted by reference in accordance with G.S. 150B-14(c).

(s) ~~(r)~~ 40 CFR 265.1030 through 265.1049 (Subpart AA), "Air Emission Standards for Process Vents", have been adopted by reference in accordance with G.S. 150B-14(c).

(t) ~~(s)~~ 40 CFR 265.1050 through 265.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks" have been adopted by reference in accordance with G.S. 150B-14(c).

(u) ~~(t)~~ Appendices to 40 CFR Part 265 have been adopted by reference in accordance with G.S. 150B-14(c).

Statutory Authority G.S. 130A-294(c).

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Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

Upon request from the adopting agency, the text of rules will be published in this section.

TITLE 17 DEPARTMENT OF REVENUE

CHAPTER 5 CORPORATE INCOME AND FRANCHISE TAX DIVISION

SUBCHAPTER 5B - FRANCHISE TAX

SECTION .0100 - GENERAL INFORMATION

.0104 INACTIVE CORPORATIONS

A corporation that is inactive and without assets is subject annually to a minimum franchise tax. A return is required containing a statement of the status of the corporation. Failure to file this return and pay the minimum tax will result in suspension of the articles of incorporation or certificate of authority.

*History Note: Statutory Authority G.S. 105-114; 105-262;
Eff. February 1, 1976;
Amended Eff. November 1, 1991; November 1, 1987.*

SUBCHAPTER 5C - CORPORATE INCOME TAX

SECTION .0900 - PAYROLL FACTOR

.0904 THE TERM EMPLOYEE

(a) The term "employee" means:

- (1) any officer of a corporation, or
- (2) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee.

(b) Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act; except that, since certain individuals are included within the term "employees" in the Federal Insurance Contributions Act who would not be employees under the usual common-law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this Regulation.

*History Note: Statutory Authority G.S. 105-130.4; 105-262;
Eff. February 1, 1976.*

SECTION .2100 - DISSOLUTIONS AND WITHDRAWALS

.2101 DISSOLUTIONS

(a) The "Business Corporation Act" provides for the dissolution of corporations immediately upon the effective date of filing the articles of dissolution with the Secretary of State. Although a tax clearance is no longer a part of the Secretary of State's dissolution process, this in no way relieves the corporation of its liability to file all tax reports and returns due and pay all taxes due the Department of Revenue. The Department will continue to notify a corporation of any unfilled tax requirements.

(b) After the end of the year in which dissolution occurs, a dissolved corporation is not subject to the annual franchise tax unless the corporation engages in business activities not appropriate to winding up and liquidating its business and affairs.

*History Note: Statutory Authority G.S. 55-14-01; 55-14-02; 55-14-03; 105-262;
Eff. February 1, 1976;
Amended Eff. November 1, 1991; April 1, 1991.*

.2102 WITHDRAWALS

(a) Before a foreign corporation is permitted to withdraw its certificate of authority to do business in North Carolina, it must file all tax reports and returns due and pay all taxes due. The Revenue Department is required to make a certification of such fact to the Secretary of State before withdrawal is permitted. The same general procedure followed with respect to dissolution, of notifying a corporation of any unfilled tax requirements, will also be followed for corporations withdrawing from North Carolina.

(b) A corporation which is dissolving or withdrawing is required to file an income tax return for the current year within 75 days after the close of business in this state. In this final return, the corporation must include in income any unrealized, deferred or unreported profit from installment sales and pay the tax due with such return before its dissolution or withdrawal is approved.

*History Note: Statutory Authority G.S. 55-15-20; 105-262;
Eff. February 1, 1976;
Amended Eff. November 1, 1991; April 1, 1991.*

SECTION .2600 - REINSTATEMENT OF CORPORATE CHARTER

.2601 REINSTATEMENT OF CORPORATE CHARTER

(a) A domestic corporation (incorporated in North Carolina) certified for suspension of its Corporate Charter to the Secretary of State's office with an effective "suspended" date on or after July 2, 1985 may be reinstated without regard to the elapsed suspension period provided all returns are filed with remittance of the tax, interest and penalty due, plus the reinstatement fee of twenty-five dollars (\$25.00).

(b) A foreign corporation (incorporated outside North Carolina) certified for suspension of its Certificate of Authority to the Secretary of State's office may be reinstated without regard to the elapsed suspension period provided all returns for years since securing the Certificate and/or since commencing business in this State are filed with remittance of tax, interest and penalty due, plus the reinstatement fee of twenty-five dollars (\$25.00).

*History Note: Statutory Authority G.S. 105-230; 105-232;
Eff. November 1, 1991.*

**CHAPTER 7
SALES AND USE TAX**

SUBCHAPTER 7B - STATE SALES AND USE TAX

SECTION .0100 - GENERAL PROVISIONS

.0101 IMPOSITION OF AND LIABILITY FOR COLLECTING AND REMITTING TAX

(a) All retail sales of tangible personal property are subject to the four percent (three percent until July 16, 1991), three percent, two percent or the one percent sales or use tax unless specifically exempt by statute. Effective January 1, 1985, the gross receipts derived by a utility from sales of electricity, piped natural gas or intrastate telephone service are subject to the three percent state rate of sales tax, other than receipts from the sale of electricity by a municipality whose only wholesale supplier of electric power is a federal agency and who is required by contract with that federal agency to make payments in lieu of taxes. The statute was amended effective January 1, 1989, to substitute the term "local telecommunications services" for the term "intrastate telephone service," as used in the above sentence, and to levy the three percent rate of tax only on receipts derived from local telecommunications services as defined by G.S. 105-120(e). A new subdivision, G.S. 105-164.4 (a) (4c) was added,

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effective January 1, 1989, which levies a six and one-half percent sales tax on the gross receipts derived from toll or private telecommunications services, as defined by G.S. 105-120(e), that both originate from and terminate in the state. The provisions of G.S. 105-164.4 (a) (c) do not apply to telephone membership corporations as described in Chapter 117 of the General Statutes. The gross receipts derived by a utility from sales of electricity, piped natural gas and telecommunications services are not subject to the local sales or use tax. Wholesale sales are not subject to the tax if made pursuant to the conditions set forth in the statutory definition of wholesale sale. Every person making retail sales of taxable tangible personal property or charges for taxable utility services is required to register with the department and collect and remit all tax due on such sales.

(b) A use tax at the applicable rate is levied on taxable tangible personal property purchased or received from within or without this state for storage, use or consumption in this state. The liability for the tax is not extinguished until it is fully paid, except that payment of the tax to a vendor who charges such tax shall relieve the purchaser of further liability with respect to the tax so paid. Where retail sales or use tax is due and has already been paid in another state by the purchaser with respect to such tangible personal property, such tax may be credited against the North Carolina use tax due thereon. If the tax paid in another state is less than the North Carolina use tax due, the difference must be paid in this State. Effective July 1, 1981, no credit shall be allowed for sales or use taxes paid in another state if that taxing jurisdiction does not grant similar credit for sales taxes paid in North Carolina. Every person outside this state who is engaged in business in this state, as hereinafter defined, is required to register with the department and collect and remit the tax due on all taxable tangible personal property sold or delivered for storage, use or consumption in this state. Every person who purchases from out-of-state vendors any taxable tangible personal property for storage, use or consumption in this state upon which the tax has not been fully paid must register with the department and remit the tax due on such purchases. A fee is not required for registration by a consumer and a license is not issued in connection with such registration; however, all registrants will be furnished report forms to be used in reporting and remitting all tax due.

(c) Effective October 1, 1989, retail sales of motor vehicles are exempt from sales tax and are subject to the three percent highway use tax with a minimum tax of forty dollars (\$40.00) applicable thereto, with certain exceptions, and a maximum tax of one thousand dollars (\$1,000.00) on any one motor vehicle increasing to one thousand five hundred dollars (\$1,500.00) July 1, 1993. Reference is made to 17 NCAC 7B .4601 for the treatment of sales of motor vehicles.

(d) Effective January 1, 1990, all retail sales of motor vehicle tires are subject to the one percent scrap tire disposal fee. New motor vehicle tires purchased within or without this state for use in this state are subject to the one percent fee on their cost price.

(e) Effective July 1, 1991, a privilege tax is imposed at the rate of one percent on the sales price of each new tire sold at retail by a retailer and on the sale of each new tire by a retail or wholesale merchant to a retail or wholesale merchant for placement on a vehicle offered for sale, lease or rental by the retail or wholesale merchant. An excise tax at the rate of one percent is imposed on the cost price of each new tire purchased from outside the state for storage, use or consumption in this state or for placement in this state on a vehicle offered for sale, lease or rental.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-262;
Eff. February 1, 1976;*

Amended Eff. October 1, 1991; October 1, 1990; May 1, 1990; August 1, 1986.

.0104 REPORTS

(a) Every person engaged in the business of selling tangible personal property at retail or making purchases subject to the use tax and whose total tax liability is consistently less than twenty thousand dollars (\$20,000.00) per month must file on or before the 15th day of each calendar month a true and correct report, in such form as the Department shall prescribe, of all taxes due for the preceding calendar month and shall remit the taxes due with such monthly report. When the total amount of tax for which a taxpayer is liable for any month is consistently less than twenty-five dollars (\$25.00) [increasing to fifty dollars (\$50.00) effective July 1, 1992], such taxpayer may, in lieu of filing monthly returns, file a quarterly return with remittance of tax due on or before the 15th day of January, April, July and October of each year for the preceding three months' period upon making application to the Secretary to use such basis of filing. A report must be filed for each reporting period showing gross sales and/or receipts and an itemization of all exempt sales or receipts which are not included in the computation of tax due. Reports for periods in which no sales are made should be marked "no sales."

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(b) A taxpayer who is consistently liable for at least twenty thousand dollars (\$20,000.00) per month in state and local sales and use taxes shall, as directed by the Secretary of Revenue, file a return on a semimonthly basis. Returns of taxpayers who are required to report on a semimonthly basis are due within ten days after the end of each semimonthly period. The semimonthly reporting periods are the first day of each month through the 15th day of each month and the 16th day of each month through the last day of each month. In determining the amount of tax due from a taxpayer for a reporting period, the Secretary shall consider the total amount due from all places of business owned and operated by the same person as the amount due from that person.

(c) Taxpayers who are directed to remit sales and use tax on a semimonthly basis but are unable to compile the information required to submit a complete sales and use tax report on or before the due date for either the first reporting period or both the first and second reporting periods may, upon written authorization of the Secretary of Revenue, file an estimated report for either or both periods on the basis prescribed by the Secretary. Once a taxpayer has received authorization, he may continue to file estimated returns until such authorization is revoked by the Secretary.

(d) When filing a return for the second period, a taxpayer who files an estimated return for the first period but not for both periods must remit the amount of tax due for both periods less the amount of tax remitted with the estimated return. A taxpayer who files an estimated return for both periods is considered to have been granted an extension for both periods. If a taxpayer who files estimated returns for both periods files a reconciling return for those periods within ten days of the due date of the return for the second period and any underpayment of estimated taxes remitted with the reconciling return is less than ten percent of the amount of taxes due for both reporting periods, no interest is due. Otherwise, a taxpayer who files an estimated return for both periods is required to pay interest from the due date of the return for the first period to the date the reconciling return is filed. If such report is not filed within the applicable time, penalties as provided by statute will attach thereto.

(e) Taxpayers who are authorized to file an estimated report for each or both reporting periods shall file a report reflecting thereon their estimated taxable receipts, rentals and/or sales, any taxable purchases of tangible personal property for storage, use or consumption in this state and shall compute and pay the amount of tax thereon. Taxpayers who have more than one location in North Carolina and file a consolidated report with a schedule of state tax due by each location are required to file such schedule with their estimated report. Also, taxpayers who remit county tax for more than one county and file a schedule showing a breakdown of the local tax due for each county are required to file the schedule with their estimated report.

(f) Every person engaged in the business of providing electricity, piped natural gas, local telecommunications service and toll and private telecommunications services is required to file a utilities and municipalities sales tax report on a monthly basis on or before the last day of the month following the close of the month except those firms providing local telecommunications services which are authorized by the Franchise Tax Section to file franchise tax reports on a calendar quarterly basis.

(g) A person who engages exclusively in the business of making wholesale sales is not required to file monthly reports. However, if in addition to making wholesale sales, such person makes taxable sales to users or consumers or nonregistered merchants or makes purchases subject to the use tax, he is required to file semimonthly, monthly or quarterly reports as provided by statute.

(h) Every person engaged in the business of providing electricity, piped natural gas, local telecommunications service and toll and private telecommunications services is required to file a monthly return except that a utility allowed to pay tax under G.S. 105-120 on a quarterly basis shall file a quarterly return. A quarterly return is due by the last day of the month following the quarter covered by the return. A monthly return is due by the last day of the month following the month in which the tax accrues, except the return for tax that accrues in May is due by June 25th of each year. A utility that is required to file a monthly return may file an estimated return for the first month, the second month or both the first and second months of the quarter.

A utility is not subject to interest on or penalties for an underpayment submitted with an estimated monthly return if the utility timely pays at least 95 percent of the amount due with a monthly return and includes the underpayment with the company's return for the third month of the same quarter.

(i) Every person who purchases from out-of-state vendors taxable tangible personal property for storage, use or consumption in this state upon which the tax has not been fully paid must file reports on a semimonthly, monthly or quarterly basis as provided by statute and report all such purchases and remit the applicable tax due thereon.

*History Note: Statutory Authority G.S. 105-164.16; 105-164.17; 105-262;
Eff. February 1, 1976;*

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Amended Eff. October 1, 1991; October 1, 1990; April 1, 1986; February 1, 1986.

.0109 APPLICATION OF TAX TO FISH BAIT

Sales of bloodworms, shrimp or seafood to users other than commercial fishermen for bait are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax except when such products are sold in their original or unmanufactured state by the producer in his capacity as the producer.

*History Note: Statutory Authority G.S. 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0111 STAMPS, COINS, ETC.

Persons engaged in the business of selling collectible stamps, coins and related items to collectors thereof must register with the Department of Revenue for the purpose of collecting and remitting the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on such sales. Sales of stamps through vending machines or in any other manner for use as United States postal fees are exempt from the tax. Casual or isolated sales of coins and stamps by individuals who are not engaged in the business are exempt from tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.3; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; March 1, 1984.*

.0115 RESEARCH SERVICES

Sales of scientific or research equipment to independent contract research organizations for use in performing research services for clients are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0116 COMPUTER SOFTWARE

(a) The retail sale of all canned or prewritten computer programs, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, held or existing for general or repeated sale, lease or license to use or consume is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use taxes. Computer program means a complete plan for the solution of a problem, such as the complete sequence of automatic data processing equipment instructions necessary to solve a problem, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators and utility programs. The following examples set forth for illustrative purposes:

- (1) When a vendor sells programs for use with home television games or other personal computer equipment which are wholly usable without modification by the vendor, the sale, lease or license to use such programs is subject to sales or use tax.
- (2) When a consultant not in business as a vendor of computer programs performs consulting services only under a performance contract and recommends a program which the customer purchases from a vendor without modification, the sale, lease or license to use such program is subject to sales or use tax.
- (3) When a consultant not in business as a vendor of computer programs performs consulting services under a performance type contract, the consultant is liable for the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on the cost price of all taxable tangible personal property purchased for use in the performance of the contract including any canned or prewritten programs purchased for use without modification by the vendor.

(b) Charges for the design, development, writing, fabrication, lease or license to use or consume or the transfer of title or possession of a custom computer program, except a basic operational program which is a part of the hardware, either in the form of written procedures or in the form of storage media on or in which the program is recorded or any of the required documents or manuals that are designed

to facilitate the use of the custom computer program are exempt from sales or use taxes. "Custom computer program" means a computer program prepared to the special order of the customer. Custom computer programs include one of the following elements:

- (1) Preparation or selection of the program for the customer's use requires an analysis of the customer's requirements by the vendor. The following examples are set forth for illustrative purposes:
 - (A) A computer programmer, a consultant, a qualified representative of the computer software firm or a hardware manufacturer who is the vendor of computer software programs may visit the customer's premises to determine the customer's needs or requirements and then analyze the software needs of the customer so as to enable the customer to accomplish the desired specific function or functions of the customer's electronic data processing equipment and on the basis of such analysis sell the customer computer software programs. The sale by such vendor of the software programs that result from such analysis qualify for the exemption from tax as custom computer programs whether such programs are designed, developed, written, translated, fabricated, leased, licensed to use or consume, or transferred for a consideration of title or possession by the vendor or whether they are held for general or repeated sale by such vendor and whether or not they qualify as a canned or prewritten program and would otherwise be taxable.
 - (B) A customer with sufficient knowledge of his business operations and needs for computerization thereof and the specific operations that he wants to accomplish with computer hardware may visit a vendor's place of business and after a discussion with a qualified representative of the software outlet be supplied with appropriate software based upon the analysis of the customer's needs by the vendor and, in such case, the computer software program would be a custom computer program and exempt from sales or use taxes. Of course, it will be incumbent upon the vendor to provide written documentation that an analysis as contemplated by the statute was, in fact, made by the vendor.
- (2) The program requires adaptation by the vendor to be used in a particular make and model of a computer using a specified output device. A specified output device is a piece of hardware attached to a computer that assists in the operation, such as video terminals, printers, disc drives or tape drives. The process of adaptation by the vendor can be as simple as changing the code on a particular program so that such program will be acceptable to or accepted by a specified output device of a different manufacturer than the central processing unit. When a vendor sells a canned or prewritten program which requires adaptation in whole or in part by the vendor to be used in a particular make and model of a computer utilizing a specified output device, the program is considered to be customized and the sale, lease or license to use or consume same is exempt from sales or use tax.
 - (c) Systems and programming services: Services involved in the analysis, design and programming of an electronic data processing system are exempt, whether the services are used for the initial development or modification of the computer software or the data processing system. A person providing the preceding exempt services for his customers is subject to the applicable sales or use taxes on all purchases of tangible personal property used to provide such services, notwithstanding the fact that some part of the property may later be transferred to the customer with the exempt service.
 - (1) Charges for services to modify or update existing software, to meet additional processing procedures or new procedures being employed by the users of the software program, are not subject to sales or use tax.
 - (2) When a programmer goes to a customer's location to analyze a customer's requirements and designs a program to solve a problem and after a program is written it is keypunched by the customer and introduced into his own computer system for use, the charge therefor is for services rendered which are not subject to sales or use tax.
 - (d) Time sharing: Charges made to customers for the use of a computer which the customer has access to through a remote terminal device are not deemed to be a taxable transfer of possession of the computer.
 - (e) Data processing services: Information services are commonly provided by data processing centers. An information service may consist of a data processing company using its own facilities to process its customer's data to record information. The data may be provided to the data processing company in source document forms, as machine readable medium or entered directly into the company's computer facilities by devices located at the customer's premises. Information services are not subject to tax when the output is personal or individual in nature to the purchaser and the object of the transaction is to obtain the information and not to obtain tangible personal property for use or consumption.

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(f) The retail sale, lease or rental of electronic data processing equipment and paraphernalia equipment, commonly referred to as hardware, is subject to sales or use tax. Examples of hardware are:

- (1) central processing units;
- (2) card punch machines;
- (3) card readers;
- (4) verifiers;
- (5) sorters;
- (6) card converters;
- (7) collators;
- (8) printers;
- (9) panels;
- (10) data entry equipment;
- (11) unit record equipment;
- (12) point of sale devices;
- (13) terminals (video and hard copy);
- (14) modems;
- (15) electronic message scramblers;
- (16) bursters;
- (17) security monitors;
- (18) flexowriters;
- (19) decollators;
- (20) data storage devices (e.g. disc drives, tape drives);
- (21) blank cards, discs and tapes.

(g) For the purpose of this Rule, the basic operational program or control program which controls the basic operations of the computer causing it to execute instructions contained in the program is an integral part of the computer hardware. A basic operational program is that part of an operating system, including supervisors, monitors, executives, and control or master programs, which consists of the control program elements of that system. A control or master program, as opposed to a processing program, controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main storage unit, input/output devices and processing programs. Such basic operation programs or control programs are considered part of the hardware subject to sales or use taxes. The fact that the vendor does or does not charge separately for such programs or that such programs are prepared to the specifications of the customer is immaterial.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; May 1, 1985; December 1, 1982; January 1, 1982.*

.0126 HOLY BIBLES

Effective April 22, 1991, the exemption from tax for sales of Holy Bibles is repealed. This change is pursuant to the May 10, 1990, United States Court of Appeals ruling that declared the exemption unconstitutional.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.13; 105-262;
Eff. October 1, 1991.*

SECTION .0200 - GENERAL APPLICATION OF LAW TO MANUFACTURING AND INDUSTRIAL PROCESSING

.0202 CLASSIFICATION OF MANUFACTURING ACTIVITIES

(a) For the purposes of interpreting and administering the Sales and Use Tax Law the following classifications are based on the three principal activities of manufacturers and industrial processors and should be followed by persons selling and by manufacturers purchasing tangible personal property which is used or consumed in different phases of the operation of an industrial plant:

- (1) Production as a phase of industrial or manufacturing operations shall mean all steps performed in processing and refining rooms, and in other quarters and departments of a plant, where conditioning, treating or other operations are done on ingredient materials as an actual routine on a processing or assembly line turning out a finished product of manufacture. It shall also include

the movement of raw materials or ingredients from an inventory or a stockpile located on the premises of the manufacturing facility to the assembly or processing line, the movement of goods in process along the processing line and the movement of manufactured products from the assembly or processing line into shipping or storage areas and yards located on the premises of the manufacturing facility. Sales to a manufacturing industry or plant of machinery, and parts and accessories therefor for use in production, as defined above, are classified as mill machinery and mill machinery parts and accessories. The term production shall also mean the work of experimentation and research performed on the manufactured products. Sales to a manufacturing industry or plant of research and development equipment and supplies for quality control or the improvement of its manufactured products or for the development of products which it will manufacture are classified as mill machinery and mill machinery parts and accessories. Items which are not classified as mill machinery and mill machinery parts and accessories when purchased by manufacturing industries and plants for use in their research and development areas include such items as desks, calculators, personal computers and chairs and are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Production does not include any activity connected with the movement of raw materials or ingredients into inventory nor does it include distribution as defined in (a)(2) of this Rule. Sales to manufacturing industries and plants of machinery, parts and accessories to such machinery, or other items of tangible personal property which are used in the movement of raw materials or ingredients into inventory or in distribution activities as defined or which are used for other similar purposes are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax without any maximum tax.

- (2) Distribution with reference to industrial and manufacturing plants shall mean any activity connected with the movement of manufactured products within storage warehouses, shipping rooms and other such finished products storage areas and the removal of such products therefrom for sale or shipment. Sales of distribution equipment to manufacturing industries and plants are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.
- (3) Administration with reference to industrial and manufacturing plants shall mean and include the administrative work of offices, promotion of sales and collection of accounts. Sales of administrative equipment, such as office equipment of all kinds, stationery and related articles such as pens, pencils, rubber stamps, paper cutters, printed forms, books of accounts and records, file cabinets, small tools and implements such as scissors, staplers, desk trays, and other miscellaneous articles generally sold exclusively for office use and furniture and fixtures are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(b) Any question regarding the application of the proper rate of tax, the classification of a purchaser for sales and use tax purposes, or the exempt status of certain transactions should be submitted to the department for determination. Persons selling or persons purchasing articles subject to the eighty dollars (\$80.00) maximum tax are cautioned not to treat as one article two or more articles which, when joined together, make a functional unit or several components of machinery or equipment purchased from the same or different vendors which may be assembled by the purchaser into a single article. The purchase of a quantity of repair parts necessary to recondition or upgrade mill machinery is not considered a single article. If there is any question as to whether property involved in any transaction involves one or more articles, such question should be submitted to the department for decision.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; September 30, 1977.*

SECTION .0300 - SPECIFIC TANGIBLE PERSONALTY CLASSIFIED FOR USE BY INDUSTRIAL USERS

.0301 MILL MACHINERY

Sales of mill machinery, mill machinery parts and accessories to manufacturing industries and plants for industrial processing are subject to the one percent sales or use tax, subject to a maximum tax of eighty dollars (\$80.00) per article where applicable. The following items, when sold to manufacturing industries and plants for use in their manufacturing process, are considered mill machinery, mill machinery parts and accessories within the meaning of the Sales and Use Tax Article:

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- (1) motors, pulleys, motor bases but not foundations, gears, belts, chains and textile rope drives, line shafting with hangers and pulleys, and other types and makes of drives connecting motors to the driven machinery for direct production processes;
- (2) controls for motors consisting of:
 - (a) magnetic starters, push button stations, pressure and float switches, and other types of relays operating motor controllers;
 - (b) compensators of auto transformer starters;
 - (c) thermal relay types of motor starters;
 - (d) drum controllers and resistors;
 - (e) disconnecting switches when built as a part of magnetic starters;
 - (f) oil switches;
 - (g) synchronous motor controllers if a part of production machinery, but not otherwise;
- (3) repair and renewal parts for motors and motor controllers as production machinery;
- (4) steam engines, gasoline engines, diesel engines, motor generators;
- (5) pumps for industrial processes, air compressors, air hoses and nozzles, and pipe for carrying compressed air from compressor to hose for cleaning machinery and equipment; pumps used to remove waste of a manufacturing process;
- (6) moistening or humidifying equipment on or adjacent to machinery when the function of this equipment is the conditioning of materials for processing; This includes piping located on or immediately adjacent to mill machinery and which supports and supplies water to moistening or humidifying equipment, but does not include general piping in the mill supplying water to moistening or humidifying equipment. General piping in the mill is taxable at the state rate of four percent (three percent until July 16, 1991) and any applicable local sales or use tax;
- (7) that portion of the purchase price of general air conditioning systems allocated to conditioning materials for processing;
- (8) boiler room machinery with flue cleaners, and brushes for boiler tubes, when the boilers are operated for power generation or supplementary thereto in connection with manufacturing processes; stokers, shovels, and other equipment used in boiler rooms for feeding fuels and water to power units; Smoke stacks which are attached to and are a part of the boilers; Equipment as used here does not include storage places for fuels and water, or reserve tanks, bins or other similar items located either inside or outside power rooms or buildings. Storage tanks, bins or other facilities for water, fuel, raw materials or manufactured products are not considered as mill machinery or accessories to such machinery and are therefore subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. However, tanks, bins and other facilities in which mixing, blending or other processing action takes place are classified as mill machinery or accessories and are therefore subject to the one percent rate of tax when such items are used in the manufacturing operation;
- (9) conveyors, hoists and hoist cables, (but not track or other fixtures determined to be a part of and which lend support to the building or structure) roving trucks and other materials handling equipment, including lift trucks, used in individual mills for transporting materials or spindles or like articles from inventory to the manufacturing process, transporting materials during temporary interruptions in the manufacturing process in the mill or moving the finished product from the manufacturing or processing line into shipping and storage areas or yards at the individual mill or plant; Included for the purpose of this Paragraph are work tables, with seats and other accessories thereto at which employees work on materials in process; racks, bins, canvas baskets and similar equipment for handling goods in process; and roving cans;
- (10) hand tools designed for use on a particular machine, such as special wrenches supplied by makers of textile machinery for special machines; hammers, screwdrivers, blow torches, soldering irons, rubber mallets and similar general-use tools and machines used in repair shops to repair mill machinery or along the production line to perform work necessary as a part of the manufacturing processes and all files for general and specific use in a mill or manufacturing plant;
- (11) metal-cutting and wood-cutting lathes and their accessories in all kinds of manufacturing plants, factories and mills; band saws, circular saws, all hack saws and blades; shapers and accessories, jointers, planers; drill presses; welding machines; torches; and all other manufacturing machinery and accessories thereto; spinners' whisks, comber brushes and other brushes, in hosiery mills and cotton mills, designed for use on particular machines; polishing wheels, sanding machines and drums, portable or stationary; sandpaper, emery cloth, rubbing tow, paint brushes and filler brushes, steel wool, rubbing waste or cloths or other hand or machine devices for polishing or other finishing processes on a manufactured product; oils and lubricants for use in lubricating

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production machinery; and wiping cloths, cleaning compounds and paint for mill machinery, mill machinery parts and accessories; chemicals or other materials used to clean ingredient or component parts of manufactured products but which do not enter into or become an ingredient or component part of property being manufactured;

- (12) dyehouse thermometers, recording charts for mill machinery, hank scales and yarn scales; and tachometers and other testing devices used for checking performance or output of machinery;
- (13) air compressors, steam hose and air hose for cleaning mill machinery;
- (14) cloth pencils and mill crayons for marking cloth, lumber or other ingredients in process;
- (15) dynamite and other explosives used in mining and quarrying whether or not such mining or quarrying is carried on as a regular or continuous business within itself, or as a part of a manufacturing industry; Sales of explosives used in excavation in connection with building or construction are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax;
- (16) machinery and equipment used in packaging manufactured products as a part of the manufacturing process.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; January 3, 1984.*

.0302 ITEMS NOT MILL MACHINERY

The following items are not considered mill machinery or mill machinery parts and accessories to manufacturing industries and plants and are therefore subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax:

- (1) tangible personal property attached to or in any way a part of any building or structure of any kind whatsoever; freight elevators; plumbing and sprinkler systems; electric wiring and electric fixtures; electric lamps and tubes; and fuses and fuse links; Electrical equipment, including control panels, or wiring and related conduit affixed to mill machinery to furnish power to mill machinery and equipment, is classified as an accessory to such machinery and is therefore subject to the one percent rate of tax; however, electrical equipment or wiring and related conduit which is used for general distribution of power to or in a manufacturing industry or plant is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax;
- (2) that part of the purchase price of a general air conditioning or humidifying system charged to general building heating or cooling or to moistening of air for the comfort and convenience of employees;
- (3) ventilating fans in walls or roofs of buildings and portable or stand type fans for plant ventilation; make-up air systems used for the purpose of ventilating manufacturing industries and plants; However, exhaust fans or hoods that are a part of mill machinery and which remove fumes, vapors or dust arising from the manufacturing operation which would damage the product in process or the mill machinery unless removed from the area would be classified as mill machinery or mill machinery parts and accessories and subject to the one percent rate of tax;
- (4) all scales not used in the manufacturing process;
- (5) time clocks and cards, and all signal systems operated therewith; watch clocks and watch clock stations; and all parts and supplies therefor;
- (6) protective clothing, such as gloves, safety shoes and similar items, regardless of whether they are purchased and paid for by the employer or the employee;
- (7) machinery and equipment used in warehouses, shipping rooms or other locations separate and apart from the manufacturing process to prepare property for shipment.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

SECTION .0400 - SPECIFIC INDUSTRIES

.0403 BOTTLING PLANTS

(a) Sales to bottling plants of bottling machinery and parts or accessories therefor are taxable at the rate of one percent subject to a maximum tax of eighty dollars (\$80.00) per article. Sales to bottling

plants of lubricants for such machinery and cleaning compounds for bottles and bottling machinery are likewise subject to the one percent rate of tax.

(b) Sales to bottling plants of bottles, bottle caps, crates and cartons in which manufactured products are sold and delivered to retail or wholesale customers are exempt from the tax. Amounts charged as deposits on beverage containers which are returnable to vendors for reuse and which amounts are refundable or creditable to vendees are exempt from sales tax, whether or not said deposits are separately charged.

(c) Sales of the following items of tangible personal property to operators of bottling plants are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax:

- (1) cleaning compounds for janitorial and sanitary purposes;
- (2) uniforms for employees;
- (3) advertising materials;
- (4) office furniture, fixtures and equipment;
- (5) ice boxes, vending machines and pre-mix cylinders for use in vending machines;
- (6) conveyance equipment such as jack lifts and repair parts therefor which are not used in the production process;
- (7) paint for cases, trucks, signs, and buildings;
- (8) lubricants, repair parts and accessories for motor vehicles;
- (9) clocks, pencils, knives, etc. used as gifts.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; Eff. February 1, 1976; Amended Eff. October 1, 1991; May 11, 1979; September 30, 1977.

.0404 ELECTRIC POWER COMPANIES

(a) Sales of the following items of tangible personal property to firms engaged in generating, producing or processing electric power to be distributed to consumers are subject to the one percent sales or use tax with a maximum tax of eighty dollars (\$80.00) per article:

- (1) all production machinery and accessories thereto; all machinery controls located within a power plant or a plant substation; and control gates and control valves located at the dam site for regulating flow of water to turbines;
- (2) control panel boards located within the powerhouse and their connecting wiring;
- (3) bus bars conducting electric current from generator to powerhouse substation transformer;
- (4) powerhouse pumping equipment for drainage;
- (5) all pumping equipment for transferring transformer oil from storage tank to powerhouse transformers, or fuel oil to emergency generator motors;
- (6) electric traveling cranes built into powerhouse structures for handling turbines, generators and transformers in making installations or repairs;
- (7) distribution and power transformers of 1 1/2 KVA and larger; capacitors; induction feeder voltage and constant current regulators; de-ion gaps and expulsion type cutouts for transformers; relays; oil switches; sectionalizing switches; lightning arresters; arcing horns and gaps; watt-hour and panel control meters but not testing or laboratory equipment and meters; Current and potential transformers used in metering equipment are also included as machinery and accessories.

(b) Sales of the following items of tangible personal property to electric power companies are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax:

- (1) materials for the construction, repair or maintenance of powerhouses and powerhouse transformer stations;
- (2) materials for dams, penstocks, and canals; pipes or ducts carrying water to turbines;
- (3) all lines, wiring, poles, bracing, cross-arms, insulators, or any other materials going into or constituting a part of a power line structure used for distribution of power or current;
- (4) all storage tanks, including those located in or used in connection with the powerhouse;
- (5) all tools and maintenance equipment used separate and apart from those items classified as production machinery and equipment.

(c) The gross receipts derived by a utility from the sale of electricity are subject to the three percent state rate of sales tax on and after January 1, 1985. The term "utility," as used in this Rule, includes an electric power company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or a municipality that sells electric power, other than a municipality whose only wholesale supplier of

electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes. The gross receipts upon which the tax is due is the total amount for which electricity is sold, including any charges for services that go into the production or delivery of the electricity and that are a part of the sale valued in money whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller without any deduction on account of the cost of the electricity sold, the cost of materials used, labor or service costs, interest charged, losses or any other expenses whatsoever. Therefore, all charges for tangible personal property and services, provided in the production and delivery of electricity to consumer purchasers are a part of the gross receipts from the sale of electricity upon which the tax is due notwithstanding that some charges may be billed separately to the customers from the charge for the metered service. Set forth in this Paragraph are the departmental determinations as to the application of tax to specific transactions by electric utility companies:

- (1) Electric service meter charges are a part of gross receipts subject to the three percent sales tax.
- (2) The basic service charges to the customer, whether or not the customer uses metered service, are a part of the gross receipts from the sale of electricity subject to the three percent sales tax.
- (3) Security deposit interest paid to customers on deposits are not subject to sales tax.
- (4) Conservation discounts on electric service metered charges are exempt from sales tax when such discounts reduce the amount for which such service is billed to the customer.
- (5) Service charges made to customers when the company first supplies electricity under any applicable metered rate schedule are a part of gross receipts from sales of electricity subject to the three percent sales tax.
- (6) Construction charges to new customers for extending a utility's facilities to these customers are a part of the gross receipts from sales of electricity subject to the three percent sales tax.
- (7) Underground service charges to residential, commercial and industrial customers who are served by underground facilities are a part of the gross receipts from sales of electricity subject to the three percent sales tax.
- (8) Temporary service charges for installing and removing a service of a temporary nature are a part of gross receipts from the sale of electricity subject to the three percent sales tax.
- (9) Advance payments for temporary service that are collected prior to meter installation and customer account establishment are a part of gross receipts from the sale of electricity subject to the three percent sales tax. If the amount charged to the customer is in excess of the amount due by the customer for this service it should be refunded to the customer, including the sales tax.
- (10) Charges for providing customers additional facilities to furnish service are a part of gross receipts from the sale of electricity subject to the three percent sales tax notwithstanding that facilities are requested by the customers.
- (11) Charges for transformers which constitute charges for additional equipment furnished as a part of the electric service are subject to the three percent rate of sales tax.
- (12) Charges for transformers under bona fide rental agreements have been and continue to be subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax and the tax on such rentals should be reported monthly on Sales and Use Tax Report Form, E-500.
- (13) Area lighting charges for area lighting service which is available to customers for the purpose of lighting private streets, private driveways and other outdoor areas by the means of mercury vapor or sodium vapor units constitute receipts from the sale of electricity subject to the three percent sales tax.
- (14) Residential subdivision street lighting charges for services supplied in the lighting of residential dedicated public streets by means of mercury vapor and sodium vapor lighting units are a part of gross receipts from sales of electricity subject to the three percent sales tax.
- (15) The amounts actually charged to customers for electricity consumed for the billing period are the amounts on which the three percent sales tax is due and is to be charged notwithstanding that the customers may be under equal pay agreements.
- (16) Charges for reconnecting service to customers after service has been terminated for nonpayment are a part of gross receipts from sales of electricity subject to the three percent sales tax.
- (17) Sales of electricity to manufacturing industries and plants, laundries, dry cleaning plants and farmers are subject to the three percent sales tax.
- (18) A utility must report receipts from sales of electricity on an accrual basis. Such receipts are to be reflected on the Utilities and Municipalities Sales Tax Report, Form E-500E, which is to be filed monthly on or before the last day of the month following the calendar month in which the tax accrues.

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- (19) Load control discounts on electric service metered charges for residential customers which reduce the amount by which the customer is billed are not a part of the sale of electricity on which sales tax is due.
- (20) Charges to customers for supplying information through energy or time pulses are not a part of the sale of electricity subject to the three percent sales tax provided the customer already has the facilities for electric service in place.
- (21) Demand profile charges or pulse data charges for demand information as requested by a customer are not a part of gross receipts from the sale of electricity subject to the three percent sales tax.
- (22) Energy audit amounts charged to customers for a comprehensive energy audit provided by a utility are not a part of gross receipts from sales of electricity subject to the three percent sales tax.
- (23) Late payment charges billed on a balance that was not paid on the previous month's bill are not a part of gross receipts of sales of electricity subject to the three percent sales tax.
- (24) Return check charges for checks received by a utility in payment of an account and returned by the bank because of insufficient funds are not a part of gross receipts from the sale of electricity subject to the three percent sales tax.
- (25) Home energy loan amounts which represent the amount due under The Help Loan Program are not a part of gross receipts from the sale of electricity.
- (26) Loan late payment charges for an amount due under the loan program that is not paid in accordance with the loan agreement are not gross receipts from the sale of electricity subject to the three percent sales tax.
- (27) Sales of electricity directly to the United States Government or any agency thereof are not subject to sales or use tax. In order to be a sale to the United States Government, the government or agency involved must make the purchase of electricity and pay directly to the vendor the purchase price of such electricity. While a utility's sales directly to the United States Government or an agency thereof are exempt from sales tax, a utility should obtain a purchase requisition from each agency for its records.
- (28) Sales of electricity directly to the North Carolina Department of Transportation or any division thereof are not subject to sales or use tax. In order to be a sale to the North Carolina Department of Transportation, the Division involved must make the purchase of electricity and pay directly to the vendor the purchase price of such electricity. While a utility's sales directly to the North Carolina Department of Transportation or a division thereof are exempt from sales tax, a utility should obtain a purchase requisition from each division for its records.
- (29) Sales of electricity to registered electric membership cooperatives and to registered municipalities for resale are exempt from sales tax when such sales are supported by properly completed Certificates of Resale, Form E-590. Electric membership cooperatives and municipalities selling electricity must add and collect the three percent sales tax on their gross receipts from the sale of electricity. A municipality that pays the retail sales tax imposed on sales of electricity may deduct from the amount of tax payable by the municipality an amount equal to three percent of the difference between its gross receipts from sales of electricity for the preceding quarter and the amount paid by the municipality for purchased power and related services during that quarter.
- (30) Accounts of purchasers representing taxable sales on which the three percent sales tax has been paid that are found to be worthless and actually charged off for incomes tax purposes may, at corresponding periods, be deducted from gross sales provided, however, they must be added to gross sales if afterwards collected.
- (31) Local sales taxes are not applicable to those receipts from services subject to the state sales tax of three percent, but any applicable local taxes are applicable to receipts from sales and leases of tangible personal property subject to the four percent (three percent until July 16, 1991) state rate of tax.

*History Note: Statutory Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; June 1, 1985.*

.0405 MINING AND QUARRYING

- (a) Sales of articles of tangible personal property used in direct production or extractive processes inside the mine, including dynamite and other explosives, are deemed to be sales of mill machinery or

mill machinery parts and accessories and are taxable at the rate of one percent subject to a maximum tax of eighty dollars (\$80.00) per article.

(b) Sales or purchases of items such as caps, lights, gloves or other devices, regardless of whether paid for or owned by employees or employers, first aid equipment and supplies for use in connection with the maintenance of a first aid station, and safety supplies, such as dust masks, eye shields, goggles and respirators are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Fire extinguishers sold to mining and quarrying operators are deemed to be safety equipment and are therefore subject to the four percent state tax and any applicable local sales or use tax.

(c) The process of mining shall be considered completed when the extracted product leaves the excavation and is ready for transportation elsewhere. Transportation of the extracted product is deemed to be part of the manufacturing or processing operation if the manufacturing or processing and the mining are performed on the same premises; therefore, locomotives, or other power units, and cars or conveyors which are pulled by these power units from the excavation to processing plants on such premises are deemed to be mill machinery. Tracks for cars and power units, and power lines either inside or outside the excavation, are deemed to be structures and sales of materials used in constructing the same are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(d) Quarries, in the generally accepted sense of the term, regularly operated for the production of stone, sand, clay, marble, granite, gravel, crushed stone, and similar products for commercial purposes are deemed to be manufacturing plants and industries, and sales to such manufacturing plants and industries of production machinery, and parts and accessories thereto, are subject to the one percent sales or use tax with a maximum tax of eighty dollars (\$80.00) per article. Power shovels, drills and similar equipment sold for use in mines or quarries in the extractive processes are classified as production machinery. However, if such equipment is not used in the mine or the production processes, it does not qualify as production equipment and is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0406 OTHER MILLS AND PROCESSORS

Sales of production machinery, and parts and accessories thereto, to sawmills, lumber mills, millwork plants, flour mills, grist mills, feed mills, fish canneries, fertilizer plants, cotton gins, food canneries, photo finishers, printers, ready-mixed concrete plants and asphalt plants (but not concrete or asphalt contractors), poultry processors, wood preserving plants, brick manufacturers, cement, cinder and clinker block manufacturers, paper mills, tanneries, pottery makers, novelty manufacturers, and any other producer for use in the production process, as the term "production" is defined in 17 NCAC 7B .0202(a) (1), to fabricate, process or manufacture articles of tangible personal property for sale are subject to a one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article.

Note: (1) Bulldozers or other equipment sold to sawmill operators for the purpose of opening or maintaining entries to timber lands are not mill machinery and such sales are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

Note: (2) Wedges, cant hooks, log binders, log jacks and log chains sold to sawmill and lumber mill operators for use in cutting timber are classified as mill machinery or parts and accessories for such machinery, and such sales are subject to the one percent sales or use tax.

Note: (3) Sales to wood products manufacturers or producers and their contractors or subcontractors of log-skidders, log-carts, tree-shears, feller-bunchers, grapple skidders, winches, chainsaws, clippers, tractors, axes and mallets for use in cutting and transporting timber on lands owned by them or on lands where timber rights have been acquired for timber to be manufactured into wood products or for sale either directly or indirectly to wood products manufacturers are classified as mill machinery and subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article. Sales of such machinery or equipment to employees of wood products manufacturers or producers are sub-

ject to the four percent (three percent until July 16, 1991) state tax and any applicable local rates of tax.

Note: (4) Dynamite sold to fertilizer manufacturers for use in blasting mounds of fertilizer which has been stored for aging processes is not classified as mill machinery or accessories thereto, and such sales are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

Note: (5) Propylene glycol sold to poultry processors for use as a refrigerant in the manufacturing process is classified as an accessory to mill machinery and such sales are subject to the one percent sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; August 1, 1988; June 1, 1984; February 8, 1981.*

.0407 DAIRIES AND CREAMERIES

(a) Sales to dairies, creameries and like businesses of the following items of tangible personal property are taxable at the rate of one percent subject to a maximum tax of eighty dollars (\$80.00) per article:

- (1) Babcock testers electrically operated;
- (2) Boilers producing steam to be used in manufacturing or processing, together with fire boxes, grates, fire brick, gauges, steam pipes, and other necessary accessories to such boilers;
- (3) Bottle cappers;
- (4) Brine pumps;
- (5) Butter molds;
- (6) Butter churns and workers;
- (7) Butter cutters, packers and printers;
- (8) Cans for handling milk during processing or manufacturing;
- (9) Can steamers;
- (10) Circulating bar makers;
- (11) Chocolate bar makers;
- (12) Conveyors and conveyor chains;
- (13) Cooling machines and their fittings and attachments; cottage cheese vats for manufacturing but not storage;
- (14) Cream separators;
- (15) Cream savers, vats and hose;
- (16) Curd agitators and attachments;
- (17) Dry ice saws;
- (18) Electric fillers, cappers and attachments;
- (19) Filling machines and attachments;
- (20) Filters and filter cartridges;
- (21) Heat exchanges;
- (22) Heaters and sterilizing machines;
- (23) Homogenizers;
- (24) Ice cream freezers;
- (25) Ice cream hardening cases;
- (26) Ice cream molds and pans;
- (27) Jalco testers;
- (28) Jug fillers and cappers mechanically operated;
- (29) Machines and cleaning compounds for washing and sterilizing bottles, cans and other containers; cleaning compounds for cleaning production machinery;
- (30) Pasteurizers and attachments;
- (31) Pipe line filters;
- (32) Pipe and fittings for use on, or attached to, machinery;
- (33) Purity brine units;
- (34) Rapid flow frigid filters;
- (35) Receiving tanks and units;
- (36) Rinsers and sterilizers;
- (37) Roller conveyors;
- (38) Scales when attached to a machine;
- (39) Specialty brass filters and cappers, but not hand operated;

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- (40) Storage tanks and vats for milk, ice cream, and other milk products;
- (41) Thermometers, charts and gauges when attached to any part of a machine;
- (42) York freezers, and all other machinery, special tools therefor, attachments and accessories used in the manufacture or processing of milk and milk products whether or not specifically enumerated above; all repair and replacement parts for machinery, attachments and accessories, and all engines, motors, pulleys, motor bases but not foundations, gears, belts, line shafting with hangers and pulleys and other types and makes of drives connecting motors to the driven machinery, and all repair and renewal parts of the same.

(b) Sales of the following items of tangible personal property to dairies, creameries, and like businesses processing and manufacturing dairy products are exempt from the tax if such materials are purchased for use in packaging, shipment or delivery of tangible personal property which is sold either at wholesale or retail and such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer:

- (1) butter boxes and cartons;
- (2) cheese cartons;
- (3) glass and other containers;
- (4) ice cream cups and milk bottle crates;
- (5) ice cream spoons, wood and fiber labels;
- (6) milk bottles, and jugs of all sizes and materials;
- (7) milk bottle caps and hoods of all makes;
- (8) sealing tape;
- (9) twine;
- (10) straws;
- (11) wrappers, wrapping paper and other tangible personal property used, consumed or furnished free in the packing, sale or distribution of milk and milk products.

(c) Sales to dairies, creameries and like businesses of freezing or cooling units not classified as processing machinery or accessories are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Freezing or cooling units in which finished dairy products are stored pending distribution or dispensation to wholesale or retail customers do not qualify as processing machinery or accessories.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; May 11, 1979.*

SECTION .0500 - EXEMPT SALES TO MANUFACTURERS

.0502 PACKAGING MATERIALS

(a) Sales of bagging and ties or other packaging materials to manufacturers for use in processing their customers' feed are exempt from tax provided their customers will resell the feed and such packaging materials are a part of the sale. If the manufacturers use bagging and ties or other packaging materials in processing their customers' feed, which the customers will use and not resell, such bagging and ties and other packaging materials are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(b) Box wraps, labels, printed toppers for polyethylene bags and cardboard hosiery inserts upon which hosiery is placed are exempt from tax when sold to hosiery manufacturers and such items attach to, contain, or otherwise become a part of the sale of the hosiery.

(c) Sales of scotch tape, sealing paper and steel strapping to manufacturers, producers, and retailers for use as set forth under the provisions of G.S. 105-164.13(23) are exempt from the tax.

(d) Sales of drums to manufacturers, producers, wholesalers, and retailers are exempt from tax under G.S. 105-164.13(23) when such drums are used for packaging, shipment, or delivery of tangible personal property which is sold at wholesale or retail and when such drums constitute a part of the sale of such tangible personal property and are delivered with it to the customer. Sales of paint to manufacturers, producers, wholesalers, and retailers for use in painting such drums are also exempt from tax.

(e) Sales to manufacturers, producers, wholesalers and retailers of instruction sheets, instruction booklets or pamphlets, direction folders and similar items which constitute a part of the sale of tangible personal property at wholesale or retail and are delivered with it to the customer to give instructions as to the proper use of such property are not subject to sales or use tax. Provided, however, that this

ruling shall not apply to sales of any items of tangible personal property which accompany products being sold to advertise other products and do not give instructions as to the proper use of the products being purchased.

(f) Sales to manufacturers of strapping, bagging, ties, and other packaging materials for use in the production line to package or hold materials which are not for sale but which are held for further processing in the same plant or at another plant are classified as accessories to the production process and, thus, are taxable at the rate of one percent. The one percent rate of tax is also applicable to sales of packaging materials to manufacturers to be used to package materials or hold materials in process which are transferred to a contract manufacturer for further processing even though such materials are not sold to the contract manufacturer by the owner thereof.

(g) Packaging materials which are purchased by a contract manufacturer and used to package products which it is manufacturing or processing for its manufacturer-customers to be sold by such manufacturer-customers in such packages or containers, are not subject to the tax since the packaging materials will become a part of the sale of the products by the owner thereof. If such packaging materials are used by the contract manufacturer to package or hold products which are returned to the manufacturer-customers or sent to other contract manufacturers for further processing, they would be subject to the one percent rate of tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

SECTION .0600 - SALES OF MILL MACHINERY AND ACCESSORIES

.0602 PACKAGING MACHINERY

Sales of packaging machinery to manufacturers to be used to package their manufactured product during the initial stage and through the final steps of production are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article. Machinery and equipment used in the shipping room, warehouse or other locations separate and apart from the manufacturing process to prepare property for shipment is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0603 TAPE DISPENSING MACHINES

Sales of tape dispensing machines to manufacturers and other industrial processors for use in packaging their manufactured products in the line of process as a part of the manufacturing operations are subject to the one percent rate of tax. Sales of tape dispensing machines to manufacturers for use in shipping rooms are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 5, 1980.*

.0604 STRAPPING MACHINE

The sale of a strapping machine to a manufacturer for use in packaging products during the manufacturing process is subject to the one percent rate of tax, with a maximum tax of eighty dollars (\$80.00) per article. The sale of a strapping machine to a manufacturer for use in a distribution or finished goods storage area is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0610 WATER PURIFICATION EQUIPMENT AND CHEMICALS

Sales to manufacturers of machinery for use in the purification of water for use in the manufacturing process are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article applicable thereto. Sales to such manufacturers of pumps and pipe to be used to pump the water from the river or other source to the purification plant are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Sales of chemicals to manufacturing industries and plants to purify and clarify water to be used for manufacturing purposes are subject to the one percent rate of tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0615 INSULATION MATERIALS: MANUFACTURERS

Insulation materials sold to manufacturing industries or plants for use by them in repairing or maintaining machinery or equipment which is properly classified as mill machinery or accessories thereto are taxable at the one percent rate of tax. Insulation materials used in repairing or maintaining buildings or machinery and equipment which is not properly classified as mill machinery or accessories are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0617 LIFT TRUCKS

Sales of lift trucks to manufacturing industries and plants for use in moving materials between the beginning and ending step in the manufacturing process are considered to be mill machinery and are taxable at one percent of the sales price with a maximum tax of eighty dollars (\$80.00) per article. Lift trucks which are for use in receiving and shipping areas are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax, and no maximum tax is applicable thereto.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0618 SINGLE ARTICLE APPLICATION: SYSTEM

(a) An operating system containing a number of separate articles of equipment does not constitute a single article as contemplated by the statute. Each single article within the system is subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article applicable to each single article.

(b) A manufacturer or processor which purchases various components of mill machinery or equipment, otherwise taxable at the rate of one percent, is not purchasing a single article of mill machinery, as such, even though the assembled machinery or equipment constitutes a single article. The purchaser has made numerous purchases of components of machinery or equipment and the tax is due on each purchase at the rate of one percent, and if the cost of any one component does, in fact, exceed eight thousand dollars (\$8,000.00), the eighty dollars (\$80.00) maximum tax would be applicable thereto. If any one article, as such, is purchased by a taxpayer, it does not lose its identity as a single article because it is too large or cumbersome to be shipped as "the" single article and has to be disassembled for shipping purposes or is billed on more than one invoice. The single article limitation has never been interpreted to apply to numerous purchases from the same or different vendors, even though the various components so purchased may be assembled by the purchaser into a single article. The purchase of a quantity of repair parts necessary to recondition or upgrade mill machinery is not considered a single article.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0621 ELECTRIC LIGHT BULBS

Electric light bulbs which attach to items properly classified as mill machinery are classified as accessories to such machinery and are taxable at the rate of one percent of the sales price. Such bulbs for electric fixtures which attach to buildings or structures to provide general lighting for the buildings or structures are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0624 ELEVATORS

Sales of elevators to manufacturers which become a part of the building or structure are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0626 PAPER STOCK

Purchases of paper stock by a manufacturer for use in printing its own stationery, office forms, accounting forms, stock or production control records or similar items for use are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0627 HANG TAGS AND LABELS

Sales of hang tags to manufacturers which are placed on their manufactured product to advertise other products they manufacture are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Tags or labels that describe the product to which they are attached and which become a part of the sale are exempt from tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0628 STOCK CONTROL CARDS

Stock control cards sold to users or consumers are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0629 OFFICE SUPPLIES: STENCILS

Sales of stencils, office supplies, and other tangible personal property to manufacturing industries and plants for use in receiving or shipping areas and other raw materials or finished goods storage areas are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 1, 1984.*

.0630 SCALES

Scales used to weigh truck loads of peanuts as they are brought to peanut manufacturing or processing plants from the markets are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0631 SEWAGE TREATMENT PLANTS

Sewage treatment plants are not manufacturers under the Sales and Use Tax Law and sales of chemicals, machinery and equipment for use in their operation are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0632 GRAIN ELEVATORS

Grain and peanut elevator operators are not manufacturers or processors within the meaning of the Sales and Use Tax Law. Purchases of taxable tangible personal property by such firms for use or consumption in the operation of their business are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0633 ANIMALS AND ANIMAL CAGES

Sales of animals and animal cages to research laboratories for use in performing research services for others and for use in performing research for the purpose of selling the findings and results to others are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Sales of animals and animal cages to manufacturers for use in experimentation and research purposes for the improvement of its manufactured products or for the development of products which it will manufacture are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article. Sales of animal cages to manufacturers for use to contain animals in holding areas or storage areas are subject to the four percent state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 5, 1980.*

SECTION .0700 - SPECIFIC INDUSTRY PURCHASES

.0702 FURNITURE FACTORIES

(a) The one percent rate of tax applies to sales of paper tape to furniture and plywood manufacturers which apply the tape to products manufactured for sale and subsequently remove the tape from the manufactured products during the sanding and finishing process. Paper tape, sold to veneer or plywood manufacturers that apply it to the manufactured products and do not remove it from the veneer or plywood panels before they are sold, is a component part of the finished product and is exempt from tax.

(b) Sales of lumber stackers to manufacturers for use in moving tangible personal property before the manufacturing process begins and after the manufacturing process has been completed are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(c) Paper or plastic which is sold as liner stock for use in lining paint spraying booths and chambers used in the manufacture of furniture is subject to the one percent rate of tax.

(d) Sales of rags to furniture manufacturers to buff or polish furniture being manufactured for sale are taxable at the rate of one percent. The total charge to manufacturing industries and plants for the

laundering of such rags or similar finishing materials for such use is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0704 MINING AND QUARRYING

(a) Machinery and piping used in the flotation process in mining operations are taxable at the rate of one percent with a maximum tax of eighty dollars (\$80.00) per article. Chemicals used during the flotation process are exempt from the tax.

(b) Mucking machines, pumps and pipe used to remove water and muck from the mine are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(c) Sales of front-end loaders and repair parts therefor to commercial quarry and mine operators for use in the direct extractive processes are taxable at the rate of one percent with a maximum tax of eighty dollars (\$80.00) per article. Sales of front-end loaders and repair parts therefor to quarry and mine operators for use in transporting the extracted product from the mine or quarry to the initial step in the process on the same premises as the mine are taxable at the rate of one percent with a maximum tax of eighty dollars (\$80.00) per article. Sales of front-end loaders and repair parts therefor to quarry and mine operators for use in the receiving and distribution areas are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax and no maximum tax is applicable thereto.

(d) Pipe used to ventilate a mine is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(e) Sales to mine operators of bulldozers to be used to remove overburden and for general purposes are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. The sale of a bulldozer to a mine operator only for use in the extraction processes in strip mining and the removal of overburden from the products to be mined is taxable at the one percent rate of tax.

(f) Sales of irrigation pipe to quarries for use in the manufacturing process to wash stone which they produce for sale are taxable at the rate of one percent.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 5, 1980.*

.0705 TEXTILE MILLS

(a) Sales of special gloves to hosiery manufacturers for use by employees such as knitters and examiners to prevent picks and pulls on manufactured products are for the protection of the products and not for the protection of the employees and are taxable at the one percent rate.

(b) Box wraps, labels, printed toppers for polyethylene bags and cardboard hosiery inserts upon which hosiery is placed are exempt from tax when sold to hosiery manufacturers and such items attach to, contain, or otherwise become a part of the sale of the hosiery.

(c) Sales of filter paper to textile manufacturers for use in filtering dye solution are subject to the one percent rate of tax.

(d) Sales of color charts to manufacturers for use in quality control or in preparing new color shades for the dyeing process for their manufactured products are taxable at the one percent rate of tax.

(e) Sales of dye nets to manufacturers for use by them in the dyeing process are classified as accessories to the manufacturing process and are taxable at the rate of one percent.

(f) Sales of folding machines to textile manufacturers for use in folding manufactured products in the line of process are taxable at the rate of one percent with a maximum tax of eighty dollars (\$80.00) per article.

(g) Sales of oil to manufacturers for use in conditioning nylon yarn are exempt from sales tax since the oil enters into and becomes an ingredient or component part of the manufactured product.

(h) Receipts from the lease or rental of button attaching equipment and other mill machinery to apparel manufacturers are subject to the one percent rate of tax.

(i) When a person engaged in the business of ginning cotton for others purchases a gin stand and feeder for use in the ginning process, the purchase would be taxable at the rate of one percent of the purchase price with a maximum tax of eighty dollars (\$80.00) on each machine.

(j) Sales to manufacturers of fabric conditioners and other chemicals which actually enter into manufactured products at some step between the initial and final steps in the manufacturing process are exempt from tax.

(k) Sales of cotton knit tubing to manufacturing industries for use in the manufacturing process, including the dyeing process, are exempt from tax when such items become a part of the sale of the manufactured product and are delivered with it to the customers. Sales to manufacturers of cotton knit tubing which is used in the manufacturing process but which does not become a part of the sale of the manufactured product and is not delivered with it to the customer are subject to the one percent rate of tax.

(l) Hosiery inventory control and reorder cards are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax when sold to hosiery manufacturers.

(m) Sales to manufacturers of loom cleaners which remove lint from raw materials during the production process to prevent it from becoming entangled in the machine are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article. Sales of air draft cleaners to manufacturers for general cleaning purposes are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 5, 1980.*

.0706 SAWMILLS

(a) Sawmill operators who manufacture lumber for sale qualify as manufacturers for sales and use tax purposes. Sales to them of tractors to be used in snaking logs which they have cut from the woods to the sawmill or from the woods to points where they can be loaded in trucks or other vehicles for transportation to the sawmills are subject to the one percent rate of tax. The one percent rate of tax is also applicable to sales of tractors to such purchasers for use in transporting logs from the stockpile to the mill on the same premises. The four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax applies to sales of tractors to such purchasers for use only in unloading raw materials or in handling lumber in finished goods inventory or in the distribution or shipping areas.

(b) Sales of lumber stackers to manufacturers for use in moving tangible personal property before the manufacturing process begins and after the manufacturing process has been completed are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(c) Sawmills and power units therefor sold to sawmill operators and lumber manufacturers for use in the manufacture of lumber for sale are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article.

(d) Saw bits and other repair parts for production machinery sold to sawmill operators for use in the manufacture of lumber for sale are subject to the one percent rate of tax.

(e) Sales of chemicals to lumber manufacturers to be applied to lumber at the end of the sawing operation to keep the lumber from molding are exempt from tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0707 CONCRETE MANUFACTURERS

(a) Weigh hoppers sold to ready-mix concrete manufacturers and sales of scales to other manufacturers are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article when used for weighing cement or ingredient materials for the manufacturing process. Sales to manufacturers of scales for use in shipping and receiving areas are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(b) Effective October 1, 1989, the sale of a truck with a ready-mix concrete mill mounted upon the chassis at the time of the sale which is operated off a power train from the truck transmission is exempt from sales tax and subject to the three percent highway use tax with a maximum tax of one thousand dollars (\$1,000.00) applicable thereto when sold to a ready-mix concrete manufacturer for use in mixing concrete for sale and transporting it to the purchaser. Prior to October 1, 1989, such a sale was subject to the two percent rate of tax with a maximum tax of three hundred dollars (\$300.00) when sold to a ready-mix concrete manufacturer for the above-described purposes.

(c) Sales of calcium chloride to concrete manufacturers for use as an ingredient or component part of concrete manufactured for sale are exempt from tax. Sales of calcium chloride to contractors for use or consumption in the performance of contracts are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Effective February 15, 1984, sales of calcium chloride solutions to farmers for use as an antifreeze in tractor tires are subject to the one percent rate of tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; October 1, 1990; July 1, 1984; January 1, 1982.*

.0708 ICE MANUFACTURERS

Sales of ice manufacturing machines to persons engaged in the business of manufacturing and selling ice at retail or wholesale are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article. Sales of ice machines to grocery stores, restaurants and motels for use in making ice are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 5, 1980.*

.0710 FOOD PROCESSORS

(a) Sales of caustic soda to food processors for use in peeling fruits and vegetables, such as apples and potatoes, are subject to the one percent rate of tax when the caustic soda does not enter into the product being processed or does not become an ingredient or component part of the product being processed.

(b) Sales to meat processors of ammonia and other refrigerants for use in refrigeration machinery which is used to condition meat for processing are subject to the one percent rate of tax.

(c) Sales of insecticide to flour and feed manufacturers for use in the control of grain weevils in grain storage areas are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(d) Sales of rubber fingers to poultry processing plants for use in plucking feathers from poultry during the production process are subject to the one percent rate of sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0711 MODULAR HOME MANUFACTURERS

(a) When a modular home manufacturer enters into a sales contract to manufacture and sell a modular home to a contractor or other user or consumer, he is making a retail sale of a manufactured item of tangible personal property and is liable for collecting and remitting the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on the total retail sales price thereof including all charges for fabrication labor performed and services rendered that go into the manufacture and delivery of the modular home. A modular home manufacturer who is engaged in the business of manufacturing homes for sale to contractors or other users is liable for remitting the one percent rate of tax on purchases of tools and machinery for use during the production processes with a maximum tax of eighty dollars (\$80.00) per article applicable thereto.

(b) When a modular home manufacturer purchases land and enters into a contract to sell his customer a lot with a house built thereon, or enters into a turn key contract to furnish labor and materials to build a home on the customer's lot, manufactures the house after the contract is executed, and transports it to the lot for erection and finishing, the manufacturer is liable for payment of the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on the materials which he uses in fulfilling the contract. The basis for the tax is the cost price of such materials, and the fact that sections of the house are fabricated in the plant and transported to the job site does not affect the basis for the tax. A modular home manufacturer who engages primarily in the business of manufacturing homes which he uses in the performance of contracts to furnish and erect homes is liable for remitting the four percent (three percent until July 16, 1991) state tax and any ap-

plicable local sales or use tax on purchases of tools, machinery and other tangible personal property for use in the manufacture and erection of such homes.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0712 MONUMENT MANUFACTURERS

Sales to monument manufacturers of stencils, abrasives and cutting tools and equipment used by such manufacturers in the cutting, shaping, and polishing process and the solvents used to remove the stencils from the monuments are subject to the one percent rate of tax. Monument dealers who do not cut, shape, polish and otherwise process monuments are not classified as manufacturers and sales of stencils and other supplies to monument dealers for use in lettering or polishing monuments which they sell are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0713 ELECTROPLATING INDUSTRIES

(a) Receipts derived from electroplating tangible personal property belonging to users or consumers are not subject to sales or use tax. However, such persons are liable for remitting the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on all metal and other tangible personal property purchased for use in the operation of their businesses.

(b) Receipts derived from electroplating tangible personal property for persons who will sell same at retail or wholesale are not subject to sales or use tax. Persons doing this type of electroplating are classified as manufacturers and their purchases of metal and other tangible personal property which enters into or becomes an ingredient or component part of property being electroplated for sale are exempt from tax under the provisions of G.S. 105-164.13(8). Purchases by such persons of items which are properly classified as mill machinery or mill machinery parts and accessories are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article as set forth by G.S. 105-164.4(1)h.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0714 REFRACTORY MANUFACTURERS

When refractory manufacturers enter into contracts to fabricate, furnish and install or apply the necessary refractory materials for the repair of boilers operated by other manufacturers for power generation or supplementary thereto for use in connection with their production processes, as the term "production" is defined in 17 NCAC 7B .0202(a)(1), the tax is due at the state rate of four percent (three percent until July 16, 1991) state tax and any applicable local rate of tax of the cost price of the refractory materials used or consumed in the performance of such contracts, except that, effective July 1, 1977, the tax is due at the rate of one percent of the cost price of the refractory materials used or consumed by contractors and subcontractors in the performance of such contracts.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264;
Eff. May 11, 1979; February 1, 1976;
Amended Eff. October 1, 1991; September 30, 1977.*

.0716 STATE AGENCIES

(a) The printing plant, metal plant, soap plant, duplicating plant, forestry unit, woodworking plant, and the sign plant of the Prison Enterprises Division of the North Carolina Department of Corrections engage in the business of manufacturing tangible personal property for sale and are classified as manufacturers for sales and use tax purposes. Their purchases and sales are subject to the tax in accordance with the provisions of 17 NCAC 7B .0200 and the applicable provisions of the statute.

(b) Effective August 1, 1991, the sales tax exemption for prison concession stands was repealed. Such sales are subject to the four percent state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; March 1, 1984; January 1, 1982; July 5, 1980.*

**SECTION .0800 - ADJUSTMENTS: REPLACEMENTS: ALTERATIONS AND
INSTALLATION SALES**

.0801 ADJUSTMENTS AND REPLACEMENTS

(a) Whenever any taxable article is returned to the manufacturer for adjustment, replacement, or exchange under a guaranty as to its quality or service and pursuant thereto a new article is given free, or at a reduced price, the sales or use tax shall be computed on the actual amount, if any, paid to the manufacturer for the new article.

(b) Dealers using tangible personal property to fulfill sales warranties or guaranty obligations to a customer without cost to the customer shall be liable for and pay the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on the dealer's cost price of all tangible personal property so used. In such cases, the dealer is using the property and the four percent (three percent until July 16, 1991) state rate of tax and any applicable local sales or use tax accrues on the dealer's cost price of the property when it is withdrawn from inventory by the dealer.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0803 CABINETMAKERS

(a) Cabinetmakers who fabricate and sell cabinets to homeowners, contractors and others for use in this state are liable for collecting and remitting the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on the sales price of such property, including charges for any services that go into the fabrication, manufacture or delivery of such tangible personal property without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest charged, losses or any other expenses whatsoever. Any cost of labor or services rendered in installing or affixing such property when separately stated on sales invoices given to customers at the time of sale shall not be included as a part of the sales price.

(b) Cabinetmakers who, pursuant to a construction or performance-type contract with or for the benefit of the owner of real property, install or affix tangible personal property, including cabinets, in or to real property are liable for tax on the cost or purchase price of materials and other such property used in performing the contract.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; October 1, 1988.*

.0805 SIGN FABRICATING AND PAINTING

(a) Retail sales of electrical, neon or other made-to-order signs are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. If the vendor makes a separate charge for installing signs which he makes and sells, the charge for installation will not be subject to tax provided it is in addition to the sales price of the sign and is separately stated on the customer's invoice and in the vendor's records. If the vendor enters a separate contract to furnish maintenance or repair service subsequent to the sale of the sign, charges for such services are not subject to the sales or use tax, but receipts from the sale of all tangible personal property used in making the repairs are taxable.

(b) Persons engaged in the business of painting signs on buildings or other real or personal property belonging to others are rendering services, and their gross proceeds are not subject to sales or use tax. Sales of paint, brushes, and other tangible personal property to such sign painters are sales to purchasers for use or consumption and subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0806 REPAIRS AND ALTERATIONS: GENERALLY

(a) Sales of tangible personal property by persons engaged in the business of making repairs or alterations for users or consumers are subject to the sales or use tax. Any charges for labor or services rendered in installing or applying such repair or alteration parts are not subject to tax provided such charges are segregated from the charge for the tangible personal property sold on the invoice given to the customer at the time of the sale and in the vendor's records; otherwise, the total amount is subject to tax.

(b) Sales of tangible personal property to those engaged in repair work or alterations are sales for the purpose of resale if the property is to be attached to or is to become a part of the property which is being repaired or altered. Sales of tools, equipment and similar items to persons who use said property in making repairs or alterations are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0811 FIRE EXTINGUISHERS: RECHARGING

Chemicals and other tangible personal property sold in connection with refilling fire extinguishers are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Any labor charges in connection with the refilling of fire extinguishers belonging to others are exempt from tax provided such charges are stated separately on the invoice given to the customer. In the absence of such separation the entire charge is taxable.

*History Note: Statutory Authority G.S. 105-164.3; 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

SECTION .0900 - ADVERTISING AND ADVERTISING AGENCIES

.0901 IN GENERAL

(a) Charges for advertising space in magazines, newspapers, and similar publications, and charges made for broadcasting time on radio or for telecasting time on television are not subject to sales or use tax.

(b) Charges by advertising agencies to their clients pursuant to full-service agreements requiring such agencies to furnish advertising time or space, tangible personal property and services to conduct an advertising campaign on behalf of their clients on radio, television, or billboards, and in newspapers or other similar publications are not subject to sales or use taxes. Charges for providing such advertising do not constitute the sale of tangible personal property to such clients and are exempt from sales or use tax notwithstanding that the billing to the client may separately state the charge for materials, advertising time or space, actors' fees, agency or retainer fees and other related costs. The term "full-service agreement," as used in this Rule, shall mean an agreement pursuant to which an advertising agency agrees to prepare the necessary advertising materials and furnish same directly to publishers or radio and television stations from which it has acquired space or time to conduct an advertising campaign or program for a client, but the term does not include catalogues, magazines, handbills, brochures, programs, pamphlets and similar printed matter which advertising agencies acquire or produce and sell to a purchaser that uses such printed material to advertise his products, business or other matters.

Purchases by advertising agencies of paper, ink, printing plates, finished art, positives, negatives, filmed or recorded commercials, and all other tangible personal property used in providing such advertising are subject to sales or use tax. When advertising agencies make such purchases from suppliers in North Carolina or from out-of-state suppliers who charge the applicable tax, they should pay the tax due thereon directly to their suppliers. When advertising agencies make purchases of tangible personal

property from out-of-state suppliers who do not collect and remit the North Carolina state or local sales or use tax due thereon, the advertising agencies become liable for remitting the tax due thereon directly to the department on the actual cost price of such tangible personal property without any deduction therefrom on account of the cost of materials used, cash discounts, labor or service costs, transportation charges or any expenses whatsoever.

(c) When advertising agencies produce, fabricate or acquire, catalogues, magazines, handbills, brochures, programs, pamphlets, and similar printed matter, finished art, positives, negatives, photographs, filmed or recorded commercials and other tangible personal property which they sell and deliver to their clients or which they deliver to others on behalf of their clients for advertising purposes or for any other use or purpose on the part of the purchaser other than for resale, such advertising agencies are making retail sales of tangible personal property which are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on the sales price. The retail sales price to which the tax applies is the total amount for which the tangible personal property is sold including all charges for services rendered in the fabrication, manufacture and delivery of the property, such as commissions, supervision, research, transportation charges, postage, telephone and telegraph messages, printing plates, copy, models' fees, stage props, and film even though such charges are separately stated on the invoice rendered to the client at the time of the sale and in the agency's records. That portion of any consultation or retainer fees by advertising agencies to their clients which are attributable to and result in the purchase or acquisition, fabrication, production and sale of taxable tangible personal property by advertising agencies to their clients are a part of the retail sales price of such property subject to the tax even though the consultation or retainer fees may be billed separately from the charge for tangible personal property.

Purchases by advertising agencies of tangible personal property which becomes a component part of tangible personal property produced or fabricated by such advertising agencies for resale at retail or wholesale or purchases by advertising agencies of tangible personal property for resale in its same form at retail or wholesale are exempt from sales and use taxes when such purchases are supported by properly completed certificates of resale, Form E-590.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; December 1, 1984; May 11, 1979.*

.0902 ADVERTISING ARTISTS: PASTE-UPS AND MECHANICALS

(a) Advertising artists who create "paste-ups" and "mechanicals" which they deliver to their clients are rendering professional services and the charge for such services is exempt from sales tax. Since the advertising artists are rendering services when they create "paste-ups" or "mechanicals" which they deliver to their clients, they are liable for payment of the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on any purchases of tangible personal property for use in performing such services.

(b) When an advertising artist creates "paste-ups" or "mechanicals" for use by him in producing other tangible personal property which he sells at retail, the total charge for the tangible personal property sold at retail is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax including any charge for materials used or services rendered in creating the "paste-ups" or "mechanicals." Advertising artists who actually produce paintings, portraits, negatives, photographs, or other tangible artistic creations and sell them to users or consumers are liable for collecting and remitting the four percent rate of tax on the sales price of such articles.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 5, 1980.*

SECTION .1000 - BARBERS: BEAUTY SHOP OPERATORS: SHOE REPAIRMEN: WATCH REPAIRMEN

.1001 BARBER AND BEAUTICIAN SUPPLIES

(a) Sales to barber and beauty shop operators of tools, furniture, fixtures, equipment, materials, health and beauty aids and any and all other supplies purchased for use in connection with the operation of their business are subject to the four percent (three percent until July 16, 1991) state tax and any ap-

plicable local sales or use tax. Barber and beauty shop supply houses and other businesses making sales of the above items to barber and beauty shop operators to be used or consumed in rendering personal services to their customers are liable for collecting and remitting the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax to this Department on such sales.

(b) Barber and beauty shop operators who purchase hair tonics, cosmetics and other health and beauty aids for resale and who maintain an inventory and facilities for regularly and continuously making retail sales of such items to their customers are required to register with this Department as retail merchants and are liable for collecting and remitting the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on such sales. Barber and beauty shop operators purchasing hair tonics, cosmetics and other health and beauty aids, some of which are regularly and continuously sold to their customers and some of which are used or consumed in rendering personal services to their customers, may purchase such items without payment of tax to barber and beauty shop supply houses and other suppliers by furnishing the suppliers with properly executed certificates of resale, Form E-590. By executing the certificates, the barber and beauty shop operators assume responsibility for payment of tax directly to this department on the sales price of items sold to their customers and on the cost price of items used or consumed in rendering personal services to their customers. The above provisions do not apply to barber and beauty shop operators who make occasional or infrequent sales of hair tonics and other health and beauty aids from their stock of merchandise which was purchased to be used in rendering services to their customers. Receipts of barber and beauty shop operators derived from rendering personal services are not taxable.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.1002 SHOE REPAIRMEN

(a) Charges for materials used by shoe repairmen in repairing shoes or other articles for their customers are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. A segregation may be made between the retail charge for the materials furnished and the charge for labor or services rendered and in such case the tax does not apply to the labor or service charge separately stated.

(b) If no segregation is made between the charges for the materials furnished and the charges for labor and services performed in connection with the repair work, the Secretary will permit shoe repairmen to collect and remit the tax on 40 percent of the combined price or charge made for the materials, labor and services as representing the retail charge for the materials furnished.

(c) The sales or use tax applies to the full retail selling price of tangible personal property such as shoes, shoe laces and shoe polish sold by shoe repairmen.

(d) All shoe repair machinery, parts therefor, tools, equipment and supplies, other than those described in Paragraph (c) of this Rule, sold to persons engaged in the business of repairing shoes and which are used or consumed by such persons in shoe repair operations are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(e) Sales to registered merchants of leather, rubber or like products, cement, thread and other items of a similar nature which ordinarily become a part of or attach to shoes which are repaired and are sold to and delivered with the repaired shoes to customers, including bags for delivery of the shoes, are sales for resale and may be sold on certificates of resale, Form E-590. If registered shoe repairmen purchase other tangible personal property for resale to their customers, their suppliers should also secure certificates of resale in connection with such sales. If the items that shoe repairmen generally purchase for use are purchased by them for the purpose of resale to other shoe repairmen, or other users, their suppliers should secure a certificate of resale with each such sale to support the claim for the exemption from the retail tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.1003 WATCH: CLOCK AND JEWELRY REPAIRMEN

(a) Charges for repair parts and other materials used by watch, clock and jewelry repairmen in repairing watches, clocks, jewelry and other articles for their customers are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. A segregation

may be made between the retail charge for the materials furnished and the charge for labor or services rendered and in such case the tax does not apply to the labor or service charges separately stated.

(b) If no segregation is made between the charges for the materials furnished and the charges for labor and services performed in connection with such repair work, the secretary will permit such repairmen to collect and remit the tax on ten percent of the combined price or charge made for the materials, labor and services as representing the retail charge for the materials furnished.

(c) Sales of watches, clocks, watch bands, watch chains, trophies, jewelry and other taxable tangible personal property are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on the full retail sales price. Any charges for labor or services rendered in engraving tangible personal property selected by a vendee and left with the vendor to be engraved are exempt from tax when such charges are segregated from the charge for the tangible personal property sold on the invoice given to the customer at the time of the sale and in the vendor's records; otherwise, the total amount is subject to tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; February 1, 1988.*

SECTION .1100 - SALES OF BULK TOBACCO BARNS: FARM MACHINES AND MACHINERY

.1101 IN GENERAL

(a) Sales to farmers of machines and machinery, and parts therefor or accessories thereto for use by them in planting, cultivating, harvesting or curing of farm crops including nursery stock, or to dairy operators, poultry farmers, egg producers, and livestock farmers for use by them in the production of dairy products, poultry products, eggs, or livestock are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article of merchandise. Sales of machines and machinery, and the parts therefor or accessories thereto, 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 four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax without limitation. In other words, to qualify for the one percent rate of tax and the eighty dollar (\$80.00) maximum tax per article, the transaction must be a sale of a machine or machinery, or parts therefor or accessories thereto, 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 four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax without limit. The following sales of tangible personal property to farmers qualify for the one percent rate of tax with an eighty dollar (\$80.00) maximum tax per article of merchandise:

- (1) Effective July 1, 1971, sales to farmers of bulk tobacco barns, racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm product are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article of merchandise. The sale to farmers of a bulk curing barn with perforated floors, curers, racks, fans, motors, dampers and flues will constitute the sale of one article and an eighty dollar (\$80.00) maximum tax will be applicable thereto.
- (2) Effective July 1, 1979, sales to farmers of grain, feed, or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.
- (3) Effective July 1, 1979, sales to farmers of commercially manufactured portable swine equipment or facilities and accessories thereto; and sales to farmers for installing on the farm of all bulk feed handling equipment which has been designed and constructed to be used for raising, feeding, and the production of livestock and poultry products and all cages used in the production of livestock and poultry products are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article of merchandise. Effective July 1, 1982, the sale of the total number of poultry cages to be served by the same automatic feeder, automatic waterer or automatic egg collector constitutes the sale of a single article that is separate and distinct from a feeder, waterer or egg collector. The statute was expanded, effective July 1, 1983, to include sales to farmers of commercially manufactured swine, livestock or poultry equipment or facilities and accessories thereto. Effective September 1, 1987, this Subparagraph is rescinded as a result of a statutory amendment to G.S. 105-164.13(4c). See 17 NCAC 7B .1123 for information in re-

gard to the exemption from sales and use taxes for sales of articles described in this Subparagraph.

- (4) Effective July 1, 1982, sales of containers to farmers and producers for use in the planting, producing, transporting or delivery of their products are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article of merchandise when such containers do not go with and become a part of the sale of the product at wholesale or retail.

(b) The following are examples of sales of machines and machinery and the parts therefor and accessories thereto, which qualify for the one percent rate of tax with the eighty dollars (\$80.00) maximum when sold to general farmers for use by them in planting, cultivating, harvesting or curing farm crops:

- (1) tractors,
- (2) plows,
- (3) harrows,
- (4) cultivators,
- (5) mowers,
- (6) planters,
- (7) corn pickers and snappers,
- (8) manure spreaders,
- (9) manure loaders,
- (10) harvester threshers,
- (11) rotary tillers,
- (12) fertilizer distributors,
- (13) wind-rowers,
- (14) forage blowers,
- (15) stalk cutters,
- (16) seeders,
- (17) grain loaders,
- (18) harvesters,
- (19) cotton pickers,
- (20) rotary hoes,
- (21) corn and hay elevators,
- (22) tobacco curers,
- (23) tobacco flues,
- (24) tobacco trucks or slides,
- (25) wagons,
- (26) non-highway trailers,
- (27) mechanical rakes,
- (28) balers,
- (29) rod weeders,
- (30) combines,
- (31) tobacco transplanters,
- (32) shredders for corn stalks,
- (33) power loader lifts,
- (34) platform carriers,
- (35) portable insecticide sprayers,
- (36) chain saws,
- (37) motor oils, greases, lubricants and anti-freeze, (effective February 15, 1984),
- (38) hydraulic fluids.

(c) Examples of items which are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax when sold to general farmers:

- (1) lawn mowers;
- (2) snow plows;
- (3) oil storage tanks and fittings;
- (4) drainage tile;
- (5) paint, cleaning compounds and brushes;
- (6) baler twine;
- (7) tobacco sticks and tobacco twine;
- (8) tools for maintaining machinery and equipment;
- (9) plastic mulch, plant bed covers and tobacco canvas.

(d) The lists in Paragraphs (b) and (c) of this Rule are not intended to be exclusive, but are for illustrative purposes only. If there is any question whatever as to the tax status of any item which does not appear therein, such question should 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.

(e) The word farmer as used in this Rule includes dairy operators, poultry farmers, egg producers, livestock farmers, nurserymen, greenhouse operators, 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: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; February 1, 1988; March 1, 1984; December 1, 1982.*

.1107 EGG CLEANING DETERGENT

Sales of egg cleaning detergent to poultry farmers for use in cleaning eggs are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.1111 VENTILATORS

Ventilators installed in tobacco barns are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. The ventilators are a part of a building or structure and are not classified as farm machines or machinery.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.1113 MACHINERY STORAGE EQUIPMENT

Sales to dairy farmers of equipment used to store or hold machinery which is not in use are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax unless the equipment is an integral part of an item which is properly classified as farm machinery. Effective September 1, 1987, sales of such commercially manufactured swine, livestock and poultry equipment and parts and accessories therefor placed or installed in or affixed to facilities, enclosures or structures specifically designed, constructed and used for housing, raising or feeding of swine, livestock or poultry are exempt from sales tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; August 1, 1988.*

.1115 SNAPBEAN GRADERS

Snapbean graders are not used in the planting, cultivating, harvesting or curing of farm crops and are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax when sold to farmers for use.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.1118 SICKLE GRINDERS

Sales of sickle grinders to farmers for use are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;*

Amended Eff. October 1, 1991.

.1122 RIGHT-OF-WAY EQUIPMENT

Sales of tractors and bush-cutting equipment to power companies, railroad companies, counties, cities, and contractors for use in cutting and maintaining rights-of-way are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; October 1, 1988.*

SECTION .1200 - HOTELS: MOTELS: TOURIST CAMPS AND TOURIST CABINS

.1201 TAXABILITY OF GROSS RECEIPTS

(a) All persons engaged in the business of operating hotels, motels, inns, tourist homes, tourist camps, and similar type businesses and, effective August 1, 1983, all persons who rent private residences, condominiums or cottages to transients for consideration are deemed to be retailers and must register with the department and collect and remit the tax herein required to be paid. The term "persons who rent to transients," as used in this Rule, includes:

- (1) owners of private residences, cottages, apartments, condominiums, (time share and interval ownership properties as hereinafter described) and similar places; and
- (2) real estate agents, including "real estate brokers" as defined in G.S. 93A-2, who rent any such accommodations to transients on behalf of the owners.

When the rental agent is liable for the tax imposed, the owner is not liable. If the owner rents such accommodations to transients, the owner is liable for the tax and must register with this department for sales and use tax purposes.

(b) Gross receipts derived from the rental of any room or rooms, lodgings or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin and any private residence, condominium, (time share and interval ownership properties), cottage or any other place in which rooms, lodgings or accommodations are furnished to transients for a consideration are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax, except as set forth in Paragraphs (c), (d) and (e) of this Rule or as otherwise provided by the statute.

(c) Receipts derived from the rental of any room, lodging or accommodation to the same person for a period of 90 continuous days or more are not subject to the tax, and the tax collected from any person prior to the accumulation of such 90 continuous days of occupancy by said person shall be refunded to such person by the retailer collecting the same. A retailer actually making any such refund of tax which he has paid to the department shall be entitled to claim credit for the tax so refunded on a subsequent return filed by him with the department.

(d) If a rental agent enters into an agreement prior to July 16, 1991, the date the general state sales and use tax rate was increased from three percent to four percent, to lease rooms, lodgings or accommodations to transients for a specific period of time of less than 90 continuous days, the additional one percent state tax will not apply to these rentals provided a partial deposit or the entire rent due in connection with the rental is received prior to the effective date of the additional one percent state tax, notwithstanding that the rental period might extend beyond July 16, 1991. If, however, a transient enters into an agreement to rent rooms, lodgings, or accommodations on or after the effective date of the additional tax, the gross receipts from such rentals will be subject to the increased rate of state tax. If a transient enters into an agreement prior to the effective date of the one-percent increase for the rental of property after July 16, 1991 but tenders no deposit, part payment, or full payment of the rental amount, such rentals will be subject to the four percent state plus applicable local sales tax. In this situation, there is merely a reservation for accommodations made before the inception of the new tax rate and the increased levy of tax would be due when the lease payment is eventually made.

(e) Receipts derived from an occasional or isolated rental of a private residence or cottage by the owner for less than a total of 15 days in a calendar year are not subject to sales tax. The 14 days exclusion is applicable only to those private residences and cottages which are not made available for rental to transients. If the private residence or cottage is generally or routinely made available by the owner for rental to transients, the less than 15 days exclusions is not applicable to such rentals and all receipts therefrom are taxable without regard to the aforementioned period. When private residences and cottages are listed with real estate agents, including "real estate brokers" as defined in G.S. 93A-2,

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for rental to transients, such private residences and cottages are deemed to be generally available for rental to transients and the less than 15 days exclusion is not applicable to any receipts from such rentals to transients.

(f) Sales of time share or interval ownership property which can be transferred by estate, gift or devise pursuant to deeds or documents under which the owners have a fixed and continuing right to occupy such units during a specified period of time in the same manner as a person who owns or is buying a private residence or cottage are considered to be sales of real property not subject to sales or use tax. When owners of interval ownership and time share property do not occupy the property but rent it to transients or place the property in the hands of a rental agent, including "real estate brokers" as defined in G.S. 93A-2, for rental on their behalf to transients, such receipts are subject to sales tax and the less than 15 days exclusion is not applicable to any receipts from such rentals as explained in Paragraphs (d) and (e) of this Rule.

*History Note: Statutory Authority G.S. 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; August 1, 1988; July 1, 1984; January 3, 1984.*

.1202 SUPPLIES AND EQUIPMENT

Sales to hotels, motels, inns, tourist camps, and tourist cabins and other places in which rooms, lodgings or accommodations are furnished for a consideration, of any supplies, equipment, or fixtures including but not limited to beds, bedding, bathroom supplies and furniture are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

SECTION .1300 - SALES IN INTERSTATE COMMERCE

.1301 OUT-OF-STATE DELIVERIES

Sales within the state of tangible personal property which the vendor delivers to the purchaser at a point outside the state, or which the vendor delivers to a common carrier or to the mails for transportation and delivery to the purchaser at a point outside the state are not subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax provided the property is not returned to a point within the state, and provided further, that the vendor furnishes acceptable proof of transportation to a point outside the state. The most acceptable proof of transportation and delivery to a point outside the state will be:

- (1) a waybill or bill of lading made out to the seller's order calling for delivery; or
- (2) an insurance or registry receipt issued by the United States Postal Service, or a postal service receipt; or
- (3) a trip sheet signed by the seller's delivery agent and showing the signature and address of the person who received the delivered goods outside the state.

*History Note: Statutory Authority G.S. 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.1302 IN-STATE DELIVERIES

Sales of tangible personal property delivered in this state to the buyer or his agent, if such agent is not a common carrier, are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax, notwithstanding that the buyer may subsequently transport, or employ someone else to transport, the property out of this state, except as provided by G.S. 105-164.13.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; January 1, 1982; February 8, 1981; July 5, 1980.*

.1303 GIFTS: OUT-OF-STATE DONEES

Sales of printed material by vendors other than printers and sales of other taxable tangible personal property to any person in North Carolina which such person provides without charge to recipients, whether it be advertising materials or gifts or donations are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax even though the vendor delivers the property to the donee at a point outside this state and without regard to whether such delivery is made by mail, common carrier or otherwise. Sales of taxable tangible personal property delivered to a donee or any other user or consumer in North Carolina are taxable.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; March 1, 1984; January 3, 1984.*

SECTION .1400 - SALES OF MEDICINES: DRUGS AND MEDICAL SUPPLIES

.1402 MEDICINES: SALES TO PHYSICIANS

Physicians, dentists and hospitals are considered to be the users or consumers of medicines and drugs which they purchase for use in administering treatment to their patients; therefore, sales thereof to physicians, dentists and hospitals for such use are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax, and this is true notwithstanding such medicines and drugs may be of the type usually sold only on the prescription of a physician or dentist. Effective August 1, 1988, sales of insulin are exempt from sales or use tax whether or not sold on prescription. If a physician or dentist should, in fact, make outright sales of medicines or drugs to his patients or to other consumer customers, such sales are exempt from sales or use tax provided such medicines or drugs are sold on written prescription of the physician or dentist, or another physician or dentist, and a record is made of each such sale and kept, along with the written prescription, as a part of the seller's permanent records. If a hospital maintains a pharmacy from which sales of drugs and medicines are made to individuals or to patients for their use after they leave the hospital, such sales are exempt from tax provided they are made on written prescription of a physician or dentist and a record of the sale and the prescription is kept in the manner described in 17 NCAC 7B .1401. An entry on a patient's medical record card or chart of medicines or drugs for such patient does not meet the requirements of a written prescription. Physicians, dentists and hospitals making sales of medicines and drugs, as set forth above, may purchase the medicines and drugs which they will resell or use in administering treatment to their patients without payment of tax to their vendors if the physician, dentist or hospital making the purchase has registered with the Department of Revenue for sales and use tax purposes and furnished his vendor properly executed certificates of resale, Form E-590. In such cases, the physicians, dentists or hospitals become liable for remitting the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax directly to this department on the cost price of the medicines and drugs which they use in administering treatment to their patients, and the medicines and drugs sold on written prescription for subsequent use by the patient will be exempt from tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; August 1, 1988.*

.1403 NONPRESCRIPTION MEDICINES AND DRUGS

Sales of medicines or drugs, other than insulin, to users or consumers, except when the sales are made pursuant to a prescription of a physician or dentist or as a refill of a written prescription, as referred to in 17 NCAC 7B .1401, are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; August 1, 1988.*

.1404 SUPPLIES: SALES TO PHYSICIANS

Sales to physicians, dentists, hospitals or other users or consumers of medical supplies, including such items as cotton, gauze, adhesive tape, bandages and other dressings and medical instruments and equipment such as knives, needles, scissors, microscopes, x-ray machines and other laboratory equip-

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ment used for testing and diagnosis, and for the prevention, treatment or cure of disease are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

SECTION .1500 - FINANCE COMPANIES: FINANCE CHARGES AND CARRYING CHARGES

.1501 FINANCE COMPANIES

(a) If a finance company maintains a regular place of business wherein repossessed tangible personal property is sold or placed on display for sale as an adjunct to the principal business of the finance company, such finance company must register with the department and collect and remit the four percent (three percent until July 16, 1991) state tax and any applicable local tax on its sales.

(b) If a finance company, as an incident only of its finance business, has occasion, from time to time, to repossess articles of tangible personal property upon which payments have become delinquent and sells such tangible personal property either at public auction or at private sale, such sales shall be deemed occasional sales and are not subject to the tax.

*History Note: Statutory Authority G.S. 105-164.3; 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

SECTION .1600 - SALES TO OR BY HOSPITALS: EDUCATIONAL: CHARITABLE OR RELIGIOUS INSTITUTIONS: ETC.: AND REFUNDS THERETO

.1601 INSTITUTIONS: ETC.: SALES TO OR BY

(a) Sales of taxable tangible personal property to hospitals not operated for profit, educational institutions not operated for profit, churches, orphanages, and other charitable or religious institutions or organizations not operated for profit are subject to sales or use tax when such property is purchased for use or consumption. Sales of building materials, supplies, fixtures, and equipment to contractors for use in the performance of contracts with any institution or organization named in this Rule are also subject to sales or use tax.

(b) Sales of tangible personal property to nonprofit organizations such as chambers of commerce, civic clubs, fraternities, sororities or other fraternal, civic or patriotic organizations for use or consumption are subject to sales or use tax and such organizations are not entitled to any refund.

(c) When any institution or organization named in this Rule makes taxable purchases of tangible personal property from a North Carolina supplier or a registered out-of-state supplier who charges the North Carolina and any applicable local sales or use tax thereon, such institution or organization must remit the tax on such purchases to the supplier. Any such institution or organization making taxable purchases of tangible personal property from an out-of-state supplier who does not collect the North Carolina and any applicable local sales or use tax thereon is required to register with the department and file returns monthly with remittance of the tax due on such purchases. Any such institution or organization which does not owe any tax for a given month should file a report reflecting no tax due.

(d) If any institution or organization named in this Rule makes taxable retail sales, it must register with the department and collect and remit the tax due on such sales. The refund provisions contained in 17 NCAC 7B .1602 do not apply to the tax on such sales and no part thereof shall be refunded or claimed as a refund. Institutions and organizations properly registered for sales and use tax purposes may purchase the tangible personal property which they resell without paying tax thereon to their suppliers provided they have furnished such suppliers with properly executed certificates of resale, Form E-590. Certificates of resale may not be used by any institution or organization named in this Rule, or by any other vendee, in making purchases of tangible personal property to be used or consumed by such purchaser.

(e) Sales of items by a nonprofit civic, charitable, educational, scientific or literary organization are exempt from tax when the net proceeds of the sales will be given or contributed to the State of North Carolina or to one or more of its agencies or instrumentalities, or to one or more nonprofit charitable

organizations, one of whose purposes is to serve as a conduit through which such net proceeds will flow to the state or to one or more of its agencies or instrumentalities.

(f) Sales by a nonprofit civic, charitable, fraternal, educational, scientific or literary organization continuously chartered or incorporated within North Carolina for at least two years are exempt from the tax when such sales are conducted only upon an annual basis for the purpose of raising funds for its activities and when the proceeds therefrom are actually used for such purposes; however, the sales are not exempt if they are not actually consummated within 60 days of the first solicitation of any sales made during the organization's annual sales period.

(g) Effective October 1, 1990, sales of food by a church or religious organization not operated for profit are exempt from sales and use taxes when the proceeds of the sales are actually used for religious activities.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; January 1, 1982; July 5, 1980.*

.1602 REFUNDS TO INSTITUTIONS; ETC.

(a) Subject to the terms and conditions herein set forth, hospitals not operated for profit, educational institutions not operated for profit, churches, orphanages, and other charitable or religious institutions or organizations not operated for profit are entitled to semiannual refunds of sales and/or use taxes paid by them in North Carolina on their direct purchases of tangible personal property used in carrying on their nonprofit work. For refund purposes, purchases by contractors of building materials, supplies, fixtures and equipment which become a part of or are annexed to any building or structure being erected, altered or repaired under contract with any such institution or organization and which are used in carrying on the nonprofit activities of such institution or organization are deemed to be direct purchases. Prior to January 1, 1984, the provisions of this Rule apply to out-of-state institutions and organizations only to the extent of sales or use tax paid by them in this state on tangible personal property purchased for use in this state in carrying on charitable, religious or educational activities which are not for profit. On and after January 1, 1984, the provisions of this Rule apply to out-of-state institutions and organizations to the extent of sales or use taxes paid by them in this state on purchases of tangible personal property for use in carrying on charitable, religious or educational activities within or without this state which are not for profit.

(b) In addition to the provisions in (a) of this Rule for refunds of sales and or use taxes paid by hospitals not operated for profit, all other hospitals not specifically excluded herein are entitled to semiannual refunds of sales and or use taxes paid on and after July 1, 1977, by them on medicines and drugs purchased for use in carrying out the work of such hospitals.

(c) Refund claims of the organizations and institutions named in Paragraph (a) of this Rule must be filed with the North Carolina Department of Revenue covering the first six months of the calendar year on or before the 15th day of October following the close of the first six months period. Refund claims covering the second six months of the calendar year must be filed on or before the 15th day of April following the close of the second six months period. Refund claims filed after the due date shall be subject to the following penalties for late filing:

- (1) refund claims filed within 30 days after the due date, 25 percent;
- (2) refund claims filed more than 30 days after the due date but within six months of the due date, 50 percent.

The amount of the penalties in this Rule shall be deducted from the face amount of the refund due the claimant. The statute prohibits the payment of any refund claim not filed within the stipulated time.

(d) All refund claims must be substantiated by proper documentary proof and only the taxes actually paid by the claimant during the period for which the claim for refund is filed may be included in the claim. Any local sales or use taxes included in the claim must be separately stated in the claim for refund. In cases where more than one county's tax has been paid, a breakdown must be attached to the claim showing the amount of each county's local tax separately.

(e) As to taxes paid on the claimant's purchases for use, other than those made by contractors performing work for the claimant, invoices or copies of invoices showing the property purchased, the cost thereof, the date of purchase and the amount of state and local sales or use tax paid during the refund period will constitute proper documentary proof.

(f) To substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures and equipment by its contractor, the claimant must secure from such contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of

state and local sales or use taxes paid thereon. In the event the contractor makes several purchases from the same vendor, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices and the sales and use taxes paid thereon. Such statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of state and local sales or use tax paid thereon by the contractor. Similar certified statements by his subcontractors must be obtained by the general contractor and furnished to the claimant. Any local sales or use taxes included in the contractor's statements must be shown separately from the state sales or use taxes. The contractor's statements must not contain sales or use taxes paid on purchases of tangible personal property by such contractors for use in performing the contract which does not annex to, affix to or in some manner become a part of the building or structure being erected, altered or repaired for the institutions and organizations named in Paragraph (a) of this Rule. Examples of property on which sales or use tax has been paid by the contractor and which should not be included in the contractor's statement are scaffolding, forms for concrete, fuel for the operation of machinery and equipment, tools, equipment repair parts, equipment rentals and blueprints.

(g) The refund provisions set forth in this Regulation apply only to institutions and organizations described in Paragraphs (a) and (b) of this Rule, but do not apply to nonprofit fraternal, civic or patriotic organizations, notwithstanding that such organization may perform certain charitable functions. The refund provisions set forth in this Regulation do not apply to organizations, corporations and institutions which are owned and controlled by the United States, the state or a unit of local government except hospital facilities created under Article 12 of Chapter 131 of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under G.S. 105-154.14(b) instead of annual refunds under G.S. 105-164.14(c). Any nonprofit hospital owned and controlled by a unit of local government may submit a written request to receive semiannual refunds under G.S. 105-164.14(b) instead of annual refunds under G.S. 105-164.14(c). The request is effective beginning with the six-months refund period following the date of the request and applies to sales or use taxes paid on or after the first day of the refund period for which the request is effective.

(h) The refund provisions of this Regulation are not applicable to sales taxes incurred by employees on purchases of food, lodging or other taxable travel expenses paid by employees and reimbursed by the type institutions and organizations named in Paragraph (a) of this Rule. Such expenses are personal to the employee since 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. Such institutions and organizations have not incurred and have not paid any sales tax liability. In such cases, it has chosen to reimburse a personal expense of the employee. The refund provisions of this Regulation do not apply to sales tax paid by the organizations and institutions named in (a) of this Regulation on charges by a utility for electricity, piped natural gas and local, toll or private telecommunications services; to the occupancy taxes levied and administered by certain counties and cities in this state; to the highway use taxes paid on the purchase, lease or rental of motor vehicles; to the scrap tire disposal fee levied on new motor vehicle tires; or to the scrap tire disposal tax levied on new motor vehicle tires. Such taxes should not be included in any claim for refund filed by such institutions and organizations.

*History Note: Statutory Authority G.S. 105-164.14; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; May 1, 1990; February 1, 1988; February 1, 1987.*

SECTION .1700 - SALES TO OR BY THE STATE: COUNTIES: CITIES: AND OTHER POLITICAL SUBDIVISIONS

.1701 GOVERNMENTAL SALES AND PURCHASES

(a) Sales of tangible personal property not specifically exempt by statute to the State of North Carolina, counties, cities, towns, and political subdivisions or any agencies thereof for the purpose of use or consumption are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax, except, effective August 1, 1986, sales of tangible personal property, local telecommunications services, electricity and piped natural gas and the sales tax levied, effective January 1, 1989, on gross receipts derived from toll and private telecommunications services directly to the Department of Transportation are exempt from sales and use taxes. However, the exemption does not extend to sales of tangible personal property to contractors for use in the performance of contracts with the Department of Transportation nor to sales of tangible personal property to other state agencies, local governments or employees of the Department of Transportation. Sales of building materials,

supplies, fixtures and equipment to contractors for use in the performance of contracts with the federal government or any above referred to governmental units or agencies are also subject to the sales or use tax.

(b) When the State of North Carolina, counties, cities, towns, and political subdivisions or any agencies thereof make taxable purchases of tangible personal property from a North Carolina supplier or registered out-of-state supplier who charges the North Carolina and any applicable local sales or use tax thereon, such governmental unit or agency must remit the tax on such purchases to the supplier. Any such governmental unit or agency making taxable purchases of tangible personal property from an out-of-state supplier who does not collect the North Carolina and any applicable local sales or use tax thereon is required to register with the department and remit monthly the tax due on such purchases. Any governmental unit or agency so required to register which does not owe any tax for a given month should file a report reflecting no tax due.

(c) If any governmental unit or agency referred to in Paragraph (b) of this Rule makes taxable retail sales of tangible personal property, it must register with the department and collect and remit the tax due on such sales. The refund provisions contained in G.S. 105-164.14(c) do not apply to the tax on such sales and no part thereof shall be refunded or claimed as a refund. Governmental units and agencies properly registered for sales and use tax purposes may purchase the tangible personal property which they resell without paying tax thereon to their suppliers provided they have furnished such suppliers with properly executed certificates of resale, Form E-590. Certificates of resale may not be used by any governmental unit or agency herein referred to, or by any other vendee, in making purchases of tangible personal property to be used or consumed by such purchaser.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; May 1, 1990; February 1, 1987; January 1, 1982.*

.1702 REFUNDS TO COUNTIES; CITIES; ETC.

(a) Governmental entities, as defined by G.S. 105-164.14(c), are entitled to an annual refund of sales and/or use taxes paid by them on their direct purchases of tangible personal property, subject to the terms and conditions hereafter set forth. The refund provisions of this Rule are not applicable to sales taxes incurred by employees on purchases of food, lodgings or other taxable travel expenses paid by employees and reimbursed by governmental entities. Such expenses are personal to the employee since 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. The governmental entity has not paid any sales tax liability. In such cases, it has chosen to reimburse a personal expense to the employee. The refund provisions of this Rule do not apply to sales taxes paid by the organizations and institutions named herein on charges by a utility for electricity, piped natural gas and local, toll or private telecommunications services; to the occupancy taxes levied and administered by certain counties and cities in this state; to the highway use taxes paid on the purchase, lease or rental of motor vehicles; to the scrap tire disposal fee levied on new motor vehicle tires; or to the scrap tire disposal tax levied on new motor vehicle tires. Governmental entities and the Federal Government are entitled to annual refunds of sales and/or use taxes paid in North Carolina by their contractors on purchases of building materials, supplies, fixtures and equipment which become a part of or are annexed to any building or structure being erected, altered or repaired under contract with such governmental entities which is owned or leased by such governmental entities.

Effective July 1, 1991, G.S. 105-164.14 was amended by adding a new subdivision (e) which authorizes refunds of county sales and use taxes paid by state agencies on their direct purchases for use. It also includes sales and use taxes paid by their contractors on building materials, supplies, fixtures and equipment that become a part of or annexed to a building or structure that is being erected, altered or repaired and is owned or leased by a state agency. Claims are to be filed quarterly within 15 days of the close of each calendar quarter. Notwithstanding the provisions of G.S. 105-164.14(c), the constituent institutions of the University of North Carolina may obtain in the manner prescribed in G.S. 105-164.14(c) a refund of sales and use tax paid by them on or after January 1, 1992, on tangible personal property acquired by them through the expenditure of contract and grant funds.

(b) All refund claims must be substantiated by proper documentary proof and only those taxes actually paid by the claimant during the fiscal year covered by the refund claim may be included in the claim. Any local sales or use taxes included in the claim must be separately stated in the claim for refund. In cases where more than one county's sales and use tax has been paid, a breakdown must be attached to the claim for refund showing the amount of each county's local tax separately.

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(c) As to taxes paid by governmental entities on purchases for use, other than those made by contractors performing work for the claimant, invoices or copies of invoices showing the property purchased, the cost thereof, the date of purchase, the amount of state and local sales or use tax paid thereon and a record reflecting the date of payment will constitute proper documentary proof.

(d) To substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, and equipment by its contractor, the claimant must secure from such contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of state and local sales or use taxes paid thereon. In the event the contractor makes several purchases from the same vendor, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the state and local sales and use taxes paid thereon. Such statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of state and local sales or use tax paid thereon by the contractor. Similar certified statements by his subcontractors must be obtained by the general contractor and furnished to the claimant. Any local sales or use taxes included in the contractor's statements must be shown separately from the state sales or use taxes. The contractor's statements must not contain sales or use taxes paid on purchases of tangible personal property purchased by such contractors for use in performing the contract which does not annex to, affix to or in some manner become a part of the building or structure being erected, altered or repaired for the governmental entities as defined by G.S. 105-164.14(c). Examples of property on which sales or use tax has been paid by the contractor and which should not be included in the contractor's statement are scaffolding, forms for concrete, fuel for the operation of machinery and equipment, tools, equipment repair parts and equipment rentals, blueprints, etc.

*History Note: Statutory Authority G.S. 105-164.14; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; May 1, 1990; February 1, 1987; August 1, 1986.*

.1703 SALES TO STATE

Sales of food products and other tangible personal property to the State of North Carolina, its political subdivisions or agencies for use and not for resale are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 5, 1980.*

.1705 HOUSING AUTHORITIES

Sales of taxable tangible personal property to housing authorities created and existing under Chapter 157 of the North Carolina General Statutes for use in carrying on their activities are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; August 1, 1988; March 1, 1984.*

.1706 PRISON CONCESSION STANDS

Effective August 1, 1991, the sales tax exemption for prison concession stands was repealed. Such sales are subject to the four percent state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264;
Eff. October 1, 1991.*

SECTION .1800 - HOSPITALS AND SANITARIUMS

.1801 SALES TO AND BY HOSPITALS: ETC.

(a) Hospitals, sanitariums, nursing homes and rest homes are primarily engaged in rendering services and are deemed to be the users or consumers of all tangible personal property which they purchase for use in connection with the operation of such institutions. Hospitals, sanitariums, nursing homes and

rest homes are, therefore, liable for payment of sales or use tax on their purchases of such property except as hereinafter set forth.

(b) Hospitals, sanitariums, nursing homes and rest homes are deemed to be the users or consumers of drugs or medicines which they administer to patients. Purchases by hospitals, sanitariums, nursing homes and rest homes of drugs or medicines, other than insulin, for such use are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Effective August 1, 1988, sales of insulin are exempt from sales or use taxes whether or not sold on prescription. If, in addition to using drugs or medicines in administering to patients, a hospital, sanitarium, nursing home or rest home operates a pharmacy from which it makes across the counter sales of medicines and drugs, and all purchases of medicines and drugs by such institution are made through the pharmacy, then the drugs or medicines may be purchased without payment of tax to suppliers provided the institution is registered with the Department of Revenue for sales or use tax purposes and has furnished the suppliers with properly executed certificates of resale, Form E-590. By executing the certificate of resale, the institution assumes the liability for payment of and must pay directly to the department all sales or use taxes due on drugs and medicines which are used by the institution in administering to and caring for its patients. Sales of drugs and medicines by the pharmacy on prescription of physicians and dentists are exempt from tax. Sales of drugs and medicines without written prescriptions of physicians or dentists are taxable at the four percent (three percent until July 16, 1991) state tax and any applicable local rate; except, effective August 1, 1988, sales of insulin are exempt from sales or use tax whether or not sold on prescription. Sales of drugs and medicines, other than insulin, to physicians and dentists who administer the same to their patients in rendering professional services are also subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(c) Purchases by hospitals, sanitariums, nursing homes or rest homes of foodstuffs for use in furnishing meals to patients are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. If, in addition to furnishing meals to patients, a hospital, sanitarium, nursing home or rest home operates a cafeteria from which it makes sales of prepared meals or foods to guests, visitors, employees, staff or other persons such institution must register with the Department of Revenue and collect and remit the tax on its sales. If the foodstuffs purchased by such institution for use in furnishing meals to patients cannot be distinguished from those purchased for resale through the cafeteria, the hospital, sanitarium, nursing home or rest home may purchase all the foodstuffs under a certificate of resale. The hospital, sanitarium, nursing home or rest home thus assumes liability for payment of the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on foodstuffs used in furnishing meals to its patients and the four percent (three percent until July 16, 1991) state tax and any applicable local sales tax on sales of meals by the cafeteria.

(d) Meals and food products served to students in dining rooms regularly operated by state or private educational institutions are exempt from tax; thus, if a hospital serves meals and food products to student nurses, such sales are exempt from tax.

(e) Sales of crutches, artificial limbs, artificial eyes, hearing aids, false teeth, eyeglasses ground on prescription of physicians, oculists or optometrists, and other orthopedic appliances when the same are designed to be worn on the person of the owner or user are not subject to sales or use tax; therefore, any sales of such property to hospitals, sanitariums, nursing homes or rest homes are exempt from the tax.

(f) Except as provided by Paragraphs (b) and (c) of this Rule, certificates of resale, Form E-590, may not be used by hospitals, sanitariums, nursing homes or rest homes when making taxable purchases of tangible personal property for use or consumption. The tax due on taxable purchases from North Carolina suppliers or out-of-state suppliers who charge North Carolina sales or use tax must be paid to the suppliers. Hospitals, sanitariums, nursing homes or rest homes which make taxable purchases from out-of-state suppliers who do not collect and remit North Carolina sales or use tax thereon must register with the department and remit monthly the tax due on such purchases.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 1, 1989.*

.1802 REFUNDS TO HOSPITALS: ETC.

(a) Hospitals, sanitariums and charitable or religious nursing homes or rest homes not operated for profit are entitled to semiannual refunds of sales and/or use taxes paid by them on their direct purchases of tangible personal property, including medicines and drugs, for use in carrying on their work. For

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the purpose of the refund, sales or use taxes paid by contractors on their purchases of building materials, supplies, fixtures and equipment which become a part of or are annexed to a building or structure being erected, altered or repaired under contract with such hospitals, sanitariums, nursing homes or rest homes for use in carrying on their nonprofit activities are deemed to be taxes paid on direct purchases. In addition to the above provisions for refunds of sales and/or use taxes paid by hospitals, sanitariums and charitable or religious nursing homes or rest homes not operated for profit, all other institutions not specifically excluded herein are entitled to semiannual refunds of sales and/or use taxes paid on and after July 1, 1977, by them on medicines and drugs purchased for use in carrying out the work of such hospitals, sanitariums, nursing homes or rest homes.

(b) As to taxes paid on purchases for use other than those made by contractors performing work for the claimant, invoices or copies of invoices showing the property purchased, the cost thereof, the date of purchase and the amount of sales or use tax paid thereon during the refund period will constitute proper documentary proof. To substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures and equipment by its contractor, the claimant must secure from such contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales and use taxes paid thereon. In the event the contractor makes several purchases from the same vendor, the certified statements may indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices and the sales or use taxes paid thereon in lieu of an itemized listing of each separate invoice. The statements must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of sales or use tax paid thereon by the contractor. Similar certified statements by his subcontractors must be obtained by the general contractor and furnished to the claimant.

(c) Sales and/or use taxes paid by hospitals, sanitariums, nursing homes or rest homes which are agencies of counties and incorporated cities and towns on their direct purchases of tangible personal property, including medicines and drugs, and by their contractors on purchases of building materials, supplies, fixtures and equipment becoming a part of or annexing to a building or structure being erected, altered or repaired under contract with such institutions are also refundable; however, such refund must be included in the claim filed by the county or incorporated city or town which is to be filed within six months after the close of the claimant's fiscal year. In such cases, the documentary proof as explained in Paragraph (b) of this Rule should be submitted to the county or incorporated city or town filing the claim. The refund provisions are not applicable to hospitals, sanitariums, nursing homes or rest homes which are agencies of the state or any political subdivisions thereof other than counties and incorporated cities and towns. Nonprofit hospitals, sanitariums, nursing homes or rest homes owned and controlled by a unit of local government may file for a refund on a semiannual basis under G.S. 105-164.14(b) rather than file annually as a part of the local government unit. In order to file semiannually, the institution must submit a written request to do so to the Secretary of Revenue and the request is effective beginning with the six-months refund period following the date of the request and applies to sales and use tax paid on or after the first day of the refund period for which the request is effective.

(d) The refund provisions set forth in Paragraphs (a), (b) and (c) of this Rule are not applicable to taxes paid by hospitals, sanitariums, nursing homes or rest homes on their taxable sales and no part thereof shall be refunded or claimed as a refund. Furthermore, the refund provisions are not applicable to sales tax incurred by employees on purchases of food, lodgings or other taxable travel expenses paid by employees and reimbursed by the institution. Such expenses are personal to the employee since 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 and such tax shall not be refunded under the provisions of this Rule. The institution has incurred and paid no sales tax liability. In such cases, it has chosen to reimburse a personal expense of the employee.

(e) The refund provisions set forth in Paragraphs (a), (b) and (c) of this Rule are not applicable to sales taxes paid by hospitals, sanitariums, nursing homes or rest homes on charges by a utility for electricity, piped natural gas and local, toll or private telecommunications services; to the occupancy taxes levied and administered by certain counties and cities in this state; to the highway use taxes paid on the purchase, lease or rental of motor vehicles; or to the scrap tire disposal fee levied on new motor vehicle tires; or to the scrap tire disposal tax. Such taxes should not be included in any claim for refund filed by such institutions and organizations.

History Note: Statutory Authority G.S. 105-164.14; 105-262; 105-264;

Eff. February 1, 1976;

Amended Eff. October 1, 1991; May 1, 1990; May 1, 1985; January 3, 1984.

.1804 OXYGEN

Sales of oxygen and oxygen dispensing equipment to hospitals, sanitariums, nursing homes or rest homes for use in administering oxygen to patients are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Sales of oxygen on written prescription of a physician or dentist are exempt from sales tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; January 1, 1982.*

.1805 HOSPITAL SUPPLIES

Sales of linens, soap, toilet paper, kleenex-type tissues, and other supplies to sanitariums, hospitals and similar institutions and businesses for use subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

SECTION .1900 - TIRE RECAPPERS AND RETREADERS: TIRE AND TUBE REPAIRS

.1905 SALES TO TIRE RECAPPERS

(a) Sales to tire recappers of camelback or other rubber products, cement and rubber solvent, cord fabric, wheel weights and other 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) Effective January 1, 1985, the gross receipts derived by a utility from sales of electricity and piped natural gas to tire recappers for use in connection with the operation of the recapping plant are subject to the three percent state rate of tax. Sales of other fuel to tire recappers for use in connection with the operation of the recapping plant are subject to the one percent rate of tax.

(c) Sales to tire recappers of mill machinery, or parts and accessories therefor, for use exclusively in the recapping process are subject to the one percent rate of tax, with a maximum tax of eighty dollars (\$80.00) per article. Effective July 1, 1977, 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 subject to a one percent rate of tax, with a maximum tax of eighty dollars (\$80.00) per article where applicable. 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 7B .0202(a)(1), to qualify for the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article when purchased by such contractors or subcontractors. Contractors and subcontractors may obtain Contractor's and Subcontractor's Certificate, Form E-580, from the Sales and Use Tax 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 one percent rate of tax thereto:

- (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) crayon 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 casing 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 casing to be recapped;
 - (17) tread builders used to apply tread rubber to casing being recapped;
 - (18) air compressors used exclusively in retreading or recapping process;
 - (19) dust collectors;
 - (20) knives, stitchers, rollers, shears, awls, splicing tools, etc., 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 debugging equipment;
 - (23) sprayers used exclusively in the recapping process;
 - (24) matrix loaders;
 - (25) steam traps and valves used in steam lines for curing molds;
 - (26) mold cleaners.
- (d) The following are examples of items which are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax when sold to tire recappers for use or consumption:
- (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 compound for janitorial and sanitary purposes;
 - (7) uniforms for employees;
 - (8) advertising materials;
 - (9) lubricants, repair parts and accessories for motor vehicles;
 - (10) inspection bags;
 - (11) gloves.
- (e) The lists in (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.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; May 1, 1985; May 11, 1979; September 30, 1977.*

.1907 SCRAP TIRE DISPOSAL TAX

(a) Effective July 1, 1991, G.S. 105-187.16 imposes a privilege tax at the rate of one percent on the sales price of each new tire sold at retail by the retailer which replaces the scrap tire disposal fee. The one percent privilege tax is also imposed on the sale of each new tire by a retail or wholesale merchant to a retail or wholesale merchant for placement on a vehicle offered for sale, lease or rental by the retail or wholesale merchant. An excise tax at the rate of one percent is imposed on the cost price of each new tire purchased from outside of North Carolina for storage, use, or consumption in this State or for placement in this state on a vehicle offered for sale, lease or rental. The definitions in G.S. 105-164.3 apply to this Article, except the term "sale" does not include lease or rental of new tires, but does include the amount of any federal excise tax imposed on such tires. G.S. 105-187.18 provides for exemptions from the taxes to:

- (1) bicycle tires and other tires for vehicles propelled by human power; and
 - (2) recapped tires.
- (b) The exemptions in G.S. 105-164.13 and the refunds allowed in G.S. 105-164.14 do not apply to the taxes imposed by this Article. According to G.S. 105-187.17, these taxes are to be collected and administered in the same manner as the state sales and use taxes and are to be reported on the Scrap Tire Disposal Tax Report, Form E-500G.

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History Note: Statutory Authority G. S. 105-262; 105-264; 130A-309.55; 130A-309.56; Eff. October 1, 1991.

SECTION .2000 - SALES AND GIFTS BY EMPLOYERS TO EMPLOYEES OR OTHER USERS

.2001 SALES TO EMPLOYEES

Sales of tangible personal property by any employer, manufacturer, processor, wholesaler, distributor or jobber to his employees or others for use or consumption are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax, unless specifically exempt, notwithstanding that such sales are infrequent or comprise only a small fraction of the vendor's total business, and every employer, manufacturer, processor, wholesaler, distributor or jobber making such sales must register with the department and collect and remit the tax due thereon. The fact that any such vendor only makes sales to his employees shall in no way relieve him of this requirement.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262; Eff. February 1, 1976; Amended Eff. October 1, 1991.

.2002 GIFTS TO EMPLOYEES

Gifts of tangible personal property by any employer, manufacturer, processor, wholesaler, distributor or jobber to his employees or other persons are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax, unless the donor paid sales or use tax on the sales or purchase price of the donated property at the time he acquired the same. The tax due by reason of any such gift shall be paid by the donor and shall be computed on the donor's cost price of the property donated, irrespective of whether fabricated, produced, manufactured or processed by the donor, or acquired elsewhere.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262; Eff. February 1, 1976; Amended Eff. October 1, 1991.

SECTION .2100 - ELECTRICITY: PIPED NATURAL GAS: BOTTLED GAS: COAL: COKE: FUEL OIL: OXYGEN: ACETYLENE: HYDROGEN: LIQUEFIED PETROLEUM GAS AND OTHER COMBUSTIBLES

.2101 IN GENERAL

(a) Sales of bottled gas, coal, coke, fuel oil, oxygen, acetylene, hydrogen, liquefied petroleum gas or other combustibles to users or consumers are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local rate of sales or use tax except those sales exempt from tax under the provisions of G.S. 105-164.13 and those sales which are subject to the one percent rate of tax or are exempt from tax under the provisions of G.S. 105-164.4. The gross receipts derived by a utility from sales of electricity and piped natural gas to users including manufacturing industries and plants are subject to the three percent state rate of tax. The gross receipts derived by a utility from sales of electricity and piped natural gas are not subject to the local sales or use tax. The gross receipts derived from the sale of electricity by a municipality whose only wholesale supplier of electric power is a federal agency and who is required by contract with that federal agency to make payments in lieu of taxes are not subject to the three percent state rate of tax. Effective July 1, 1991, sales to a small power production facility of fuel for use by the facility to generate electricity are exempt from sales or use tax. A "small power production facility" means a facility which:

- (1) produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, geothermal resources or any combination thereof; and
- (2) has a power production capacity which, together with any other facilities located at the same site (as determined by the North Carolina Utilities Commission), is not greater than 80 megawatts.

(b) The gross receipts derived by a utility from sales of piped natural gas are subject to the three percent state rate of tax on and after January 1, 1985. The term "utility," as used in this Rule, means piped natural gas companies that are subject to a privilege tax based on gross receipts under G.S.

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105-116. The three percent sales tax is to be added as a separate item to the charges for piped natural gas. Gross receipts upon which the tax is due is the total amount for which the piped natural gas is sold, including any charges for services that go into the production or delivery of the gas and that are a part of the sale valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller without any deduction on account of the cost of gas sold, the cost of materials used, labor or service costs, interest charged, losses or any other expense whatsoever. Therefore, all charges for tangible personal property and services provided in the production and delivery of gas to the purchaser are a part of the sale of piped natural gas upon which the tax is due notwithstanding that some charges may be billed separately to the customer for the metered service. Set forth below are the departmental determinations as to the application of tax to certain specific transactions by natural gas utility companies.

- (1) A utility must report receipts from sales of piped natural gas on an accrual basis. The three percent sales tax should be separately stated on the bill to each customer. A sale by a utility of piped natural gas is considered to accrue when the utility bills the customer for the sale. The three percent sales tax will be due on gross receipts derived from the sale of such gas without any deduction therefrom for any franchise tax which is due. Such receipts must be reflected on the Utilities and Municipalities Sales Tax Report, Form E-500E, which is to be filed monthly on or before the last day of the month following the calendar month in which the tax accrues.
 - (2) Service charges to customers when the company first supplies gas under any applicable rate schedule are a part of gross receipts from sales of gas subject to the three percent sales tax.
 - (3) The amounts actually charged to customers for piped natural gas consumed for the billing period are the amounts on which the three percent sales tax is due and is to be charged notwithstanding that the customers may be under equal pay agreements.
 - (4) Charges for reconnecting service to customers after service has been terminated for nonpayment are a part of gross receipts from sales of piped natural gas subject to the three percent sales tax.
 - (5) Sales of piped natural gas to manufacturing industries and plants, commercial laundries, farmers and other users for use as a fuel are subject to the three percent sales tax. Sales of piped natural gas to a manufacturer which enters into or becomes an ingredient or component part of the manufactured product are exempt from sales tax.
 - (6) Sales of piped natural gas directly to the United States Government or any agency thereof are not subject to sales tax. In order to be a sale to the United States Government, the Government or agency involved must make the purchase of piped natural gas and pay directly to the vendor the purchase price of such piped natural gas. While a utility's sales directly to the United States Government or an agency thereof are exempt from sales tax, a utility should obtain a purchase requisition one time from each agency for its records.
 - (7) Sales of piped natural gas to registered utility companies for resale are exempt from sales tax when such sales are supported by properly completed Certificates of Resale, Form E-590.
 - (8) Energy audit amounts charged to customers for a comprehensive energy audit provided by a utility are not a part of gross receipts from sales of piped natural gas subject to the three percent sales tax.
 - (9) Late payment charges billed on a balance that was not paid on the previous month's bill are not a part of gross receipts of sales of piped natural gas subject to the three percent sales tax.
 - (10) Return check charges for checks received by a utility in payment of an account and returned by the bank because of insufficient funds are not a part of gross receipts from the sale of piped natural gas subject to the three percent sales tax.
 - (11) Accounts of purchasers representing taxable sales on which the three percent sales tax has been paid that are found to be worthless and actually charged off for incomes tax purposes may be corresponding periods be deducted from gross sales provided, however, they must be added to gross sales if afterwards collected.
 - (12) Local sales taxes are not applicable to those receipts from services subject to the state sales tax of three percent, but the local taxes are applicable to receipts from sales and leases of tangible personal property subject to the four percent (three percent until July 16, 1991) state rate of tax.
- (c) Effective January 1, 1985, the gross receipts derived by a utility from sales of electricity and piped natural gas to manufacturing industries and plants for use in connection with the operation of such industries and plants are subject to the three percent state rate of tax. Receipts from the sale of electricity by a municipality whose only wholesale supplier of electric power is a federal agency required by contract with that federal agency to make payments in lieu of taxes are not subject to the three percent state rate of tax. Sales of other fuel to manufacturing industries and plants for use in connection with the operation of such industries and plants other than sales of fuel to be used for residential heating

purposes are subject to the one percent rate of sales or use tax. Sales of fuel, other than electricity and piped natural gas, to manufacturing industries and plants for residential heating purposes are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Sales of coal in its original state are exempt from tax when such sales are made by the producer, or his agent, in the capacity of a producer and the coal is delivered to the purchaser directly from the mine.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; May 1, 1990; August 1, 1986; February 1, 1986.*

.2103 PROPANE SOLD TO SCHOOLS

Sales of propane gas to public and private schools for use or consumption are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.2105 AVIATION FUEL

Sales of aviation gasoline and other aviation fuel to users or consumers in this state are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. The federal tax on aviation gasoline or other aviation fuels which is levied at the rate of 9.1 cents per gallon by Chapter 32, Section 4081, of the Internal Revenue Code and the federal super fund tax of .35 cents per gallon are imposed on gasoline sold by any producer, terminal operator or importer of gasoline and should be included in the sales price of aviation gasoline on which North Carolina sales tax is due. The federal tax of three cents per gallon on noncommercial aviation gasoline and the federal tax of 14.1 cents per gallon on certain other liquids sold for use or used for fuel in noncommercial aviation as levied by the provisions of Chapter 31, Section 4041, of the Internal Revenue Code, are taxes imposed at the retail level and these taxes are not includable in the sales price upon which North Carolina sales tax is due.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; October 1, 1990; January 3, 1984.*

SECTION .2200 - FOOD AND FOOD PRODUCTS FOR HUMAN CONSUMPTION

.2201 IN GENERAL

(a) All retail sales of food or food products are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax unless there is an exemption or exclusion provided in the statutes.

(b) The following sales are excluded from the tax as sales for resale:

- (1) sales of food products to registered merchants for resale, including sales to registered restaurants, if such sales are supported by properly executed certificates of resale, Form E-590;
- (2) sales of food products to schools if such food products are to be sold within school buildings to school children in connection with the school lunchroom program, and sales of food products to state or private educational institutions, or student organizations thereof, if such food products are to be served to students in dining rooms regularly operated by such institutions or organizations.

(c) The following sales are exempt from the tax under the provisions of G.S. 105-164.13:

- (1) sales of products of farms, forests and waters if sold in their original or unmanufactured state by the producer in his capacity as the producer and not as a retail merchant; Fish and seafoods shall likewise be exempt when sold by the fishermen;
- (2) sales of lunches to school children when such sales are made within school buildings and are not for profit;
- (3) sales of meals and food products to students in dining rooms regularly operated by state or private educational institutions, or student organizations thereof;

- (4) Effective October 1, 1985, food and other items lawfully purchased with coupons issued under the Food Stamp Program, 7 U.S.C. Subsection 51, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental Food Program, 42 U.S.C. Subsection 1786. Under the Food Stamp Program, "food" means any food or food product for human consumption and also includes seeds and plants for use in home gardens to produce food for consumption by food stamp households. Items which may not be purchased with food stamps include alcoholic beverages, tobacco, hot foods ready to eat and foods intended to be heated in the store, lunch counter items or foods to be eaten in the store, vitamins or medicines, pet foods and any nonfood items. The supplemental foods list currently includes whole, skim, evaporated and nonfat milk; specific cereals; certain juices; cheese; eggs; dry beans and peas; dry infant cereal and infant juice; and other special formulas. The items on the supplemental food list are subject to change;
- (5) effective October 1, 1990, sales of food by a church or religious organization not operated for profit are exempt from sales and use taxes when the proceeds of the sales are actually used for religious activities.

(d) Every retailer shall keep and preserve suitable records of gross income, gross receipts and/or gross receipts of sales of such business and such other books or accounts as may be necessary to determine the amount of tax for which he is liable under the statute. Retailers shall keep separate records disclosing sales of tangible personal property taxable under the statute and sales transactions not taxable because exempt under G.S. 105-164.13 or elsewhere excluded from taxation. Unless such records shall be kept, the exemptions and exclusions provided by the statute shall not be allowed and it shall be the duty of the secretary or her authorized agents to assess a tax upon gross sales at the rate levied upon retail sales; and if records are not kept disclosing gross sales, it shall be the duty of the secretary to assess tax based upon the best information available.

(e) Since the sales defined in Paragraphs (c)(2) and (c)(3) of this Rule are tax exempt, the schools, institutions and organizations making such sales will not on account of such sales be required to register with the department and, therefore, unless otherwise required to register by reason of making other sales or purchases subject to the sales or use tax, cannot furnish certificates of resale, Form E-590, to their suppliers. Thus, when making purchases of food products to be sold, such nonregistered schools, institutions and organizations must furnish their suppliers with information to the effect that the food products purchased are to be sold in connection with their school lunchroom programs or their dining rooms, and the suppliers must enter such information on their records and on the sales invoices. Otherwise, such transactions may be subject to the tax. Registered schools, institutions and organizations should furnish properly executed certificates of resale, Form E-590, where applicable.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; February 1, 1986; May 11, 1979.*

.2202 DISPOSABLE LUNCHROOM SUPPLIES

Sales to school lunchrooms and dining rooms of disposable items such as paper cups, paper napkins and drinking straws which actually contain or otherwise accompany the sale or service of the food and which are actually used by the students in consuming the meals are exempt from the tax. This exemption does not include brooms, mops, soaps, chinaware, silverware and other equipment or supplies, and sales of this nature are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.2203 EMPLOYEES' MEALS

Prepared meals furnished to employees in restaurants, cafes, cafeterias, hotel dining rooms, drug stores or any other similar places whether for the convenience of the employer or as a part of the employee's compensation are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax to be computed on the cost price of the food products used in furnishing such meals; however, sales of meals to employees are subject to tax on the sales price thereof.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;

Eff. February 1, 1976;
Amended Eff. October 1, 1991; February 1, 1986.

.2204 MEALS ON TRAINS: PLANES: ETC.

Sales of prepared foods or meals by railroads, pullman cars, steamships, airlines or other transportation company diners, while within this state, are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

History Note: Statutory Authority G.S. 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.

.2205 CATERERS

All charges by persons engaged in the catering business that are connected with the furnishing, preparing or serving of meals, foods, and other tangible personal property to users or consumers are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. If such persons perform other services that are not a part of the charges for the furnishing, preparing or serving of meals, foods, and other tangible personal property, the charges for such services rendered are exempt from tax provided such charges are separately stated from the charges for the tangible personal property on the invoice given to the customer at the time of the sale and in the vendor's records; otherwise, the total amount is subject to the tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 5, 1980.

.2207 FOOD SERVICE SUPPLIES

Paper doilies, paper place mats, paper coasters, paper napkins, drinking straws and similar disposable items which become a part of the sale or service of food and are expended by customers in consuming their meals are exempt from sales or use tax when sold to school lunchrooms, restaurants, cafes, cafeterias and other such places of business selling and serving prepared meals and foods. Sales of plastic or cloth place mats, cork, plastic or china coasters, china, silverware, cloth napkins, tablecloths or other reusable items to restaurants, cafes, cafeterias and other similar places of business for use in serving meals and not for resale are taxable at the state rate of four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax rate. Sales of patty paper, paper containers, etc., to restaurants for use in storing food are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 5, 1980.

.2212 SEAFOODS

A person who purchases fish and sells them at retail is liable for the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on such sales. Sales of fish and seafood are exempt when sold in their original or unmanufactured state by the fisherman in his capacity as a fisherman.

History Note: Statutory Authority G.S. 105-164.4; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.

SECTION .2400 - VETERINARIANS

.2401 SALES TO VETERINARIANS

(a) Veterinarians are engaged in rendering professional services and are the users or consumers of medicines or drugs and other tangible personal property which they purchase for use in administering treatment to animals. Purchases by veterinarians of medicines or drugs for use in the treatment of pets.

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such as birds, dogs and cats, are subject to sales or four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax notwithstanding such medicines and drugs may be of the type usually sold on the prescription of a veterinarian. Veterinarians should remit the tax due on such purchases to their suppliers who collect and remit North Carolina sales and/or use taxes. When such purchases are made from out-of-state suppliers who do not collect and remit the applicable sales or use tax, the veterinarians are liable for remitting the use tax due thereon directly to the North Carolina Department of Revenue. Purchases and sales by veterinarians of medicines and drugs for use in the treatment of livestock and poultry, including cattle, horses, mules, sheep, chickens, turkeys and other domestic animals usually found on a farm, and other animals or poultry held or produced for commercial purposes are exempt from sales or use tax.

(b) Veterinarians who make purchases of medicines or drugs for use in the treatment of livestock, poultry and pets, and by reason of the multiple uses to be made of the medicines or drugs cannot determine the application of tax thereto until they are used may, in connection with such purchases, furnish Veterinarian's Certificate, Form E-567, to their vendors and assume liability for payment of the applicable tax to the Secretary of Revenue on that portion which is used in the treatment of pets. Veterinarians making purchases pursuant to a Veterinarian's Certificate, Form E-567, must register with the department for the purpose of remitting the use tax due on that portion of such medicines and drugs used in treating pets.

(c) Sales to veterinarians of medical supplies, including such items as cotton, gauze, adhesive tape, bandages and other dressings and medical instruments and equipment, such as knives, needles, scissors, microscopes, x-ray machines and other laboratory equipment used for testing and diagnosis, and for the prevention, treatment or cure of diseases in animals are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; August 1, 1986; May 11, 1979.*

SECTION .2500 - FURNITURE AND STORAGE WAREHOUSEMEN

.2502 MOVING AND PACKING MATERIALS

Crating, boxing, packaging and packing materials purchased by warehousemen to be used by them in moving, storing, packing or shipping tangible personal property are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.2503 SECONDHAND FURNITURE

Except as provided in 17 NCAC 7B .2504, sales by warehousemen of secondhand furniture or other tangible personal property to which they have acquired title are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax and warehousemen making such sales must register with the department and collect and remit the tax due on such sales.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

SECTION .2600 - LIABILITY OF CONTRACTORS: USE TAX ON EQUIPMENT BROUGHT INTO STATE: BUILDING MATERIALS

.2601 USE TAX ON EQUIPMENT BROUGHT INTO STATE

(a) A use tax is levied at the applicable rates upon the storage or use of all motor vehicles, machines, machinery, tools or other equipment brought, imported or caused to be brought into this state for use in constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant,

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transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any part thereof. The state rate of tax is four percent (three percent until July 16, 1991) and the local rate of tax is two percent on all tangible personal property unless it is exempt from tax or subject to a lesser rate of tax by statute. Prior to October 1, 1989, the state rate of tax is two percent on motor vehicles with a maximum tax of three hundred dollars (\$300.00) applicable to each vehicle. Effective October 1, 1989, the state rate of tax of four percent (three percent until July 16, 1991) and the local rate of tax of two percent are applicable to motor vehicles brought, imported or caused to be imported into this state for the use or purposes described in this Paragraph and the maximum tax is not applicable thereto. The use in this state of any motor vehicle, machine or machinery previously purchased at retail for use in another state and actually placed into substantial use in another state before being brought, imported or caused to be brought into this state by the owner thereof for use in constructing or repairing its own buildings, structures or other property, shall not be subject to the tax.

(b) The tax shall be computed on the basis of such proportion of the original purchase price of such property as the duration of time of use in this state bears to the total useful life thereof. For the purposes of this Rule, the word use shall mean and include use, storage, consumption and stand-by time occasioned by weather conditions, controversies or other causes, it being the intention of this Rule that the tax shall be computed upon the basis of the relative time each item of equipment is in this state rather than upon the basis of actual use.

(c) Before any property subject to the use tax is brought into this state for use as provided above, the owner, or, if the property is leased, the lessee shall register with the sales and use tax division of the North Carolina Department of Revenue. After registering, the taxpayer shall file monthly reports on forms furnished by the Secretary of Revenue reporting such property brought, imported or caused to be brought into this state during the preceding calendar month, together with remittance of the amount of tax due. Such reports are to be filed on or before the 15th of the month following the month in which such property was brought into this state.

Monthly reports filed pursuant to this Rule shall be accompanied by a schedule listing the property included in the report and showing the original cost price, duration of time of use in this state, total useful life, and the taxable amount for each item.

The taxable amount on each item of property shall be computed by multiplying the original purchase price by the duration of time of use in this state and dividing the result by the total useful life, expressed in the same units of time as the duration of time of use in this state, as follows:

$$\frac{\text{Original purchase price} \times \text{Duration of time of use in this state}}{\text{Total useful life}} = \text{Taxable amount}$$

In the absence of satisfactory evidence as to the period of use intended in this state, it will be presumed that such property will remain in this state for the remainder of its useful life, which shall be determined in accordance with the experiences and practices of the building and construction trades. Any taxpayer who claims a greater estimated useful life for a given piece of equipment than that suggested by the Bureau of Internal Revenue in the then current bulletin F for depreciation purposes, or any then current bulletin replacing said bulletin F, shall set forth his reasons therefor.

Effective October 1, 1989, a credit is allowed against the tax imposed on the use of property in this state for any retail sales or use tax due and properly paid on the property to another state. A similar credit is also allowed against the local use taxes imposed in this state for any local retail sales or use tax paid on the property to a locality in another state. The amount of the credit allowed is computed by dividing the total useful life of the property into the duration of time of use in this state, expressed in the same units of time as the useful life of the property, and multiplying the result by the state or local sales or use tax paid on the property as follows:

$$\frac{\text{Duration of time of use in state}}{\text{Total Useful Life}} \times \text{Sales or Use Tax Paid} = \text{State or Local Credit}$$

No credit is allowed, however, if the state, or the locality in another state, to which a retail sales or use tax was paid does not allow a similar credit or grant an exemption for property brought into that state or locality from this state. No credit is allowed against the tax imposed on the use of property brought, imported or caused to be imported into this state prior to October 1, 1989, for any retail sales or use tax paid on the property to another state or to a locality in another state.

(d) When a taxpayer determines that he will have no further liability for use tax, he shall so advise the department at the time his final monthly report is filed.

(e) Nothing in this Rule shall be so construed as to relieve any taxpayer of liability for sales or use tax levied on sales or purchases of tangible personal property for use, storage or consumption in this state under other provisions of the Sales and Use Tax Article of the Revenue Act. In addition to the use tax as provided in this Rule, taxpayers are liable for sales or use tax on all other tangible personal property purchased for use, storage or consumption in this state.

*History Note: Statutory Authority G.S. 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; May 1, 1990; December 1, 1984; January 1, 1982.*

.2602 CONTRACTORS: SUBCONTRACTORS: RETAILER-CONTRACTORS

(a) Contractors are deemed to be consumers of tangible personal property which they use in fulfilling contracts and, as such, are liable for payment of sales or use tax on such property. When a contractor or a subcontractor makes taxable purchases of tangible personal property from suppliers outside this State who charge North Carolina sales or use tax thereon or from suppliers in this State, they should remit the tax on such purchases to their suppliers. When a contractor or subcontractor makes taxable purchases of tangible personal property for use in this State from a supplier outside this State who does not collect North Carolina sales or use tax thereon, such contractor or subcontractor must remit the tax directly to the department. Where the purchaser is a contractor, the contractor and owner shall be jointly and severally liable for said tax, but the liability of the owner shall be deemed satisfied if before final settlement between them the contractor furnishes to the owner an affidavit certifying that said tax has been paid. Effective October 1, 1980, where the purchaser is a subcontractor, the contractor and subcontractor shall be jointly and severally liable for said tax, but the liability of the contractor shall be deemed satisfied if before final settlement between them the subcontractor furnishes the contractor an affidavit certifying that said tax has been paid. The liability of the subcontractor for such tax does not extend to the property owner.

(b) The term retailer-contractor shall mean any person who engages in the business of selling building materials, supplies, equipment, and fixtures at retail and, in addition to such business, enters into contracts for constructing, building, erecting, altering or repairing buildings or other structures, and for the installation of equipment and fixtures to buildings and, in the performance of such contracts, consumes or uses such materials or merchandise. When a retailer-contractor as herein defined makes purchases of the above named tangible personal property, a part of which he will use in performing contracts and a part of which he will sell at retail, the retailer-contractor should furnish his supplier a properly executed certificate of resale. The supplier should keep the executed certificate for his records as his authority for not charging tax on the transaction. The retailer-contractor then becomes liable for remitting, directly to the department, tax on the sales price of any tangible personal property sold at retail, and tax on the cost price of any tangible personal property used in the performance of a contract.

(c) Contractors are required to remit use tax at the applicable rate on the storage or use of motor vehicles, machines, machinery, tools and other equipment brought into this state for use in construction or repair work. The tax is to be applied and computed in the manner set forth in 17 NCAC 7B .2601.

(d) Effective July 1, 1977, sales to contractors and subcontractors purchasing 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 subject to the one percent rate of tax, with a maximum tax of eighty dollars (\$80.00) per article where applicable. Such mill machinery or mill machinery parts and accessories must be for use by a manufacturing industry or plant in the production process, as the term "production" is defined in 17 NCAC 7B .0202(a)(1), to qualify for the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article when purchased by such contractors or subcontractors. Contractors and subcontractors may obtain Contractor's and Subcontractor's Certificate, Form E-580, from the Sales and Use Tax 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 one percent rate of tax thereto.

(e) Construction materials purchased or sold on and after July 16, 1991, (the effective date of the increase in the state tax rate to four percent) to fulfill a lump-sum or unit price contract entered into or awarded before July 16, 1991, or entered into or awarded pursuant to a bid made before July 16, 1991, will continue to be taxable at the three percent state rate of tax and the local tax of two percent.

Form E-589, Affidavit to Exempt Contractors From the Additional One Percent State Tax Effective July 16, 1991, must be executed by the contractor or subcontractor to obtain the three percent state rate.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; February 8, 1981; May 11, 1979; September 30, 1977.*

.2603 WEIGH HOPPERS SOLD TO CONTRACTORS

Sales of asphalt plants, concrete plants, weigh hoppers or other equipment to contractors who produce concrete or asphalt for use in fulfilling their contracts are taxable at the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax, and no maximum tax is applicable thereto.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; December 1, 1984; July 5, 1980.*

.2604 SAND: STONE SOLD TO CONTRACTORS

Sales of sand, dirt, and stone to contractors or other users or consumers or to nonregistered merchants are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax unless such property is sold in its original or unmanufactured state by the producer in his capacity as a producer.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.2605 SANDBLAST SAND SOLD TO CONTRACTORS

Sales of sandblast sand to contractors for use in the performance of contracts to clean ships, buildings, etc. are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.2606 PRE-FABRICATED BUILDINGS: CONTRACTORS

Sales of pre-fabricated buildings to contractors, builders, or other users or consumers in this state are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Manufacturers of pre-fabricated buildings entering into performance contracts for the erection of buildings are liable for payment of the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on the cost price of tangible personal property used in the performance of the contract.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; October 1, 1990.*

.2607 SUBCONTRACTORS

Subcontractors are liable for payment of the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on the taxable tangible personal property which they purchase for use in fulfilling their subcontracts unless such property is subject to a one percent rate of tax under the provisions of G.S. 105-164.4(1)(h).

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 5, 1980.*

.2608 PLUMBING: HEATING CONTRACTORS: PURCHASES

(a) Construction materials purchased or sold on and after July 16, 1991, (the effective date of the increase in the state tax rate to four percent) to fulfill a lump-sum or unit price contract entered into or awarded before July 16, 1991, or entered into or awarded pursuant to a bid made before July 16, 1991, will continue to be taxable at the three percent state rate of tax and the local tax of two percent. Form E-589, Affidavit to Exempt Contractors From the Additional One Percent State Tax Effective July 16, 1991, must be executed by the contractor or subcontractor to obtain the three percent state rate.

(b) Contractors are deemed to be the users or consumers of building materials and other tangible personal property which they use in the performance of lump-sum, cost-plus or time and material contracts to furnish and install a plumbing, heating, air conditioning or electrical system or which they use in making repairs, alterations or additions to an existing system. Contractors are therefore liable for payment of tax on their purchases of such property. The tax paid on such purchases is a part of the cost of the property and may be recovered in the contract price; however, the tax shall not be charged as a separate item to the property owner. Contractors must also pay the tax on purchases of property which they resell unless such contractors have been classified by the Department of Revenue as retailer-contractors and have been authorized to use the certificate of resale, Form E-590. The tax due on all purchases by contractors should be paid to the suppliers unless the purchases are made from out-of-state vendors who do not collect North Carolina sales or use tax. Contractors must remit the tax on such out-of-state purchases directly to the Department of Revenue.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.2611 BUILDING MATERIALS

(a) All building materials, supplies, fixtures and equipment of every kind and description which become a part of or are annexed to any building or other structure are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Vendors of such items are required to register and to collect and remit the tax on their sales to contractors and other users or consumers.

(b) If the contractor purchases from a vendor outside the state any building materials, supplies, fixtures or equipment for use in the construction, erection, alteration or repair of a building or other structure in this state and the vendor does not collect the tax thereon, such contractor must remit the use tax directly to the department. The Sales and Use Tax Law provides that in such cases the tax is a joint liability of the contractor and the owner. The liability of the owner will be satisfied if he obtains from the contractor before settlement an affidavit that the tax due has been paid.

(c) Construction materials purchased or sold on and after July 16, 1991, (the effective date of the increase in the state tax rate to four percent) to fulfill a lump-sum or unit price contract entered into or awarded before July 16, 1991, or entered into or awarded pursuant to a bid made before July 16, 1991, will continue to be taxable at the three percent state rate of tax and the local tax of two percent. Form E-589, Affidavit to Exempt Contractors From the Additional One Percent State Tax Effective July 16, 1991, must be executed by the contractor or subcontractor to obtain the three percent state rate.

(d) Effective July 1, 1977, sales to contractors and subcontractors purchasing 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 subject to the one percent rate of tax, with a maximum tax of eighty dollars (\$80.00) per article where applicable. Such mill machinery or mill machinery parts and accessories must be for use by a manufacturing industry or plant in the production process, as the term "production" is defined in 17 NCAC 7B .0202(a)(1), to qualify for the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article when purchased by such contractors or subcontractors. Contractors and subcontractors may obtain Contractor's and Subcontractor's Certificate, Form E-580, from the Sales and Use Tax 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 one percent rate of tax thereto.

(e) Effective August 1, 1986, sales to commercial livestock and poultry farmers of materials to be used exclusively in the construction, repair or improvement of any enclosure or structure specifically de-

signed, constructed, and used for commercial purposes for housing, raising, or feeding livestock and poultry or for housing equipment necessary for these activities, including work space used solely for these commercial activities, are exempt from sales and use taxes. Likewise, sales of materials for the above described uses to contractors performing contracts with commercial livestock and poultry farmers and subcontractors performing contracts with general contractors who have contracts with commercial livestock and poultry farmers shall be exempt. The exemption from tax extends only to building materials, as such, which are used in the construction, repair or improvement of such enclosures or structures and which become a part of such enclosures or structures. The exemption does not extend to sales of equipment and machinery used to equip such enclosures or structures prior to September 1, 1987. Effective September 1, 1987, the exemption was expanded to include sales of commercially manufactured swine, livestock, and poultry facilities to be used for commercial purposes for housing, raising, or feeding of swine, livestock, or poultry or for housing equipment necessary for these commercial activities; building materials, supplies, fixtures, and equipment to be used in the construction, repair, or improvement and that become a part of an enclosure or structure specifically designed, constructed and used for such above commercial purposes; and commercially manufactured swine, livestock, and poultry equipment, parts and accessories therefor placed or installed in or affixed to such facilities, enclosure, or structures.

(f) For the purpose of this Rule, the words "swine, livestock and poultry" include swine, cattle, horses, mules, sheep, chickens, turkeys and other similar domestic animals and fowl usually held or produced on a farm for commercial purposes. The word "commercial" shall mean "held or produced for income or profit." It does not include one who merely produces swine, livestock or poultry for one's personal use or consumption and not for sale. Commercial swine, livestock or poultry farmers, and contractors performing contracts with commercial swine, livestock or poultry farmers and subcontractors performing contracts with general contractors who contract with commercial swine, livestock or poultry farmers may obtain Commercial Swine, Livestock and Poultry Farmers' Certificate, Form E-599S, from the Sales and Use Tax Division, North Carolina Department of Revenue, or any of its field offices, to be executed by them and furnished to their vendors in connection with such purchases as the vendor's authority to exempt such purchases from sales and use taxes.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264;

Eff. February 1, 1976;

Amended Eff. October 1, 1991; February 1, 1988; May 11, 1979; September 30, 1977.

SECTION .2700 - DENTISTS: DENTAL LABORATORIES AND DENTAL SUPPLY HOUSES

.2701 SALES TO DENTISTS AND ORTHODONTISTS

Dentists and orthodontists are deemed to be the users or consumers of tangible personal property which they purchase for use in rendering professional services. With the exception of false teeth and orthopedic appliances which are specifically exempt from tax, all sales of tangible personal property to dentists and orthodontists, including dental supplies, equipment, furnishings and other property, such as materials which dentists fabricate into false teeth, are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. 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, wires, bands, brackets, rubber bands and jackscrews 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.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;

Eff. February 1, 1976;

Amended Eff. October 1, 1991; January 3, 1984; November 1, 1982.

.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 subject to sales or use tax.

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(b) Sales to dental laboratories of machinery and equipment, and accessories thereto for use directly in 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.

(c) 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 (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; January 1, 1982; May 11, 1979; September 30, 1977.*

SECTION .2800 - FLORISTS: NURSERYMEN: GREENHOUSE OPERATORS AND FARMERS

.2801 IN GENERAL

(a) Retail sales of wreaths, bouquets and similar items are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(b) Retail sales of flowers, potted plants, shrubbery and similar nursery stock and retail sales of fruits, vegetables and other farm products are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax unless the product in question is a product of the 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.

(c) For the purpose of the exemption afforded by G.S. 105-164.13(4.2), nurserymen and greenhouse operators are considered to be farmers. Nursery stock which is not sold during the season in which it was purchased by the nurserymen, greenhouse operators and other farmers but is retained until the next season and growth is added thereto 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.

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

(e) If such vendors are not classified primarily as retail merchants on the basis of the total dollar sales volume, sales of their produced products in the original state are exempt from tax; however, retail sales of any farm products or any other taxable merchandise acquired by purchase are subject to any applicable tax. If such vendors are classified primarily as retail merchants on the basis of the total dollar sales volume, they shall be liable for tax accordingly; i.e., all retail sales of both types of products shall be subject to the tax unless specific sales are statutorily exempt from tax.

(f) When vendors make sales of farm products produced by them and products acquired by purchase, separate records must be maintained of sales of products produced by them. Records of purchased products, as well as sales thereof, must be kept and maintained in a manner that can be accurately and conveniently checked by the agents of the Secretary of Revenue; otherwise, all sales are subject to the tax.

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

(h) When nurserymen, greenhouse operators, florists or other persons make taxable sales of shrubbery, young trees 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 rate, the entire amount of the transaction is subject to the four

percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax unless such vendors segregate on the invoice that portion of the charge which is for the property sold and that portion of the charge which is for transplanting.

(i) For the purpose of the exemption afforded by G.S. 105-164.13(4.2), nurserymen and greenhouse operators are considered to be farmers and; therefore, the fact that they may be selling tangible personal property primarily as a retailer and not as a producer does not preclude certain of their purchases of tangible personal property for use from the one percent state rate of tax with a maximum tax of eighty dollars (\$80.00) per article levied pursuant to G.S. 105-164.4(1)(g). G.S. 105-164.4(1)(g) levies the above state rate of tax on sales to farmers of machines and machinery and parts therefor and accessories thereto for use by them in planting, cultivating, harvesting or curing farm crops. Regulation 17 NCAC 7B .1101 provides additional information regarding the above levy.

(j) Effective September 1, 1990, G.S. 105-164.13(6) was repealed removing the exemption from tax for retail sales of ice. G.S. 105-164.13(4b) was rewritten to add an exemption for ice sold to be used to preserve agricultural, aquacultural and commercial fishery products until the products are sold at retail. Sales of ice for resale continue to be exempt from tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; March 1, 1987; June 1, 1985; January 1, 1982.*

.2802 FLORISTS' TELEGRAPHIC DELIVERY ASSOCIATIONS

The tax due on transactions conducted through a florists' telegraphic delivery association shall be collected and remitted to the department pursuant to the following rules:

- (1) On all orders accepted by a florist within North Carolina and telegraphed to another florist within or without North Carolina for delivery within or without North Carolina, the florist initially accepting the order must collect and remit to the department the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on the total sales price. Service charges and telephone or telegraph charges to customers in connection with such orders are exempt from tax provided the charges are separately stated in the vendor's records and on the invoice given to the customer at the time of the sale; otherwise, the total sum received from the customer who placed the order is subject to tax.
- (2) A North Carolina florist receiving telegraphic 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 which he derives from such transactions.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; March 1, 1987.*

SECTION .2900 - VENDING MACHINES

.2902 SALES OF VENDING MACHINES

Sales of vending machines to any person for use are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. The lease or rental of vending machines to users are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Sales of vending machines to registered merchants for leasing purposes or for the purpose of resale are not subject to the tax when supported by properly executed certificates of resale, Form E-590.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

SECTION .3000 - ARTICLES TAKEN IN TRADE: TRADE-INS: REPOSSESSIONS: RETURNED MERCHANDISE: USED OR SECONDHAND MERCHANDISE

.3002 REPOSSESSIONS

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Retailers shall not deduct from their gross taxable sales the unpaid amounts on repossessed merchandise. However, where a retailer repossesses an article of tangible personal property pursuant to either a limited or full recourse endorsement by such retailer to a financing institution and he resells such tangible personal property to recover the unpaid sales price, such resale is not subject to sales tax provided the sales tax was paid on the gross sales price of the initial sale. Otherwise, the sale of any repossessed article is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. The full gross sales price of any used article taken in trade by the vendor as a credit or part payment of the sales price of such nontaxable repossessed article is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax when sold at retail.

*History Note: Statutory Authority G.S. 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; May 1, 1990; January 3, 1984.*

.3004 SECONDHAND PROPERTY

Retail sales of used or secondhand tangible personal property which the vendor acquired by purchase, or by any means other than by trade-in or repossession are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. In cases where a vendor reacquires property that is collateral for a nonrecourse endorsement by the vendor to a financing institution, the vendor has actually repurchased the property. In such case, it is not property repossessed by the vendor and the gross sales price of such property is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax when sold at retail. Used or secondhand property accepted in lieu of commissions is deemed to have been purchased. The original stock in trade of the merchant is not limited to newly manufactured articles; therefore, the fact that tangible personal property is secondhand or used does not exempt sales of such property from the tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; January 3, 1984.*

.3009 TRADE-INS: TRANSFER TO NEW BUSINESS

(a) When a proprietorship or partnership is succeeded by a corporation and the merchandise inventory is sold or transferred to the corporation for resale, tax is not due on such transactions. The corporation will be liable for collecting and remitting the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on its retail sales of tangible personal property acquired from the proprietorship or partnership, including any tangible personal property which would have been exempt from tax under the provisions of G.S. 105-164.13(16) if sold by the proprietorship or partnership as repossessed or traded-in articles.

(b) When corporations merge or consolidate pursuant to the provisions of G.S. 55-107 and the merchandise inventory is transferred from the predecessor corporation to a new or surviving corporation for resale, the tax is not due on such transactions. Furthermore, G.S. 55-110(b) operates so that the exemption from sales tax provided by G.S. 105-164.13(16) and applicable to sales of repossessed articles or sales of used articles taken in trade by a predecessor corporation on the sales price of new articles is applicable to the sale of such repossessed or traded-in articles when they are sold by the corporation formed through such statutory merger or consolidation.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; November 1, 1982.*

.3010 TRADE-INS ON EXEMPT SALES

(a) Sales by a North Carolina merchant of new tangible personal property to registered retail or wholesale merchants for the purpose of resale are not subject to tax provided the merchant obtains from the customers a properly executed certificate of resale, Form E-590. Retail sales of tangible personal property taken in trade on such transactions are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(b) Sales by a North Carolina vendor of new tangible personal property which the vendor delivers to a purchaser at a point outside this state or which the vendor delivers to a common carrier or to the

mails for transportation and delivery to the purchaser at a point outside this state are not subject to tax provided the property is not returned to a point within the state for use or consumption. Retail sales in this state of used tangible personal property taken in trade on such transactions are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.3011 USED PROPERTY SOLD FOR REPAIR CHARGES

The retail sale of taxable tangible personal property that is left with merchants for repair or storage and is sold to satisfy repair or storage charges because the owners fail to reclaim it within a stipulated period of time is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.3012 TRADE: GRAIN FOR FLOUR

If a customer brings grain to be milled and the miller gives the customer a bag of flour or corn meal which has already been milled and runs the customer's grain into the general inventory of grain, this would not constitute a taxable transaction. If the customer brings grain to the miller and the miller actually mills the grain and delivers the resulting product to the customer, there is no sales tax on the milling charge. When a customer barter's grain for dissimilar articles of merchandise, such as groceries or clothing, the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax is due on the usual retail selling price of the merchandise received for the grain.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

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

.3101 RADIO AND TELEVISION: ETC. RECEIPTS

Receipts of radio and television companies for the broadcasting or telecasting of programs are not subject to sales or use tax. Receipts of motion picture theatres derived from admission charges are not subject to sales or use tax. Motion picture theatres making taxable sales of tangible personal property through concession stands or otherwise must register with the department and must collect and remit tax at the state rate of four percent (three percent until July 16, 1991) state tax and any applicable local rate on such sales.

*History Note: Statutory Authority G.S. 105-164.3; 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.3102 BROADCASTING EQUIPMENT

Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio or television companies which operate under the regulation and supervision of the Federal Communications Commission are taxable at the rate of one percent, subject to a maximum tax of eighty dollars (\$80.00) per article. For the purpose of applying the maximum tax, a radio or television tower is a single article when the complete tower is sold by the same vendor. The tower antenna is considered to be a separate single article. The antenna cable or transmission cable is not a single article and the sale of such cable is subject to the one percent rate of tax without any maximum tax applicable thereto. Taxable tangible personal property purchased by such radio and television companies other than towers, antennas and broadcasting equipment or parts and accessories thereto are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

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*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; December 1, 1984; March 1, 1984; July 5, 1980.*

.3103 RENTAL OF FILMS: RECORDINGS

Receipts derived from the lease or rental of motion picture film to theatres or similar businesses for exhibition to the public and receipts derived from the lease or rental of such film to schools, churches, hospitals, prisons and similar institutions and organizations for exhibition to students, congregations, patients and inmates are exempt from sales or use tax. Receipts derived from the lease or rental of motion picture film to businesses, individuals, organizations and other lessees for any use other than for public exhibition are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Sales of motion picture film to users or consumers are subject to the applicable state and local sales or use tax regardless of whether the film is publicly or privately exhibited. Projection equipment, screens, advertising matter and other tangible personal property which are leased, rented or sold at retail for use in showing film are subject to the applicable state and local sales or use tax regardless of whether the film is privately or publicly exhibited.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; November 1, 1982; January 1, 1982.*

.3106 COMMERCIAL CABLE TELEVISION COMPANIES

(a) Sales of broadcasting equipment and parts and accessories thereto and towers to commercial cable television companies which operate under the regulation and supervision of the Federal Communications Commission are taxable at the rate of one percent subject to the maximum tax of eighty dollars (\$80.00) per article. For the purpose of applying the maximum tax, a television tower is a single article when the complete tower is sold by the same vendor. The tower antenna is considered to be a separate single article. Sales of antenna cable, transmission cable and trunk, feeder and drop cable to cable television companies for use in broadcasting are subject to a one percent rate of tax without any maximum tax applicable thereto. The term "commercial cable television company," 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/or 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) Taxable tangible personal property purchased by cable television companies other than towers, antennas and purchases of broadcasting equipment and parts and accessories thereto are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(c) The provisions of this Paragraph are applicable to sales to and purchases by cable television companies, as defined in this Rule, prior to and subsequent to February 15, 1984, notwithstanding the amendment to this Rule of January 31, 1984.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. March 1, 1984;
Amended Eff. October 1, 1991; August 1, 1986; December 1, 1984.*

SECTION .3200 - TELEPHONE AND TELEGRAPH COMPANIES

.3201 IN GENERAL

(a) Sales of central office equipment and switchboard and private branch exchange equipment to telephone and telegraph companies regularly engaged in providing telephone and telegraph services to subscribers on a commercial basis and, effective July 1, 1983, sales to those companies of prewritten computer programs used in providing telephone service to their subscribers are subject to the one percent sales or use tax with a maximum tax of eighty dollars (\$80.00) per article. For the purpose of determining the items that may be properly included in the terms central office equipment, switchboard equipment and private branch exchange equipment, reference is made to Accounts 2124, 2211, 2212, 2215, 2220, 2231, 2232, 2311, and 2341 of Title 47--Telecommunication Chapter 1, Part 32, Uniform Systems of Accounts, Class A and Class B Telephone Companies, of the Federal Communications Commission's rules and regulations as revised to January 1, 1988. This Rule has no application to future changes in the Federal Communications Commission's rules and regulations until such changes

are reviewed by the Secretary of Revenue to determine the application of tax to the tangible personal property affected by such changes.

(b) Accounts 2211, 2212, 2215, 2220, 2231 and 2232; Central Office Equipment. These accounts include switchboards and other equipment, instruments and apparatus necessary to the functions of central offices. Sales to and purchases by the above-referred to telephone and telegraph companies of the items included in Central Office Equipment Accounts, with certain exceptions, examples of which are set out below, are subject to the one percent sales or use tax with a maximum tax of eighty dollars (\$80.00) per article, irrespective of whether the items are classified in the Uniform System of Accounts as capital expenditures or as maintenance expense. Examples of items contained in Accounts 2211, 2212, 2215, 2220, 2231 and 2232 which are taxable at the four percent (three percent until July 16, 1991) state and any applicable local rate are:

- (1) aisle-lighting equipment attached to buildings;
- (2) minor building alterations when tangible personal property not properly termed central office equipment is affixed or attached to or in any manner becomes a part of a building or structure;
- (3) cable, other than that connecting central office units to each other or to distributing frames;
- (4) covers for transmission power apparatus;
- (5) desks and tables unless equipped with central office equipment when purchased;
- (6) foundations for engines and other equipment when part of building;
- (7) loading coils used outside central office, loud speaker equipment, operators' chairs;
- (8) platforms, rolling ladders, tarpaulins, ticket holders, toll ticket carriers;
- (9) water stills for battery service;
- (10) tools and portable testing equipment regardless of where used.

(c) Account 2311; Station Apparatus. This account includes private branch exchange equipment in addition to station apparatus. Equipment which is properly included in the term private branch exchange equipment is taxable at the one percent rate subject to the eighty dollar (\$80.00) maximum tax per article, whether classified by the Uniform System of Accounts as capital expenditures or as maintenance expense; however, all other equipment in this account is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Examples of items contained in Account 2311 which are taxable at the four percent state and applicable local rate are desk sets, hand sets, wall sets, mobile telephone equipment, backboards, battery boxes, booths, coil collectors, station wiring, protectors, arresters, ground rods, clamps, wire and similar associated equipment.

(d) Account 2341; Large Private Branch Exchange. This account contains equipment and apparatus necessary to the operation of the above named exchanges. The equipment and apparatus contained in this account which are properly included in the term private branch exchange equipment are subject to the one percent sales or use tax with a maximum tax of eighty dollars (\$80.00) per article, whether classified under the Uniform System of Accounts as capital expenditures or as maintenance expense, but does not include any tangible personal property which is station apparatus. Examples of items included in Account 2341 which are taxable at the four percent state (three percent until July 16, 1991) and applicable local rate are operators' chairs and equipment.

(e) Effective January 1, 1985, the gross receipts derived by a utility from sales of intrastate telephone service are subject to the three percent sales tax. The statute was amended effective January 1, 1989, to substitute the term "local telecommunications services" for the term "intrastate telephone service," as used in the above sentence, and to levy the three percent rate of tax only on receipts derived from local telecommunications services as defined by G.S. 105-120(e). A new subdivision, G.S. 105-164.4(a) (4c) was added, effective January 1, 1989, which levies a six and one-half percent sales tax on the gross receipts derived from toll or private telecommunications services, as defined by G.S. 105-120(e), that both originate from and terminate in the state which are not subject to the privilege tax under G.S. 105-120. The provisions of G.S. 105-164.4(a) (4c) do not apply to telephone membership corporations as described in Chapter 117 of the General Statutes. The receipts upon which the tax is due is the total amount derived from the sale of telecommunications services, including any charges that go into the delivery of the services that are a part of the sale of services valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller without any deduction on account of the cost of the services sold, the cost of materials used, labor or service costs, interest charged, losses or any other expenses whatsoever. Therefore, all charges for tangible personal property and services provided in the delivery of telecommunications services to the purchaser are a part of the sale of services upon which the tax is due, notwithstanding that some charges may be billed separately to the customer from the time or flat rate charges. Set forth in this Paragraph are the departmental interpretations as to the application of sales tax to transactions by telecommunications companies.

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- (1) Sales tax should be separately stated on the bill provided to each customer; however, the franchise tax is not to be separately stated on such bills.
- (2) A telecommunications company must report receipts from sales of telecommunications services on an accrual basis. The sale of the services is considered to occur when the company bills the customer for the sale and the applicable tax should be computed thereon. Such receipts must be reported on the Utilities and Municipalities Sales Tax Report, Form E-500E. Telecommunications companies with a monthly liability of three thousand dollars (\$3,000.00) or more are required to file monthly reports on or before the last day of the month following the month in which the tax accrues except the return for tax that accrues in May is due by June 25th of each year. A telecommunications company that is required to file a monthly return may file an estimated return for the first month, the second month, or both the first and second months of the quarter. There is no interest or penalty for an underpayment submitted with an estimated monthly return if the utility timely pays at least 95 percent of the amount due with a monthly return and includes the underpayment with the company's return for the third month of the same quarter. A telecommunications company with a monthly liability of less than three thousand dollars (\$3,000.00) that has been authorized by the Secretary of Revenue to file the Franchise Return, Form CD 311, on a quarterly basis will continue to file the Utilities and Municipalities Sales Tax Report, Form E-500E, on a quarterly basis by the last day of the month following the quarter covered by the return.
- (3) Charges for reconnecting services to customers after services have been terminated for nonpayment are a part of gross receipts from sales of telecommunications services and are subject to sales tax. Likewise, any charges for disconnecting services are subject to the sales tax.
- (4) Sales of telecommunications services directly to the United States Government or any agency thereof are not subject to sales tax. In order to be a sale to the United States Government, the Government or agency involved must make the purchase of the services and pay directly to the vendor the purchase price of the services. While sales directly to the United States Government or any agency thereof are exempt from sales tax, telephone companies should obtain a purchase requisition one time from each agency for their records.
- (5) Accounts of purchases representing taxable sales on which the sales tax has been paid that are found to be worthless and actually charged off for income tax purposes may at corresponding periods be deducted from gross sales provided, however, they must be added to gross sales if afterwards collected.
- (6) The local sales tax is not applicable to those receipts from telecommunications services subject to the state sales tax of three percent, but the local tax is applicable to receipts from sales and leases of tangible personal property subject to the four percent (three percent until July 16, 1991) state rate of tax.
- (7) Late payment charges are not subject to sales tax.
- (8) Any return check charges on customers' checks returned by a bank because of insufficient funds are not subject to sales tax.
- (9) Telecommunications companies, other vendors or lessors that sell or lease telecommunications equipment are liable for collecting and remitting the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax on the amounts of such sales or leases. Such tax is to be reported on the monthly, quarterly or semimonthly sales and use, tax reports, and should not be reported on the Franchise Return, Form CD-311, or the Utilities and Municipalities Sales Tax Report, Form E-500E.

History Note: Statutory Authority G.S. 105-164.4 105-164.6; 105-262;

Eff. February 1, 1976;

Amended Eff. October 1, 1991; October 1, 1990; July 1, 1989; May 1, 1985.

.3202 TELEPHONE COMPANIES: SPECIFIC FOUR PERCENT ITEMS

All sales of tangible personal property to telephone and telegraph companies which is not properly included in the terms central office equipment, switchboard equipment, private branch exchange equipment or prewritten computer programs used in providing telephone services to their subscribers, as explained in Regulation 17 NCAC 7B .3201 are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. This includes all canned or prewritten computer programs to be used for administrative purposes unless specifically exempt by statute; all equipment, materials, supplies and apparatus to be used for distribution purposes; apparatus or equipment chargeable to other accounts pursuant to the instructions set out in the notes appearing

under Accounts 2124, 2211, 2212, 2215, 2220, 2231, 2232, 2311 and 2341 in the Federal Communications Commission's telecommunication rules and regulations; all building materials, supplies, fixtures and equipment of every kind and description annexed to or in any manner becoming a part of a building or structure.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; March 1, 1984; January 1, 1982.*

.3203 TOLL OR PRIVATE TELECOMMUNICATIONS SERVICES

Effective January 1, 1989, the gross receipts derived from toll telecommunications services or private telecommunications services as defined by G.S. 105-120(e) that both originate and terminate in the state which are not subject to the privilege tax under G.S. 105-120 are subject to a six and one-half percent state sales tax. Such receipts are not subject to the state four percent (three percent until July 16, 1991) or local sales taxes. This six and one-half percent sales tax is not refundable under the provisions of G.S. 105-164.14(b) or (c). This levy does not apply to telephone membership corporations as described in Chapter 117 of the General Statutes nor does it include those companies that provide pager services by means other than telephonic quality communications.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. July 1, 1989;
Amended Eff. October 1, 1991; October 1, 1990.*

SECTION .3300 - ORTHOPEDIC APPLIANCES

.3301 EXEMPT ORTHOPEDIC APPLIANCES

Sales of crutches, artificial limbs, artificial eyes, hearing aids, false teeth, eyeglasses ground on prescription of physicians or optometrists, pulmonary respirators sold on prescription of physicians, whether worn on the person or not, and other orthopedic appliances when the same are designed to be worn on the person of the owner or user, are exempt from the four percent (three percent until July 16, 1991) state tax and any applicable local sales and use tax. The term "orthopedic appliances" includes headgear, bows, neckstraps, wires, bands, brackets, rubber bands and jackscrews 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. Items which are deemed to be tax exempt orthopedic appliances are set forth in this Rule for illustrative purposes:

- (1) abdominal belts;
- (2) artificial noses and ears;
- (3) cervical braces;
- (4) clavicle splints;
- (5) crutch tips;
- (6) crutches;
- (7) dorsolumbar supports;
- (8) elastic anklets;
- (9) elastic arch binder;
- (10) elastic arch brace;
- (11) elastic bandage;
- (12) elastic hose;
- (13) elastic wrist bands;
- (14) head halters;
- (15) invalid walkers;
- (16) lumbosacral supports;
- (17) maternity supports;
- (18) obturators for cleft palate;
- (19) post-operative supports;
- (20) rib splints;
- (21) sacroiliac supports;
- (22) shoulder braces;
- (23) spinal braces;

- (24) stryker frames;
- (25) suspensories;
- (26) traction devices;
- (27) trusses;
- (28) walking canes;
- (29) wheel chairs;
- (30) hip prosthesis;
- (31) bone nails;
- (32) artificial heart valves;
- (33) artificial arteries;
- (34) iron lungs;
- (35) cervical neck collars;
- (36) leg braces;
- (37) ostomy bags, discs, tubes and belts (but not ostomy supplies, such as cements and removers, powders, germicides or similar supplies);
- (38) artificial limbs.

History Note: Statutory Authority G.S. 105-164.13; 105-262;

Eff. February 1, 1976;

Amended Eff. October 1, 1991; July 1, 1989; February 1, 1986; January 1, 1982.

.3302 ITEMS NOT ORTHOPEDIC APPLIANCES

Effective July 1, 1985, sales of therapeutic, prosthetic, or artificial devices, such as pulmonary respirators or medical beds, that are designed for individual personal use to correct or alleviate physical illness, disease or incapacity are exempt from sales and use tax when sold on the written prescription of a physician, dentist or other professional person licensed to prescribe; however, this exemption does not apply to the sale of a motor vehicle or to sales to persons not made pursuant to a written prescription of a physician, dentist or other professional person licensed to prescribe. Vendors making sales of therapeutic, prosthetic, or artificial devices pursuant to written prescriptions must keep sales records which clearly segregate such prescription sales. All original prescriptions must be filed and kept available for inspection by the Secretary of Revenue or her authorized agent. The items listed in this Rule are not orthopedic appliances within the meaning of G.S. 105-164.13(12) and are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax when sold to users or consumers in this state unless sold pursuant to a written prescription as provided herein:

- (1) athletic supporter;
- (2) ball o foot cushions;
- (3) bunion protector;
- (4) bunion reducer;
- (5) foot cushion;
- (6) heel cushions;
- (7) shoe insoles;
- (8) toe flex;
- (9) walk strate pads;
- (10) wigs;
- (11) heating pads;
- (12) heat lamps;
- (13) oxygen regulators (medical);
- (14) oxygen tents;
- (15) vaporizers.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;

Eff. February 1, 1976;

Amended Eff. October 1, 1991; February 1, 1986.

SECTION .3400 - MEMORIAL STONE AND MONUMENT DEALERS AND MANUFACTURERS

.3401 MEMORIAL STONE SALES

(a) Except as provided in Paragraph (b) of this Rule, sales of memorial stones to users or consumers are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Where the seller of a memorial stone or monument agrees to install such stone or monument upon a foundation, a segregation must be made of materials used and installation charges involved, on an invoice given to the customer at the time of the sale. The seller may deduct the installation labor costs or services from the gross proceeds of the sale only when a segregation of the billing is made to the customer; otherwise, the total charge is taxable.

(b) Effective July 1, 1986, the first fifteen hundred dollars (\$1,500.00) of all funeral expenses, including gross receipts from tangible personal property furnished and services rendered by funeral directors, morticians and undertakers, or by monument and memorial stone dealers, shall be exempt from sales or use taxes. The term "funeral expenses", as used in this Rule, shall include charges by monument or memorial stone dealers for the sale and installation of memorial stones and monuments purchased by the estate of a deceased person and allowed as a funeral expense. It shall also include charges by monument and memorial stone dealers for the sale and installation of memorial stones and monuments purchased by a family member or other person responsible for the funeral expenses within one year after the death of the deceased person. The fifteen hundred dollars (\$1,500.00) exemption is applicable to the total charge for the sale and installation of a memorial stone or monument notwithstanding that the installation charge may be separately stated on the invoice at the time of the sale and in the vendor's records. Vendors making sales of memorial stones and monuments or services subject to the fifteen hundred dollars (\$1,500.00) exemption must keep sales invoices, books and other records showing the name of the purchaser, the total sales price of the tangible personal property, the date of the sale, the date of the death of the deceased person and the total sales price of all tangible personal property and services furnished.

*History Note: Statutory Authority G.S. 105-164.3 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 1, 1990.*

.3402 MONUMENT MANUFACTURERS: TOOLS AND SUPPLIES

Sales to monument manufacturers of stencils, abrasives and cutting tools and equipment used by such manufacturers in the cutting, shaping, and polishing process and the solvents used to remove the stencils from the monuments are subject to the one percent rate of tax. Monument dealers who do not cut, shape, polish and otherwise process monuments are not classified as manufacturers and sales of stencils and other supplies to monument dealers for use in lettering or polishing monuments which they sell are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.3403 SUPPLIES FOR MONUMENT INSTALLATION

Purchases of sand, cement, lumber and other tangible personal property by monument dealers for use in installing monuments are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Charges by dealers to their customers for installing monuments are exempt from tax when such charges are separately stated from the charge for the monument.

*History Note: Statutory Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

SECTION .3500 - MACHINISTS: FOUNDRYMEN: AND PATTERN MAKERS

.3501 IN GENERAL

(a) Sales to users or consumers of dies, castings, patterns, tools, machinery and any other tangible personal property made by machinists, foundrymen or pattern makers, and parts and other tangible personal property fabricated and sold for use or consumption on or with such items of tangible personal property, are subject to the four percent (three percent until July 16, 1991) state tax and any applicable

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local sales or use tax unless such sales qualify for the one percent rate of tax under the provisions of G.S. 105-164.4(a)(1d), or are wholly exempt from the tax under the provisions of G.S. 105-164.13.

(b) The tax due hereunder shall be computed at the applicable rate on the full selling price of such property, including charges for any services that go into the fabrication, manufacture or delivery thereof.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; January 1, 1982; May 11, 1979; September 30, 1977.

.3502 MOLDS: DIES: MILL MACHINERY

Sales of molds, patterns or dies by machinists, foundrymen, pattern makers or others to manufacturing industries and plants for their use as mill machinery or mill machinery parts and accessories are subject to the one percent state rate of sales or use tax with an eighty dollar (\$80.00) maximum tax per article. Sales of molds, patterns or dies to other users or consumers in this state are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; October 1, 1988.

.3505 MOLDS: DIES: NONMANUFACTURERS' USE

Manufacturers making retail sales of molds, patterns or dies to nonmanufacturing users or consumers within and without this state, with right of possession and title thereto passing to such customers, are liable for collecting and remitting the three percent four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on such sales, when the manufacturers selling the molds, patterns or dies retain them in their possession within this state for use in manufacturing tangible personal property for sale to such customers.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; October 1, 1988.

SECTION .3600 - FUNERAL EXPENSES

.3601 IN GENERAL

(a) Except as otherwise provided in Paragraph (b) of this Rule, all funeral expenses, including gross receipts from tangible personal property furnished or services rendered by funeral directors, morticians or undertakers are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Where coffins, caskets, vaults and memorial stones or monuments are provided by the same funeral home and a separate charge is paid for services, the provisions of this Rule shall apply to the total for both. For additional information regarding the sale and installation of memorial stones and monuments, see 17 NCAC 7B .3400.

(b) Prior to July 1, 1986, the first one hundred fifty dollars (\$150.00) of the charge for such tangible personal property furnished or services rendered, or both, shall not be subject to the tax. On and after July 1, 1986, the first one hundred fifty dollars (\$150.00) statutory exclusion is increased to one thousand five hundred dollars (\$1,500). In addition to the statutory exclusion, the following charges may also be excluded from taxable receipts provided such charges are separately and accurately identified in the funeral directors' records: those services which have been taxed pursuant to G.S. 105-164.4(4); those services performed by any beautician, cosmetologist, hairdresser or barber employed by or at the specific direction of the family or personal representative of the deceased; burial permit fees for interment in church cemeteries; stone deposits advanced to city and church cemeteries to guarantee the erection of a grave stone within a given time; transportation charges by common carriers for transporting the deceased from the place of death to the place of interment; honorariums; ambulance service in cases of final illness where the bill was not paid prior to death and is subsequently added to the funeral bill; cemetery lots; cash advances; grave opening fees; charges for telephone calls to friends and relatives of the deceased for the convenience of and at the request of the family of the deceased when billed separately to the family; charges for death certificates procured by or at the specific direction of the family or personal representative of a deceased person; and amounts paid directly to the funeral

director by agencies of the federal government except death benefit payments by the Social Security Administration which require the authorization of the surviving spouse.

(c) Sales to funeral directors, morticians and undertakers of graveside equipment, embalming fluid, cosmetics, disinfectants, chairs, flower racks, casket trucks and other supplies or equipment for use in conducting their businesses are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; February 1, 1987; February 1, 1986; January 3, 1984.*

SECTION .3700 - LUBRICANTS: OILS AND GREASES

.3701 LUBRICATING SERVICE

Chassis lubricants or greases, equipment and other tangible personal property used in lubricating motor vehicles are subject to the three percent sales or use tax when sold to service stations, garage operators and other persons engaged in the business of lubricating motor vehicles. Charges by the above businesses for services rendered in lubricating motor vehicles are not subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax when sold to tax provided such businesses maintain records which separately reflect the charges for lubricating motor vehicles and the charges for any sales of tangible personal property.

*History Note: Statutory Authority G.S. 105-164.3; 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.3702 SALES OF LUBRICANTS

Sales of motor oils, transmission or differential oils or greases, or other such oils and greases by lubricating stations, service stations, garage operators and similar businesses to users or consumers are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax and such businesses must collect and remit the tax thereon to the department, except that sales of oils and lubricants to manufacturers for use in lubricating production machinery are taxable at the rate of one percent. Sales of such property by any vendor to commercial fishermen for use by them in the commercial taking or catching of seafood and sales of such property for use by or on ocean-going vessels which ply the high seas in transporting in interstate or foreign commerce freight or passengers for hire exclusively are exempt from the tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.3703 CAR WASH BUSINESSES

The gross receipts from washing cars by persons operating a car wash business are exempt from tax. Such persons are liable for payment of the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on tangible personal property which they purchase for use in the operation of such businesses. If car wash operators make sales of tangible personal property through vending machines or otherwise, they are liable for collecting and remitting tax thereon.

*History Note: Statutory Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

SECTION .3800 - PREMIUMS: GIFTS AND TRADING STAMPS

.3801 PREMIUMS AND GIFTS

Sales to a retailer of tangible personal property for use by the retailer as premiums or gifts are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax

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and he should remit the tax on such purchases to his suppliers. If the suppliers are located outside this state and do not collect the North Carolina sales or use tax on such purchases, the purchaser becomes liable for remitting such tax directly to the department. If the property purchased is of the character customarily sold by the retailer, he may purchase the same without payment of the tax if he furnishes his supplier with a certificate of resale, Form E-590. In such case, the retailer must remit to the department the tax on all taxable articles withdrawn from stock and used as premiums or gifts. The provisions of this Paragraph do not apply to any purchases of property to be used in redeeming trading stamps or other media.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.3802 SALES OF TRADING STAMPS

Sales of trading stamps to a registered merchant, whether a trading stamp company or other retailer, are deemed to be sales for the purpose of resale and such sales are not subject to the tax. When the retailer distributes the stamps to his customers in connection with retail sales of other property, the stamps are considered to be included in the price of the items purchased by such customers. Sales to a trading stamp company of catalogues, stamp books, advertising matter or other tangible personal property furnished free to retail merchants or used by the trading stamp company to promote its stamp program are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Sales of such items to other retail merchants are also subject to said tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.3803 REDEMPTION OF TRADING STAMPS

(a) Trading stamp companies which redeem trading stamps are deemed to be engaged in the business of selling tangible personal property at retail for a consideration. Such companies must register with the department and collect and remit the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax due on all such sales. The tax is to be computed on the redemption value of the stamps, stamp book, or other media which the trading stamp company accepts for the premium.

(b) A trading stamp company or other vendor which sells goods and trading stamps to a retailer who will himself redeem the stamps should secure a certificate of resale from such retailer since, in such instances, the trading stamp company or other vendor is deemed to be selling tangible personal property for the purpose of resale. Such retailer is liable for the four percent (three percent until July 16, 1991) state tax and any applicable local sales tax on the redemption value of the stamps, stamp book or other media which he accepts for any such premium.

(c) If a trading stamp company or other merchant has questions relative to any transaction or operation involving the use of trading stamps, premiums or gifts, such trading stamp company or other merchant should submit all pertinent facts relating thereto to the department for a ruling as to their tax status.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.3804 GIFT CERTIFICATES

Charges by vendors for gift certificates which can be exchanged for merchandise are not subject to sales tax. When the holder of such gift certificates exchanges the certificate for merchandise, the transaction is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. The basis for the tax is the sales price of the property.

*History Note: Statutory Authority G.S. 105-164.3; 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

SECTION .3900 - CONTAINERS: WRAPPING: PACKING AND SHIPPING MATERIALS

.3901 IN GENERAL

(a) Sales to manufacturers, producers, wholesalers and retailers of wrapping paper, labels, bags, cartons, and the other items specified in G.S. 105-164.13(23) are not subject to the tax when such materials are used for packaging, shipping, or delivering tangible personal property sold at wholesale or retail, and when such materials constitute a part of the sale of such tangible personal property and are delivered with it to the customer. The exemption does not apply to items which are used solely for delivery purposes and which do not become a part of the sale of tangible personal property.

(b) Sales of any such items of tangible personal property to persons who use the same in rendering services and all other sales of any such items of tangible personal property which are used for any purpose other than to accompany the sale of tangible personal property are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax, except those sales to commercial laundries or to pressing and dry cleaning plants which are tax exempt under G.S. 105-164.13(10), sales to freezer locker plants of wrapping paper, cartons and other supplies which are taxed at the rate of one percent under G.S. 105-164.4(a)(1c)f and sales of containers to farmers or producers for use in planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail which are taxed at the rate of one percent under the provisions of G.S. 105-164.4(a)(1d)i.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; April 1, 1986; May 11, 1979.*

.3902 HOGSHEADS: CARDBOARD CONTAINERS: ETC.

Sales of wooden hogsheads, cardboard containers and strapping to operators of prizeeries for use in moving tobacco from the prizeery to the redrying plant are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.3903 PACKAGING MATERIALS: WAREHOUSEMEN AND MOVERS

Sales of packaging and packing materials to warehousemen and movers for use in the performance of storage and moving services are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.3904 MARKING MACHINES

Sales of marking machines to retailers and wholesalers for use in imprinting price, size, or other information on tickets, tags, etc., are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.3905 ICE HANDLING SUPPLIES

Sales of ice picks, ice tongs, tarpaulins and reusable canvas bags to merchants for use in the delivery of ice to customers, but which do not become a part of the sale, are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;

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Eff. February 1, 1976;
Amended Eff. October 1, 1991.

SECTION .4000 - FERTILIZER: SEEDS: FEED AND INSECTICIDES

.4003 FEED: REMEDIES: VACCINES: MEDICATIONS: FOR LIVESTOCK AND POULTRY

Sales of remedies, vaccines, medications, litter materials and feed for livestock and poultry, including cattle, horses, mules, sheep, chickens, turkeys, and other domestic animals usually found on a farm and sales of remedies, vaccines, medications or feed for animals, bees, or poultry held or produced for commercial purposes are exempt from sales or use tax. The terms "remedies" and "medications" shall mean all medicines in the generally accepted sense of the term and also includes tonics for internal use, vitamins, ointments, liniments, antiseptics, anaesthetics and other medicinal substances having preventive and curative properties in the prevention, treatment or cure of disease in animals. The term "feed" includes dietary supplements, such as minerals, oyster shells, salt, bone meal, and other similar preparations or compounds to be fed directly or to be mixed with feed for livestock or poultry for normal growth, maintenance, lactation, or reproduction, but does not include sand or grit. Retail sales of sand or grit for use in the production of livestock or poultry are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Retail sales of remedies, vaccines, medications, litter materials and feed for pets, such as birds, cats and dogs, are subject to the four percent state tax and any applicable local sales or use tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; May 1, 1990; May 11, 1979.

.4006 HOUSEHOLD INSECTICIDES: ETC.

Sales of rodenticides, insecticides, herbicides, fungicides and pesticides for household purposes are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Sales of insecticides for use on lawns and golf courses are subject to the four percent rate of tax. Sales of insecticides and herbicides to contractors for use in performing contracts to clear highway rights-of-way are subject to the four percent state tax and any applicable local sales or use tax.

History Note: Statutory Authority G.S. 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; December 1, 1982.

SECTION .4100 - ARTISTS: ART DEALERS: PHOTOGRAPHERS: ETC.

.4101 OBJECTS OF ART

Retail sales of objects of art and art supplies are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax except those sales to the North Carolina Museum of Art of paintings and other objects or works of art for public display the purchases of which are financed in whole or in part by gifts or donations. The exemption applies only to sales to the museum or purchases by the museum as specified herein. Purchases of works of art by the museum that do not involve donated funds and purchases by the museum of other tangible personal property for use or consumption are taxable.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.

.4102 PHOTO FINISHING

The entire charge for photo finishing, including all charges for developing or printing, is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;

Amended Eff. October 1, 1991.

.4103 PHOTO TINTING

The tinting or coloring of photographs delivered to a photographer or photo finisher by a customer constitutes a service and the receipts therefrom are not taxable. Sales to photographers and photo finishers of materials to be used by them in performing such services are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.4104 BLUEPRINTS

Sales of photostatic copies or blueprints by a photostat or blueprint producer or others to consumers or users are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax to be computed on the gross receipts.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.4105 PHOTO SUPPLIES AND MATERIALS

Sales of frames, films and other articles by photographers, photo finishers or others to users or consumers are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Gross receipts from sales of photographs by commercial or portrait photographers or others are subject to the four percent state tax and any applicable local sales or use tax; however, sales to commercial or portrait photographers of materials which become an ingredient or component part of the finished picture are not subject to the tax. Mounts, frames, and paper become an ingredient or component part of the finished picture and the sales of such materials to commercial or portrait photographers are not subject to the tax. Materials such as films, chemicals, proof paper, cameras, trays, and similar items that are used in the manufacture or fabrication of such pictures are subject to the one percent rate of tax when such materials are sold to commercial or portrait photographers.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.4106 PHOTOENGRAVINGS: ELECTROTYPES: ETC.

Sales to commercial printers of photoengravings, electrotypes and lithographs, when the same are not for resale, but which the purchaser uses in printing tangible personal property for sale are subject to the one percent rate of sales or use tax. Sales of these items and all other printing equipment and supplies, including paper and ink, to consumer or captive printers are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.4107 MOVIE FILM DEVELOPING

The entire charge for developing movie film for users or consumers is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax unless subject to a lesser rate of tax by Statute. Charges to commercial television stations, which operate under the regulation and supervision of the Federal Communications Commission, for developing film for use by them in broadcasting and telecasting programs are subject to the one percent rate of tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 5, 1980.*

.4109 BLUEPRINTS SOLD TO ARCHITECTS

Sales of blueprints, photographs and other tangible personal property to an architectural or engineering firm for use or consumption and not for resale are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

**SECTION .4200 - SALES TO THE UNITED STATES GOVERNMENT OR AGENCIES
THEREOF**

.4202 EXEMPT SALES TO UNITED STATES GOVERNMENT

(a) Purchase Requisitions: Some agencies, instrumentalities, organizations, or activities of the United States Government listed in 17 NCAC 7B .4201 will be using purchase requisitions or affidavits in connection with their purchases. A vendor making sales directly to the United States Government, or any agency or instrumentality thereof, that issues purchase requisitions or affidavits must obtain and keep copies of such purchase requisitions or affidavits signed by the purchasing officer stating that such sales are being made directly to the United States Government or an agency or instrumentality thereof. Copies of such purchase requisitions or affidavits must be retained by the vendor in his files for three years following the date of sale and must be available for inspection by the Secretary of Revenue or her agents upon request.

(b) United States Government Bankcards: All departments and agencies within the Federal Government are authorized to use the United States Government Bankcard or I.M.P.A.C. (International Merchant Purchase Authorization Card) card in connection with their purchases. This card is a purchasing card and may not be used by employees for travel or entertainment. The United States Government obtains title to the property purchased by the use of the card and pays the bank directly for the property. The face of the card is embossed with the statement "US GOVT TAX EXEMPT" directly above the name of the card holder so that the copy which must be retained by the merchant in his files for three years following the date of sale will have the necessary proof that the property was obtained for and paid for by the Federal Government if inspected by the Secretary of Revenue or her agents.

(c) Diner's Club Credit Cards: At this time, the Diner's Club Corporate Charge Card has only been issued to the Bureau of the Census and the Defense Nuclear Agency and is used by federal agencies to pay for group lodging and rental of facilities and equipment used to train employees. The cards issued to employees of the Bureau of the Census are embossed with the name of the employee followed by "Bureau of the Census" followed by the statement "For Official Use Only". The cards which are issued to the Defense Nuclear Agency are embossed with the name of the employee followed by the date the card was issued, the name of the state where the employee works, the letters "U.S." and the period during which the card is valid.

Many United States Government employees are issued individual Diner's Club cards for use when traveling. Purchases made by employees on these cards are subject to the retail sales tax because the employee is required to pay charges and then get reimbursed by the government. Thus, the sale is not made directly to the United States Government. The individual (and taxable) card can be distinguished from the corporate card because the individual Diner's Club card shows "Department of Commerce - Census" after the employee's name and there is no statement that the card is for official use. Also, this particular card is to be used to make individual purchases rather than group purchases. Copies of such credit card receipts must be retained by the vendor in his files for three years following the date of sale and must be available for inspection by the Secretary of Revenue or her agents upon request.

*History Note: Statutory Authority G.S. 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; August 1, 1988.*

.4203 CONTRACTORS FOR THE FEDERAL GOVERNMENT

Sales of tangible personal property to contractors for use in performing contracts with the United States Government or its agencies and instrumentalities are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.4206 FED SAVINGS/LOAN ASSOC: NATL BANKS/ST CHARTERED CREDIT UNIONS

Sales of tangible personal property to federal savings and loan associations, state banks, national banks, and state chartered credit unions for use or consumption are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.4207 RESERVE OFFICERS' UNIFORMS

Sales of uniforms, other than sales directly to the United States Government, for use in reserve officers training programs are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

SECTION .4400 - LEASE OR RENTAL

.4402 ROYALTIES

Royalties paid, or agreed to be paid, either on a lump sum or production basis, for tangible personal property used in this state are rentals subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.4403 MAINTENANCE OF LEASED PROPERTY

(a) Sales of tangible personal property to registered lessors or retailers for the purpose of lease or rental exclusively are wholesale sales and not subject to tax provided properly executed certificates of resale are furnished to the vendors of such property. Sales of lubricants, repair parts and accessories to such lessors or retailers who use them to repair, recondition or maintain such lease or rental personal property are also wholesale sales when properly executed certificates of resale are provided to vendors of this type property. Lessors are responsible for payment of any applicable state and local tax on the cost price of such items if they are used for a purpose other than repairing or maintaining leased or rented property or resale as such. Any tax due thereon is to be paid to the Secretary of Revenue on the lessors' or retailers' sales and use tax returns.

(b) When the lessee purchases lubricants and repair parts to maintain tangible personal property being leased or rented, the lessee is liable for payment of the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on the cost price of such purchases to the vendors or to the Secretary of Revenue. If a separate maintenance agreement for a fixed fee where no separate charge is made for parts and labor is executed by the lessor and lessee whereby the lessor or the lessee agrees, for a consideration separate from the lease payments, to maintain property being leased or rented, purchases of repair parts and lubricants by either party are subject to the tax payable by the purchaser thereof as described in this Rule.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-262;
Eff. February 1, 1976;*

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Amended Eff. October 1, 1991; March 1, 1984.

.4406 INSURANCE ON LEASED PROPERTY

The gross proceeds derived from or amounts agreed to be paid for the lease or rental of all kinds and types of tangible personal property for storage, use or consumption within this state are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use taxes. The tax shall be computed on the gross receipts, gross proceeds or rental payable without any deduction whatsoever for any insurance charges paid to insure the property of the lessor or to insure the lessor against liability for damages to the property or person of others. When the lessee purchases insurance on his own property or to insure himself against liability for damages to the property or person of others, insurance premiums paid by such lessee directly to the insurer or to the lessor as agent for transmittal to the insurer are exempt from tax. If the lessee pays such insurance premiums directly to the lessor as agent for transmittal to the insurer, such amounts are exempt from tax provided they are separately stated from the charges for the lease or rental of tangible personal property in the lessor's records and on the invoice given to the lessee; otherwise, the total amount charged by the lessor is subject to the tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 5, 1980.*

.4414 GOLF DRIVING RANGE FEES

Charges by golf driving ranges for the use of the range are not subject to sales or use taxes. In such cases, the person who pays the charge is generally entitled to the use of a golf club, basket of balls and the driving range; thus, there is no sale or rental of tangible personal property. Sales or rentals of tangible personal property by such businesses are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.3; 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.4415 SKATING RINK FEES

Charges for the use of a skating rink or bowling alley are not subject to sales or use taxes; however, if such businesses rent tangible personal property, such as skates and shoes, charges for same are subject to sales tax. Sales of tangible personal property by such businesses are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.3; 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.4416 HWY USE TAX/ALT GROSS RCPTS TAX/MOTOR VEH HELD/LEASE/RENTAL

(a) G.S. 105-187.5 provides that, effective October 1, 1989, lessors of motor vehicles may elect to pay the highway use tax to the Commission of Motor Vehicles when applying for a certificate of title for a motor vehicle purchased by the retailer for lease or rental or may elect to collect and remit the tax to the Secretary of Revenue on the lease or rental receipts derived therefrom. Any credit allowed by a vendor in the lease agreement for the equity in a traded-in vehicle is considered a part of the gross receipts derived from the lease or rental of a motor vehicle and is subject to the highway use tax. Effective April 23, 1991, G.S. 105-187 was amended by adding Section 11 which allows lessors of motor vehicles the option of paying the highway use tax to the Commissioner of Motor Vehicles rather than the alternate gross receipts tax to the Secretary of Revenue on motor vehicles held in their inventory for lease prior to October 1, 1989, and leased or rented on or after that date. To make the election allowed by this Section, a retailer must complete a form provided by the Division of Motor Vehicles. That Division will notify the Secretary of Revenue of a retailer who makes an election under this Section. If this election is made, no credit will be allowed for any tax paid on the purchase or rental of a motor vehicle under the Sales and Use Tax Law and for any tax paid on gross receipts under the Highway Use Tax Act. The taxes collected under this Section will be credited to the General Fund.

(b) Effective October 1, 1989, the rate of highway use tax on motor vehicle lease or rental receipts will be eight percent for the first 90 continuous days of lease or rental of a vehicle to the same person, and the rate will reduce to three percent for the remainder of the continuous period during which the vehicle is leased or rented to that person. The maximum tax of one thousand dollars (\$1,000.00) [effective July 1, 1993, the maximum tax will increase to one thousand five hundred dollars (\$1,500.00)] applicable to the sale of a motor vehicle applies when the vehicle is leased or rented to the same person for more than 90 continuous days and the tax paid by a person from the first day of such period applies toward the maximum tax.

(c) Effective July 1, 1991, the Highway Use Tax Act was amended to define long-term and short-term lease or rental. Long-term lease or rental means a written agreement to lease or rent property for at least 365 continuous days to the same person. Short-term lease or rental is a lease for less than 365 continuous days. The rate of tax on the gross receipts from the short-term lease or rental of a motor vehicle is eight percent and the tax rate on the gross receipts from the long-term lease or rental of a motor vehicle is three percent. The maximum tax of one thousand dollars (\$1,000.00) [effective July 1, 1993, the maximum tax will increase to one thousand five hundred dollars (\$1,500.00)] applies to a continuous lease or rental of a motor vehicle to the same person.

(d) A retailer who elects to pay tax to the Secretary of Revenue on the gross receipts from the lease or rental of a motor vehicle must make this election when applying for a certificate of title for the vehicle. To make the election, the retailer must complete a form provided by the Division of Motor Vehicles. Once made, an election is irrevocable. The eight percent rate of tax will be deposited in the General Fund. The three percent rate of tax will be deposited to the Highway Trust Fund. Separate forms for reporting the separate rates of tax on motor vehicle lease receipts will be provided by the Department of Revenue to motor vehicle lessors upon receipt of their request for such forms.

History Note: Statutory Authority G.S. 105-187.3; 105-187.4; 105-187.5; 105-187.6; 105-187.8; 105-187.9; 105-187.11; 105-262; Eff. October 1, 1991.

SECTION .4500 - LAUNDRIES: DRY CLEANING PLANTS: LAUNDERETTES: LINEN RENTALS: AND SOLICITORS FOR SUCH BUSINESSES

.4501 RECEIPTS OF LAUNDRIES: ETC.

(a) The gross receipts derived from the following are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax:

- (1) services rendered by pressing clubs, cleaning plants, hat blocking establishments, dry cleaning plants, laundries, including wet or damp wash laundries and businesses known as launderettes and laundralls, and all similar type businesses;
- (2) the rental of clean linen, towels, wearing apparel and similar items;
- (3) soliciting cleaning, pressing, hat blocking and laundry;
- (4) rug cleaning services performed by persons operating rug cleaning plants or performed by any of the businesses named in this Rule when the rug cleaning service is performed at the plant; receipts from rug cleaning services performed at the customer's location by any of the businesses included in this Rule are not subject to sales and use tax;
- (5) charges for laundering or dry cleaning property owned by lessors which is held for lease or rental.

Effective July 1, 1988, receipts derived from coin or token-operated washing machines, extractors and dryers are exempt from sales or use taxes. Retail sales of detergents, bleaches and other taxable items of tangible personal property through vending machines continue to be subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(b) Charges by the businesses named in (a) of this Rule for alterations or storage of garments are not a part of the gross receipts subject to tax when such charges are separately stated on their invoices and in their records. When such charges are not separately stated, the total charge is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Sales of thread, buttons, zippers, pockets, and other similar tangible personal property to such businesses for use or consumption in making repairs and alterations to garments being laundered, cleaned or pressed are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(c) When in addition to the services named in Paragraph (a) of this Rule, the herein-named businesses make retail sales of tangible personal property for which a separate charge is made, such sales are sub-

ject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales tax. Any charge for labor or services rendered in applying or installing such property are not subject to tax provided such charges are segregated from the charge for the tangible personal property sold on the invoice given to the customer at the time of the sale and in the vendor's records; otherwise, the total amount is subject to tax.

(d) Receipts derived through persons engaged in soliciting laundering or cleaning business are not subject to the tax if such solicitor is a registered retailer and he pays to the department the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on the total gross receipts derived from the business solicited.

*History Note: Statutory Authority G.S. 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; August 1, 1988.*

.4502 FUEL FOR LAUNDRIES: ETC.

The gross receipts derived by a utility from sales of electricity, other than receipts from the sale of electricity by a municipality whose only wholesale supplier of electric power is a federal agency and who is required by contract with that federal agency to make payments in lieu of taxes, and piped natural gas to laundries, dry cleaning plants and other users or consumers are subject to the three percent state rate of tax. The sales to the herein named businesses of other fuels for use in machinery used in the direct performance of the laundering or pressing and cleaning services are subject to the one percent rate of sales or use tax. Sales of fuel to such businesses for any other use or purpose are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; February 1, 1986; May 1, 1985.*

.4503 EQUIPMENT AND SUPPLIES FOR LAUNDRIES: ETC.

(a) Sales to laundries, dry cleaning plants and similar businesses of machinery used in the direct performance of the laundering or the pressing and cleaning service and parts and accessories thereto are subject to the one percent rate of sales or use tax with a maximum tax of eighty dollars (\$80.00) per article. The following items are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article when sold to the herein-named businesses:

- (1) washing machines, water heaters, water softener tanks, central control collection systems, pressing machines, marking machines, packaging machines, folding machines and similar cleaning machines;
- (2) hydraulic fluids used in laundry and dry cleaning machinery;
- (3) boiler compounds used in boilers furnishing water or steam to the laundering, pressing or cleaning machinery;
- (4) steam hose leading directly from the boiler to the laundering and dry cleaning machinery;
- (5) press pads and covers for laundering and dry cleaning machinery;
- (6) baskets, hampers, casters, or other containers used between the laundering and cleaning processes to transport or contain garments being laundered or cleaned;
- (7) carbon and carbon filters used for reprocessing cleaning compounds;
- (8) lint rolls and refills therefor;
- (9) conveyors used to transport garments along the laundering, cleaning, and pressing line during the process but not conveyors used before the laundering, cleaning, and pressing process begins or after it has been completed;
- (10) boiler room machinery, including valves, fittings and water pumps;
- (11) transformers located on or adjacent to motors which power machinery used in the direct performance of laundering and cleaning services.

(b) The following items are not classified as laundering, pressing or dry cleaning machinery or parts and accessories thereto and are, therefore, subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax when sold to the herein-named businesses:

- (1) coin operated musical devices, amusement devices, coin changers, vending machines and repair or replacement parts for such machines;
- (2) baskets, hampers, casters, or containers used for general purposes such as to pick up soiled garments or deliver clean garments;

- (3) smoke stacks, including the steel ladders attached thereto;
- (4) wiring used in the general wiring system and the transformers used in connection therewith;
- (5) sewing machines used in repairing or altering the customers' property and the replacement or repair parts to such machines;
- (6) tailoring supplies such as buttons, threads and zippers for use in repairing or altering garments for which no charge is made to the customer;
- (7) letterheads, monthly reports, envelopes and other office supplies;
- (8) protective clothing for employees such as rubber gloves, aprons, protective shoes, etc. whether paid for by the employer or the employee;
- (9) steam hose or pipe used in the general heating system;
- (10) janitorial supplies;
- (11) office furniture, fixtures and equipment, including cash registers;
- (12) uniforms for employees;
- (13) advertising materials;
- (14) structural or building materials, supplies, fixtures and equipment which shall become a part of or be annexed to any building or structure being erected, altered or repaired;
- (15) equipment used in the storage process to revitalize furs;
- (16) conveyors used before or after the laundering, pressing and cleaning process to transport garments but not those used to move the garments along the laundering, pressing and cleaning line;
- (17) lubricants used in laundering, pressing, or cleaning machines.
- (18) transformers used in connection with general wiring and power supply;
- (19) water softener chemicals.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; January 1, 1982.*

.4506 GARMENT REPAIRS AND STORAGE

Charges by commercial laundries and dry cleaners for repairs, alterations and storage of garments are not subject to sales tax when such charges are separately stated on the invoice given to the customer and in the vendor's records. Sales of buttons, thread, zippers, and cloth for pockets and similar items to such businesses for use or consumption in repairing, altering or storing the customers' property are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.3; 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.4509 UNIFORM RENTALS

Uniform rental businesses are not soliciting laundry or cleaning but are soliciting rental business for themselves. The total charge to such businesses by commercial laundries and dry cleaners for laundering or dry cleaning articles of tangible personal property which are to be leased or rented are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

SECTION .4600 - MOTOR VEHICLES AND BOATS

.4601 SALES AND PURCHASES OF AUTOMOBILES AND OTHER MOTOR VEHICLES

(a) The Sales and Use Tax Article was amended, effective October 1, 1989, to provide an exemption from sales and use taxes for sales of motor vehicles, the separate sales of a motor vehicle body and a motor vehicle chassis when the body is to be mounted on the chassis, and the sale of a motor vehicle body to be mounted by the manufacturer thereof on a motor vehicle chassis that temporarily enters the state for that purpose. Effective July 1, 1991, motor vehicle bodies mounted upon motor vehicles

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chassis that were titled and registered before the body was installed thereon are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

Prior to October 1, 1989, sales of motor vehicles, as defined in Paragraph (b) of this Rule, to users or consumers were subject to the two percent rate of tax with a maximum tax of three hundred dollars (\$300.00) applicable to the sale of any one motor vehicle. The tax was to be computed on the gross sales price of the motor vehicle less any allowance for a motor vehicle taken in trade as a credit or part payment on the sales price thereof. The gross sales price of the motor vehicle included any parts or accessories installed thereon at the time of the sale, labor for installing such parts or accessories, freight and any other charges for preparing the vehicle for sale. Parts or accessories sold separately from the sale of a motor vehicle are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax; however, charges for labor to install such parts or accessories are not subject to tax when separately stated on the customer's invoice and in the vendor's records.

Prior to October 1, 1989, separate sales of a new motor vehicle chassis and a new motor vehicle body to be installed thereon, whether sold by the same or different retailers, were subject to the maximum tax on sales of motor vehicles. Such sales are treated as a single sale. Retailers making sales of this nature must retain in their permanent records evidence of the amount of tax paid on the purchase of a new body or chassis and compute the amount of additional tax to be charged by determining the difference between the tax already paid and the amount of tax due on the combined selling price of such body and chassis subject to the maximum tax. When a new motor vehicle body was sold to be installed on a used motor vehicle chassis, the tax was to be computed on the sales price of the new motor vehicle body, subject to the maximum tax without regard to any tax previously paid on the used chassis.

Effective July 1, 1991, G.S. 105-164.13(32) was rewritten to exempt the sale of a motor vehicle body to be mounted on a motor vehicle chassis when the certificate of title has not been issued for the chassis. Motor vehicle bodies mounted upon motor vehicle chassis that have been previously titled and registered will be subject to the state rate of three percent or four percent plus the applicable local sales tax. Prior to October 1, 1989, the lease receipts derived from the lease or rental of a motor vehicle to a user or consumer in this state were subject to the two percent sales or use tax. The maximum tax of three hundred dollars (\$300.00) was applicable to the receipts derived from the lease or rental of a motor vehicle for a stipulated period of time. Persons who leased or rented motor vehicles were to collect and remit the tax on the separate retail sale of a motor vehicle in addition to the tax imposed on the lease or rental of the motor vehicle.

(b) Motor Vehicle defined: For the purposes of the Sales and Use Tax Article, the term motor vehicle means a vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:

- (1) a moped as defined in G.S. 20-4.01(27)(d1);
- (2) special mobile equipment as defined in G.S. 20-4.01(44);
- (3) a tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11);
- (4) a farm tractor or other implement of husbandry;
- (5) a manufactured home; or
- (6) road construction or road maintenance machinery or equipment.

(c) Special Mobile Equipment Defined: Every truck, truck-tractor, industrial truck, trailer, or semi-trailer on which have been permanently attached cranes, mills, well-boring apparatus, ditch digging apparatus, air compressors, electric welders or any similar type apparatus or which have been converted into living or office quarters, or other self-propelled vehicles which were originally constructed in a similar manner which are operated on the highway only for the purpose of getting to and from a non-highway job and not for the transportation of persons or property or for hire. This shall also include trucks on which special equipment has been mounted and used by the American Legion or Shrine Temples for parade purposes, trucks or vehicles privately owned on which fire-fighting equipment has been mounted and which are used only for fire-fighting purposes, and vehicles on which are permanently mounted feed mixers, grinders, and mills although there is also transported on the vehicle molasses or other similar type feed additives for use in connection with the feed-mixing, grinding or milling process.

(d) Prior to October 1, 1989, the sales or use tax was to be computed on the gross sales price of a motor vehicle less any allowance for a motor vehicle taken in trade as a part of the consideration for the purchased vehicle. Prior to October 1, 1989, sales of all motor vehicles accepted in trade or repossessed by vendors were subject to sales or use tax regardless of the fact that such motor vehicles may have been acquired by trade or repossessed by vendors. Prior to October 1, 1989, when property, other than motor vehicles, was taken in trade as a part of the consideration for a purchased vehicle, the

sales or use tax was to be computed and paid on the full gross sales price of the motor vehicle without any deduction whatever on account of any trade-in credit or allowance. The sale of used property, other than a motor vehicle, by the dealer who accepted same in trade would then be exempt from tax. Effective October 1, 1989, motor vehicles are exempt from sales and use taxes and the sale of used property, other than a motor vehicle, taken in trade as a part of the consideration for the purchased vehicle is subject to sales tax. Repair parts withdrawn from inventory by a dealer and installed upon such property for sale are not subject to the tax. Certificates of resale may be executed by registered dealers when purchasing repair parts for resale or for use in reconditioning such property for sale.

(e) Prior to October 1, 1989, sales of motor vehicles to a registered merchant for resale were not subject to tax when supported by properly executed Resident and Nonresident Retail or Wholesale Merchant's Certificate of Resale, Form E-590, or other evidence in writing adequate to support the conclusion that he was registered with the Department of Revenue or in a taxing jurisdiction outside this state for sales and use tax purposes and that the property was being purchased for the purpose of resale. Certificates of resale may also be executed by registered motor vehicle leasing firms when purchasing motor vehicles which they will lease or rent to their customers since such firms must remit tax on their lease or rental receipts. Prior to October 1, 1989, sales of motor vehicles to out-of-state merchants who accept delivery of the vehicles in this state for resale in their respective states are not subject to tax provided such merchants are registered for sales and use tax purposes in a taxing jurisdiction outside this state and furnish the North Carolina merchant a properly completed certificate of resale. Reference is made to 17 NCAC 7B .3201 for further information regarding sales to nonresident merchants.

(f) Prior to October 1, 1989, sales of motor vehicles to nonresident purchasers which were delivered to them in North Carolina for immediate transportation to and use in another state in which such vehicles are required to be registered were not subject to sales tax. For the purpose of the exemption, the term "immediate transportation to . . . another state" means to either drive or transport the vehicle outside North Carolina en route to its state of registration within seventy-two hours after the purchase thereof; however, purchases of motor vehicles by military personnel for use in North Carolina are taxable notwithstanding that such persons might have registered the motor vehicles in their home states. The seller must have obtained from the purchaser and furnished to the Secretary of Revenue an Affidavit for Exemption of Motor Vehicle Sold for Immediate Transportation and Use Outside of North Carolina, Form E-599B, stating the name and address of the purchaser, the state in which the vehicle will be registered and operated, the make, model, and serial number of the vehicle, and such other information as the Secretary may require. The exemption was fully allowed when the affidavit was filed with the seller's sales and use tax report for the month during which the sale was made and such report was timely filed. When an affidavit concerning a sale of a motor vehicle to a nonresident purchaser was not filed with the retailer's sales and use tax report for the month in which the sale of the vehicle was made and the failure to file the affidavit is discovered on or after August 12, 1989, it shall be accepted if it is filed within 30 days after such discovery, but no refund shall be made of sales and use taxes already paid. An affidavit filed within this 30-day period is subject to a penalty of 25 percent of the tax applicable to the sales price of the motor vehicle. If the affidavit is submitted to the Secretary of Revenue after the end of this 30-day period, no exemption shall be allowed. The provisions of this Paragraph are not applicable to sales of motor vehicles which are subject to the highway use tax after September 30, 1989.

History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-164.13; 105-262; Eff. February 1, 1976; Amended Eff. October 1, 1991; July 1, 1990; February 1, 1988; March 1, 1987.

.4602 AIRCRAFT; BOATS; RAILWAY CARS; LOCOMOTIVES; MANUFACTURED HOMES

(a) Effective August 1, 1989, the maximum sales tax on retail sales of aircraft, boats, railway cars or locomotives increased from three hundred dollars (\$300.00) to fifteen hundred dollars (\$1,500.00). The rate of tax applicable to such sales of aircraft, boats, railway cars or locomotives three percent (two percent until July 16, 1991) state tax and is payable to the Secretary of Revenue on vendors' sales and use tax reports.

Effective October 1, 1989, the term "motor vehicle", as set forth under G.S. 105-164.3(Sb), excludes a manufactured home. G.S. 105-164.3(8a) defines a "manufactured home" as a structure that is designed to be used as a dwelling and:

- (1) Is built on a permanent chassis;
- (2) Is transportable in one or more sections;

(3) When transported, is at least eight feet wide or 40 feet long; and

(4) When erected on a site, has at least 320 square feet.

Retail sales of manufactured homes will continue to be subject to the two percent rate of sales tax with a maximum tax of three hundred dollars (\$300.00) per article including all accessories attached to the manufactured home when it is delivered to the purchaser. Each section of a manufactured home that is transported to the site where it is to be erected is a separate article. Dealers must continue to remit sales tax to the Secretary of Revenue on their retail sales of manufactured homes.

(b) A retail sale of a boat with a boat trailer is considered to be the sale of two separate articles. The retail sale of the boat trailer, a motor vehicle within the meaning of the statute, is subject to the three percent highway use tax with a maximum tax of one thousand dollars (\$1,000.00) applicable to the trailer. The retail sale of the boat is subject to the three percent (two percent until July 16, 1991) rate of tax with a maximum tax of fifteen hundred dollars (\$1,500.00) applicable to the sale of any boat except for those sales exempt from tax under the provisions of G.S. 105-164.13(9). The tax shall be computed on the gross sales price of the boat, including charges for the boat motor, fenders, boat and motor controls, compasses, windshields, horns, lights, or any other parts or accessories, all of which must be attached thereto at the time of delivery to the purchaser, labor for installing such parts and accessories, freight or any other charge for preparing the boat for sale. Life jackets, life rings, cushions, flares, fire extinguishers and rope are considered to be safety equipment rather than accessories to the boat and sales of such items at retail are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax notwithstanding they are sold with the boat. Parts and accessories, including boat motors, fenders, boat and motor controls, lights, windshields, horns and other above-named items sold separately from the sale of a boat are also subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 1, 1990; January 3, 1984; May 11, 1979.*

.4603 MOTOR VEHICLE SERVICE BUSINESSES

(a) Persons engaged in the business of repairing automobiles and other motor vehicles are liable for collecting and remitting the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on the sales price of any parts, accessories or other tangible personal property which they furnish in connection with repairing their customers' vehicles. Charges for labor to install the parts, accessories and similar property are not subject to tax if such charges are separately stated on the customers' invoices and in the vendor's records; otherwise, the total charges are subject to the tax.

(b) Sales of repair parts, accessories and other tangible personal property to automotive repair shops for resale in connection with repairing their customers' vehicles are not subject to tax when supported by certificates of resale, Form E-590.

(c) Sales of tools, equipment and supplies to automotive repair shops for use in conducting their business are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax and vendors making such sales are required to collect and remit same. Certificates of resale are not applicable to sales of this nature. If, in addition to repairing motor vehicles, a repair shop actually makes sales of tools, equipment, supplies, and similar items to its customers, such repair shop may purchase such items under a certificate of resale. Vendors selling tools, equipment, supplies and similar items to a repair shop, or similar business which does not ordinarily and customarily engage in reselling such articles at retail should require from such vendee a certificate of resale with each order for such articles. Such vendee is then liable for collecting and remitting the three percent tax on its sales of tools, equipment, supplies and similar items.

(d) The total charge for all tangible personal property, including windshields, window glass, seat covers, floor mats, head liners, runners, channels, pig rings, felt, tacks, screws, thread, tape, windlaee, welt cord, and similar items installed in or upon motor vehicles or other articles by persons selling and installing such property are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. The charge for labor performed or other services rendered in installing the same are also subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax unless such charges are separately stated on the customer's invoice and the vendor's records. All tax due hereunder must be collected and remitted to the department by the person selling and performing such installation service. Sales of tangible personal property for resale in connection with glass repair and reupholstery jobs are not subject to tax when supported by properly

executed certificates of resale; however, any tools, supplies or other property sold for use in performing such work are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(e) Persons engaged in the business of painting or refinishing motor vehicles are the users or consumers of tangible personal property which they purchase for use in the performance of such services. Sales to such businesses of paint and other refinishing materials, tools, supplies and any other tangible personal property for use in body repair, painting or refinishing work are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. If, in addition to such body repair, painting or refinishing work, said businesses purchase tangible personal property such as automobile fenders, doors, windshields or other parts or accessories, and sell the same to their customers, such businesses are liable for collecting and remitting the tax on such sales irrespective of whether the sales are made in connection with repair or refinishing jobs.

*History Note: Statutory Authority G.S. 105-164.3; 105-164.4; 105-164.5; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.4604 SPECIAL EQUIPMENT-ACCESSORIES: MOTOR VEHICLES

(a) Effective October 1, 1989, retail sales of motor vehicles, including all accessories attached to the vehicles when delivered to the purchaser, are exempt from sales tax. Prior to October 1, 1989, retail sales of motor vehicles with special accessories such as pulling devices, hole digging devices, aerial working devices or other special accessories which are attached to and a part of such motor vehicles when they are delivered to purchasers are subject to the two percent rate of tax with a maximum tax of three hundred dollars (\$300.00) applicable to each such vehicle. The term "motor vehicle", as used in this Rule, means a vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:

- (1) a moped as defined in G.S. 20-4.01(27)(d1);
- (2) special mobile equipment as defined in G.S. 20-4.01(44);
- (3) a tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11);
- (4) a farm tractor or other implement of husbandry;
- (5) a manufactured home; or
- (6) road construction or road maintenance machinery or equipment.

(b) Persons selling such special equipment or accessories at retail which they mount upon a motor vehicle chassis or body belonging to others must collect and remit the three percent state and two percent county sales or use tax thereon. Any charges for labor or services rendered in installing or applying such items are not subject to tax provided such charges are segregated from the charge for the tangible personal property sold on the invoice given to the customer at the time of sale and in the vendor's records; otherwise the total amount is subject to tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 1, 1990; December 1, 1988.*

.4609 FIRE TRUCKS AND EQUIPMENT

(a) Prior to October 1, 1989, sales of fire trucks to municipalities, counties and rural fire protection districts organized under Chapter 69 of the North Carolina General Statutes were taxable at the rate of two percent and the maximum tax of three hundred dollars (\$300.00) was applicable with respect to any one fire truck including all accessories built into or affixed thereto by the manufacturer such as nozzles, hoses, hose reels, hose straps, hose clamps, hose connections, adapters, play pipes, ladders, tanks, booster pumps, pike poles, etc.

(b) Retail sales of axes, brooms, buckets, shovels, ropes, general purpose tools, gas masks, first aid kits, blankets, portable pumps, portable fire extinguishers and like articles are considered to be other fire fighting equipment rather than accessories to the fire truck, and sales of such items at retail are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax without any maximum tax applicable thereto notwithstanding such sales are made to the above type customers or that the items are sold with fire trucks. Privately owned fire trucks or vehicles on which fire fighting equipment has been mounted that are used only for fire fighting purposes are classified as special mobile equipment, and sales thereof are subject to the four percent (three percent

until July 16, 1991) state tax and any applicable local sales or use tax. Sales of repair parts to municipalities, counties, rural fire protection districts, and industrial users for use in repairing fire trucks are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 1, 1990; January 3, 1984.*

.4614 PICKUP CAMPERS: TRAILERS

Retail sales of camper trailers which are designed to run on the streets and highways and which are pulled by a self-propelled vehicle are properly classified as sales of motor vehicles and exempt from sales tax effective October 1, 1989. Retail sales of such camper trailers are subject to the highway use tax on and after October 1, 1989. Retail sales of slide-in pickup camper units are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; October 1, 1990; July 1, 1990.*

.4615 MANUFACTURED HOMES

(a) Prior to October 1, 1989, the retail sale of a manufactured home designed to run upon the streets and highways, when pulled by a self-propelled vehicle was classified as a motor vehicle subject to the two percent rate of sales tax with a maximum tax of three hundred dollars (\$300.00) per vehicle including all accessories attached thereto at the time of delivery to the purchaser. The tax was to be computed on the gross sales price less any allowance for a manufactured home or motor vehicle taken in trade as a part of the consideration for the purchased manufactured home. Effective October 1, 1989, the term "motor vehicle", as set out in G.S. 105-164.3, excludes a manufactured home. A "manufactured home" is defined as a structure that is designed to be used as a dwelling and:

- (1) Is built on a permanent chassis;
- (2) Is transportable in one or more sections;
- (3) When transported, is at least eight feet wide or 40 feet long; and
- (4) When erected on a site, has at least 320 square feet.

Retail sales of manufactured homes will continue to be subject to the two percent rate of sales tax with a maximum tax of three hundred dollars (\$300.00) per article including all accessories attached to the manufactured home when it is delivered to the purchaser. Each section of a manufactured home that is transported to the site where it is to be erected is a separate article subject to the two percent rate of sales or use tax with a maximum tax of three hundred dollars (\$300.00) applicable thereto. Effective October 1, 1989, the tax is to be computed on the gross sales price of the manufactured home without any deduction whatever on account of any trade-in credit or allowance. The gross sales price of the manufactured home includes any parts or accessories installed thereon at the time of the sale and delivery to the customer, labor for installing such parts or accessories, freight, or any other charges for preparing the manufactured home for sale. Parts or accessories sold separately from the sale of a manufactured home are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax; however, charges for labor to install such parts or accessories are not subject to tax when separately stated on the customer's invoice and in the vendor's records.

(b) Any furniture, appliances or accessories placed in a manufactured home by the manufacturer or the dealer and which are a part of the sale and delivery of the manufactured home to a customer are included in the gross sales price of the manufactured home, subject to the two percent rate of tax with a maximum tax of three hundred dollars (\$300.00) applicable to the sale. Anchor bolts, tie-downs, skirting, steps, and central or window air-conditioning units that are to be attached to a manufactured home and that are a part of the sale of a manufactured home at the time of delivery to the customer or at the time of installation by a dealer for his customer are included in the sales price subject to the two percent rate of tax with a maximum tax of three hundred dollars (\$300.00) applicable to the sale of each manufactured home.

(c) Any charge made by a vendor to a customer for running gear upon which a manufactured home is delivered is a part of the gross sales price of such manufactured home subject to the two percent rate of tax, with a maximum tax of three hundred dollars (\$300.00), notwithstanding that such charge may be separately stated from the charge for the manufactured home on the invoice given to the customer

at the time of the sale. The return of running gear to a dealer for credit or refund of such charge does not alter the rate of tax applicable to the sale, and the customer is not entitled to a credit or refund of the tax paid on the charge for the running gear returned or sold to the dealer.

(d) Any sale of furniture, appliances and other accessories to a customer by a dealer after the sale of the manufactured home has been consummated is subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Cement blocks which are used to prepare or build the foundation for or to level a manufactured home, the sewer pipe used to connect a manufactured home to the septic or sewer system, and wedges used for leveling a manufactured home do not come within the definition of accessories attached at the time of delivery and, therefore, purchases of these items by dealers or other users or consumers in this state to be used in the installation of a manufactured home are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 1, 1990; January 3, 1984; July 5, 1980.*

.4618 MOTOR VEHICLE SUPPLIES

(a) A motor vehicle dealer is the user or consumer of wax and other refinishing materials used in the preparation of new or used automobiles for sale and is therefore liable for remitting the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax thereon.

(b) Sales of masking tape to auto and body repair shops for use in stripping automobiles in the painting process are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.4619 HIGHWAY USE TAX

(a) Effective October 1, 1989, retail sales of motor vehicles are exempt from sales tax and subject to the three percent highway use tax under Article 5A of Chapter 105 of the General Statutes with a minimum tax of forty dollars (\$40.00) applicable thereto, with certain exceptions, and a maximum tax of one thousand dollars (\$1,000.00) on any one motor vehicle increasing to fifteen hundred dollars (\$1,500.00) July 1, 1993. The highway use tax must be paid to the Commissioner of Motor Vehicles by the dealer, the purchaser, or other applicant for a certificate of title at the time of making application. The basis for the tax on sales of motor vehicles by retailers will be the sales price of the motor vehicles including all accessories attached thereto at the time of delivery of the vehicles to the purchasers less the amount of any allowance given by the retailer for motor vehicles taken in trade.

The basis for the tax on sales of motor vehicles for which a certificate of title is issued because of a sale of the vehicle by the seller who is not a retailer is the market value of the vehicle, less the amount of any allowance given by the seller for a motor vehicle taken in trade for the purchased motor vehicle. The retail value of a motor vehicle for which a certificate of title is issued because of a reason other than the sale of the motor vehicle is the market value of the vehicle. The market value of the vehicle is presumed to be the value of the vehicle set forth in a schedule of values adopted by the Commissioner of Motor Vehicles not to exceed the wholesale value.

(b) The statute provides that the highway use tax will not be applicable to motor vehicles delivered to purchasers on or after October 1, 1989, pursuant to written contracts of sale entered into before that date, but they will be subject to the sales tax at the rate of two percent with the three hundred dollars (\$300.00) maximum tax per vehicle. The highway use tax will not be applicable to the transfer of a motor vehicle to:

- (1) the insurer under G.S. 20-109.01 of the Motor Vehicle Laws because the vehicle is a salvage vehicle;
- (2) to either a manufacturer, as defined in G.S. 20-285, for resale; or
- (3) to a motor vehicle retailer for the purpose of resale. Only the minimum tax of forty dollars (\$40.00) will be imposed when a certificate of title is issued as a result of the transfer of a motor vehicle:
 - (A) by a gift between a husband and wife or a parent and child;
 - (B) by will or intestacy;

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- (C) by a distribution of marital property as a result of a divorce;
- (D) to a secured party who has filed a security interest in the motor vehicle with the Department of the Secretary of State;
- (E) to a partnership or corporation as an incident to the formation of the partnership or corporation and no gain or loss arises on the transfer under section 351 or section 721 of the Internal Revenue Code, or to a corporation by merger or consolidation in accordance with G.S. 55-110; or
- (F) to the same owner to reflect a change in the owner's name.

When a purchaser of a motor vehicle returns the vehicle to the seller within 90 days after the purchase of the vehicle and receives a motor vehicle replacement or a refund of the purchase price paid to the seller, the purchaser may obtain a refund of the tax paid on the certificate of title issued for the returned vehicle less the minimum tax of forty dollars (\$40.00) by submitting an application for refund to the Commissioner of Motor Vehicles.

(c) G.S. 105-187.5 provides that, effective October 1, 1989, lessors of motor vehicles may elect to pay the highway use tax to the Commissioner of Motor Vehicles when applying for a certificate of title for a motor vehicle purchased by the retailer for lease or rental or may elect to collect and remit the tax to the Secretary of Revenue on the lease or rental receipts derived therefrom. Effective April 23, 1991, G.S. 105-187 was amended by adding Section 11 which allows lessors of motor vehicles the option of paying the highway use tax to the Commissioner of Motor Vehicles rather than the alternate gross receipts tax to the Secretary of Revenue on motor vehicles held in their inventory for lease prior to October 1, 1989, and leased or rented on or after that date. To make the election allowed by this Section, a retailer must complete a form provided by the Division of Motor Vehicles. That Division will notify the Secretary of Revenue of a retailer who makes an election under this Section. If this election is made, no credit will be allowed for any tax paid on the purchase or rental of a motor vehicle under the Sales and Use Tax Law and for any tax paid on gross receipts under the Highway Use Tax Act. The taxes collected under this Section will be credited to the General Fund.

Effective October 1, 1989, the rate of highway use tax on motor vehicle lease or rental receipts will be eight percent for the first 90 continuous days of lease or rental of a vehicle to the same person, and the rate will reduce to three percent for the remainder of the continuous period during which the vehicle is leased or rented to that person. The maximum tax applicable to the sale of a motor vehicle applies when the vehicle is leased or rented to the same person for more than 90 continuous days and the tax paid by a person from the first day of such period applies toward the maximum tax. Effective July 1, 1991, the Highway Use Tax Act was amended to define long-term and short-term lease or rental. Long-term lease or rental means a written agreement to lease or rent property for at least 365 continuous days to the same person. Short-term lease or rental is a lease for less than 365 continuous days. The rate of tax on the gross receipts from the short-term lease or rental of a motor vehicle is eight percent and the tax rate on the gross receipts from the long-term lease or rental of a motor vehicle is three percent. The maximum tax applies to a continuous lease or rental of a motor vehicle to the same person. A retailer who elects to pay tax to the Secretary of Revenue on the gross receipts from the lease or rental of a motor vehicle must make this election when applying for a certificate of title for the vehicle. To make the election, the retailer must complete a form provided by the Division of Motor Vehicles. Once made, an election is irrevocable. The eight percent rate of tax will be deposited in the General Fund. The three percent rate of tax will be deposited to the Highway Trust Fund. Separate forms for reporting the separate rates of tax on motor vehicle lease receipts will be provided by the Department of Revenue to motor vehicle lessors upon receipt of their request for such forms.

(d) G.S. 105-187.5(d) was rewritten to authorize the Secretary of Revenue to administer the tax imposed on the gross receipts from the lease or rental of motor vehicles in the same manner as the tax levied under G.S. 105-164.4(a)(2). The administrative provisions and powers of the Secretary that apply to the tax levied under G.S. 105-164.4(a)(2) apply to the tax imposed on the gross receipts from the lease or rental of motor vehicles. The Division of Motor Vehicles may request the Secretary to audit a retailer who elects to pay tax on gross receipts under this Section and the Division of Motor Vehicles shall reimburse the Secretary for the cost of the audit, as determined by the Secretary. In conducting an audit of a retailer under this Section, the Secretary may audit any sales of motor vehicles made by the retailer.

*History Note: Statutory Authority G.S. 105-187.3; 105-187.4; 105-187.5; 105-187.6; 105-187.8; 105-187.9; 105-262;
Eff. October 1, 1990;
Amended Eff. October 1, 1991.*

SECTION .4700 - PRINTERS AND NEWSPAPER OR MAGAZINE PUBLISHERS

.4701 IN GENERAL

(a) All retail sales of tangible personal property by commercial printers or publishers are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax unless such sales are subject to a lesser rate of tax under the provisions of G.S. 105-164.4(1) or are exempt by statute. The following sales are exempt from sales or use tax:

- (1) charges for advertising space in newspapers, magazines and other publications;
- (2) sales of newspapers by newspaper street vendors and by newspaper carriers making door to door deliveries and sales of magazines by magazines vendors making door to door sales;
- (3) charges made by printers for imprinting or binding books or forms or other similar items which are owned by their customers;
- (4) sales to manufacturers, producers, wholesalers and retailers of wrapping paper, labels, bags, cartons and other similar items when such items are used for packaging, shipping, or delivering tangible personal property sold at wholesale or retail, and when such items constitute a part of the sale of such tangible personal property and are delivered with it to the customer;
- (5) effective July 20, 1983, sales of advertising supplements and any other printed matter ultimately to be distributed with or as a part of a newspaper;
- (6) effective October 1, 1985, sales of paper, ink and other tangible personal property to commercial printers and commercial publishers for use as ingredient or component parts of free circulation publications, and sales by printers of free circulation publications to the publishers of these publications. As used in this Rule, the term "free circulation publications" means shoppers' guides that:

- (A) are published on a periodic basis at recurring intervals;
- (B) are mailed or distributed house-to-house, by street distributors, in racks, or in any other manner at other locations without charge to the recipient;
- (C) contain advertising of a general nature for the sale of goods and services by a variety of businesses, trades or industries and are not limited to advertising the sale of goods or services by a particular business, trade or industry; and
- (D) make space available to all advertisers for the purpose of inducing readers to purchase the goods and services of the advertisers.

The term does not include house organs or trade, professional, or similar types of publications. The ratio of news to advertising in a publication is not a factor in determining whether the publication is a free circulation publication.

- (7) effective July 1, 1983, printed material which is sold by a printer to a purchaser within or without this state is exempt from sales or use tax when such printed material is delivered in this state by the printer to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this state, if the purchaser does not thereafter use the printed material in this state. Printed material which is sold by a printer to a purchaser within or without this state is exempt from sales or use tax when the printed material is delivered by the printer directly to a mailing house or to a common carrier or to the United States Postal Service for delivery to a mailing house in this state which will preaddress and presort the material and deliver it to a common carrier or to the United States Postal Service for delivery to recipients outside this state designated by the purchaser.
 - (A) Sales of printed material by a printer located within or without this state which is delivered directly to the purchaser in this state for the original purpose of preparing and delivering the printed material to the United States Postal Service or a common carrier for delivery to prospective customers or other recipients outside this state are exempt from sales and use tax provide such purpose is consummated. A purchaser of such printed material for preparation and delivery to prospective customers and other recipients outside this state must furnish the vendor a written statement certifying that the printed material is being purchased for use in a mailing program which is in place at the time of purchase; otherwise, the vendor must collect and remit the tax on such sales. Sales of printed materials to a user or consumer in this state to be placed in the purchaser's inventory for use as needed are subject to sales or use taxes notwithstanding that all or a portion of the printed material may be delivered to the United States Postal Service or a common carrier for delivery to prospective customers or other recipients outside this state.

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(B) A printer who sells printed material which is delivered to an in-state or out-of-state purchaser at a point within this state or which is delivered to a common carrier or the United States Postal Service for delivery to the purchaser at a point within this state who prepares the material to be mailed to prospective customers or other recipients without charge and transports the material outside this state to be delivered to the United States Postal Service or a common carrier or to a mailing house outside this state for delivery to designated recipients is liable for sales or use tax except as provided herein.

(C) The sale of printed materials by vendors other than printers and other types of tangible personal property which is provided without charge to recipients, whether it be advertising materials or gifts or donations, are subject to sales or use tax even though the items in question may be mailed to designated recipients outside this state. For example, a purchaser in this state buys tangible personal property other than printed material from a printer which is given to a donee within or without this state and directs that the item can be shipped or mailed to the donee. This transaction is subject to sales or use tax.

(b) Retail sales of advertising circulars, catalogues, booklets, pamphlets, forms, tickets, letterheads, envelopes and similar items and retail sales of books, magazines, periodicals, newspapers and other publications are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax unless such sales are exempt from tax by statute. When publications, other than magazines, are sold by subscription, the tax accrues at the time the subscription is accepted.

(c) Sales of paper, ink, and other tangible personal property to commercial printers or publishers for use as an ingredient or component part of the printed matter which they produce for sale are exempt from the tax.

(d) Sales to commercial printers and publishers of machinery and equipment and parts therefor and accessories thereto for use directly in the production of newspapers, magazines and other printed matter for sale are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article. Included herein are custom made plates and dies when title thereto does not pass to the printers' customers. Sales to commercial printers and publishers of tangible personal property such as wood and metal which is used to fabricate plates and dies for use in the production of printed matter for sale are likewise subject to the one percent rate of tax when title to the plates and dies does not pass to the printers' customers. Sales to commercial printers and publishers of machinery, equipment, film, and similar items of tangible personal property for use or consumption directly in the production of such plates and dies are also subject to the one percent rate of tax. It is a printing trade practice that title to lithographic and gravure plates and dies is retained by the printer or publisher. Unless it is otherwise agreed in writing, the secretary will consider such items to be purchased by the printer or publisher for use or consumption and taxable at the one percent rate of tax on the cost price thereof.

(e) Sales to commercial printers of custom made plates and dies for resale are exempt from sales or use tax when supported by certificates of resale, Form E-590. Sales to commercial printers of tangible personal property such as wood and metal which becomes a component part of printing plates produced by such printers for sale to customers are likewise exempt from sales or use tax when supported by certificates of resale, form E-590. However, sales to commercial printers of machinery, equipment, film, and similar items of tangible personal property which do not enter into or become a component part of such plates and dies but are used or consumed by the printer in the direct production of such plates and dies are subject to the one percent rate of tax. When, at the request of the customer, commercial printers purchase custom made printing plates and dies for use in the direct production of the printed matter or when they purchase wood and metal which becomes a component part of printing plates and dies fabricated by the printer for use in the direct production of printed matter and title to the plates and dies passes to the printers' customers, such items can be properly purchased for resale. The printer is, of course, liable for collecting and remitting the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on the total retail sales price of such plates and dies including charges for tangible personal property and art work or any other services that go into the manufacture or delivery thereof. In such cases, the printer's sales invoices and records must show that the plates and dies are actually sold to the customer; otherwise, such items will be deemed to have been used by the printer, and the cost price of same will be subject to the one percent rate of tax.

(f) Sales to commercial printers and publishers of tangible personal property which is not resold as such or which does not become an ingredient or component part of the tangible personal property which they produce for sale or which is not production machinery or parts therefor and accessories thereto are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax without any maximum tax.

(g) The provisions of Paragraphs (c) and (d) of this Rule have no application to sales of printing equipment and supplies to firms which operate print shops for the production of printed matter for their own use and not for sale. Purchases of printing equipment and supplies by such firms are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-164.13; 105-262; 105-264; Eff. February 1, 1976; Amended Eff. October 1, 1991; February 1, 1988; April 1, 1986; February 1, 1986.

.4706 OFFSET PRINTING EQUIPMENT

Sales of offset or direct relief duplicating machines and repair parts and accessories for such machines, including offset blankets and plates, to commercial printers for use in the production of printed matter for sale are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article. Sales of positives and negatives to commercial printers for use in preparing plates for use in the printing process are also subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article. Sales of such items to consumer printers for use or consumption are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262; Eff. February 1, 1976; Amended Eff. October 1, 1991.

.4707 PRINTING CHEMICALS

Sales of chemicals to commercial printers or publishers which enter into or become an ingredient or component part of printed matter which such purchasers sell are exempt from sales and use tax. Chemicals used by commercial printers and publishers to clean printing machinery are subject to the one percent rate of tax. Chemicals used by commercial printers and publishers for sanitation purposes are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262; Eff. February 1, 1976; Amended Eff. October 1, 1991; July 5, 1980.

.4708 POSTAGE CHARGES BY PRINTERS

When a printer purchases postal cards or stamped envelopes and prints and sells them to customers for use, the printer is liable for collecting and remitting the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on the charge to the customer; except the postage charges on the printed cards or envelopes are exempt from tax when separately stated on the customer's invoice.

History Note: Statutory Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; Eff. February 1, 1976; Amended Eff. October 1, 1991; July 5, 1980.

.4710 BOOKBINDERS

(a) Persons engaged in the business of binding books, magazines, or other printed matter belonging to other persons are rendering services, and the receipts therefrom are not subject to sales or use tax. Sales of cloth, leather, cardboard, glue, thread or other such items of tangible personal property to bookbinders for use in performing such services are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

(b) Sales of cloth, leather, cardboard, glue, thread or other such items of tangible personal property to registered bookbinders for use in binding their own books, magazines or other printed matter for sale or for use in making loose-leaf or detachable binders for sale are wholesale sales and are exempt from tax when supported by properly completed certificates of resale, Form E-590. Such bookbinders must collect and remit the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on their retail sales of tangible personal property.

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*History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.4713 TYPEWRITERS SOLD TO PRINTERS

Sales of typewriters to commercial printers to be used in the printing process are taxable at the one percent rate of tax. Typewriters used for administrative purposes are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.4715 NEWSPAPER PUBLISHERS: MACHINERY

Sales of printing machines to newspaper publishing companies are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article when the machines are used to produce newspapers or other printed material for sale. Sales of machines to newspaper publishing companies for use in printing their customers' addresses are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax without any maximum tax applicable thereto. Sales of addressograph plates to commercial printers for use in the mailing and shipping process are subject to the four percent state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.4716 TYPESETTING

Charges made by typesetters for setting type for users, are charges for services rendered and receipts therefrom are exempt from tax. Typesetters are liable for remitting the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on purchases of metal or other tangible personal property for use in performing such services. Charges by typesetters to commercial printers for reproduction proofs used in the production of printed matter are not subject to the tax. Purchases of proof paper and ink by typesetters for use in the production of proofs for sale are subject to the four percent state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; October 1, 1990.*

SECTION .4900 - TRANSPORTATION CHARGES

.4902 SHIPMENTS FROM WITHIN NORTH CAROLINA

(a) Freight, delivery or other transportation charges made or paid in connection with the sale or purchase of tangible personal property are subject to four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax when the shipment originates within this state unless title to the transported property passes to the vendee at the point of origin, or the sale of the property being transported is exempt from sales and use tax. Except as provided by Paragraph (c) of this Rule, or unless the terms of the sale dictate otherwise, title to property being transported is deemed to have passed to the purchaser at the point of origin only when:

- (1) The vendor delivers the property to a common carrier or other carrier for hire, including the U.S. mails, for delivery to the vendee; or
- (2) When the vendor delivers the property to the vendee or his agent for transportation by the vendee or his agent.

(b) Except as provided by Paragraph (a) of this Rule, when the vendor prepays transportation charges connected with the taxable sale or purchase of tangible personal property, the tax shall be computed on the total amount charged for the property and for transporting the same, even though the transportation charges are billed separately or are separately stated on the invoice for the property.

(c) In the case of so-called delivered price shipments or shipments FOB the place of destination, the sales and use tax must be computed on the delivered price without any deduction for transportation charges included therein. When tangible personal property the sale or purchase of which is subject to tax is delivered freight prepaid and allowed or freight collect and allowed, the sales or use tax must be computed on the total sales or purchase price of the property before any allowance for transportation charges is deducted.

*History Note: Statutory Authority G.S. 105-164.12; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

**SECTION .5000 - EYEGASSES AND OTHER OPHTHALMIC AIDS AND SUPPLIES:
OCULISTS: OPTOMETRISTS AND OPTICIANS**

.5003 OPHTHALMIC INSTRUMENTS

Sales of ophthalmic instruments and supplies to physicians, oculists, optometrists and other users are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.5004 TAXABLE OPTICAL SUPPLIES

(a) All sales to users or consumers of eyeglass frames, sunglasses not ground on prescription, solutions for cleaning eyeglasses, telescopes, binoculars, opera glasses, and similar items, by whomsoever made, are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax and all persons, including opticians, optometrists, and oculists, making such sales are required to register as retail merchants and to collect and remit the tax due thereon.

(b) The statutory exemption and the exemption provisions of this Rule have no application whatever to retail sales of eyeglasses or other optical goods not prescribed by licensed refractionists and all such sales are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

SECTION .5100 - LEASED DEPARTMENTS AND TRANSIENT SELLERS

.5102 TRANSIENT SELLERS

(a) Persons engaged in any form of retail selling, whether through stores, from private residences, from trucks and wagons, by house-to-house canvass, or in any other manner whatsoever, are required to register with the department and to collect and remit the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. Sales of products of the farms, forests and waters in their original or unmanufactured state by producers in their capacity as producers are, however, exempt from the tax. Producers are deemed to be selling in their capacity as producers when making sales on foot or from trucks or wagons.

(b) Because of the transient character of persons who sell at retail from other than stores regularly established and carrying a stock of goods on hand at all times in North Carolina from which sales may be made at retail, such persons may be required, as a condition of their obtaining a retailer's license, to post with the secretary a suitable bond payable to the state, conditioned upon their full compliance with the provisions of the Sales and Use Tax Law, and their accounting to the secretary for all moneys due thereunder.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.13; 105-262;
Eff. February 1, 1976;*

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Amended Eff. October 1, 1991.

SECTION .5200 - BABY CHICKS AND POULTS

.5201 CHICKS: EGGS: EXEMPTION

The following sales are exempt from tax:

- (1) sales of baby chicks and poults to poultry farmers, egg producers and hatcheries for commercial poultry or egg production;
- (2) sales of eggs to be used in hatching baby chicks and poults which will be sold or used for commercial poultry or egg production;
- (3) all sales of eggs, baby chicks and poults for resale, irrespective of by whom sold;
- (4) sales of eggs, baby chicks and poults by egg producers and poultry farmers when such sales are made by them in their capacity as producers; Generally, hatcheries do not qualify as producers of farm products within the provisions of G.S. 105-164.13(3). Hatchery sales which are not exempt under (1), (2) or (3) of this Rule are subject to four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.5202 CHICKS: EGGS: TAXABLE

All sales of eggs, baby chicks and poults which do not qualify for exemption under one or more of the provisions above set forth in 17 NCAC 7B .5201 are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

SECTION .5400 - FORMS USED FOR SALES AND USE TAX PURPOSES

.5432 AFFIDAVIT FORM: E-589

The Affidavit Form, E-589, is to be completed by contractors and subcontractors and furnished to their suppliers to be used in connection with sales or purchases of building materials for use in the performance of lump sum or unit price contracts entered into or awarded prior to July 16, 1991, or awarded pursuant to bids made prior to July 16, 1991. This Affidavit is to be executed by contractors and subcontractors to their suppliers of building materials and is valid only when used in connection with the additional one percent state sales and/or use taxes.

*History Note: Statutory Authority G.S. 105-164.15; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.5443 SALES AND USE TAX CHART: E-502C: SIX PERCENT

The sales and use tax chart, E-502C, shows the amount of six percent sales or use tax to be collected on retail sales indicated. The form is sent to taxpayers for use as a guide in determining the six percent tax to be charged on sales.

*History Note: Statutory Authority G.S. 105-164.15; 105-262;
Eff. January 3, 1984;
Amended Eff. October 1, 1991; August 1, 1988.*

.5448 SCRAP TIRE DISPOSAL TAX REPORT FORM: E-500G

The Scrap Tire Disposal Tax Report Form, E-500G, is for use by taxpayers to report the one percent scrap tire disposal tax liability. An initial supply of report forms is sent to taxpayers who request them and an additional supply is furnished on an annual basis thereafter.

*History Note: Statutory Authority G.S. 105-164.15; 105-262; 130A-309.54; 130A-309.56;
Eff. July 1, 1990;
Amended Eff. October 1, 1991.*

.5459 CLAIM FOR REFUND OF COUNTY SALES AND USE TAXES FORM: E-585E

The Claim for Refund of County Sales and Use Taxes Form, E-585E, is to be used by state agencies to request a quarterly refund of local sales and use taxes paid by a state agency on direct purchases of tangible personal property and local sales and uses taxes paid indirectly by the state agency on building materials, supplies, fixtures, and equipment that become a part of or annexed to a building or structure that is being erected, altered, or repaired and is owned or leased by the state agency.

*History Note: Statutory Authority G.S. 105-164.14; 105-164.15; 105-262; 105-264;
Eff. October 1, 1991.*

**SUBCHAPTER 7C - LOCAL GOVERNMENT: MECKLENBURG COUNTY: SUPPLEMENTAL
LOCAL GOVERNMENT AND ADDITIONAL SUPPLEMENTAL LOCAL GOVERNMENT
SALES AND USE TAX ACTS**

SECTION .0100 - LOCAL GOVERNMENT SALES AND USE TAXES

.0103 SALES TAX IMPOSED

(a) Every retailer whose place of business is located in a county which has levied the Mecklenburg County or the local government sales and use tax and the supplemental local government and the additional supplemental local government sales and use tax is required to collect and remit to the North Carolina Secretary of Revenue any applicable local sales tax on:

- (1) the sales price of those articles of tangible personal property now subject to the four percent (three percent until July 16, 1991) sales tax imposed by the state under G.S. 105-164.4(a)(1) and (4b) but not on sales of electricity, piped natural gas or local telecommunications services taxed under G.S. 105-164.4(a)(4a), and toll or private telecommunications services taxed under G.S. 105-164.4(a)(4c);
- (2) the gross receipts derived from the lease or rental of tangible personal property when the lease or rental of the property is subject to the four percent (three percent until July 16, 1991) sales tax imposed by the state under G.S. 105-164.4(a)(2);
- (3) the gross receipts derived from the rental of any room or lodging furnished by any hotel, motel, inn, tourist camp or other similar accommodations now subject to the four percent (three percent until July 16, 1991) sales tax imposed by the state under G.S. 105-164.4(a)(3); and
- (4) the gross receipts derived from services rendered by laundries, dry cleaners, cleaning plants and similar type businesses now subject to the four percent (three percent until July 16, 1991) sales tax imposed by the state under G.S. 105-164.4(a)(4).

(b) All retailers making taxable sales from a place of business located within a taxing county must collect and remit any applicable local sales tax of the county in which the retailer's place of business is located. Effective March 1, 1988, for local sales tax purposes, the situs of a sale is the retailer's place of business located within a taxing county where the retailer becomes contractually obligated to make the sale. The term "place of business located within a taxing county" shall mean stores, warehouses, sales offices, sales outlets, inventories, and other places within a taxing county where tangible personal property is maintained for sale, lease, or rental at retail, and it shall include inventories of goods carried on foot or in vehicles for sale to customers in a taxing county. It shall also include laundries, dry cleaning plants, or similar businesses and hotels, motels, or similar facilities in a taxing county. Taxable tangible personal property sold at a business location in a taxing county and delivered by retailers, their agents, the U.S. Mail, or by common carrier to the purchaser in that county or in any county in this state is subject to the sales tax of the county in which the retailer's place of business is located at which such retailer becomes contractually obligated to make the sale.

*History Note: Statutory Authority G.S. 105-262; 105-467;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; May 1, 1990; July 1, 1989; December 1, 1988.*

.0104 USE TAX IMPOSED

(a) A local use tax is levied on the cost price of each item or article of tangible personal property which is used, consumed or stored for use or consumption in a taxing county and such use tax may be imposed only on those items of tangible personal property upon which the state now levies a four percent (three percent until July 16, 1991) use tax under G.S. 105-164.6. Every retailer engaged in business in this state and in the taxing county and required to collect the use tax levied by G.S. 105-164.6 shall also collect the applicable local use tax and remit same to the North Carolina Secretary of Revenue when such property is to be used, consumed or stored in the taxing county. The use tax shall be levied against the purchaser and his liability for such tax shall be extinguished only upon his payment of the tax to the retailer, where the retailer has charged the tax, or to the Secretary of Revenue where the retailer has not charged the tax. Every person who purchases any taxable tangible personal property for use or consumption in a taxing county from vendors located outside North Carolina or outside the purchaser's county on which the local tax was not required to be collected by the vendors must report and remit the applicable use tax to the Secretary of Revenue.

(b) Where a local sales or use tax has been paid with respect to such tangible personal property by the purchaser thereof, either in another taxing county within this State or in a taxing jurisdiction outside this State where the purpose of the tax is similar in purpose and intent to the local sales or use tax which is imposed within this State, said tax may be credited against the local use tax due. If the amount of local sales or use tax paid in another taxing county or jurisdiction is less than the amount of tax due the taxing county, the purchaser shall pay to the Secretary of Revenue an amount equal to the difference between the amounts so paid in the other taxing county or jurisdiction and the amount due in the taxing county. No credit shall be allowed for sales and use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not allow a credit for local government sales taxes paid in this State. The local use tax will not be subject to credit for payment of any state sales or use tax not imposed for the benefit and use of counties and municipalities.

*History Note: Statutory Authority G.S. 105-262; 105-468;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 1, 1989; December 1, 1988; August 1, 1988.*

LIST OF RULES CODIFIED

The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

Key:

- Citation = Title, Chapter, Subchapter and Rule(s)
- AD = Adopt
- AM = Amend
- RP = Repeal
- With Chgs = Final text differs from proposed text
- Eff. Date = Date rule becomes effective
- Temp. Expires = Rule was filed as a temporary rule and expires on this date

NORTH CAROLINA ADMINISTRATIVE CODE

AUGUST 1991

TITLE	DEPARTMENT	TITLE	DEPARTMENT
2	Agriculture	17	Revenue
4	Economic and Community Development	19A	Transportation
9	Governor	21	Occupational Licensing Boards
10	Human Resources		8 - CPA Examiners
11	Insurance		14 - Cosmetic Art Examiners
13	Labor		32 - Medical Examiners
15A	Environment, Health, and Natural Resources		36 - Nursing
16	Public Education		46 - Pharmacy
			54 - Practicing Psychologists
		26	Administrative Hearings

	Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
2	NCAC 9L .0602 - .0603		•			10 01 91	
4	NCAC 6C .0305		•			10 01 91	
9	NCAC 2B Exec. Order No. 147					07 30 91	
	Exec. Order No. 148					08 06 91	
10	NCAC 3U .0102		•		•	10 01 91	
	.0207	•				10 01 91	
	.0303		•		•	10 01 91	
	.0510		•		•	10 01 91	
	.0511		•			10 01 91	
	.0702		•			10 01 91	
	.0705		•			01 01 92	
	.0707		•		•	10 01 91	
	.0710		•			10 01 91	
	.0711		•		•	10 01 91	

LIST OF RULES CODIFIED

	Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
10	NCAC 3U .0712 - .0713		•			01 01,92	
	.0714		•		•	10 01,91	
	.0802		•		•	10 01,91	
	.0901		•			10 01,91	
	.1003		•			10 01,91	
	.1403		•			01 01,92	
	.1612		•			10 01,91	
	.1717		•		•	01 01,92	
	.1903		•			10 01,91	
	.2206		•		•	10 01,91	
	.2508		•		•	10 01,91	
	.2510		•			01 01,92	
	.2606		•			10 01,91	
	.2611		•			01 01,92	
	26D .0016		•			08 15 91	02,15 92
	26H .0101		•			10 01,91	
	.0102 - .0104		•		•	10 01,91	
	.0107		•			08 01,91	01 31 92
	.0107		•		•	10 01,91	
	.0209	•				08 01,91	01,31 92
	.0508		•			08 01,91	01 31 92
	50B .0204		•			10 01,91	
	.0305		•			10 01,91	
	51C .0108		•			08 01,91	01,28 92
11	NCAC 8 .0815		•		•	10 01,91	
13	NCAC 7C .0101(a)(93)(L)		•			08 26 91	
	.0101(a)(26)		•			08 23 91	
15A	NCAC 2D .0505			•		10 01,91	
	.0535		•		•	10 01,91	
	.1105		•			10 01,91	
	.1201 - .1206	•			•	10 01,91	
	.1207	•				10 01,91	
	.1209	•			•	10 01,91	
	2H .0603		•		•	10 01,91	
	.0610		•		•	10 01,91	
	7L .0101		•			10 01,91	
	.0302		•			10 01,91	

LIST OF RULES CODIFIED

Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
15A NCAC 7L .0304		•			10 01 91	
10K .0001	•			•	10 01 91	
12C .0306	•				08 12 91	02 08 92
19A .0202		•			10 01 91	
19I .0101 - .0105 transferred and recodified to 15A NCAC 21E .0401 - .0405					08 28 91	
21E .0401 - .0405 Transferred and recodified from 15A NCAC 19I .0101 - .0105					08 28 91	
16 NCAC 6D .0102		•			08 12 91	02 07 92
6E .0301 - .0303	•				08 12 91	02 07 92
17 NCAC 3B .0107		•			10 01 91	
3C .0001		•			10 01 91	
.0004		•			10 01 91	
.0006		•			10 01 91	
4C .0505	•				10 01 91	
4D .0303		•			10 01 91	
.0305		•			10 01 91	
.0401		•			10 01 91	
.0501		•			10 01 91	
.0505 - .0506		•			10 01 91	
.0507			•		10 01 91	
.0508 - .0509	•				10 01 91	
.0602 - .0606			•		10 01 91	
.0608			•		10 01 91	
.0610		•			10 01 91	
.0701 - .0702			•		10 01 91	
.0706 - .0708			•		10 01 91	
.0710 - .0711			•		10 01 91	
.0801 - .0803			•		10 01 91	
.0805 - .0806			•		10 01 91	
.0808			•		10 01 91	
.0901			•		10 01 91	
.0902 - .0903		•			10 01 91	
.0904 - .0905			•		10 01 91	
.0907 - .0909	•				10 01 91	

LIST OF RULES CODIFIED

	Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
17	NCAC 4D .1001 - .1002	•				10 01/91	
	4F .0005	•				10 01/91	
	6B .0101		•			10,01/91	
	.0104		•			10 01,91	
	.0107		•			10,01/91	
	.0110		•			10 01/91	
	.0114 - .0117		•			10 01/91	
	.0606		•			10 01/91	
	.3202		•			10 01/91	
	.3406		•			10 01/91	
	.3513		•			10 01/91	
	.3528	•				10 01,91	
	.3716		•			10.01 91	
	.3718		•			10 01/91	
	.3724		•			10 01/91	
	.3804		•			10 01,91	
	.4003		•			10 01,91	
	.4102		•			10.01 91	
	6C .0103			•		10 01,91	
	.0105		•			10 01 91	
	.0109		•			10 01,91	
	.0123		•			10 01,91	
	.0203		•			10 01/91	
	.0301 - .0304			•		10 01,91	
	6D .0102		•			10 01,91	
	.0206		•			10 01,91	
	.0209		•			10 01,91	
	7B .0101		•			10 01,91	
	.0104		•			10 01,91	
	.0109		•			10 01,91	
	.0111		•			10 01,91	
	.0115 - .0116		•			10 01,91	
	.0126	•				10 01 91	
	.0202		•			10 01 91	
	.0301 - .0302		•			10 01,91	
	.0403 - .0407		•			10 01,91	
	.0502		•			10 01,91	
	.0602 - .0604		•			10 01,91	

LIST OF RULES CODIFIED

Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
17 NCAC 7B .0610		•			10 01 91	
.0615		•			10 01 91	
.0617 - .0618		•			10 01 91	
.0621		•			10 01 91	
.0624		•			10 01 91	
.0626 - .0633		•			10 01 91	
.0702		•			10 01 91	
.0704 - .0708		•			10 01 91	
.0710 - .0714		•			10 01 91	
.0716		•			10 01 91	
.0801		•			10 01 91	
.0803		•			10 01 91	
.0805 - .0806		•			10 01 91	
.0811		•			10 01 91	
.0901 - .0902		•			10 01 91	
.1001 - .1003		•			10 01 91	
.1101		•			10 01 91	
.1107		•			10 01 91	
.1111		•			10 01 91	
.1113		•			10 01 91	
.1115		•			10 01 91	
.1118		•			10 01 91	
.1122		•			10 01 91	
.1201 - .1202		•			10 01 91	
.1301 - .1303		•			10 01 91	
.1402 - .1404		•			10 01 91	
.1501		•			10 01 91	
.1601 - .1602		•			10 01 91	
.1701 - .1703		•			10 01 91	
.1705 - .1706		•			10 01 91	
.1801 - .1802		•			10 01 91	
.1804 - .1805		•			10 01 91	
.1905		•			10 01 91	
.1907	•				10 01 91	
.2001 - .2002		•			10 01 91	
.2101		•			10 01 91	
.2103		•			10 01 91	
.2105		•			10 01 91	

LIST OF RULES CODIFIED

Citation			AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
17	NCAC	7B .2201 - .2205		•			10/01/91	
		.2207		•			10/01/91	
		.2212		•			10/01/91	
		.2401		•			10/01/91	
		.2502 - .2503		•			10/01/91	
		.2601 - .2608		•			10/01/91	
		.2611		•			10/01/91	
		.2701 - .2702		•			10/01/91	
		.2801 - .2802		•			10/01/91	
		.2902		•			10/01/91	
		.3002		•			10/01/91	
		.3004		•			10/01/91	
		.3009 - .3012		•			10/01/91	
		.3101 - .3103		•			10/01/91	
		.3106		•			10/01/91	
		.3201 - .3203		•			10/01/91	
		.3301 - .3302		•			10/01/91	
		.3401 - .3403		•			10/01/91	
		.3501 - .3502		•			10/01/91	
		.3505		•			10/01/91	
		.3601		•			10/01/91	
		.3701 - .3703		•			10/01/91	
		.3801 - .3804		•			10/01/91	
		.3901 - .3905		•			10/01/91	
		.4003		•			10/01/91	
		.4006		•			10/01/91	
		.4101 - .4107		•			10/01/91	
		.4109		•			10/01/91	
		.4202 - .4203		•			10/01/91	
		.4206 - .4207		•			10/01/91	
		.4402 - .4403		•			10/01/91	
		.4406		•			10/01/91	
		.4414 - .4415		•			10/01/91	
		.4416	•				10/01/91	
		.4501 - .4503		•			10/01/91	
		.4506		•			10/01/91	
		.4509		•			10/01/91	
		.4601 - .4604		•			10/01/91	

LIST OF RULES CODIFIED

	Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
17	NCAC 7B .4609		•			10 01,91	
	.4614 - .4615		•			10 01 91	
	.4618 - .4619		•			10 01 91	
	.4701		•			10 01 91	
	.4706 - .4708		•			10 01 91	
	.4710		•			10 01 91	
	.4713		•			10 01 91	
	.4715 - .4716		•			10 01 91	
	.4902		•			10 01,91	
	.5003 - .5004		•			10 01 91	
	.5102		•			10 01 91	
	.5201 - .5202		•			10 01 91	
	.5432		•			10 01 91	
	.5443		•			10 01 91	
	.5448		•			10 01 91	
	.5459		•			10 01 91	
	7C .0103 - .0104		•			10 01 91	
	8 .0506		•			10 01 91	
	.0403 - .0404		•			10 01 91	
	9F .0003		•			10 01 91	
	9G .0103			•		10 01 91	
	.0104 - .0105		•			10 01 91	
	.0106			•		10 01 91	
	.0204			•		10 01 91	
	.0401			•		10 01 91	
	.0404		•			10 01 91	
	.0510		•			10 01 91	
	9I .0101			•		10 01 91	
	.0102 - .0103		•			10 01 91	
	.0104			•		10 01 91	
	.0302 - .0304		•			10 01 91	
	.0403		•			10 01 91	
	.0408		•			10 01 91	
	9J .0203		•			10 01 91	
	9I .0201		•			10 01 91	
	.0304		•			10 01 91	
	.0506		•			10 01 91	
19A	NCAC 2A .0102		•			10 01 91	

LIST OF RULES CODIFIED

Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
19A NCAC 2B .0102		•			10 01/91	
.0143 - .0144		•			10 01/91	
.0163	•				10 01/91	
.0201		•			10 01/91	
.0208		•			10 01/91	
2D .0414		•			10 01/91	
.0425	•				10 01/91	
.0601 - .0602		•			10 01/91	
.0603 - .0606			•		10 01/91	
.0607		•			10 01/91	
.0608 - .0611			•		10 01/91	
.0612		•			10 01/91	
.0613 - .0615			•		10 01/91	
.0617			•		10 01/91	
.0619 - .0622			•		10 01/91	
.0623 - .0627			•		10 01/91	
.0629			•		10 01/91	
.0630 - .0632			•		10 01/91	
.0633		•			10 01/91	
.0634 - .0639			•		10 01/91	
.0641			•		10 01/91	
.0818		•			10 01/91	
.0825		•			10 01/91	
2E .0207		•			10 01/91	
.0210		•			10 01/91	
.0216		•			10 01/91	
.0218 - .0219		•			10 01/91	
.0222		•			10 01/91	
.0404		•			10 01/91	
.0407		•			10 01/91	
.0417		•			10 01/91	
.0425	•				10 01/91	
.0701 - .0702		•			10 01/91	
.0801 - .0803		•			10 01/91	
.0901 - .0906	•				10 01/91	
3D .0515		•			10 01/91	
.0801		•			10 01/91	
3J .0803		•			10 01/91	

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Citation			AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
19A	NCAC	3J .0901 - .0907	•				10 01 91	
		8G .0306		•			10 01 91	
		14A .0101		•			10 01 91	
		14F .0008		•		•	10 01 91	
		3211 .0402		•		•	10 01 91	
		.0406		•			10 01 91	
		36 .0211		•			10 01 91	
		.0223		•		•	10 01 91	
		.0401		•			10 01 91	
		46 .2901	•			•	10 01 91	
		54 .1703		•			10 01 91	
		.1704		•		•	10 01 91	
		.1706	•				10 01 91	
		.1802 - .1803		•			10 01 91	
		.1902 - .1904		•			10 01 91	
		.2001 - .2002		•			10 01 91	
		.2004		•			10 01 91	
		.2006	•				10 01 91	
		.2101		•			10 01 91	
26	NCAC	2A .0205		•			10 01 91	03 29 92
		.0301		•			10 01 91	03 29 92
		.0303	•				10 01 91	03 29 92
		.0402 - .0404		•			10 01 91	03 29 92
		2B .0201 - .0202		•			10 01 91	03 29 92
		.0301 - .0302		•			10 01 91	03 29 92
		.0303	•				10 01 91	03 29 92
		.0401		•			10 01 91	03 29 92
		3 .0002 - .0004		•			10 01 91	
		.0009		•			10 01 91	
		.0013		•			10 01 91	
		.0019		•			10 01 91	
		.0026		•			10 01 91	
		.0030		•			10 01 91	

ARRC OBJECTIONS

The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 143B-30.2(d).

Temporary Rules are noted by "". These Rules have already gone into effect.*

ECONOMIC AND COMMUNITY DEVELOPMENT

Employment and Training

* 4 NCAC 20B .0903 - Allocation of Grants	ARRC Objection 8/22/91
* 4 NCAC 20B .0905 - Eligibility	ARRC Objection 8/22/91
* 4 NCAC 20B .0907 - Cost Limitations/Categories	ARRC Objection 8/22/91
* 4 NCAC 20B .0908 - Reporting	ARRC Objection 8/22/91
* 4 NCAC 20B .0909 - Performance Standards	ARRC Objection 8/22/91
* 4 NCAC 20B .0911 - Fund Availability	ARRC Objection 8/22/91

EDUCATION

Elementary and Secondary Education

16 NCAC 6C .0207 - Prospective Teacher Scholarship Loans Agency Revised Rule	ARRC Objection 6/21/91 Obj. Removed 7/18/91
* 16 NCAC 6E .0301 - Driver Training	ARRC Objection 8/22/91

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Management

15A NCAC 2D .1102 - Applicability	ARRC Objection 8/22/91
15A NCAC 2D .1203 - Test Methods and Procedures Agency Revised Rule	ARRC Objection 8/22/91 Obj. Removed 8/22/91
15A NCAC 2D .1208 - Operator Training Requirements	ARRC Objection 8/22/91
15A NCAC 2D .1209 - Compliance Schedules Agency Revised Rule	ARRC Objection 8/22/91 Obj. Removed 8/22/91

Adult Health

15A NCAC 16A .0804 - Financial Eligibility No Response from Agency	ARRC Objection 1/18/91 2/25/91
Agency Responded	No Action 3/21/91
No Response from Agency	No Action 4/18/91
15A NCAC 16A .0806 - Billing the HIV Health Services Program No Response from Agency	ARRC Objection 1/18/91 2/25/91
Agency Responded	No Action 3/21/91
No Response from Agency	No Action 4/18/91

Wildlife

15A NCAC 10K .0001 - Course Requirements Agency Revised Rule	ARRC Objection 7/18/91 Obj. Removed 8/22/91
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HUMAN RESOURCES

ARRC OBJECTIONS

Children's Services

10 NCAC 411 .0406 - Responsibility for Training of Team Members
Pending Correction ARRC Objection 7/18/91
8/22/91

Economic Opportunity

* 10 NCAC 51F .0102 - Definitions ARRC Objection 8/22/91
* 10 NCAC 51F .0202 - Ineligible Activities ARRC Objection 8/22/91
* 10 NCAC 51F .0402 - Eligibility Requirements ARRC Objection 8/22/91
* 10 NCAC 51F .0501 - Grant Agreement ARRC Objection 8/22/91

Facility Services

10 NCAC 3U .0604 - General Safety Requirements ARRC Objection 8/22/91
10 NCAC 3U .0804 - Infectious and Contagious Diseases ARRC Objection 8/22/91

Individual and Family Support

10 NCAC 42B .1201 - Personnel Requirements ARRC Objection 1/18/91
No Response from Agency 2/25/91
Agency Returned Rule Unchanged No Action 3/21/91
Agency Filed Rule with OAH Rule Eff. 8/01/91
10 NCAC 42C .2001 - Qualifications of Administrator ARRC Objection 1/18/91
No Response from Agency 2/25/91
Agency Returned Rule Unchanged No Action 3/21/91
Agency Filed Rule with OAH Rule Eff. 8/01/91
10 NCAC 42C .2002 - Qualifications of Supervisor-in-Charge ARRC Objection 1/18/91
No Response from Agency 2/25/91
Agency Returned Rule Unchanged No Action 3/21/91
Agency Filed Rule with OAH Rule Eff. 8/01/91
10 NCAC 42C .2006 - Qualifications of Activities Coordinator ARRC Objection 1/18/91
No Response from Agency 2/25/91
Agency Returned Rule Unchanged No Action 3/21/91
Agency Filed Rule with OAH Rule Eff. 8/01/91
10 NCAC 42C .3301 - Existing Building ARRC Objection 11/14/90
Agency Returned Rule Unchanged No Action 12/20/90
Agency Filed Rule with OAH Rule Eff. 5/01/91
10 NCAC 42D .1401 - Qualifications of Administrator/Co-Administrator ARRC Objection 11/14/90
Agency Returned Rule Unchanged No Action 12/20/90
Agency Filed Rule with OAH Rule Eff. 5/01/91

Medical Assistance

10 NCAC 50B .0305 - Deprivation ARRC Objection 8/22/91
Agency Revised Rule Obj. Removed 8/22/91

Social Services

10 NCAC 24A .0303 - Sel/County Board Members/Social Svcs Comm ARRC Objection 4/18/91
Agency Revised Rule Obj. Removed 7/18/91

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Engineering and Building Codes

11 NCAC 8 .0815 - Final Board Order ARRC Objection 7/18/91

ARRC OBJECTIONS

Agency Revised Rule

Obj. Removed 8/22/91

LICENSING BOARDS AND COMMISSIONS

Cosmetic Art Examiners

21 NCAC 14F .0010 - Sanitary Rules

ARRC Objection 5/16/91

No Response from Agency

No Action 7/18/91

Agency Requested Additional Time

7/18/91

Agency Responded Will Repeal Rule

Obj. Removed 8/22/91

21 NCAC 14G .0017 - Changes in Teaching Staff

ARRC Objection 5/16/91

No Response from Agency

No Action 7/18/91

Obj. Removed 7/18/91

21 NCAC 14I .0304 - Classroom Work

ARRC Objection 5/16/91

No Response from Agency

No Action 7/18/91

Agency Revised Rule

Obj. Removed 7/18/91

Medical Examiners

21 NCAC 32B .0309 - Personal Interview

ARRC Objection 2/25/91

Agency Responded

No Action 3/21/91

Rule Returned to Agency

5/16/91

Practicing Psychologists

21 NCAC 54 .1701 - Information Required

ARRC Objection 8/22/91

21 NCAC 54 .1704 - Review Procedure

ARRC Objection 8/22/91

Agency Revised Rule

Obj. Removed 8/22/91

21 NCAC 54 .2103 - Reinstatement

ARRC Objection 8/22/91

Real Estate Commission

21 NCAC 58C .0302 - Program Structuring

ARRC Objection 7/18/91

Agency Revised Rule

Obj. Removed 7/18/91

21 NCAC 58D .0201 - Qualifications for Appraiser Licensure and Cert.

ARRC Objection 7/18/91

Agency Revised Rule

Obj. Removed 7/18/91

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

10 NCAC 261 .0101 - PURPOSE: SCOPE/NOTICE OF CHANGE IN LEVEL OF CARE

10 NCAC 261 .0102 - REQUESTS FOR RECONSIDERATION AND RECIPIENT APPEALS

10 NCAC 261 .0104 - FORMAL APPEALS

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rules 10 NCAC 261 .0101, 10 NCAC 261 .0102 and 10 NCAC 261 .0104 void as applied in *Linda Allred, Petitioner v. North Carolina Department of Human Resources, Division of Medical Assistance, Respondent* (90 DHHR 0940).

10 NCAC 42W .0003(c) - COUNTY DEPT OF SOCIAL SERVICES RESPONSIBILITIES

10 NCAC 42W .0005 - REPORTING CASES OF RAPE AND INCEST

The North Carolina Court of Appeals, per Judge Robert F. Orr, declared Rules 10 NCAC 42W .0003(c) and 10 NCAC 42W .0005 void as applied in *Rankin Whittington, Daniel C. Hudgins, Dr. Takey Crist, Dr. Gwendolyn Boyd and Planned Parenthood of Greater Charlotte, Inc., Plaintiffs v. The North Carolina Department of Human Resources, David Flaherty, in his capacity as Secretary of the North Carolina Department of Human Resources, The North Carolina Social Services Commission, and C. Barry McCarty, in his capacity as Chairperson of the North Carolina Social Services Commission, Defendants* [100 N.C. App. 603, 398 S.E.2d 40 (1990)].

16 NCAC 6D .0105 - USE OF SCHOOL DAY

The North Carolina Supreme Court, per Associate Justice Henry E. Frye, held invalid Rule 16 NCAC 6D .0105 as decided in *The State of North Carolina; The North Carolina State Board of Education; and Bob Etheridge, State Superintendent of Public Instruction, Plaintiffs v. Whittle Communications and The Thomasville City Board of Education, Defendant-Counterclaimants and The Davidson County Board of Education, Defendant-Intervenor and Counterclaimant v. The State of North Carolina; The North Carolina State Board of Education; and Bob Etheridge, State Superintendent of Public Instruction; and Howard S. Haworth; Barbara M. Tapscott; Kenneth R. Harris; Teena Smith Little; W.C. Meekins Jr.; Mary B. Morgan; Patricia H. Neal; Cary C. Owen; Donald D. Pollock; Prezell R. Robinson; Norma B. Turnage; State Treasurer Harlan E. Boyles; and Lt. Governor James C. Gardner; in their official capacities as members of The North Carolina State Board of Education, Counterclaim Defendants* [328 N.C. 456, 402 S.E.2d 556 (1991)].

15A NCAC 7H .0308 - SPECIFIC USE STANDARDS

The North Carolina Court of Appeals, per Judge Sidney S. Eagles Jr., held that it was error for the Coastal Resources Commission to fail to follow the required notice and comment procedure prior to the adoption of temporary rule 15A NCAC 7H .0308(a)(1)(M), but that the CRC followed proper procedures when it adopted the text of the temporary rule as a permanent rule [15A NCAC 7H .0308(a)(1)(M)]. *Conservation Council of North Carolina v. Haste* [102 N.C. App. 411, 402 S.E.2d 447 (1991)].

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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3	Auditor	Barber Examiners	6
4	Economic and Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
6	Council of State	General Contractors	12
7	Cultural Resources	Cosmetic Art Examiners	14
8	Elections	Dental Examiners	16
9	Governor	Electrical Contractors	18
10	Human Resources	Foresters	20
11	Insurance	Geologists	21
12	Justice	Hearing Aid Dealers and Fitters	22
13	Labor	Landscape Architects	26
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- AO - Administrative Order
- AG - Attorney General's Opinions
- C - Correction
- FR - Final Rule
- GS - General Statute
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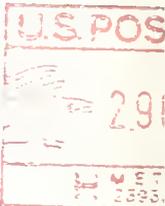
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