

Burgos, Alexander N

Subject: FW: [External] RE: Rules .4415 and .4707 and .1601, .1605, and .2204

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>

Sent: Wednesday, January 17, 2024 4:33 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Furuseeth, Andrew O <andrew.furuseeth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>

Subject: [External] RE: Rules .4415 and .4707 and .1601, .1605, and .2204

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Bill and Seth,

Regarding Administrative Rules .1601, .1605, .2204, .4415, and .4707 that the Rules Review Commission objected to at its December 14, 2023 meeting, the Department is advising the Rules Review Commission that in accordance with G.S. 150B-21-12(a)(2), the Secretary has decided not to change these Rules.

Please let me know if you need any additional information.

Thank you.

Laura

Laura Lansford
Assistant General Counsel
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Laura.Lansford@ncdor.gov

Burgos, Alexander N

Subject: FW: [External] Revisions to Rules objected to by RRC at 11/16/2023 meeting

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Friday, January 5, 2024 1:32 PM

To: Lansford, Laura L <Laura.Lansford@ncdor.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Peaslee, William W <bill.peaslee@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>

Subject: RE: [External] Revisions to Rules objected to by RRC at 11/16/2023 meeting

Good afternoon,

After reviewing the updated rule, I believe that the new revised version of 17 NCAC 07B .3101 has satisfied the RRC's previous objections to this rule. At this point, I anticipate recommending approval of the new revised version of 17 NCAC 07B .3101 at the January 31st Commission meeting. I'll let you know if something changes before then.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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Burgos, Alexander N

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Wednesday, December 20, 2023 12:51 PM
To: Rules, Oah
Cc: Peaslee, William W; Ascher, Seth M; Burgos, Alexander N; Furuseth, Andrew O; Jacobs, Tenisha S
Subject: [External] Revisions to Rules objected to by RRC at 11/16/2023 meeting
Attachments: 17 NCAC 07B .3101.docx; 17 NCAC 07B .4203.docx; 17 NCAC 07B .4210.docx; 17 NCAC 07B .4404.docx; 17 NCAC 07B .4503.docx; 17 NCAC 07B .4609.docx; 17 NCAC 07B .4701.docx

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

On behalf of the Sales and Use Tax Division of the Department of Revenue, please find attached the following 7 revised Rules objected to by the RRC on 11/16/2023:
17 NCAC 07B .3101; .4203; .4210; .4404; .4503; .4609; and .4701.

Please let me know if additional information is required.

Thank you.

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

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

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

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

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

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

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

History Note: Authority G.S. 105-164.3; 105-164.4; ~~[105-164.4G;]~~ 105-262; 105-264; ~~[Chapter 105, Articles 39, 40, 42, 43, and 46;]~~ Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; ~~105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;~~

Eff. February 1, 1976;

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

Readopted Eff. January 1, 2024.

Burgos, Alexander N

Subject: FW: [External] RE: Status of 17 NCAC 07B .1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, .3101, and .4109

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>

Sent: Wednesday, December 13, 2023 12:20 PM

To: Ascher, Seth M <seth.ascher@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>

Subject: RE: [External] RE: Status of 17 NCAC 07B .1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, .3101, and .4109

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Hi Seth,

Thanks for letting me know. I hope you feel better soon.

Laura

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Wednesday, December 13, 2023 12:18 PM

To: Laura L. Lansford <Laura.Lansford@ncdor.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Andrew O. Furuseth <andrew.furuseth@ncdor.gov>; Tenisha S. Jacobs <Tenisha.Jacobs@ncdor.gov>

Subject: RE: [External] RE: Status of 17 NCAC 07B .1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, .3101, and .4109

CAUTION: This email originated from outside of the organization. Do not click links or attachments unless you recognize the sender.

Laura,

I wanted to let you know that I am getting over an illness so will be participating in the meeting remotely from my office tomorrow. If you need something from me during or after the meeting, please call or email and I can put on a mask and talk to you outside the meeting room.

Thanks,

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

From: Ascher, Seth M
Sent: Monday, December 11, 2023 4:16 PM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Peaslee, William W; Furuseth, Andrew O; Jacobs, Tenisha S
Subject: Status of 17 NCAC 07B .1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, .3101, and .4109
Attachments: Staff Opinion 17 NCAC 07B .1601, .1605, .1705, .2204.doc

Laura,

Attached is my staff opinion recommending that the Commission continue its necessity objection for 17 NCAC 07B .1601, .1605, .1705, and .2204.

I anticipate recommending that the Commission approve the final revised version of 17 NCAC 07B .1202, .1303, .1404, .2001, .2002, and .4109 because it is my opinion that your revisions have resolved the October objections.

Additionally, your agency has not submitted any revisions to 17 NCAC 07B .3101 after the November meeting objection, so I anticipate recommending no action on that rule.

Let me know if you have any questions or believe I am missing any rules.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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Burgos, Alexander N

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Tuesday, December 12, 2023 8:16 AM
To: Ascher, Seth M
Cc: Burgos, Alexander N; Peaslee, William W; Furuseth, Andrew O; Jacobs, Tenisha S
Subject: [External] RE: Status of 17 NCAC 07B .1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, .3101, and .4109

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Hi Seth,

Thank you for the update. All the rules you listed for the December RRC meeting match what I have.

Thanks.

Laura

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Monday, December 11, 2023 4:16 PM
To: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Andrew O. Furuseth <andrew.furuseth@ncdor.gov>; Tenisha S. Jacobs <Tenisha.Jacobs@ncdor.gov>
Subject: Status of 17 NCAC 07B .1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, .3101, and .4109

CAUTION: This email originated from outside of the organization. Do not click links or attachments unless you recognize the sender.

Laura,

Attached is my staff opinion recommending that the Commission continue its necessity objection for 17 NCAC 07B .1601, .1605, .1705, and .2204.

I anticipate recommending that the Commission approve the final revised version of 17 NCAC 07B .1202, .1303, .1404, .2001, .2002, and .4109 because it is my opinion that your revisions have resolved the October objections.

Additionally, your agency has not submitted any revisions to 17 NCAC 07B .3101 after the November meeting objection, so I anticipate recommending no action on that rule.

Let me know if you have any questions or believe I am missing any rules.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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Burgos, Alexander N

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Monday, December 11, 2023 12:02 PM
To: Rules, Oah
Cc: Peaslee, William W; Ascher, Seth M; Burgos, Alexander N; Furuseth, Andrew O; Jacobs, Tenisha S
Subject: [External] DOR response to RFC on 17 NCAC 07B .5004
Attachments: 17 NCAC 07B .5004.docx

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

On behalf of the Sales and Use Tax Division of the Department of Revenue, please accept this email with attachment in response to email correspondence requesting a change to Rule 17 NCAC 07B .5004 by Mr. Peaslee on 12/11/2023.

Please let me know if additional information is required.

Thank you.

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
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Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

17 NCAC 07B .5004 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .5004 TAXABLE OPTICAL SUPPLIES

(a) ~~[Supplies for Corrective Eyeglasses—]~~All sales to users or ~~[Sales]~~ The sale to consumers of eyeglass frames not for use in connection with eyeglasses ground on prescription, sunglasses not ground on prescription, solutions for cleaning eyeglasses, telescopes, binoculars, opera glasses, and similar items, by whomsoever made, eyeglass cleaning cloths or wipes, eyeglass cases, eyeglass chains or cords, and similar [corrective] eyeglass supplies are exempt from sales and use tax pursuant to G.S. 105-164.13(12), provided that: [when such sales are made separate and apart from a corrective eyeglass sale or when they]

(1) The items are sold with corrective ~~[eyeglasses, but]~~ eyeglasses and the items are not billed separate and apart from the corrective [eyeglasses;] are subject to the applicable statutory state and local sales or use tax. [general State, and applicable local and transit rates of sales and use tax.] In addition, the retail sale of nose pads, temples and any other repair parts for eyeglass frames are subject to the tax without regard to whether the repair parts are sold to be used on frames with prescription lens. All persons, including opticians, optometrists, and oculists, making such sales shall register as retail merchants and collect and remit the tax due thereon eyeglasses; and

(2) The sale is a bundled transaction pursuant to G.S. 105-164.4D.

(b) ~~[Supplies for Corrective Contact Lenses— Sales]~~ The sale to consumers of aseptors, salt tablets, squeeze bottles, carrying cases, ~~[patient]~~ contact lens instruction booklets, ~~[patient]~~ contact lens care kits, and similar ~~[corrective]~~ contact lens supplies are exempt from sales and use tax pursuant to G.S. 105-164.13(12), provided that: [when such sales are made separate and apart from a corrective contact lens sale or when they]

(1) The items are sold with corrective contact ~~[lenses, but]~~ lenses and the items are not billed separate and apart from the corrective contact [lenses; are subject to the general State, and applicable local and transit rates of sales and use tax.] lenses; and

(2) The sale is a bundled transaction pursuant to G.S. 105-164.4D.

~~[(c) Supplies for Non-Corrective Eyeglasses or Contact Lenses— Sales to consumers of optical supplies for non-corrective eyeglasses or contact lenses are subject to the general State, and applicable local and transit rates of sales and use tax.]~~

~~[(d) Other Optical Items— Sales to consumers of telescopes, binoculars, opera glasses, and similar items are subject to the general State, and applicable local and transit rates of sales and use tax.]~~

History Note: Authority G.S. 105-164.4; 105-164.4D; 105-164.6; 105-164.13; 105-262; 105-264; ~~Article 39;~~ ~~Article 40;~~ ~~Article 42;~~ ~~Article 43;~~ ~~Article 44;~~ ~~Article 46;~~ [Chapter 105, Articles 39, 40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

Eff. February 1, 1976;

1 *Amended Eff. October 1, 2009; October 1, 1993; October 1, ~~1991~~1991;*
2 *Readopted Eff. January 1, 2024.*
3

Burgos, Alexander N

From: Ascher, Seth M
Sent: Monday, November 20, 2023 11:44 AM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Peaslee, William W
Subject: Notice of Continued Objection to 17 NCAC 07B 3101
Attachments: 11.2023 DOR cont objection letter 3101.docx; Staff Opinion Revised Rule 17 NCAC 07B 3101.docx

Good morning,

Attached is the notice of the Rules Review Commission's continuing objection to the above captioned rule. Let me know if you have any questions.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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Burgos, Alexander N

From: Ascher, Seth M
Sent: Monday, November 20, 2023 11:44 AM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Peaslee, William W
Subject: Notice of Continued Objection to 17 NCAC 07B 3101
Attachments: 11.2023 DOR cont objection letter 3101.docx; Staff Opinion Revised Rule 17 NCAC 07B 3101.docx

Good morning,

Attached is the notice of the Rules Review Commission's continuing objection to the above captioned rule. Let me know if you have any questions.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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Burgos, Alexander N

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Sunday, November 19, 2023 3:10 PM
To: Rules, Oah
Cc: Peaslee, William W; Ascher, Seth M; Burgos, Alexander N; Furuseth, Andrew O; Jacobs, Tenisha S
Subject: [External] Revisions to Rules objected to by RRC at 10/19/2023 meeting
Attachments: _DOR response to Oct RRC objection 10.20.2023.zip

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On behalf of the Sales and Use Tax Division of the Department of Revenue, please find attached the following 18 revised Rules objected to by the RRC on 10/19/2023:

17 NCAC 07B .1202; .1303; .1404; .1601; .1605; .1705; .2001; .2002; .2204; .4109; .4201; .4202; .4510; .4707; .4708; .4801; .5001; .5004.

Please let me know if additional information is required.

Thank you.

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

1 17 NCAC 07B .1202 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .1202 SUPPLIES AND EQUIPMENT FOR AN ACCOMMODATION**

5 ~~Sales to hotels, motels, inns, tourist camps, and tourist cabins and other places in which rooms, lodgings or~~
6 ~~accommodations are furnished for a consideration,~~ [A] For purposes of G.S. 105-164.13, a hotel, motel, inn, tourist
7 camp, tourist cabin, or other accommodation provider making purchases of any supplies, equipment, or fixtures
8 including linens, but not limited to beds, bedding, bathroom supplies, cleaning supplies, and furniture are
9 subject to are purchased for use and not resale, and the accommodation provider shall pay the applicable statutory
10 state[general State,] and [applicable] local [and transit rates of] sales or use tax-tax on the supplies, equipment, or
11 fixtures at the time of purchase, pursuant to G.S. 105-164.4.

12
13 *History Note:* *Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; [Chapter 105,*
14 *Articles 39, 40, 42, 43, and 46;] Article 39; Article 40; Article 42; Article 43; 105-467; 105-468;*
15 *105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;*
16 *Article 44; Article 46;*
17 *Eff. February 1, 1976;*
18 *Amended Eff. May 1, 2009; October 1, 1993; October 1, 1991; 1991;*
19 *Readopted Eff. January 1, 2024.*

17 NCAC 07B .1303 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .1303 ~~DELIVERIES~~ GIFTS TO DONEES

(a) A donee is a person to whom the buyer of tangible personal property gives the property that receives an item, as the term item is defined in G.S. 105-164.3, from a purchaser without charge. ~~Retailers~~ Pursuant to G.S. 105-164.4, ~~retailers~~ making sales of items sourced to this State shall collect and remit the ~~applicable rates of~~ sales and use tax due on the sales price of the item, even if the item is given away by the purchaser to a donee or delivered directly to a donee.

(b) ~~The~~ Pursuant to G.S. 105-164.6, the purchaser of items used or consumed in this State is liable for ~~the applicable rates of~~ use tax due on the purchase price of the items, even if the items are given away by the purchaser to a donee or delivered directly to a donee, unless the sales tax is paid to the retailer at the time of purchase. ~~When a North Carolina retailer sells tangible personal property to a buyer and the retailer, at the direction of the buyer, delivers the property to the buyer's donee instead of to the buyer, the sale by the retailer is subject to applicable statutory State and local sales tax only if the delivery to the donee is made inside the State. If the delivery to the donee is made outside the State, no State or local sales or use tax applies.~~

(c) A retailer who, at the direction of a buyer, delivers property to the ~~buyer's~~ purchaser's donee at a point outside the State ~~must have~~ shall maintain acceptable proof of delivery in accordance with 17 NCAC 07B .1301.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4B; 105-164.6; 105-262; 105-264; [Chapter 105, Articles 39, 40, 42, 43, and 46; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538; Amended Eff. April 1, 2006; July 18, 2002; July 1, 1999; October 1, 1993; October 1, 1991; March 1, 1984; January 3, 1984; 1984; Readopted Eff. January 1, 2024.

17 NCAC 07B .1404 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .1404 MEDICAL SUPPLIES SUPPLIES, INSTRUMENTS, AND EQUIPMENT

Sales Pursuant to G.S. 105-164.4, sales to physicians, dentists, hospitals, or other users or consumers of medical supplies, ~~instruments~~ medical instruments, medical equipment, and laboratory equipment used to diagnose, prevent, treat, or cure disease are subject to applicable state ~~[the general State,] and [applicable] local [and transit rates of]~~ sales or and use tax. ~~[tax, unless exempt by statute.] tax.~~ For purposes of G.S. 105-164.13, these items are not purchased for resale or pursuant to a prescription. Sales of medical equipment and medical supplies are also subject to applicable state and local sales or use tax, unless their sale is exempt under G.S. 105-164.13(12)d. That statute exempts from tax durable medical equipment and related medical supplies that are covered under the Medicare or Medicaid program and are sold on either a certificate of medical necessity or a written prescription. Items listed below are subject to tax, unless their sale is exempt under G.S. 105-164.13(12)d. Items not included in the list may also be Examples of medical supplies, instruments, and equipment subject to ~~tax~~ sales and use tax include the following:

- (1) ~~Adhesive~~ adhesive tape;
- (2) ~~Alcohol~~ alcohol;
- (3) ~~Bandages~~ bandages;
- (4) ~~Battery~~ battery chargers;
- (5) ~~Bed~~ bed pans;
- (6) ~~Betadine~~ betadine solution;
- (7) ~~Blood~~ blood glucose monitors;
- (8) ~~Blood~~ blood glucose test/reagent strips;
- (9) ~~Blood~~ blood or urine control strips;
- ~~(10)~~ ~~breast pumps~~;
- ~~(10)~~ ~~(11)~~ ~~(10)~~ Breathing breathing circuits;
- ~~(11)~~ ~~(12)~~ ~~(11)~~ CO₂ carbon dioxide (CO₂) saturation monitors and accessories;
- ~~(13)~~ ~~(12)~~ cold packs and hot packs;
- ~~(14)~~ ~~(13)~~ collection bags;
- ~~(12)~~ ~~(15)~~ ~~(14)~~ Cotton; cotton;
- ~~(13)~~ ~~(16)~~ ~~(15)~~ Crutch crutch and cane holders;
- ~~(14)~~ ~~(17)~~ ~~(16)~~ Cylinder cylinder tank carriers;
- ~~(18)~~ ~~(17)~~ denture adhesive;
- ~~(15)~~ ~~(19)~~ ~~(18)~~ Dial a dosedial-a-does insulin delivery devices;
- ~~(16)~~ ~~(20)~~ ~~(19)~~ Dressings; dressings;
- ~~(17)~~ ~~(21)~~ ~~(20)~~ Exam exam and surgical gloves;
- ~~(18)~~ ~~(22)~~ ~~(21)~~ Gauze; gauze;
- ~~(23)~~ ~~(22)~~ glucose for insulin reactions;

1 ~~[(24)](23)~~ incontinence pads, sheets, and liners;
 2 ~~(19) — Knives;~~
 3 ~~(20)[(25)](24)~~ I.V.intravenous (IV) hangers;
 4 ~~(21) — I.V. poles;~~
 5 ~~[(26)](25)~~ knives;
 6 ~~(22)[(27)](26)~~ ~~Lancets;~~lancets;
 7 ~~[(28)](27)~~ lubricants;
 8 ~~(23)[(29)](28)~~ Microscopes;microscopes;
 9 ~~(24)[(30)](29)~~ Mouthpieces;mouthpieces;
 10 ~~(25)[(31)](30)~~ Needles;needles and syringes;
 11 ~~[(32)](31)~~ non-corrective eye lenses;
 12 ~~[(33)](32)~~ ostomy barrier wipes and powders;
 13 ~~[(34)](33)~~ ostomy cleansers, deodorants, and adhesive removers;
 14 ~~(26)[(35)](34)~~ Peak-peak flow meters;
 15 ~~(27)[(36)](35)~~ Percussors;percussors;
 16 ~~(28)[(37)](36)~~ Pulse-pulse oximeters;
 17 ~~(29)[(38)](37)~~ Rollabout-rollabout chairs;
 18 ~~[(39)](38)~~ soap;
 19 ~~(30)[(40)](39)~~ Seissors;scissors;
 20 ~~(31)[(41)](40)~~ Sterile-sterile water;
 21 ~~(32) — Surgical gloves;~~
 22 ~~(33) — Syringes;~~
 23 ~~[(42)](41)~~ tissues;
 24 ~~(34)[(43)](42)~~ Tracheal-trachael suction catheters;
 25 ~~(35)[(44)](43)~~ Tracheostomy-tracheostomy care kits;
 26 ~~(36)[(45)](44)~~ Tracheostomy-tracheostomy cleaning brushes;
 27 ~~(37)[(46)](45)~~ Tracheostomy-tracheostomy masks and collars;
 28 ~~(38)[(47)](46)~~ Tubing;tubing, sold by the linear foot or otherwise;
 29 ~~(39)[(48)](47)~~ Urinals;urinals;
 30 ~~(40)[(49)](48)~~ Urine-urine test or reagent strips or ~~tablets; and~~tablets; or
 31 ~~(41)[(50)](49)~~ X-rayx-ray machines.

33 *History Note:* *Authority G.S. 105-164.4; 105-164.6; 105.164.13; 105-262; 105-264; [Chapter 105, Articles 39,*
 34 *40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-*
 35 *510.1; 105-511.3; 105-537; 105-538;*

36 *Eff. February 1, 1976;*

37 *Amended Eff. July 1, 2000; August 1, 1998; October 1, 1993; October 1, 1991;*

1 Readopted Eff. January 1, 2024.
2

17 NCAC 07B .1601 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

SECTION .1600 – SALES TO OR PURCHASES BY HOSPITALS; EDUCATIONAL; CHARITABLE OR RELIGIOUS INSTITUTIONS; ETCNONPROFIT ENTITIES; SALES BY NONPROFIT ENTITIES; AND REFUNDS THERETOTO NONPROFIT ENTITIES

17 NCAC 07B .1601 SALES TO OR PURCHASES BY NONPROFIT ENTITIES

(a) For purposes of this Rule, a nonprofit entity is an organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and includes entities such as hospitals not operated for profit, educational institutions not operated for profit, churches, and civic groups such as chambers of commerce, fraternities, sororities, clubs, lodges, parent and teacher associations, scout councils, and similar organizations.

~~(a)(b) Sales to nonprofits. -- Sales To Nonprofits~~ Nonprofit entities are not exempt from paying sales and use tax. Sales ~~[Retail]~~ Pursuant to G.S. 105-164.4, retail sales of taxable tangible personal property items, as the term item is defined in G.S. 105-164.3, to a nonprofit entity for use or consumption by that entity are subject to ~~the applicable rates of~~ sales and use tax, unless acquired by the nonprofit entity for the purpose of resale. A retailer is liable for collecting and remitting sales and use tax on a sale to a nonprofit entity, unless the nonprofit provides the retailer a Certificate of Exemption in accordance with 17 NCAC 07B .0106. ~~Nonprofit entities include hospitals not operated for profit, educational institutions not operated for profit, churches, and civic groups such as chambers of commerce, fraternities, sororities, and scout clubs. Sales of building materials, supplies, fixtures, and equipment to contractors for use in the performance of contracts with a nonprofit entity are also subject to sales or use tax.~~

(c) Purchases by nonprofits:

(1) Purchases for Use or Consumption. -- Nonprofit entities are not exempt from paying sales and use tax. Purchases of taxable items by nonprofit entities for use or consumption are subject to ~~the applicable rates of~~ sales and use ~~tax,~~ tax, pursuant to G.S. 105-164.4. Any nonprofit entity making taxable purchases from a seller that does not collect North Carolina sales and use tax is required to register with the Department and file returns in accordance with 17 NCAC 07B .0104, and pay the use tax due on such ~~purchases.~~ purchases, pursuant to G.S. 105-164.6. A nonprofit entity must pay sales tax charged on its purchases and is liable for use tax on its purchases when no sales tax is collected. A nonprofit entity that owes use tax must file a return in accordance with 17 NCAC 7B .0104.

(2) Purchases for Resale. -- Nonprofit entities that make purchases of items for the purpose of resale may purchase such items exempt from sales and use ~~tax,~~ tax, pursuant to G.S. 105-164.13(61b), when purchased in accordance with 17 NCAC 07B .0106.

(c) Real property contracts with nonprofits:

1 (1) ~~[Retail]~~ Pursuant to G.S. 105-14.4H, ~~retail~~ sales of building materials, supplies, fixtures, and
2 equipment to contractors or other persons for use in the performance of real property contracts with
3 a nonprofit entity are subject to sales and use tax.

4 (2) ~~[Purchases]~~ Pursuant to G.S. 105-164.4H, ~~purchases~~ of building materials, supplies, fixtures, and
5 equipment by real property contractors or other persons for use in the performance of real property
6 contracts with a nonprofit entity are subject to sale and use tax.

7 ~~(b) Sales By Nonprofits. Sales by nonprofit entities are subject to sales or use tax unless a specific~~
8 ~~exemption applies to the sale. A nonprofit entity that makes taxable retail sales must register with the~~
9 ~~Department and file sales and use tax returns. A nonprofit entity that is registered with the Department may~~
10 ~~execute a Streamlined Sales Tax Agreement Certificate of Exemption, form E-595E. The certificate shall~~
11 ~~not be used for items the nonprofit entity intends to use or consume.~~

12
13 History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4H; 105-164.6; 105-164.13; 105-164.28; 105-
14 164.29; 105-262; 105-264; [Chapter 105, Articles 39, 40, 42, 43, and 46;] Article 39; Article 40;
15 Article 42; Article 43; Article 44; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-
16 509.1; 105-510.1; 105-511.3; 105-537; 105-538;
17 Eff. February 1, 1976;
18 Amended Eff. April 1, 2006; July 1, 2000; October 1, 1993; October 1, 1991; January 1, 1982; July
19 5, 1980; 1980;
20 Readopted Eff. January 1, 2024.

1 17 NCAC 07B .1605 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .1605 ~~CLUBS; ASSOCIATIONS; ETC.~~SALES BY NONPROFIT ENTITIES**

5 ~~Clubs, lodges, parents and teachers associations, scout councils and similar organizations which~~Nonprofit entities as
6 ~~defined in 17 NCAC 07B .1601(a) that make regular-retail sales of taxable tangible personal property must~~shall
7 register with the ~~Department of Revenue and pay the~~Department and file sales and use tax returns in accordance with
8 17 NCAC 07B .0104, and collect and remit [the applicable.]sales and use tax on such sales except as provided by G.S.
9 105-164.13(34) and G.S. 105-164.13(35) due, unless specifically exempt by statute, pursuant to G.S. 105-164.4.

10
11 *History Note:* Authority G.S. 105-164.4; 105-164.8; 105-164.16; 105-164.29; 105-262; 105-264; [Chapter 105,
12 Articles 39, 40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-
13 509.1; 105-510.1; 105-511.3; 105-537; 105-538;

14 *Eff. February 1, 1976;*

15 *Amended Eff. January 1, 1982; July 5, ~~1980-1980;~~*

16 *Readopted Eff. January 1, 2024.*
17

1 17 NCAC 07B .1705 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .1705 HOUSING AUTHORITIES**

5 Sales of ~~taxable tangible personal property~~ items, as the term item is defined in G.S. 105-164.3, to housing authorities
6 created and existing under Chapter 157 of the North Carolina General Statutes for use in carrying on their activities
7 are subject to the applicable statutory ~~state and local sales or use tax rates~~ of sales and use tax pursuant to G.S. 105-
8 164.4, and such housing authorities are not entitled to refunds under the provisions of G.S. 105-164.14.

9
10 *History Note:* Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; 105-264; [Chapter 105, Articles 39, 40,
11 42, 43, and 46;] Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; 105-467; 105-
12 468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;
13 Eff. February 1, 1976;
14 Amended Eff. May 1, 2009; October 1, 1993; October 1, 1991; August 1, 1988; March 1, 1984; 1984;
15 Readopted Eff. January 1, 2024.

1 17 NCAC 07B .2001 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:
3

4 **SECTION .2000 - SALES AND GIFTS BY EMPLOYERS TO EMPLOYEES ~~OR OTHER USERS~~**

5
6 **17 NCAC 07B .2001 SALES TO EMPLOYEES**

7 ~~Sales of tangible personal property by any employer, manufacturer, processor, wholesaler, distributor or jobber to his~~
8 ~~employees or others for use or consumption are subject to the applicable statutory state and local sales or use tax,~~
9 ~~unless specifically exempt, notwithstanding that such sales are infrequent or comprise only a small fraction of the~~
10 ~~vendor's total business, and every employer, manufacturer, processor, wholesaler, distributor or jobber making such~~
11 ~~sales must register with the department and collect and remit the tax due thereon. The fact that any such vendor only~~
12 ~~makes sales to his employees shall not relieve him of this requirement.~~

13 (a) An Pursuant to G.S. 105-164.4, an employer engaged in business in this State shall collect and remit the sales and
14 use tax due on the retail sale of an item, as the term item is defined in G.S. 105-164.3, to an employee. The tax due
15 shall be computed [at the applicable State, local, and transit rates of tax] on the sales price of the item. An employer
16 required to collect sales or use tax shall register with the Department in accordance with 17 NCAC 07B .0104. The
17 fact that an employer's sales are infrequent, comprise only a small fraction of the total business, or are to employees
18 only, shall not relieve an employer of these requirements.

19 (b) Employees shall pay the sales or use tax due on the purchase of an item from their [employer, employer, pursuant
20 to G.S. 105-164.4 and G.S. 105-164.6. The tax due shall be computed [at the applicable State, local, and transit rates
21 of tax] on the sales price or purchase price of the item.
22

23 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.19; 105-262; 105-264; [Chapter 105,*
24 *Articles 39, 40, 42, 43, and 46;] Article 39; Article 40; Article 42; Article 43; Article 44; 105-467;*
25 *105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-*
26 *538;*

27 *Eff. February 1, 1976;*

28 *Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991;*

29 *Readopted Eff. January 1, 2024.*

1 17 NCAC 07B .2002 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .2002 GIFTS AND WAGES TO EMPLOYEESAN EMPLOYEE OR OTHER PERSON**

5 ~~Gifts of tangible personal property by any employer, manufacturer, processor, wholesaler, distributor or jobber to his~~
6 ~~employees or other persons are subject to the applicable statutory state and local sales or use tax, unless the donor paid~~
7 ~~sales or use tax on the sales or purchase price of the donated property at the time he acquired the same. The tax due~~
8 ~~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~~
9 ~~donated, irrespective of whether fabricated, produced, manufactured or processed by the donor, or acquired elsewhere.~~
10 [An] Pursuant to G.S. 105-164.4, an employer shall pay the sales or use tax due on the purchase of an item, as the term
11 item is defined in G.S. 105-164.3, that is provided to an employee or other person as a gift or as compensation. The
12 tax due shall be computed [at the applicable State, local, and transit rates of sales and use tax] on the sales price or
13 purchase price of the item given away, irrespective of whether the item is fabricated, produced, manufactured, or
14 processed by the employer, or acquired elsewhere.

15
16 *History Note:* *Authority G.S. 105-164.3; 105-164.4; 105-164.4B; 105-164.6; 105-262; 105-264; [Chapter 105,*
17 *Articles 39, 40, 42, 43, and 46;]Article 39; Article 40; Article 42; Article 43; Article 44; 105-467;*
18 *105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-*
19 *538;*

20 *Eff. February 1, 1976;*

21 *Amended Eff. April 1, 2006; October 1, 1993; October 1, ~~1991~~,1991;*

22 *Readopted Eff. January 1, 2024.*
23

1 17 NCAC 07B .2204 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .2204 ~~MEALS SALES OF FOOD ON TRAINS: PLANES;~~ TRAINS, PLANES, ETC.**

5 ~~Sales-Retail~~ Pursuant to G.S. 105-164.4 and G.S 105-164.4B, retail sales of food and prepared foods ~~food or meals~~
6 by railroads, ~~Pullman cars, steamships, airlines~~ships, airlines, or other transportation company ~~diners, companies~~ while
7 within this ~~state, State,~~ are subject to ~~the applicable statutory state and local~~ rates of sales ~~or and~~ use tax.

8
9 *History Note:* *Authority G.S. 105-164.4; 105-164.4B; 105-262; 105-264; ~~Article 39; Article 40; Article 42; Article~~
10 ~~43; Article 44; Article 46;~~ [Chapter 105, Articles 39, 40, 42, 43, and 46;] 105-467; 105-468; 105-
11 469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;
12 *Eff. February 1, 1976;*
13 *Amended Eff. May 1, 2009; October 1, 1993; October 1, ~~1991~~1991;*
14 *Readopted Eff. January 1, 2024.**

17 NCAC 07B .4109 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .4109 BLUEPRINTS SOLD TO ARCHITECTS

~~Sales~~For purposes of G.S. 105-164.13, sales of blueprints, photographs and other tangible personal property items, as the term item is defined in G.S. 105-164.3, to an architectural or engineering firm for use or consumption and are sales for use or consumption and not for resale, and are subject to the [general State, and] applicable statutory state and local [and transit rates of] sales or and use tax-tax, pursuant to G.S. 105-164.4.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; [Chapter 105, Articles 39, 40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538; Eff. February 1, 1976; Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991; 1991; Readopted Eff. January 1, 2024.

Burgos, Alexander N

From: Ascher, Seth M
Sent: Wednesday, November 15, 2023 7:56 PM
To: Lansford, Laura L
Cc: Furuseth, Andrew O; Jacobs, Tenisha S; Peaslee, William W; Burgos, Alexander N
Subject: DOR Rules Summary for November RRC Meeting
Attachments: DOR Status November Meeting.docx

Laura,

Attached is a courtesy copy of a summary I am providing to the Commission to help organize the consideration of DOR's rules tomorrow.

Please be aware that the summary is not meant to be a staff opinion or recommendation that the Commission would vote on. This is meant to summarize the staff opinions, staff communications, and prior Commission action on these rules. If the summary misstates any of those, it was an unintentional mistake. If you notice an error or have any questions about the summary, please let me know.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

November 16, 2023, Rules Review Commission Meeting

Status of 17 NCAC 07B Rules in tabs G and H

Recommend approval:

Tab G: .0901, .0902, .0904, .1101, .1123, .1301, .1302, .1305, .1602, .1701, .1702, .1704, .1801, .1905, .1907, .2101, .2102, .2105, .2201, .2205, .2209, .2210, .2212, .2213, .2301, .2401, .2603, .2604, .2605, .2701, .2702, .2801, .2802, .2901, .3004, .3009, .3106, .3301, .3302, .3801, .3804, .3907, .3910, .4102, .4105, .4106

Tab H: .4205, .4302, .4401, .4403, .4406, .4411, .4413

Recommend Approval with technical change:

Tab G: None

Tab H: .4301

New Objections

Tab G: None

Tab H: .4203, .4210, .4404, .4503, .4609, .4614, .4701

Recommended for approval after satisfying objection:

Tab G: .0115, .3107

Tab H: None

Recommended for continuing objection:

Tab G: .3101

Tab H: .4206, .4415, .5002

Approved Rules:

.0104, .0106, .0108, .0112, .0117, .0121, .0801, .4204, .4716, .4802, .4803

Objected to in October:

.1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, .4109, .4201, .4202, .4510, .4707, .4708, .4801, .5001, .5004

Burgos, Alexander N

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Tuesday, November 14, 2023 2:14 PM
To: Peaslee, William W; Ascher, Seth M; Burgos, Alexander N
Cc: Furuseth, Andrew O; Jacobs, Tenisha S
Subject: [External] Request for oral comment - 11/16/2023 RRC meeting & question about response time

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Mr. Peaslee and Mr. Ascher,

I am submitting this request to offer oral comments regarding Rules proposed for readoption by the Department of Revenue, Sales and Use Tax Division at the 11/16/2023 Rules Review Commission meeting.

The Director of the Division, Andrew Furuseth, may wish to address the RRC to speak in favor on Sales and Use Tax Rules on the Commission's 11/16/2023 agenda.

Also, we are working on revisions to rules the RRC objected to at the 10/19/2023 meeting, and understand we have 30-days from that meeting, which puts the response date at Saturday, 11/18/2023. What is the protocol for when the response date falls on a weekend?

Please let me know if you need any additional information.

Thank you.

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

Burgos, Alexander N

Subject: FW: [External] Response to RFC Rules 17 NCAC 07B .0901 through .1907

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Tuesday, November 14, 2023 11:16 AM

To: Lansford, Laura L <Laura.Lansford@ncdor.gov>

Cc: Peaslee, William W <bill.peaslee@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>

Subject: RE: [External] Response to RFC Rules 17 NCAC 07B .0901 through .1907

Laura,

I am planning to recommend approval of the final revised version of this set of rules. I am planning to prepare a list or a chart to provide to the Commission, and will share that with you as well.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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Burgos, Alexander N

From: Ascher, Seth M
Sent: Tuesday, November 14, 2023 10:21 AM
To: Lansford, Laura L; Furuseth, Andrew O
Cc: Peaslee, William W; Burgos, Alexander N
Subject: Staff Opinions 17 NCAC 07B .0115, .03101, .3107
Attachments: Staff Opinion Revised Rule 17 NCAC 07B 0115.docx; Staff Opinion Revised Rule 17 NCAC 07B 3101.docx; Staff Opinion Revised Rule 17 NCAC 07B 3107.docx

Good morning,

Attached are three staff opinions related to the revised rules submitted by the Department of Revenue after objection by RRC. As you can see, I am recommending that the Commission find that the objection has been resolved in rules .0115 and .3107, but that the objection has not been fully resolved for rule .3101.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: [External] Response to RFC Rules 17 NCAC 07B .2101 through .4106

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Thursday, November 9, 2023 5:06 PM

To: Lansford, Laura L <Laura.Lansford@ncdor.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Peaslee, William W <bill.peaslee@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>

Subject: RE: [External] Response to RFC Rules 17 NCAC 07B .2101 through .4106

Lara,

I can confirm I received and was able to open this range of rules. I'll let you know if I have any questions as I go through them.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Wednesday, November 8, 2023 3:55 PM
To: Rules, Oah
Cc: Ascher, Seth M; Peaslee, William W; Burgos, Alexander N; Furuseth, Andrew O; Jacobs, Tenisha S
Subject: [External] Response to RFC Rules 17 NCAC 07B .2101 through .4106
Attachments: DOR response to DOR RFC 17 NCAC 07B .2101 through .4106.docx; DOR response to RFC .2101 through .4106.zip

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

On behalf of the Sales and Use Tax Division of the Department of Revenue, please accept this email with attachments in response to thirty (30) Requests for Changes submitted to the Division by Mr. Ascher on 10/30/2023, for Rules 17 NCAC 07B .2101 through .4106, and with a response due date of COB 11/9/2023.

Please let me know if additional information is required.

Thank you.

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: “~~a~~Association”
 - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
 - Wrong: “day;, and”
 - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:
<https://www.oah.nc.gov/rule-format-examples>

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2101

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change removing references to “applicable” and “unless”.

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2105

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change removing references to “applicable” and “unless”.

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

The original submission of this Rule struck the references to articles. Citation to the specific statutory references for local tax imposition is not necessary for this Rule.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2201

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

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

Food that is not "prepared food" is exempt from the State tax rate per G.S. 105-164.13B, thus it is only subject to local rates of tax. G.S. 105-467(a)(5) (Article 39) imposes a 1% tax on food, G.S. 105-483 (Article 40) imposes a ½% tax on food, and G.S. 105-498 (Article 42) imposes a ½% tax on food. G.S. 105-506.2 exempts food from Article 43, Article 44 are administration of local tax statute not relevant to impositions, and G.S. 105-538 exempts food from Article 46. Long explanation, but yes, 2% is correct across the board.

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

See proposed Rule change adopting recommended language.

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

See proposed Rule change deleting "may" and inserting "shall".

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

See proposed Rule change removing references to "applicable" and "unless".

Seth Ascher
Commission Counsel

Date submitted to agency: October 30, 2023

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: ~~State Human Resources Commission~~ Department of Revenue

RULE CITATION: 17 NCAC 07B .2205

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change removing references to “applicable”.

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2209

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Correct the introductory language to reflect the right rule.

See proposed Rule change correcting rule number in introductory statement.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2210

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

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

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

See proposed Rule change adopting recommended language.

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

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

See proposed Rule change deleting "applicable" and adding citation for exemption for camps from taxation.

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

Accommodations are tax per G.S. 105-164.4F, camps are exempted from the accommodations tax at G.S. 105-164.4F(e)(3). Accommodations provided outside the purview of the summer camp are taxable.

Seth Ascher
Commission Counsel

Date submitted to agency: October 30, 2023

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

See proposed Rule change removing references to “applicable”.

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2212

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 9, what "other exemptions"?

See proposed Rule change removing reference to "other exemptions".

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

See proposed Rule change adding language explaining the 2% local food tax rate.

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

See proposed Rule change removing references to "applicable".

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2213

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change omitting examples.

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2301

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Correct the introductory language to reflect the right rule.

See proposed Rule change correcting rule number in introductory statement.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2401

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change removing the reference to rule .1404.

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

See proposed Rule change adopting recommended language.

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

See proposed Rule change adopting recommended language.

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

See proposed Rule change removing references to "applicable".

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2603

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

“Asphalt plants” or “concrete plants” are not defined terms in Article 5. Asphalt plants are composed of equipment used for the manufacture of asphalt and other roadstone – the plant is not a physical building. Concrete plants are composed of equipment used to combine various ingredients to form concrete – the plant is not a physical building.

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

These are examples of transactions exempt under G.S. 105-164.4H.

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

See proposed Rule change removing references to “applicable”.

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: ~~State Human Resources Commission~~ Department of Revenue

RULE CITATION: 17 NCAC 07B .2604

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

Paragraph (a) of this Rule is interpreting that under G.S. 105-164.4H, real property contractors, retailer-contractors, or subcontractors are the consumers of the products purchased to fulfill real property contracts, and therefore must pay tax on those products.

Paragraph (b) of this Rule is interpreting the exemption at G.S. 105-164.13(3) to explain that sand, dirt, and stone are products of mines.

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

“Producer” or “in the capacity of a producer” are not defined terms in Article 5, therefore the term “producer” and “capacity” would have their usual and ordinary meaning. Merriam-Webster Dictionary defines “producer” as “a person or business that manufactures or grows something,” and defines “capacity” as “the action for which a person or thing is specially fitted or used or for which a thing exists, i.e. as in a role”.

G.S. 105-164.13(3) exempts from tax “[p]roducts of forests and mines in their original or unmanufactured state when such sales are made by the producer in the capacity of producer.”

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

See proposed Rule change removing references to “applicable” and “unless”.

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

Seth Ascher

Commission Counsel

Date submitted to agency: October 30, 2023

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2605

DEADLINE FOR RECEIPT: November 9, 2023

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

This Rule is interpreting G.S. 105-164.4H, specifically that real property contractors, retailer-contractors, or subcontractors are the consumers of the products purchased to fulfill real property contracts, and therefore must pay tax on those products.

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

See proposed Rule change removing references to “applicable” and “unless”.

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2701

DEADLINE FOR RECEIPT: November 9, 2023

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 14, replace “because” with “when”.

See proposed Rule change adopting recommended language.

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

See proposed Rule change adopting recommended language.

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

See proposed Rule change adopting recommended language.

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

See proposed Rule change removing references to “applicable”.

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2702

DEADLINE FOR RECEIPT: November 9, 2023

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Why is paragraph(a) necessary?

Dental laboratories are considered manufacturers of dental prosthetics and are therefore allowed exemption in G.S. 105-164.13 relevant to manufacturing. If purchases are made for purposes other than manufacturing prosthetic devices, then those purchases would not qualify for the manufacturing exemptions and the dental laboratories would be subject to paying sales and use tax on the purchase price.

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

See proposed Rule change adopting recommended language.

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

See proposed Rule change adding exemption citations.

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

See proposed Rule change adding exemption citations.

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

See proposed Rule change removing references to "applicable".

Seth Ascher
Commission Counsel

Date submitted to agency: October 30, 2023

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

See proposed Rule change citing the specific statutory references.

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

See proposed Rule change removing G.S. 105-164.28 from history note.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2801

DEADLINE FOR RECEIPT: November 9, 2023

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change adopting recommended language.

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

See proposed Rule change removing reference to “by statute”.

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

See proposed Rule change adopting recommended language.

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

The term “season” refers to the relevant planting season for the particular article of nursery stock. See proposed Rule change adding the term “planting” before season.

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

See proposed Rule change adding a time period of “at least 6 months”.

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

The phrase “accurately and conveniently” is statutory language found in G.S. 105-164.4(b) which states in part: “...A person engaging in business as a retailer shall pay the tax required on the net taxable sales of the business at

Seth Ascher

Commission Counsel

Date submitted to agency: October 30, 2023

*the rates specified when proper books are kept showing separately the gross proceeds of taxable and nontaxable sales of items subject to tax under subsection (a) of this section in a form that may be **accurately and conveniently** checked by the Secretary or the Secretary's duly authorized agent. If the records are not kept separately, the tax shall be paid on the gross sales of the business and the exemptions and exclusions provided by this Article are not allowed....” (emphasis added).*

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

See proposed Rule change removing references to “applicable”.

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .2802

DEADLINE FOR RECEIPT: November 9, 2023

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change adding reference to statute as suggested.

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

The authority is G.S. 105-164.4B(d)(3), the sourcing principle regarding florist wire sales, which states in part, “[a] florist wire sale is sourced to the business location of the florist that takes an order for the sale.”

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

This is not an interpretation related to selling items for resale, this is an interpretation of sourcing principles.

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

See proposed Rule change removing references to “applicable”.

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

See proposed Rule change citing the specific statutory references.

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

Seth Ascher
Commission Counsel

Date submitted to agency: October 30, 2023

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC .2901

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

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

See proposed Rule change adding reference to G.S. 105-164.13(50).

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .3004

DEADLINE FOR RECEIPT: November 9, 2023

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

What is a “nonrecourse endorsement” on line 14?

A nonrecourse endorsement is a transaction where the retailer reacquires property put up as collateral to a bank, as opposed to a repossession. This language is specifically used to differentiate the reacquisition from a repossession, which have different tax liabilities on the property.

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

These situations are set out to explain that when a retailer reacquires collateral on a nonrecourse endorsement, they are actually repurchasing the property, and therefore the purchase is subject to tax. And when a retailer accepts used property in lieu of monetary payment or other consideration, the retailer is considered to have purchased the used property, and therefore the purchase is subject to tax.

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

See proposed Rule change removing references to “applicable”.

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

See proposed Rule change citing the specific statutory references.

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

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

Seth Ascher

Commission Counsel

Date submitted to agency: October 30, 2023

AGENCY: ~~State Human Resources Commission~~ Department of Revenue

RULE CITATION: 17 NCAC 07B .3009

DEADLINE FOR RECEIPT: November 9, 2023

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change citing the specific statutory references.

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

Seth Ascher
Commission Counsel
Date submitted to agency: October 30, 2023

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .3106

DEADLINE FOR RECEIPT: November 9, 2023

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

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

See proposed Rule change removing reference to purchase and citing exemption statute.

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

See proposed Rule change adopting recommended language.

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

This Rule is necessary to interpret items that qualify for exemption for cable service providers.

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

See proposed Rule change citing the specific statutory references.

Seth Ascher
Commission Counsel

Date submitted to agency: October 30, 2023

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

Seth Ascher
Commission Counsel
Date submitted to agency: October 30, 2023

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .3301

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change removing the reference to the bulletin.

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

See proposed Rule change removing paragraph (c).

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

See proposed Rule change removing references to "applicable".

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .3302

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change removing the reference to the bulletin.

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

See proposed Rule change removing the reference to the bulletin.

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

See proposed Rule change removing references to “applicable”.

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .3801

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change adding recommended language.

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

See proposed Rule change removing references to “applicable”.

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: ~~State Human Resources Commission~~ Department of Revenue

RULE CITATION: 17 NCAC 07B .3804

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change removing references to “applicable” and “unless”.

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

See proposed Rule change adopting recommended language.

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .3907

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change adopting recommended language.

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

See proposed Rule change removing references to “applicable”.

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .3910

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

A demurrage period is a period of undue detention. See proposed Rule change removing the word "demurrage" and revising to read "enter a period of overdue detention".

Merriam-Webster Dictionary defines "overdue" as "delayed beyond an appointed time".

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

See proposed Rule change adding reference to G.S. 105-164.13(23) as the exemption for these transactions.

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .4102

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change adding reference to G.S. 105-164.4.

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

See proposed Rule change removing references to “applicable”.

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

See proposed Rule change citing the specific statutory references.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .4105

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

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

See proposed Rule change adding the definition of “Production” to the Rule.

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

The department’s authority to exempt mill machinery and mill machinery parts and accessories is G.S. 105-164.13(5e). See proposed Rule change adding reference to this statute.

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

See proposed Rule change removing references to “applicable”.

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

See proposed Rule change citing the specific statutory references.

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

Seth Ascher
Commission Counsel

Date submitted to agency: October 30, 2023

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .4106

DEADLINE FOR RECEIPT: November 9, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change referencing the definition of “production” included in the revised version of Rule 17 NCAC 07B .4105.

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

The department’s authority to exempt mill machinery and mill machinery parts and accessories is G.S. 105-164.13(5e). See proposed Rule change adding reference to this statute.

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

See proposed Rule change removing references to “applicable”.

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

See proposed Rule change citing the specific statutory references.

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

17 NCAC 07B .2101 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

**SECTION .2100 – ELECTRICITY: PIPED NATURAL GAS: BOTTLED GAS: COAL: COKE: FUEL OIL:
OXYGEN: ACETYLENE: HYDROGEN: LIQUEFIED PETROLEUM GAS AND OTHER
COMBUSTIBLES**

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

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

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

~~(a)~~(b) Electricity. -- Electricity is tangible personal property and its sale the gross receipts derived from the retail sales, including any separately stated charges billed to customers for repair, maintenance, and installation services or contribution in aid of construction, is subject to tax at the rates set in G.S. 105-164.4, the combined general rate of sales and use tax, unless exempt by statute. tax, pursuant to G.S. 105-164.4(9). Sales tax is computed on the gross receipts after any allowance for conservation or load control discounts on metered electric service for residential customers. Local and transit rates of sales and use taxes tax not included in the combined general rate do not apply to sales or purchases of electricity.

(c) Piped Natural Gas. -- Piped natural gas is tangible personal property and the gross receipts derived from the retail sales, including any separately stated charges billed to customers for repair, maintenance, and installation services or contribution in aid of construction, is subject to the combined general rate of sales and use tax, unless exempt by statute, pursuant to G.S. 105-164.4(a)(9). Local and transit rates of sales and use tax not included in the combined general rate do not apply to sales or purchases of piped natural gas.

~~(b)~~(d) Other Fuel. -- The sale of fuels including bottled gas, coal, coke, fuel oil, oxygen, acetylene, hydrogen, liquefied petroleum gas, or another other combustible to a user or consumer is subject to the [general] applicable statutory state [State] and [applicable] local [and transit rates of] sales and use tax [tax,] unless the sale is exempt from tax under G.S. 105-164.13, [by statute,] tax, pursuant to G.S. 105-164.4(a)(1). Sales of piped natural gas are exempt from sales tax and are subject to the excise tax imposed by G.S. 105, Article 5E.

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

Article 44; Article 46; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;
Eff. February 1, 1976;
Amended Eff. October 1, 2009; July 1, 2000; August 1, 1998; October 1, 1993; October 1, 1991;
May 1, 1990; August 1, ~~1986~~1986;
Readopted Eff. January 1, 2024.

1 17 NCAC 07B .2105 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .2105 AVIATION FUEL**

5 The gross receipts derived from the retail sale of aviation gasoline and jet fuel are subject to the combined general rate
6 of sales and use tax, pursuant to G.S. 105-164.4(a)(15), unless specifically exempt by statute. For purposes of this
7 Rule, gross receipts include any federal excise tax imposed on the retailer, even if the federal excise tax is listed
8 separately on the invoice, bill of lading, or similar billing document. Gross receipts do not include federal excise taxes
9 imposed directly on a consumer if the tax is separately stated on the invoice, bill of sale, or similar document given to
10 the customer. Sales of aviation gasoline and other aviation fuel to users or consumers in this state are subject to the
11 applicable statutory state and local sales or use tax. The federal tax on aviation gasoline or other aviation fuels which
12 is levied by Chapter 32, Section 4081, of the Internal Revenue Code and the federal super fund tax are imposed on
13 gasoline sold by any producer, terminal operator or importer of gasoline and shall be included in the sales price of
14 aviation gasoline on which North Carolina sales tax is due. The federal tax on noncommercial aviation gasoline and
15 the federal tax on liquids sold for use or used for fuel in noncommercial aviation as levied by the provisions of Chapter
16 31, Section 4041, of the Internal Revenue Code, are taxes imposed at the retail level and these taxes are not includable
17 in the sales price upon which North Carolina sales tax is due.

18
19 *History Note: Authority G.S. 105-164.3; 105-164.4; ~~105-164.6~~; 105-262; 105-264; Article 39; Article 40; Article*
20 *42; Article 43; Article 44; Article 46;*
21 *Eff. February 1, 1976;*
22 *Amended Eff. May 1, 2009; October 1, 1993; October 1, 1991; October 1, 1990; January 3,*
23 *1984-1984;*
24 *Readopted Eff. January 1, 2024.*
25

17 NCAC 07B .2201 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

SECTION .2200 - FOOD AND FOOD PRODUCTS FOR HUMAN CONSUMPTION

17 NCAC 07B .2201 FOOD AND FOOD PRODUCTS

(a) ~~General.~~ Retail sales and purchases of food or food products not included in subsection (b) of this Rule are subject to applicable statutory State and local sales or use tax unless a statute exempts the sales from tax, the two percent [2%] local food rate of sales and use tax, imposed by Articles 39, 40, and 42 of Chapter 105 of the North Carolina General Statutes, and are exempt from the general State rate of sales and use [tax:]tax, pursuant to G.S. 105-164.13B. The local and transit taxes imposed by Articles 43 and 46 of Chapter 105, do not apply to food and food products that are exempt from the State rate of sales and use tax.

(b) ~~G.S. 105-164.13B lists the food that is exempt from State tax, but not the two percent local tax.~~ The following food and food products are subject to [the general State, and applicable local and transit rates of] sales and use [tax:]tax, pursuant to G.S. 105-164.4:

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

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

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

1 *Article 46; [~~Chapter 105, Articles 39, 40, 42, 43, and 46;~~ 105-467; 105-468; 105-469; 105-483;*
2 *105-498; 105-506.2; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;*
3 *Eff. February 1, 1976;*
4 *Amended Eff. May 1, 2009; August 1, 2002; May 1, 1999; August 1, 1998; October 1, 1993; October*
5 *1, 1991; February 1, 1986; May 11, ~~1979~~1979;*
6 *Readopted Eff. January 1, 2024.*
7

17 NCAC 07B .2205 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

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

(a) Catering is the retail sale of food, prepared food, beverages, and other tangible personal property or services at a location designated by the customer or another person. ~~All charges by persons~~A person engaged in the catering business, including a personal chef that provides and prepares food for consumers, is a retailer. A location may include the caterer's banquet facility, a hotel, a restaurant, the customer's home, or any other location. All charges that are connected with the furnishing, preparing or serving of ~~meals, foods,~~food, prepared food, beverages, and other tangible personal property or services to ~~users or~~consumers are part of the sales price subject to ~~the~~ [general State, and applicable statutory state and local [and transit rates of] sales or and use tax-tax, pursuant to G.S. 105-164.4.

(b) Charges for services, including bartending or carving services, connected with the sale of catered food or drink are part of the sales price subject to sales [tax]tax, pursuant to G.S. 105-164.4, even if the charges for the services are separately stated on an invoice or similar billing document. Separately stated bartending charges, including corkage fees, for service of beverages owned or provided by the caterer's customer are not part of the sales price subject to sales [tax-]tax under G.S. 105-164.4.

(c) Charges for a venue by a caterer that are connected with the furnishing, preparing, and serving food or drink are part of the sales price subject to sales and use [tax]tax, pursuant to G.S. 105-164.4, even if the charges are separately stated on the invoice or similar billing document.

(d) Charges by a caterer for chairs, linens, tables, flatware, and similar items used to provide catering are subject to sales and use [tax]tax, pursuant to G.S. 105-164.4, even if the charges are separately stated on the invoice or similar billing document. In addition, a caterer shall pay [the applicable rates of]sales and use tax on the purchase price of such items as they are not resold to their customers.

~~(e) If such persons perform other~~Charges for nontaxable services that are not a part of the ~~charges for~~sales price and are not connected with the furnishing, ~~preparing~~preparing, or serving of ~~meals, foods,~~food, prepared food, beverages, and other tangible personal property, the charges for such services rendered are exempt from taxproperty are not subject to sales tax, pursuant to G.S. 105-164.4, provided such the charges are separately stated from the charges for the tangible personal property on the invoice or similar billing document given to the customer at the time of the sale and in the vendor's catering business' records; otherwise, the total amountnon-separately stated charges are part of the sales price and is subject to the sales tax-tax under G.S. 105-164.4.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4L; 105-164.6; 105-164.22; 105-262; 106-264; [Chapter 105, Articles 39, 40, 42, 43, and 46-]Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

Eff. February 1, 1976;

Amended Eff. May 1, 2009; October 1, 1993; October 1, 1991; July 5, 1980.1980;

1
2

Readopted Eff. January 1, 2024.

1 ~~[17 NCAC 07B .4204]~~ 17 NCAC 07B .2209 is repealed pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant
2 to G.S. 150B-1(D)(4) as follows:

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

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

17 NCAC 07B .2210 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

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

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

(b) ~~[A]~~ Pursuant to G.S. 105-164.4F(e), a Summer campssummer camp or similar camp that make-charges a weekly or monthly charge to persons who are fee for campers enrolled in the courses or activities carried-onoffered by the summer camps arecamp is not liable for collecting ~~[the applicable]~~ sales tax on such charges-charges, even if the fee includes food and prepared food provided to campers during time spent at the camp.

Summer camps and similar camps purchasing food, prepared food, or other tangible personal property that is used to provide food and prepared food to campers as part of the operation of the camp shall pay ~~[the applicable rates of]~~ sales and use tax on the ~~[purchases:]~~ purchases, pursuant to G.S. 105-164.4. Such organizations are liable for payment of the tax on their purchases of food and other tangible personal property for use in the operation of the camps.

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

(d) A person who, in addition to operating a summer camp or similar camp, rents Camps where rooms, lodgings or accommodations are regularly furnished to transients for a consideration are deemed to be retailers and mustshall collect and remit the ~~[applicable]~~ sales and use tax on such receipts-the gross receipts derived from such rentals of ~~[accommodations:]~~ accommodations, pursuant to G.S. 105-164.4F(b).

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4F; 105-164.6; 105-262; 105-264; ~~[Chapter 105, Articles 39, 40, 42, 43, and 46:]~~ 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

Eff. February 1, 1976;

Amended Eff. October 1, 1993; July 5, 1980-1980;

Readopted Eff. January 1, 2024.

17 NCAC 07B .2212 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

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

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

- (1) Fish or other seafood sold for ingestion or chewing by humans and that is consumed for its taste or nutritional value is subject to the two percent [(2%) food rate of sales tax,] local food rate of sales and use tax, imposed by Articles 39, 40, and 42 of Chapter 105 of the North Carolina General Statutes, unless the fish or other seafood is prepared food.
 - (2) Fish or other seafood meeting the definition of prepared food in G.S. 105-164.4L is subject to [the general State, and applicable local and transit rates of] sales [tax.] and use tax, pursuant to G.S. 105-164.4.
 - (3) Live fish or other seafood not intended for human consumption, such as pet fish or fish for ponds, is subject to [the general State, and applicable local and transit rates of] sales [tax.] and use tax, pursuant to G.S. 105-164.4.
 - (4) Fish or other seafood sold for bait is subject to [the general State, and applicable local and transit rates of] sales [tax.] and use tax, pursuant to G.S. 105-164.4.
 - (5) Other sales of fish or other seafood are subject to [the general State, and applicable local and transit rates of] sales [tax.] and use tax, pursuant to G.S. 105-164.4.
- (b) Sales Pursuant to G.S. 105-164.13(7), sales of fish and or other seafood are exempt when sold in their its original or unmanufactured state by a person selling in the capacity of a producer, such as an angler or fisherman fisher selling in his capacity as a fisherman that capacity, are exempt from sales and use tax.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4L; 105-164.13; 105-262; 105-264; 105-467; Article 39; Article 40; Article 42; [Chapter 105, Articles 39, 40, 42, 43, and 46;] Article 43; Article 44; Article 46; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;
Eff. February 1, 1976;
Amended Eff. August 1, 2009; May 1, 1999; August 1, 1998; October 1, 1993; October 1, 1991; 1991;
Readopted Eff. January 1, 2024.

17 NCAC 07B .2213 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

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

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

(a) Service Charges Up To Twenty ~~Percent (20%).~~ Percent. -- A service charge imposed by a retailer for the service of food, beverages, or prepared food, is considered a tip and not subject to sales and use tax pursuant to G.S. 105-164.4, if it meets all of the following requirements:

- (1) The service charge does not exceed twenty percent ~~[(20%)]~~ of the sales price.
- (2) The service charges is separately stated in the price list, menu, or written proposal and also in the invoice or similar billing document.
- (3) The service charge is turned over to the personnel directly involved in the service of the food, beverages, or prepared food, in accordance with G.S. 95-25.6.

(b) Service Charges Over Twenty ~~Percent (20%).~~ Percent. -- If a service charge imposed by a retailer for the service of food, beverages, or prepared food, exceeds twenty percent ~~[(20%)]~~ of the sales price, the portion of the service charge that equals twenty percent ~~[(20%)]~~ of the sales price is considered a tip and not subject to sales and use tax pursuant to G.S. 105-164.4, if it meets all of the following requirements:

- (1) The service charge is separately stated in the price list, menu, or written proposal and also in the invoice or similar billing document.
- (2) A portion of the service charge that is at least twenty percent ~~[(20%)]~~ of the sales price is turned over to personnel directly involved in the service of the food, beverages, or prepared food in accordance with G.S. 95-25.6.

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

- (1) Automatic gratuity charged to large dining parties.
- (2) Service charges for delivery of room service.
- (3) Service charges for bottle service in nightclubs.
- (4) Service charges for banquet room catering.

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

- (1) Hosts.

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

8 (e) Service charges subject to ~~the applicable State, local, and transit rates of~~ sales and use tax pursuant to G.S. 105-
9 164.4, include:

10 (1) For service charges of twenty percent ~~[(20%)]~~ or less of the sales price, the full amount of a service
11 charge if any portion of the service charge is paid to personnel not directly involved in service of
12 food, beverages, or prepared food. ~~[For example, a caterer separately states a twenty percent (20%)~~
13 ~~service charge on its written contract and invoice. The caterer turns the service charge over as~~
14 ~~follows: fifteen percent (15%) of the sales price to waiters who deliver prepared food and beverages;~~
15 ~~and five percent (5%) of the sales price to bussers. The caterer maintains sufficient records. In this~~
16 ~~scenario, the entire service charge is subject to sales and use tax because personnel directly involved~~
17 ~~in the service of prepared food and beverages do not receive the full amount of the twenty percent~~
18 ~~(20%) service charge.]~~

19 (2) For service charges that exceed twenty percent ~~[(20%)]~~ of the sales price, the full amount of a service
20 charge if any portion of the service charge that is less than twenty percent ~~[(20%)]~~ of the sales price
21 is paid to personnel not directly involved in service of food, beverages, or prepared food. ~~[For~~
22 ~~example, a restaurant separately states a twenty five percent (25%) automatic gratuity on its menu~~
23 ~~and bills. The restaurant turns the gratuity over as follows: fifteen percent (15%) of the sales price~~
24 ~~to waiters who deliver prepared food and beverages; five percent (5%) of the sale prices to hosts;~~
25 ~~and five percent (5%) of the sales price to bussers. The restaurant maintains sufficient records. In~~
26 ~~this case, the entire service charge is subject to sales and use tax because personnel directly involved~~
27 ~~in the service of prepared food and beverages do not receive the full amount of the twenty percent~~
28 ~~(20%) service charge.]~~

29 (3) The full amount of a service charge that is not separately stated as set out in G.S. 105-164.13A.

30 (4) The portion of any service charge that exceeds twenty ~~percent (20%).~~ percent. ~~[For example, a~~
31 ~~nightclub separately states a thirty percent (30%) service charge for bottle service on its menu and~~
32 ~~bills. The nightclub turns the service charge over as follows: twenty five percent (25%) of the sales~~
33 ~~price to waiters who deliver beverages; and five percent (5%) of the sales price to barbacks and~~
34 ~~other support staff. The nightclub maintains sufficient records. In this case, the amount of the service~~
35 ~~charge that equals twenty percent (20%) of the sales price is considered a tip and not subject to sales~~
36 ~~and use tax because servers receive an amount of the service charge that is at least twenty percent~~

1 (20%) of the sales price. The remaining portion of the service charge is subject to sales and use tax
2 because it exceeds twenty percent (20%) of the sales price.]

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

5
6 *History Note:* Authority G.S. 105-164.4; 105-164.6; 105-164.13A; 105-164.22; 105-262; 105-264; Chapter 105,
7 Articles 39, 40, 42, 43, and 46; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-
8 509.1; 105-510.1; 105-511.3; 105-537; 105-538;

9 *Eff. January 3, 1984;*

10 *Amended Eff. July 1, 2000; October 1, ~~1993~~ 1993;*

11 *Readopted Eff. January 1, 2024.*

1 ~~[17 NCAC 07B .4204]~~ **17 NCAC 07B .2301** is repealed pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant
2 to G.S. 150B-1(D)(4) as follows:

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

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

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

17 NCAC 07B .2401 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

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

(a) ~~A veterinarian is a physician.~~ Veterinarians are the consumer of items, as the term item is defined in G.S. 105-164.3, that they use in rendering professional services. ~~Therefore, Retail~~ sales to a ~~veterinarian~~ veterinarians of medical instruments, ~~laboratory equipment, medical supplies, animal blood, and medical equipment~~ other tangible personal property used to test, diagnose, prevent, treat, or cure disease in animals are subject to applicable State and local ~~rates of~~ sales or use tax, pursuant to G.S. 105-164.4, unless exempt in accordance with paragraph (d) or (e) of this ~~Rule or other statute.~~ **Rule.** Medical instruments and equipment include knives, needles, scissors, microscopes, X-ray machines, and other laboratory equipment. Medical supplies include cotton, gauze, adhesive tape, bandages, and other dressings. Rule 17 NCAC 7B .1404 lists ~~additional~~ medical items that are subject to tax, ~~the general State, and applicable local and transit rates of sales and use tax.~~

(b) Retail sales of dietary pet food, vitamins, joint supplements, flea and tick treatments, soap, collars, toys, and identification tags used by a veterinarian in the treatment of an animal or in the course of rendering professional services are subject to ~~the general State, and applicable local and transit rates of~~ sales and use tax, pursuant to G.S. 105-164.4, unless exempt in accordance with paragraph (d) or (e) of this ~~rule or other statute.~~ **Rule.**

(c) ~~Retail~~ For purposes of G.S. 105-164.13(12), retail sales to veterinarians of durable medical equipment are subject to ~~the general State, and applicable local and transit rates of~~ sales and use tax because the equipment is not sold pursuant to a prescription.

(d) Sales to veterinarians of drugs required by federal law to be dispensed only on prescription are exempt from sales and use ~~tax.~~ tax, pursuant to G.S. 105-164.13(13).

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

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-164.13E; 105-262; 105-264; ~~Chapter 105, Articles 39, 40, 42, 43, and 46;~~ 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;
Eff. February 1, 1976;
Amended Eff. July 1, 2000; August 1, 1996; April 1, 1995; October 1, 1993; October 1, 1991; August 1, 1986; 1986;
Readopted Eff. January 1, 2024.

1 17 NCAC 07B .2603 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:
3

4 **17 NCAC 07B .2603 ASPHALT PLANTS: CONCRETE PLANTS: WEIGH HOPPERS SOLD TO**
5 **CONTRACTORS**

6 ~~Sales-Purchases~~ of asphalt plants, concrete plants, weigh ~~hoppers-hoppers~~, or other equipment to ~~contractors who~~ by
7 ~~real property contractors, retail-contractors, subcontractors, or other consumers~~ to produce concrete or asphalt for use
8 in fulfilling their contracts are ~~taxable at~~subject to the applicable statutory state ~~general State,~~ and ~~[applicable]~~ local
9 ~~[and transit rates of]~~ sales or ~~and~~ use tax, and no maximum tax is applicable thereto. ~~[tax.]~~ tax, pursuant to G.S. 105-
10 164.4H.
11

12 *History Note:* *Authority G.S. 105-164.4; 105-164.4H; 105-164.6; 105-262; 105-264; ~~Article 39; Article 40;~~*
13 *~~Article 42; Article 43; Article 44; Article 46;~~ Chapter 105, Articles 39, 40, 42, 43, and 46; 105-*
14 *467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537;*
15 *105-538;*
16 *Eff. February 1, 1976;*
17 *Amended Eff. May 1, 2009; October 1, 1993; October 1, 1991; December 1, 1984; July 5,*
18 *1980-1980;*
19 *Readopted Eff. January 1, 2024.*

17 NCAC 07B .2604 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

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

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

(b) ~~[Sales]~~ Pursuant to G.S. 105-164.13(3), sales of sand, dirt, and stone from mines are exempt from sales and use tax when sold in their original or unmanufactured state by the producer in the capacity of producer.

History Note: Authority G.S. 105-164.4; 105-164.4H; 105-164.6; 105-164.13; 105-262; 105-264; ~~Article 39;~~ ~~Article 40;~~ ~~Article 42;~~ ~~Article 43;~~ ~~Article 44;~~ ~~Article 46;~~ Chapter 105, Articles 39, 40, 42, 43, and 46; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

Eff. February 1, 1976;

Amended Eff. May 1, 2009; October 1, 1993; October 1, 1991;

Readopted Eff. January 1, 2024.

17 NCAC 07B .2605 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .2605 SANDBLAST SAND SOLD TO CONTRACTORS

~~Sales-Retail sales~~ of sandblast sand to ~~contractors~~ consumers, including real property contractors, retailer-contractors, or subcontractors for use in the performance of contracts to clean ships, buildings, etc., fulfilling their contracts, are subject to the applicable statutory state [general State,] and [applicable] local [and transit rates of] sales or and use tax-tax, pursuant to G.S. 105-164.4H.

History Note: Authority G.S. 105-164.4; 105-164.4H; 105-164.6; 105-262; 105-264; ~~Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;~~ [Chapter 105, Articles 39, 40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

Eff. February 1, 1976;

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

Readopted Eff. January 1, 2024.

17 NCAC 07B .2701 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

SECTION .2700 - DENTISTS: DENTAL LABORATORIES AND DENTAL SUPPLY HOUSES

17 NCAC 07B .2701 SALES TO DENTISTS AND ORTHODONTISTS

(a) ~~Dentists and orthodontists are deemed to be the users or consumers of items, as the term item is defined in G.S. 105-164.3, tangible personal property which that they purchase for use in rendering professional services. With the exception of false teeth and orthopedic appliances which are specifically exempt from tax, all~~ Retail sales of tangible personal property to dentists and orthodontists, including orthodontists of dental supplies, equipment, furnishings, and other property, such as materials which dentists fabricate into false teeth, tangible personal property that does not become part of a dental prostheses, are subject to the four percent state tax and any applicable local [rates of] sales or use tax, pursuant to G.S. 105-164.4. Retail sales to dentists and orthodontists of durable medical equipment for use in rendering professional services are subject to [the general State, and applicable local and transit rates of] sales and use [tax because] tax, pursuant to G.S. 105-164.4, when the durable medical equipment is not sold pursuant to a prescription.

(b) ~~[Sales] Pursuant to G.S. 105-164.13(12), sales to dentists and orthodontists of prosthetic devices for human use are exempt from sales and use tax. The term prosthetic device includes the following items when purchased to become a component part of a prosthetic device worn on or in the body: The term "false teeth" includes dentures and artificial restoration of teeth; however, as stated in this Rule, the exemption for false teeth does not apply to sales of materials to dentists which they use in fabricating false teeth. The term "orthopedic appliances" includes headgear, bows, neckstraps, neck straps, wires, bands, brackets, rubber bands and jackscrews bands, jackscrews, bonding agents used to attach the prosthetic device to teeth, and other similar tangible person property. A prosthetic device also includes a dental prosthesis. A dental prosthesis includes an artificial replacement of one or more teeth and bridges, crowns, and dentures, when such items are purchased by orthodontists to be assembled into various types of appliances to be worn on the person of the owner or user and other orthopedic appliances when the same are designed to be worn on the person of the owner or user.~~

(c) ~~[Sales] Pursuant to G.S. 105-164.13(13), sales to dentists and orthodontists of drugs required by federal law to be dispensed only on prescription are exempt from sales and use tax.~~

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; [Chapter 105, Articles 39, 40, 42, 43, and 46; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

Eff. February 1, 1976;

Amended Eff. October 1, 1993; October 1, 1991; January 3, 1984; November 1, 1982-1982;

Readopted Eff. January 1, 2024.

17 NCAC 07B .2702 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .2702 SALES TO DENTAL LABORATORIES

(a) Sales to dental laboratories ~~of tangible personal property which becomes a component part of false teeth, dentures or artificial restoration of teeth being fabricated by such laboratories are not~~ do not qualify for the exemption in G.S. 105-164.13(5e) and G.S. 105-164.13(8) unless they are identified in paragraphs (b) or (c) of this Rule are ~~subject to [the applicable rates] of sales or [and] use tax.~~ Rule.

(b) ~~Sales~~ Pursuant to G.S. 105-164.13(8), sales to dental laboratories of tangible personal property that becomes a component part of a dental prosthesis manufactured by the dental laboratories are exempt from sales and use tax.

(c) ~~[Sales]~~ Pursuant to G.S. 105-164.13(5e), sales to dental laboratories of machinery and equipment, and machinery, equipment, parts, or accessories thereto for use ~~used~~ directly in manufacturing a dental prosthesis are exempt from sales and use tax. ~~the fabricating of false teeth are subject to the one percent rate of sales or use tax with a maximum tax of eighty dollars (\$80.00) per article.~~

(d) Sales to contractors and subcontractors ~~purchasing such machinery and equipment or parts and of machinery, equipment, parts, or accessories thereto for use by them in the performance of contracts with dental laboratories and sales to subcontractors of such machinery and equipment or parts and accessories thereto for use by them in the performance of contracts encompassed in such contracts with dental laboratories are taxable at the one percent rate of sales or use tax, subject to a maximum tax of eighty dollars (\$80.00) per article where applicable when the machinery and equipment or parts and accessories thereto are~~ are exempt from sales and use tax pursuant to G.S. 105-164.13(5e), if the machinery, equipment, parts, or accessories will be used by such the dental laboratories directly in the fabricating of false teeth manufacturing dental prostheses. ~~Contractors and subcontractors may obtain Contractor's and Subcontractor's Certificate, Form E 580, from the Office Services Division, Taxpayer Assistance Section, North Carolina Department of Revenue, to be executed by them and furnished to their vendors in connection with such purchases as the vendor's authority to apply the one percent rate of tax thereto.~~

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

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; ~~[105-164.28;]~~ 105-262; 105-264; ~~[Chapter 105, Articles 39, 40, 42, 43, and 46;]~~ 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

Eff. February 1, 1976;

Amended Eff. October 1, 1993; June 1, 1992; October 1, 1991; January 1, 1982.

Readopted Eff. January 1, 2024.

17 NCAC 07B .2801 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

**SECTION .2800 – FLORIST: ~~NURSERYMEN;~~NURSERIES: GREENHOUSE GREENHOUSES
OPERATORS AND FARMERS**

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

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

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

~~(b)(c)~~ Retail sales of ~~flowers, potted plants, shrubbery and similar nursery stock and retail sales of fruits, vegetables and other farm products~~ planters, hoses, nozzles and sprayers, rain barrels, sprinklers and timers, fertilizer, insect and weed control, garden tools, birdbaths, and other tangible personal property are subject to ~~the applicable statutory state~~ general State, ~~and [applicable] local [and transit rates of]~~ sales or and use tax unless [exempt by statute, tax, pursuant to G.S. 105-164.4.

(d) Producer of Nursery Stock. -- If a nursery or greenhouse operator is the producer of an article of nursery stock, ~~the article the product in question is a product of the farm [farm,]~~ a farm for the purposes of G.S. 105-164.13(4b), and is sold in its original state by the producer of the product who is not primarily a retail merchant at the location where the product is sold. A nursery or greenhouse operator is the producer of nursery stock in either of the following circumstances:

(1) The operator owns the article and grows the article from seed, cutting, or other similar propagation.
(e) ~~For the purpose of the exemption afforded by G.S. 105-164.13(4b), nurserymen and greenhouse operators are considered to be farmers.~~

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

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

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

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

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

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

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

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

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

18 (6) The classification shall remain in effect until the primary business determination has changed [on a
19 regular basis.] for a period of at least 6 months.

20 ~~(e)(f) Exempt Sales of Nursery Stock by a Producer. -- If such vendors are not classified primarily as retail merchants~~
21 ~~on the basis of the total dollar sales volume, sales of their produced products Nursery stock sold in the its original state~~
22 ~~by the producer of the nursery stock are is exempt from tax; sales and use [tax] tax, pursuant to G.S. 105-164.13(4b),~~
23 ~~unless the producer is however, retail sales of any farm products or any other taxable merchandise acquired by~~
24 ~~purchase are subject to any applicable tax. If such vendors are classified primarily as a retail merchants merchant, on~~
25 ~~the basis of the total dollar sales volume, they shall be liable for tax accordingly; i.e., all retail sales of both types of~~
26 ~~products shall be subject to the tax unless specific sales are statutorily exempt from tax.~~

27 (g) Sales by a Person that is Primarily a Retail Merchant. -- [A] Pursuant to G.S. 105-164.4, a person that is primarily
28 a retail merchant shall collect and remit [the general State, and applicable local and transit rates of] sales and use tax
29 on all retail sales of purchased and produced nursery [stock unless the sales are specifically exempt by statute.] stock.

30 (h) Real Property Contracts:

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

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

1 ~~(f)(i) Record Keeping for Producers. -- When vendors who are not primarily retail merchants make sales of farm~~
2 ~~products produced by them and products acquired by purchase, Producers that make exempt sales and taxable sales~~
3 ~~shall maintain separate records must be maintained of sales of products produced by them of each. Records of~~
4 ~~purchased products, as well as sales thereof, must be kept and maintained in a manner that can be Failure to keep~~
5 ~~separate records in a manner that can be accurately and conveniently checked by the agents of the Secretary of~~
6 ~~Revenue; otherwise, all sales are subject to the tax. Revenue subjects all sales to [the general State, and applicable~~
7 ~~local and transit rates of] sales and use [tax.] tax, pursuant to G.S. 105-164.4.~~

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

10 ~~(h) When nurserymen, greenhouse operators, florists or other persons make taxable sales of shrubbery, young trees~~
11 ~~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~~
12 ~~rate, the entire amount of the transaction is subject to the applicable statutory state and local sales or use tax unless~~
13 ~~such vendors segregate on the invoice that portion of the charge which is for the property sold and that portion of the~~
14 ~~charge which is for transplanting.~~

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

21
22 *History Note: Authority G.S. 105-164.3; 105-164.4; ~~105-164.4A; 105-164.4H~~; 105-164.6; 105-164.13; 105-*
23 *164.13E; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; [Chapter 105,*
24 *Articles 39, 40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-*
25 *509.1; 105-510.1; 105-511.3; 105-537; 105-538;*

26 *Eff. February 1, 1976;*

27 *Amended Eff. June 1, 2006; July 1, 2000; October 1, 1993; June 1, 1992; October 1, 1991;*

28 *March 1, ~~1987~~; 1987;*

29 *Readopted Eff. January 1, 2024.*

17 NCAC 07B .2802 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

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

(a) ~~For purposes of this Rule,~~ Pursuant to G.S. 105-164.4B, a florist wire sale is a sale in which a retail florist takes a customer's order and transmits the order to another retail florist to be filled and delivered.

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

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

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

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

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

(c) A retail florist in North Carolina that receives a florist wire sale from another retail florist located inside or outside North Carolina is not liable for sales tax on the receipts derived from the ~~transactions.~~ transactions, pursuant to G.S. 105-164.4B(d)(3).

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4B; 105-164.6; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; [Chapter 105, Articles 39, 40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538; Article 44;
Eff. February 1, 1976;
Amended Eff. June 1, 2006; April 1, 1999; October 1, 1993; October 1, 1991; March 1, 1987; 1987;
Readopted Eff. January 1, 2024.

17 NCAC 07B .2901 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

SECTION .2900 – VENDING MACHINES

17 NCAC 07B .2901 SALES THROUGH VENDING MACHINES

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

(b) Sales Price Subject to Tax. -- ~~Tobacco~~ Pursuant to G.S. 105-164.13(50), tobacco products and newspapers sold through a vending machine are taxed on one hundred percent (100%) of the sales price for which the property is sold. Other tangible personal property sold through a coin-operated vending machine are taxed on fifty percent (50%) of their sales price. All items sold through a vending machine that is not coin-operated are taxed on one hundred percent (100%) of the sales price for which the property is sold. ~~The "sales price" of an item sold in a vending machine differs depending on the item. For tobacco products sold through vending machines, the sales price is 100% of the price at which the item is sold in the vending machine. For all other items, the sales price is 50% of the price at which the item is sold in the vending machine. A vending machine retailer may calculate receipts from items sold, separate the receipts from items that are taxable at 100% of their price from those that are taxable at 50% of their price, and then divide the receipts by the appropriate number to determine the amount of receipts on which sales tax is due.~~

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

History Note: Authority G.S. 105-164.3; 105-164.4; ~~405-164.13; 105-164.22; 105-262; 105-264; [Chapter 105, Articles 39, 40, 42, 43, and 46;]Article 39; Article 40; Article 42; Article 43; Article 44; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;~~
Eff. February 1, 1976;
Amended Eff. April 1, 2006; July 1, 2000; October 1, 1993; June 1, 1992; July 1, ~~1989~~ 1989;
Readopted Eff. January 1, 2024.

17 NCAC 07B .3004 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

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

(a) ~~Tax Status~~General. -- ~~The original stock in trade of a retailer is~~Taxable sales are not limited to sales of newly manufactured articles-items. Therefore, theThe fact that property is used or secondhand does not exempt it from sales or use tax-tax, pursuant to G.S. 105-164.4.

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

~~(b)(c) Purchases~~Purchases. -- Property is considered ~~[purchased]~~purchased, and subject to sales and use tax pursuant to G.S. 105-164.4. ~~When when a vendor-retailer acquires property in any of the following circumstances, the property is considered to have been purchased and is therefore subject to tax:~~circumstances:

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

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; ~~105-264;~~ [Chapter 105, Articles 39, 40, 42, 43, and 46; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

Eff. February 1, 1976;

Amended Eff. July 1, 2000; October 1, 1993; October 1, 1991; January 3, ~~1984~~1984;

Readopted Eff. January 1, 2024.

17 NCAC 07B .3009 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

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

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

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

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; [Chapter 105, Articles 39, 40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;
Eff. February 1, 1976;
Amended Eff. July 1, 2000; October 1, 1993; October 1, 1991; November 1, 1982; 1982;
Readopted Eff. January 1, 2024.

17 NCAC 07B .3106 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .3106 CABLE SERVICE PROVIDERS

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

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

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

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

(b) ~~Sales~~ ~~Purchases~~ Pursuant to G.S. 105-164.13(5d), purchases of broadcasting equipment and parts and accessories attached to the equipment ~~to~~ by a cable service provider are exempt from sales and use tax. Examples of exempt broadcasting equipment include towers and antenna. Broadcasting equipment does not include cable for purposes of the exemption. The term "cable service provider," as used in this Rule, means a cable television company that receives consideration from its subscribers and uses broadcasting equipment and parts and accessories and a tower to receive and prepare signals for transmission over their cable systems and also is regulated and supervised by the Federal Communications Commission.

~~(b)(c)~~ ~~Purchases~~ Pursuant to G.S. 105-164.13(22), ~~including~~ the lease or ~~rental~~ rental of motion picture films, transcriptions, and recordings. The sale of developed movie film ~~to~~ by cable service providers which that operate under the regulation and supervision of the Federal Communications Commission for use by them in broadcasting and telecasting programs ~~is~~ are exempt from sales and use tax.

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

~~(e)(d)~~ ~~Purchases~~ Pursuant to G.S. 105-164.13(43a), purchases of computer software by cable service providers, that is used to provide ancillary service, cable service, Internet access service, telecommunications service, or video programming, is exempt from sales and use tax.

(e) Purchases of other tangible personal property by cable services providers, including antenna cable, transmission cable, trunk, feeder and drop cable, are subject to sales and use tax, pursuant to G.S. 105-164.4.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; [Chapter 105, Articles 39, 40, 42, 43, and 46; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538; Eff. March 1, 1984; Amended Eff. August 1, 2009; April 1, 1997; October 1, 1993; October 1, 1991; August 1, 1986; December 1, 1984; 1984; Readopted Eff. January 1, 2024.

1 17 NCAC 07B .3301 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3 4 **SECTION .3300 - ORTHOPEDIC APPLIANCES**

5 6 **17 NCAC 07B .3301 EXEMPT PROSTHETIC DEVICES**

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

- 16 (1) Abdominal belts of the brace type.
- 17 (2) Abdominal binders and supports.
- 18 (3) Access ports.
- 19 (4) Acetabular cups as part of a hip implant.
- 20 (5) Ankle braces.
- 21 (6) Anti-embolism stockings
- 22 (7) Arch supports.
- 23 (8) Artificial eyes.
- 24 (9) Artificial heart valves.
- 25 (10) Artificial larynx.
- 26 (11) Artificial limbs.
- 27 (12) Atrial valves.
- 28 (13) Back braces.
- 29 (14) Bone cement and wax.
- 30 (15) Bone growth stimulators – implanted.
- 31 (16) Bone pins, plates, nails, screws.
- 32 (17) Braces.
- 33 (18) Breast implants.
- 34 (19) Breast prosthesis – external
- 35 (20) Continuous positive airway pressure (CPAP) – worn.
- 36 (21) Casts and casting materials.
- 37 (22) Catheters – excluding suction catheters and similar catheters.

- 1 (23) Cervical collars.
- 2 (24) Cochlear implants.
- 3 (25) Non-Injectable Collagen.
- 4 (26) Contact lenses.
- 5 (27) Corrective eyeglasses.
- 6 (28) Defibrillator and leads – implanted.
- 7 (29) Dental prosthesis.
- 8 (30) Dialysis catheters – hemodialysis.
- 9 (31) Dialysis catheters – peritoneal.
- 10 (32) Drainage catheters.
- 11 (33) Drainage catheters – urinary.
- 12 (34) Drainage drains.
- 13 (35) Drainage shunts.
- 14 (36) Ear, nose, and throat implants.
- 15 (37) Feeding catheters.
- 16 (38) Foley catheters.
- 17 (39) Gastric bands.
- 18 (40) Gastrostomy kits.
- 19 (41) Grafts.
- 20 (42) Hands and feet implants.
- 21 (43) Head halters.
- 22 (44) Hearing aids and hearing aid batteries.
- 23 (45) Hip and knee implants.
- 24 (46) Humid vents for tracheostomies.
- 25 (47) Implanted expander – tissue and breast.
- 26 (48) Infuser pumps – worn.
- 27 (49) Infusion sets for external insulin pumps.
- 28 (50) Insulin pumps.
- 29 (51) Intra gastric balloons.
- 30 (52) Knee immobilizers.
- 31 (53) Mastectomy surgical bras
- 32 (54) Maxillofacial devices – implanted.
- 33 (55) Membranes implants.
- 34 (56) Nasal cannulas.
- 35 (57) Nerve stimulators – implanted with leads.
- 36 (58) Obturators for cleft palates.
- 37 (59) Ocular implants.

- (60) Orbital implants.
- (61) Orthobiologics implants.
- (62) Orthopedic shoes, shoe lifts, inserts, arch supports, heel protectors.
- (63) Ostomy – adhesives.
- (64) Ostomy – barriers, including wafer, seal ring, protective film, paste, stomahesive.
- (65) Ostomy – catheters.
- (66) Ostomy – collection leg bags and pouches.
- (67) Ostomy – drain tubes and valves.
- (68) Pacemakers and leads.
- (69) Pacemakers – not implanted
- (70) Penile pumps.
- (71) Pressure garments.
- (72) Programmable drug infusion devices.
- (73) Salem sump with anti-reflux valves.
- (74) Seprafilm.
- (75) Shoes – post operative.
- (76) Shoulder and elbow implants.
- (77) Skin implants – synthetic.
- (78) Sleeves – compression; excluding compression clothing for athletic purposes.
- (79) Slings.
- (80) Speech aids – worn electronic units.
- (81) Sphincters.
- (82) Splint and splint materials.
- (83) Staples, sutures and suture alternatives.
- (84) Stents – implanted in body.
- (85) Stockings – compression; excluding compression clothing for athletic purposes.
- (86) Stump shrinkers.
- (87) Supports – dorsolumbar, lumbosacral, maternity, post-operative, or sacroiliac.
- (88) Surgical mesh implants.
- (89) Suspensories.
- (90) Tendon implants.
- (91) Testicular and penile implants.
- (92) Trachea tubes.
- (93) Tracheostomy inner cannulas.
- (94) Tracheostomy speaking valves.
- (95) Traction devices – worn on the body.
- (96) Transcutaneous electrical nerve (TENS) units – worn.

(97) Trusses.

(98) Tubes of the following types that are implanted in the body: tracheotomy or laryngectomy.

(99) Vena cava filters.

(b) ~~Specific Items.~~Dental Prosthetic Devices. -- ~~The Sales and Use Tax Technical Bulletins contain a list of exempt prosthetic devices and a list of orthodontic materials that are considered to be exempt prosthetic devices when they are purchased by an orthodontist for assembly into an appliance. An item that is not included in these lists may also be exempt.~~Pursuant to G.S. 105-164.13(12), sales of dental prosthetic devices are exempt from sales and use tax. The term prosthetic device includes headgear, bows, neck straps, wires, bands, brackets, rubber bands, jackscrews, bonding agents used to attach prosthetic devices to teeth, and other appliances when purchased by orthodontists to assemble into various types of appliances to be worn on or in the body. Dental prosthesis also includes an artificial replacement of one or more teeth and includes bridges, crowns, and dentures.

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

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

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-164.22; 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and 46; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

Eff. February 1, 1976;

Amended Eff. October 1, 2009; April 1, 1999; August 1, 1998; October 1, 1993; October 1, 1991; July 1, 1989; February 1, 1986-1986;

Readopted Eff. January 1, 2024.

17 NCAC 07B .3302 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

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

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

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

Examples of durable medical equipment and durable medical supplies that qualify for the exemption in G.S. 105-164.13(12) include the following:

- (1) Abduction, cervical, and orthotic pillows.
- (2) Ambu resuscitators (reusable).
- (3) Anesthesia machines.
- (4) Anesthesia ventilators.
- (5) Anti-thrombolytic pumps.
- (6) Apnea monitors.
- (7) Aqua K pumps and pads.
- (8) Audiology equipment – diagnostic.
- (9) Automatic external defibrillators.
- (10) Autotransfusion equipment.
- (11) Bed – kodel pads.
- (12) Beds – alternating pressure pads.
- (13) Beds – blanket cradles.
- (14) Beds – hospital beds – bassinets.
- (15) Beds – hospital beds – beds and accessories/repair parts.
- (16) Beds – incubators/isolettes.
- (17) Beds – specialty care.
- (18) Billie lights.

- (19) Blood pressure equipment – diagnostic.
- (20) Bone growth stimulators – external – not worn.
- (21) Cardiology equipment – diagnostic.
- (22) Cardiopulmonary bypass machines.
- (23) Cauterization equipment.
- (24) Chair scales.
- (25) Cofflators.
- (26) Collection basins – urinals, bedpans, etc.
- (27) Commode chairs.
- (28) Commodes.
- (29) Compressors and other air power sources for a device in this list or for use in administering medication.
- (30) Continuous passive motion devices.
- (31) Continuous positive airway pressure (CPAP) devices – not worn.
- (32) Crash carts – stocked.
- (33) Dialyzers – single patient – multiple use.
- (34) EEG.
- (35) Enteral – feeding bags – disposable.
- (36) Enteral – feeding connectors.
- (37) Enteral – feeding tubing.
- (38) Enteral pumps and intravenous (IV) stands.
- (39) Exam tables.
- (40) External insulin pumps; adaptors, piston rods, and batteries for the pumps - not worn.
- (41) Feeding plugs.
- (42) Fever thermometers – reusable.
- (43) Glucose meters – not worn.
- (44) Heat lamps – medical purposes.
- (45) Heated humidifier systems.
- (46) Heating pads.
- (47) Humidifiers.
- (48) Implantable cardioverter defibrillator (ICD) /Pacemaker Programmers.
- (49) Infra-red lamps and bulbs.
- (50) Infusion pumps, whether parenteral or another type - reusable.
- (51) Intermittent positive pressure breathing (IPPB) machines.
- (52) Intraaortic balloon pump (IABP).
- (53) Intravenous (IV) stands.
- (54) Intravenous (IV) poles.

- 1 (55) Intravenous (IV) therapy arm boards – reusable.
- 2 (56) Kidney dialysis machines and associates parts.
- 3 (57) Kinetic therapy beds.
- 4 (58) Lithotripters.
- 5 (59) Mammography equipment – diagnostic.
- 6 (60) Mattresses, whether spring, foam, or pressure.
- 7 (61) Medical atomizers – reusable.
- 8 (62) Medical instruments – reusable.
- 9 (63) Monitors – stationary.
- 10 (64) Magnetic resonance imaging (MRI)/ Computed tomography (CT)
- 11 (65) Nebulizers.
- 12 (66) Needleless drug delivery system – reusable – such as injection guns.
- 13 (67) Nerve stimulators – programmers.
- 14 (68) Ophthalmoscopes.
- 15 (69) Ostomy irrigation sets.
- 16 (70) Otosopes.
- 17 (71) Overbed tables and trays.
- 18 (72) Oxygen delivery – Oxygen concentrators; oxygen regulators; oxygen systems, whether liquid or
- 19 gas.
- 20 (73) Oxygen tents/beds.
- 21 (74) Pacemakers – not implanted – not worn.
- 22 (75) Pacemaker transmitters.
- 23 (76) Paraffin bath units.
- 24 (77) Parenteral – feeding bags – disposable.
- 25 (78) Parenteral – feeding connectors.
- 26 (79) Parenteral – feeding tubing.
- 27 (80) Parenteral pumps and intravenous (IV) stands.
- 28 (81) Patient positioners, including prone or side-lying positioners.
- 29 (82) Percussors.
- 30 (83) Platelet separators.
- 31 (84) Pressure reduction therapy beds.
- 32 (85) Programmable drug infusion pumps.
- 33 (86) Radiology equipment – diagnostic.
- 34 (87) Respiratory bags – resuscitation.
- 35 (88) Respiratory equipment – arterial blood gas (ABG) machines, blood gas analyzer.
- 36 (89) Respiratory equipment – not oxygen delivery – such as sensors or analyzers.
- 37 (90) Respiratory-pulse oximetry equipment.

- (91) Resuscitators – reusable.
- (92) Scopes and lasers – endoscope.
- (93) Sling scales.
- (94) Speech aids – non-worn electronic.
- (95) Staplers – empty – reusable.
- (96) Stethoscopes.
- (97) Stirrups.
- (98) Stretchers.
- (99) Suction pumps.
- (100) Suction regulators.
- (101) Surgical laser devices.
- (102) Tourniquets – non-pneumatic.
- (103) Tourniquets – pneumatic.
- (104) Traction equipment.
- (105) Transcutaneous electrical nerve stimulator (TENS) units – not worn.
- (106) Ultrasound equipment.
- (107) Ultraviolet lights.
- (108) Vaporizers.
- (109) Ventilators.
- (110) Wheelchair cushions - brace/support.
- (111) Whirlpools - portable, over-the-tub type devices specifically manufactured for a medical purpose.
- (112) X-ray equipment.

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

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-164.22; 105-262; 105-264; [Chapter 105, Articles 39, 40, 42, 43, and 46]; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;
Eff. February 1, 1976;
Amended Eff. October 1, 2009; April 1, 1999; August 1, 1998; October 1, 1993; June 1, 1992;
October 1, 1991; February 1, 1986.
Readopted Eff. January 1, 2024.

17 NCAC 07B .3801 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

SECTION .3800 - ~~PREMIUMS:~~PROMOTIONAL ITEMS: GIFTS AND TRADING STAMPS

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

(a) ~~Sales to~~Purchases by a ~~retailer person of tangible personal property~~items, as the term item is defined in G.S. 105-164.3, for use by the ~~retailer person as premiums~~promotional items or gifts **are not purchases for resale and** are subject to **the applicable** statutory state and local **rates of** sales or use tax ~~tax~~**tax, pursuant to G.S. 105-164.4**and the purchaser shall remit the tax on the purchases to his suppliers. If the suppliers are located outside this state and ~~the seller~~ does not collect the North Carolina sales ~~or and~~ use tax on the purchases, such sales, the purchaser shall remit ~~such the~~ **applicable** use ~~tax~~**tax, pursuant to G.S. 105-164.6** directly to the Department.

(b) Purchases by a person of items for use in satisfying a customer's redemption of reward points or items earned by the customer through a rewards program **are not purchases for resale and** are subject to **the applicable rates of** sales or use ~~tax~~**tax, pursuant to G.S. 105-164.4**. If the seller does not collect North Carolina sales and use tax on such sales, the purchaser shall remit the **applicable** use ~~tax~~**tax, pursuant to G.S. 105-164.6** directly to the Department.

(c) If the ~~property item~~ purchased is of the ~~type or~~ character customarily sold by ~~the a~~retailer, ~~he the~~retailer may purchase the ~~same item~~ without payment of the sales tax **as a purchase for resale** if he furnishes his supplier with a Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E 595E, when the retailer complies with 17 NCAC 07B .0106. In this case, the retailer must shall remit the use ~~tax~~**tax, pursuant to G.S. 105-164.6**, to the Department ~~the tax on all taxable articles items~~ withdrawn from ~~stock inventory~~ and used as ~~premiums promotional items~~ or gifts. The provisions of this Rule do not apply to any purchases of property to be used in redeeming trading stamps or other media.

History Note: Authority G.S. ~~105-164.3; 105-164.4; 105-164.6; 105-164.28; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;~~**Chapter 105, Articles 39, 40, 42, 43, and 46;** ~~105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;~~

Eff. February 1, 1976;

Amended Eff. August 1, 2009; October 1, 1993; October 1, 1991-1991;

Readopted Eff. January 1, 2024.

17 NCAC 07B .3804 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .3804 GIFT CERTIFICATES AND GIFT CARDS

Charges ~~by vendors~~ for gift certificates or gift cards ~~which can be exchanged for merchandise~~ are not subject to sales and use ~~tax~~, pursuant to G.S. 105-164.4, at the time of initial sale for the gift certificate or gift card. When the holder of ~~such a gift certificates~~ certificate or gift card ~~exchanges~~ redeems the gift certificate or gift card for ~~merchandise items~~, as the term item is defined in G.S. 105-164.3, the transaction is subject to the applicable statutory state and local rates of same sales ~~or and use tax~~. ~~tax unless specifically exempt by statute.~~ taxes applicable to the item as if it were purchased without a gift certificate or gift card. ~~The basis for the tax is the sales price of the property.~~

*History Note: Authority G.S. 105-164.3; 105-164.4; 105-262; 105-264; ~~Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;~~ Chapter 105, Articles 39, 40, 42, 43, and 46; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;
Eff. February 1, 1976;
Amended Eff. May 1, 2009; October 1, 1993; October 1, ~~1991~~ 1991;
*Readopted Eff. January 1, 2024.**

17 NCAC 07B .3907 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .3907 DEPOSITS FOR REUSABLE CONTAINERS

(a) ~~Deposits~~Pursuant to G.S. 105-164.13(47), ~~deposits~~ charged by ~~vendors~~ a retailer or wholesale merchant for a beverage container that is returnable to the retailer or wholesale merchant for reuse ~~[and]~~when the amount charged is refundable or creditable to the ~~[purchaser, is]~~purchaser are not subject to sales and use tax, whether or not the deposit is separately stated on the invoice or similar billing document.

(b) Deposits charged by a retailer or wholesale merchant for reusable containers, other than those described in G.S. 105-164.13(47) and (48)beverage containers, are subject to ~~[the general State, and applicable local and transit rates of]~~ sales ~~or~~ and use ~~tax~~tax, pursuant to G.S. 105-164.4, when the ~~purchasers~~purchaser of the property contained therein can, during the period the containers are in their possession, exercise suchpackaged within a reusable container exercises control over the ~~containers~~container as is ordinarily associated with ~~ownership~~ownership, while the container is in their possession. Such amounts are a part of the sales price even though designated as a deposit for the containers.

~~(b)(c)~~ When the ~~vendors~~retainer a retailer or wholesale merchant retains title to such reusable containers and the ~~vendors~~ retain the right to control the use which ~~vendeethe~~ purchaser makes of the containers, the containers are not considered to be a part of the sale of the ~~property~~property packaged within the reusable container. In such cases, amounts charged to the ~~customers~~purchasers as security for the return of the containers are not subject to sales ~~or~~ and use ~~tax~~tax, pursuant to G.S. 105-164.13(23), if such charges are shown separately from the sales price of the property on the ~~customers' invoices~~invoice or similar billing document given to the purchaser at the time of sale. If such amounts are not separately stated, stated on the invoice or similar billing document given to the purchaser at the time of sale, the total charge is subject to ~~the tax~~[the general State, and applicable local and transit rates of] sales and use tax.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.13; 105-262; 105-264; ~~[Chapter 105, Articles 39, 40, 42, 43, and 46;]~~ 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

Eff. February 1, 1976;

Amended Eff. August 1, 2002; January 1, 1982; July 5, 1980.1980;

Readopted Eff. January 1, 2024.

1 17 NCAC 07B .3910 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:
3

4 **17 NCAC 07B .3910 RETURNABLE CONTAINERS**

5 ~~When~~Pursuant to G.S. 105-164.13(23), when a ~~vendor~~ person sells tangible personal property in returnable containers
6 without a ~~charge being made~~charging for the use of the containers for a specified time but, at the expiration of the
7 specified time, the containers enter a ~~demurrage~~ period ~~of overdue detention~~ and a penalty ~~charge is made as an~~
8 ~~inducement for~~charged to encourage the return of the containers, the ~~charges are incidental to the sale of the property~~
9 ~~and are~~charge is not subject to the ~~sales and use tax~~. If a container is used by the owner of the container or another
10 person to enclose tangible personal property for delivery to a purchaser of the property and is required to be returned
11 to its owner for reuse, it is exempt from tax in accordance with G.S. 105-164.13(23)b.
12

13 *History Note:* Authority G.S. 105-164.4; 105-164.13; 105-262; ~~105-264;~~ ~~Chapter 105, Articles 39, 40, 42, 43,~~
14 ~~and 46;~~ ~~105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-~~
15 ~~511.3; 105-537; 105-538;~~
16 *Eff. February 1, 1976;*
17 *Amended Eff. August 1, ~~1998-1998~~;*
18 *Readopted Eff. January 1, 2024.*
19

17 NCAC 07B .4102 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .4102 SALES OF PHOTOGRAPHS AND VIDEOS

(a) Photographs. -- The ~~sale~~ sales price of photographs, whether the photographs are transferred electronically or as tangible personal property, are ~~including all charges for developing or printing, is~~ subject to the applicable statutory state ~~[general State,] and [applicable] local [and transit rates of]~~ sales ~~or and~~ use ~~tax, tax, pursuant to G.S. 105-164.4.~~ The sales price of photographs include sitting fees charged to a customer who ultimately purchases photographs, and all charges for developing or printing. When transferred electronically, the sale of a photograph includes a photograph provided by email, electronic storage device, access through a website owned by the photographer, access through a website owned by a third-party, or by other electronic means.

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

(b) Videos. -- The sales price of videos, whether the videos are transferred electronically or as tangible personal property, are subject to ~~[the general State, and applicable local and transit rates of]~~ sales and use ~~[tax,] tax, pursuant to G.S. 105-164.4.~~ When transferred electronically, the sale of a video includes a video provided by email, electronic storage device, access through a website owned by the videographer, access through a website owned by a third-party, or by other electronic means.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; ~~105-264; Article 39; Article 40; Article 42; Article 43; Article 44;~~ ~~[Chapter 105, Articles 39, 40, 42, 43, and 46;]~~ ~~105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;~~
Eff. February 1, 1976;
Amended Eff. September 1, 2006; October 1, 1993; October 1, ~~1991~~ 1991;
Readopted Eff. January 1, 2024.

1 17 NCAC 07B .4105 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .4105 PHOTO SUPPLIES AND MATERIALS**

5 (a) Sales of items, as the term item is defined in G.S. 105-164.3, such as frames, films-films, storage media, and other
6 articles by photographers, photo finishers-finishers, videographers, or others to users or consumers are retail sales
7 subject to the [general State, and -]applicable statutory state and local [and transit rates of -]sales or and use tax-tax,
8 pursuant to G.S. 105-164.4. Gross receipts from sales of photographs by commercial or portrait photographers or
9 others are subject to the applicable statutory state and local sales or use tax; however, sales to

10 (b) Purchases of items by a commercial or portrait photographers-photographer or videographer for use or
11 consumption are subject to [the general State, and applicable local and transit rates of]sales and use [tax.]tax, pursuant
12 to G.S. 105-164.4. However, pursuant to G.S. 105-164.13(5), purchases by commercial or portrait photographers of
13 materials which become an ingredient or component part of the finished picture are not subject to the tax.
14 Mounts,items including mounts, frames, and paper-paper, which become an ingredient or component part of the
15 finished picture and the sales of such materials to commercial or portrait photographersproduct are not subject to the
16 tax-sales and use tax when purchased for resale.

17 (c) [Purchases]Pursuant to G.S. 105-164.13(5e), purchases by a commercial or portrait photographers of mill
18 machinery or mill machinery parts or accessories Materials-such as films, chemicals, proof paper, cameras, trays, and
19 similar items that are used in the manufacture or fabrication of such pictures are exempt from the sales and use tax
20 and subject to the privilege tax under the provisions of G.S. 105-187.51 when such materials are purchased by
21 commercial or portrait photographers.the mill machinery or mill machinery parts or accessories are for use in the
22 “production” [phase,]phase of the manufacturing of photographs. [as defined in section 57 of the Department’s Sales
23 and Use Tax Bulletin of the manufacture of such pictures.] For purposes of the Rule, “Production” as a phase of
24 industrial or manufacturing operations shall mean all steps performed in processing and refining rooms, and in other
25 quarters and departments of a plant, where conditioning, treating, or other operations are done on ingredient materials
26 as an actual routine on the assembly or processing line turning out a finished product of manufacture for sale. The
27 “Production” phase also includes the following:

- 28 (1) The movement of raw materials or ingredients from an inventory or a stockpile located on the
29 premises of the manufacturing facility to the assembly or processing line.
30 (2) The movement of goods in process along the assembly or processing line.
31 (3) The movement of manufactured products from the assembly or processing line into shipping or
32 storage areas and yards located on the premises of the manufacturing facility.
33 (4) The work of experimentation and research performed on the manufactured products.

34 “Production” does not include any activity connected with the movement of raw materials or ingredients into inventory
35 nor does it include “distribution” which is any activity connected with the movement of manufactured products within
36 storage warehouses, shipping rooms, and other such finished product storage areas and the removal of such products

1 therefrom for sale or shipment, or “administration” which is any administrative work of offices, promotion of sales,
2 and collection of accounts.

3
4 *History Note:* Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; ~~105-187.50; 105-187.51; 105-~~
5 ~~187.52; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; [Chapter 105,~~
6 ~~Articles 39, 40, 42, 43, and 46;]~~ 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-
7 509.1; 105-510.1; 105-511.3; 105-537; 105-538;

8 *Eff. February 1, 1976;*

9 *Amended Eff. September 1, 2006; October 1, 1993; October 1, ~~1991~~, 1991;*

10 *Readopted Eff. January 1, 2024.*

17 NCAC 07B .4106 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

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

(a) PurchasesPursuant to G.S. 105-164.13(5), purchases by commercial printers and publishers of an item, as the term item is defined in G.S. 105-164.3, including photoengravings, electrotypes and lithographs, lithographs used in the “production” phase, as production is defined in [section 57 of the Department’s Sales and Use Tax Bulletin,] 17 NCAC 07B .4105, to produce items for sale, when the same are not for resale, but which the purchaser uses in printing tangible personal property for sale are exempt from the sales and use tax and subject to the privilege tax under the provisions of G.S. 105-187.51-tax. Lithographic and gravure plates and dies, including custom made plates and dies and tangible personal property used to fabricate plates and dies for use in the “production” of printed matter for sale, are exempt from sales and use [tax] tax, pursuant to G.S. 105-164.13(5), when title to the plates and dies do not pass to the printers’ customers.

(b) Sales Purchases of photoengravings, electrotypes and lithographs electrotypes, lithographs, paper, ink, and all other printing equipment and supplies, supplies including paper and ink, to consumer by consumers or captive in-house printers are not for resale and are subject to the applicable statutory state [general State,] and [applicable] local [and transit rates of] sales or and use tax-tax, pursuant to G.S. 105-164.4.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-187.50; 105-187.51; 105-187.52; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; [Chapter 105, Articles 39, 40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

Eff. February 1, 1976;

Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991, 1991;

Readopted Eff. January 1, 2024.

Burgos, Alexander N

From: Ascher, Seth M
Sent: Tuesday, November 7, 2023 6:42 PM
To: Lansford, Laura L
Cc: Peaslee, William W; Burgos, Alexander N; Furuseth, Andrew O; Jacobs, Tenisha S
Subject: RE: [External] Response to RFC Rules 17 NCAC 07B .0901 through .1907

Laura,

I can confirm that I have received and was able to open these files. I will be in touch after I have had the chance to review them.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Tuesday, November 7, 2023 3:53 PM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Ascher, Seth M <seth.ascher@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>
Subject: [External] Response to RFC Rules 17 NCAC 07B .0901 through .1907

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

On behalf of the Sales and Use Tax Division of the Department of Revenue, please accept this email with attachments in response to fourteen (14) Requests for Changes submitted to the Division by Mr. Ascher on 10/24/2023, for Rules 17 NCAC 07B .0901, .0902, .0904, .1101, .1301, .1302, .1305, .1602, .1701, .1702, .1704, .1801, .1905, and .1907, and with a response due date of COB 11/7/2023.

Please let me know if additional information is required.

Thank you.

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871

Raleigh, NC 27602-0871

Phone: 919.814.1088

Fax: 919.715.0295

Laura.Lansford@ncdor.gov

Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: “~~a~~Association”
 - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
 - Wrong: “day;, and”
 - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:
<https://www.oah.nc.gov/rule-format-examples>

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0901

DEADLINE FOR RECEIPT: November 7, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

“Professional services” is not a defined term in Article 5. Merriam-Webster Dictionary defines “professional service” as “a service requiring specialized knowledge and skill usually of a mental or intellectual nature and usually requiring a license, certification, or registration.”

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

“Advertising” or “advertising agency” are not defined terms in Article 5, therefore the terms would have their usual and ordinary meaning. Merriam-Webster Dictionary defines “advertising” as “the activity or profession of producing advertisements for commercial products or services,” and “advertising agency” as “an agency that handles advertising for clients.”

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

See proposed Rule change removing paragraph.

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

See proposed Rule change revising paragraph as criteria of professional services provided by advertising agencies.

Seth Ascher
Commission Counsel

Date submitted to agency: October 24, 2023

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

“Consumer” is a defined term as “[a] person who stores, uses, or otherwise consumes in this State an item purchased or received from a retailer or supplier either within or without this State.” The significance of being the ‘consumer’ is to explain that the purchases are specifically excluded under the exemption in G.S. 105-164.13(5) which states: “Manufactured products produced and sold by manufacturers or producers to other manufacturers, producers, or registered retailers or wholesale merchants, for the purpose of resale except as modified by G.S. 105-164.3(279). This exemption does not extend to or include retail sales to users or consumers not for resale.” (emphasis added).

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

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

See proposed Rule change adding specific statutory references for local tax.

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

See proposed Rule changes removing references to “applicable” local taxes and “unless” exempt by statute.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0902

DEADLINE FOR RECEIPT: November 7, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Is advertising artist defined somewhere?

“Advertising” or “advertising artist” are not defined terms in Article 5, therefore the terms would have their usual and ordinary meaning. Merriam-Webster Dictionary defines “advertising” as “the activity or profession of producing advertisements for commercial products or services,” and defines “artist” as “a person who produces paintings or drawings as a profession or hobby.”

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

“Professional services” is not a defined term in Article 5. Merriam-Webster Dictionary defines “professional service” as “a service requiring specialized knowledge and skill usually of a mental or intellectual nature and usually requiring a license, certification, or registration.”

“Consumer” is a defined term as “[a] person who stores, uses, or otherwise consumes in this State an item purchased or received from a retailer or supplier either within or without this State.” The significance of being the ‘consumer’ is to explain that the purchases are specifically excluded under the exemption in G.S. 105-164.13(5) which states: “Manufactured products produced and sold by manufacturers or producers to other manufacturers, producers, or registered retailers or wholesale merchants, for the purpose of resale except as modified by G.S. 105-164.3(279). This exemption does not extend to or include retail sales to users or consumers not for resale.” (emphasis added).

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

Seth Ascher
Commission Counsel

Date submitted to agency: October 24, 2023

See proposed Rule change adding specific statutory references for local tax.

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

See proposed Rule changes removing references to “applicable” local taxes and “unless” exempt by statute.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0904

DEADLINE FOR RECEIPT: November 7, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Is public relations firm defined somewhere?

“Public relations firm” is not a defined term in Article 5, therefore the term would have its usual and ordinary meaning. Merriam-Webster Dictionary defines “public relations” as “the business of inducing the public to have understanding for and goodwill toward a person, firm, or institution,” and “firm” as “the name or title under which a company transacts business.”

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

The rule interprets when a sale is of tangible personal property versus when a sale is of professional services and the tax consequences of those determinations. Professional services (and many services generally) are a transaction not taxable under G.S. 105-164.4. However, repair, maintenance, and installation services are taxable under 105-164.4(16).

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

Repair, maintenance, and installation services are a separate taxable classification under 105-164.4(16).

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

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

Seth Ascher
Commission Counsel

Date submitted to agency: October 24, 2023

See proposed Rule change adding specific statutory references for local tax.

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

See proposed Rule changes removing references to “applicable” local taxes and “unless” exempt by statute.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1101

DEADLINE FOR RECEIPT: November 7, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

“Farmer” is not a defined term in Article 5, therefore the term would have its usual and ordinary meaning. Merriam-Webster Dictionary defines “farmer” as “a person who cultivates land or crops or raises animals (such as livestock or fish).” The use of “other persons” is needed to incorporate the other entities included in the definition of “person” (i.e. corporations, partnerships, trusts, etc).

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

See proposed Rule change adding “and” at the end of item (a)(4) and other changes to conform list to OAH style guide. Also changed references to “farmer” in the list to “farmer and other persons” to be consistent with the introductory statement to the list.

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

See proposed Rule change removing the word “subsections” and replacing with “paragraphs.”

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

See proposed Rule change adding specific statutory references for local tax.

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

Seth Ascher
Commission Counsel

Date submitted to agency: October 24, 2023

See proposed Rule changes removing references to “applicable” local taxes and “unless” exempt by statute.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1301

DEADLINE FOR RECEIPT: November 7, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change adding the subsection to the statutory reference.

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

See proposed Rule change adding specific statutory references for local tax.

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

See proposed Rule change removing references to "applicable" rates of sales and use tax and adopting recommended language below.

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

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

See proposed Rule change incorporating recommended language change.

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

Seth Ascher
Commission Counsel

Date submitted to agency: October 24, 2023

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1302

DEADLINE FOR RECEIPT: November 7, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change adding specific statutory references for local tax.

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

See proposed Rule changes removing references to “applicable” local taxes and “unless” exempt by statute.

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

See proposed Rule change removing reference to applicable local and transit rates of tax.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1305

DEADLINE FOR RECEIPT: November 7, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Insert your proposed effective date on line 29.

See proposed Rule change inserting proposed effective date.

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

See proposed Rule change adding specific statutory references for local tax.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1602

DEADLINE FOR RECEIPT: November 7, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change adding “are” as recommended.

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

See proposed Rule change removing the explanation of why the refund provision does not apply to employee purchases as recommended.

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

See proposed Rule change adopting recommended language.

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

See proposed Rule change adding specific statutory references for local tax.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1701

DEADLINE FOR RECEIPT: November 7, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change adding subsection to statutory citation.

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

DOT is specifically exempt through G.S. 105-164.13(40).

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

See proposed Rule change adding statutory reference for DOT's exemption.

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

See proposed Rule changes removing references to “applicable” local taxes and “unless” exempt by statute.

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

See proposed Rule change adding specific statutory references for local tax.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1702

DEADLINE FOR RECEIPT: November 7, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change adding "are" as recommended.

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

See proposed Rule change adding specific statutory references for local tax.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1704

DEADLINE FOR RECEIPT: November 7, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

If so, what are those ambiguities?

These are all quasi-governmental entities that have previously applied for refunds under G.S. 105-164.14(c), but were denied as not being a qualifying entity. Specifically, all of the entities argue they fall within G.S. 105-164.14(c)(1) – “a county.” However these are not counties, but rather have a county presence and/or county affiliation (i.e. ABC boards, housing authorities). Additionally, drainage districts have argued they fall within G.S. 105-164.14(c)(3), (4), and (6) (metro sewerage district, water and sewer authority, and sanitary district respectively). However, the drainage districts do not fall within any of these groups. Community colleges established under G.S. 115D argue they are due a refund under G.S. 105-164.14(c)(20) – a constituent institution of The University of North Carolina, however they are not a constituent institution of the UNC.

There is ambiguity because some quasi-governmental entities may perform tasks similar to entities listed in G.S. 105-164.14(c) or have a presence in or connection to local government (i.e cities and counties), but do not qualify for the refund.

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

See above response.

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

Seth Ascher

Commission Counsel

Date submitted to agency: October 24, 2023

See above response.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1801

DEADLINE FOR RECEIPT: November 7, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change adding specific statutory references for local tax.

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

See proposed Rule changes removing references to “applicable” local taxes and “unless” exempt by statute.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1905

DEADLINE FOR RECEIPT: November 7, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change adding the definition of "Production" to the Rule.

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

See proposed Rule change adding specific statutory references for local tax.

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

See proposed Rule changes removing references to "applicable" local taxes and "unless" exempt by statute.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1907

DEADLINE FOR RECEIPT: November 7, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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

See proposed Rule change citing G.S. 105-164.3 instead of G.S. 20-4.01.

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

See proposed Rule change listing the statutes in the history note in numerical order.

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

1 17 NCAC 07B .0901 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:
3

4 **SECTION .0900 – ADVERTISING AND ADVERTISING AGENCIES: PUBLIC RELATIONS FIRMS**
5

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

7 (a) ~~Professional Services.~~Services to Produce Advertising. -- Advertising agencies are engaged in the business of
8 rendering professional services when they produce advertising, such as radio and television spots or newspaper,
9 magazine, or billboard advertising, and contract ~~in-on~~ their own behalf with radio and television stations, newspaper
10 or magazine publishers, outdoor advertising companies, or other media for time or space to televise, broadcast, publish,
11 or otherwise display their advertising. ~~Receipts derived~~[Charges]For purposes of G.S. 105-164.4, charges by
12 advertising agencies ~~from-for~~ furnishing ~~these-such~~ professional services are not subject to sales or use ~~tax-tax~~ if the
13 charges are separately stated on the invoice or similar billing document given to the purchaser at the time of sale.
14 ~~However, their purchases of taxable tangible personal property for use in producing the advertising are subject to the~~
15 ~~applicable statutory state and local sales or use tax.~~

16 [Advertising] Agencies [agencies] rendering professional services rely on expertise in advertising strategy, media
17 buying, and in graphic arts production in their specialized fields to secure and retain clients. Usually agreements to
18 provide professional advertising services also have the following characteristics:For purposes of this Rule, a
19 professional service by an advertising agency is one that meets the following criteria:

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

26 (b) Professional Services to Produce a Report. -- Advertising agencies are also engaged in the business of rendering
27 professional services when they contract to do market research, consulting, statistical analysis, or other services that
28 result only in a report of their findings to the client.[Charges]For purposes of G.S. 105-164.4, charges by advertising
29 agencies for furnishing such services are not subject to sales and use tax if the charges are separately stated on the
30 invoice or similar billing document given to the purchaser at the time of sale.

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

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

3 (b)(c) Retail Sales. -- Advertising agencies are ~~considered to be~~ retailers when they produce, cause to be produced,
4 fabricate, purchase, or otherwise acquire items, as the term item is defined in G.S. 105-164.3, that they sell at retail
5 for any use or purpose other than for resale. Items sold by advertising agencies include: catalogs, magazines, handbills,
6 brochures, programs, pamphlets, or similar printed ~~matter~~ materials, signs, paintings, portraits, negatives, photographs,
7 vinyl wraps, certain digital property, or taxable services ~~or any other tangible personal property they sell and deliver~~
8 ~~to their clients or to others on behalf of their clients for delivery or distribution as advertising material or for any use~~
9 ~~or purpose other than for resale.~~ Advertising agencies making retail sales of ~~tangible personal property, other than~~
10 ~~exempt audiovisual masters, must~~ items shall ~~collect~~ collect, report, and remit ~~the~~ the general State, and applicable local
11 and transit rates of statutory state and local sales ~~or and~~ use tax on the sales price of the property ~~such~~ items items.
12 pursuant to G.S. 105-164.4. unless the item is specifically exempt by statute, whether it is prepared by the agency or
13 acquired from outside sources.

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

21 (e)(d) Retainer and Consultation Fees.

22 (1) Retainer. -- A retainer is generally collected in advance for future services to be rendered. Charges
23 by advertising agencies to their clients for a retainer fees that ~~are~~ is directly related to the purchase,
24 acquisition, fabrication, or production and retail sale of tangible personal property taxable items are part of
25 the sales price and are subject to the general State, and applicable local and transit rates of sales ~~or and~~ use
26 tax ~~tax,~~ pursuant to G.S. 105-164.4, whether the retainer is separately stated on the customer's invoice or not.
27 A For purposes of G.S. 105-164.4, a retainer charged to clients is not subject to sales and use tax when it is
28 solely in connection with the performance of professional services that are not subject to sales and use
29 tax. services. Charges by advertising agencies for retainer fees to their clients are generally paid in advance
30 to cover future services and if no sale of tangible personal property is involved are not subject to sales or use
31 tax.

32 (2) Consultation ~~fees~~ Fees. -- Charges by advertising agencies to their clients for consultation fees
33 directly related to the purchase, acquisition, fabrication, or production and retail sale of taxable items are a
34 part of the sales price and are subject to the general State, and applicable local and transit rates of sales and
35 use tax ~~tax,~~ pursuant to G.S. 105-164.4, whether the consultation fees are separately stated on the customer's
36 invoice or not. Consultation For purposes of G.S. 105-164.4, consultation fees charged to clients are not
37 subject to sales and use tax when they are solely in connection with the performance of professional

1 ~~[services] services. [that are not subject to sales and use tax.]~~ oral or written reports only and not in connection
2 with the sale of tangible personal property are also exempt from sales or use tax. Consultation fees directly
3 involved in transactions that require the purchase, acquisition, fabrication or production and sale of tangible
4 personal property, such as pamphlets and brochures, are a part of the sales price and are subject to sales and
5 use tax even though the fees may be separately stated on the customer's invoice. If an advertising agency is
6 retained to perform market research, analyze statistics, and develop an advertising concept on which a report
7 is presented, either orally or in writing to the client, the charges for these services are not taxable. After
8 considering the report, if the client decides to pursue the advertising concept and contracts with the same
9 agency to develop and produce advertising material to be placed on radio or television spots or in space in
10 newspapers, magazines, or on billboards, the agency must remit sales or use tax on its purchase of all taxable
11 tangible personal property used in producing the advertising material. If the advertising concept calls for the
12 production, fabrication, purchase, or acquisition of catalogs, magazines, handbills, brochures, programs,
13 pamphlets, or similar printed matter or any other tangible personal property they sell and deliver to their
14 clients or to others for their clients, the advertising agency is making retail sales subject to sales and use tax
15 on the sales price of the property. The sales price to which the tax applies includes all the items and services
16 described in Paragraph (b) of this Rule.

17 (e) Purchases for Use in Rendering Professional Services. -- Advertising agencies are the users or consumers of items
18 purchased by them for use in rendering professional services regardless of whether the items purchased are acquired
19 in the name or account of the advertising agency or their client. [Purchases Pursuant to G.S. 105-164.4, purchases by
20 advertising agencies of film, printing plates, photographs, positives, negatives, transparencies, color separations, and
21 similar items used in rendering professional services are subject to [the applicable rates of] sales and use tax on the
22 purchase price of the items without any deduction for the cost of the materials used, labor or service costs,
23 transportation charges, or any expenses whatsoever. Advertising agencies that purchase taxable items sourced to this
24 State from suppliers who do not charge and remit the applicable sales and use tax shall remit the use [tax] tax, pursuant
25 to G.S. 105-164.6, due directly to the Department.

26 ~~(d)(f)~~ Purchases for Resale. -- Purchases Pursuant to G.S. 105-164.13, purchases by advertising agencies of items for
27 resale, or of paper, ink, and other tangible personal property property, certain digital property, or services that become
28 a part of tangible personal property or certain digital property sold by advertising agencies at retail or wholesale,
29 ~~including purchases for resale in the same form,~~ are exempt from sales or use ~~taxes tax~~ when the purchases are
30 supported by ~~properly a completed Streamlined Sales Tax Agreement Certificates of Exemption, Form E 595E,~~
31 Certificate of Exemption in accordance with 17 NCAC 07B .0106, or other evidence in writing adequate to support
32 ~~the conclusion that the property is being purchased by a registered merchant for the purpose of resale.~~ The term "part
33 of tangible personal ~~property~~ property or certain digital property" includes only those items that are incorporated into
34 and become a part of property sold and does not include those items that are merely used or ~~incidentally~~ consumed in
35 its production. Purchases by advertising agencies of items used or consumed in the production of items for sale are
36 subject to [the applicable rates of] sales and use [tax.] tax, pursuant to G.S. 105-164.4. For example, a photograph,
37 transparency, printing plate, positive, negative, or color separation does not become an ingredient or component part

of property sold even though the image thereon is reproduced as a part of the property sold and the purchase of such items is subject to the general State, and applicable local and transit rates of sales and use tax. tax, pursuant to G.S. 105-164.4.

(e) ~~Purchasing for Use.~~ Purchases by advertising agencies of film, printing plates, photographs, positives, negatives, transparencies, color separations, and similar tangible personal property for use in the production of advertising material are subject to the applicable statutory state and any local sales or use tax because the property does not become incorporated into or become a component part of the property produced for sale. When advertising agencies purchase items for use in the production of property for sale, they are the users or consumers of the property and must pay the state and local sales or use tax on the cost price without regard to the disposition that may be made of the items by the advertising agency.

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

- (1) ~~The agency must disclose to the supplier the name of the principal for whom the agency is acting as agent and establish that it has the authority to bind the principal with respect to the purchase.~~
- (2) ~~The agency must be able to document that its status as agent existed prior to the acquisition.~~
- (3) ~~The price billed by the agency to the principal for the personal property, exclusive of any agency fee, must be the same as the amount paid to the supplier.~~
- (4) ~~The agency may make no use of the property for its own account.~~

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

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-164.13(22a); 105-164.28; 105-164.28A; 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and 46; Article 39; Article 40; Article 42; Article 43; Article 44; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

Eff. February 1, 1976;

1 *Amended Eff. April 1, 2006; August 1, 1998; October 1, 1993; October 1, 1991;*
2 *December 1, 1984; May 11, ~~1979~~ 1979;*
3 *Readopted Eff. January 1, 2024.*
4

17 NCAC 07B .0902 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .0902 ADVERTISING ARTISTS

(a) Sales by Advertising Artists. -- Advertising artists are retailers when they ~~who actually produce, cause to be produced, fabricate, purchase, or otherwise acquire items, as the term item is defined in G.S. 105-164.3, that they sell at retail for any use or purpose other than for resale. Items sold by advertising artists include catalogs, magazines, handbills, brochures, programs, pamphlets, or similar printed materials; other tangible personal property such as signs, paintings, portraits, negatives, photographs, vinyl wraps, certain digital property, or other tangible artistic creations~~ creations. [Advertising] Pursuant to G.S. 105-164.4, advertising artists making retail sales of items and sell them to users or consumers shall collect, report, and remit are liable for collecting and remitting the applicable statutory state and local [rates of] sales or and use tax on the sales price of such articles. [item unless specifically exempt by statute.] items.

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

(b) Purchases for Use in Rendering Professional Services. -- Advertising artists are the users or consumers of the items purchased by them for use in rendering professional services, regardless of whether the items are acquired in the name or account of the artist or their client. [Purchases] Pursuant to G.S. 105-164.4, purchases by advertising artists of items used in rendering professional services are subject to [the applicable rates of] sales and use tax on the purchase price of the item without any deduction for the cost of the material used, labor or service costs, transportation charges, or other expenses. Advertising artists that purchase taxable items sourced to this State from suppliers who do not charge and remit the applicable sales tax shall remit the use [tax] tax, pursuant to G.S. 105-164.6, due directly to the Department.

(c) Purchases for Resale. -- [Purchases] Pursuant to G.S. 105-164.13, purchases by advertising artists of items for resale that become a part of tangible personal property or certain digital property sold by the advertising artist at retail or wholesale are exempt from sales or use tax when the purchases are supported by a completed Certificate of Exemption in accordance with 17 NCAC 07B .0106. The term "part of tangible personal property or certain digital property" includes only those items that are incorporated into and become a part of property sold and does not include those items that are merely used or consumed in its production. Purchases by advertising artists of items used or consumed in the production of items for sale are subject to [the applicable rates of] sales and use [tax.] tax, pursuant to G.S. 105-164.4.

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

~~43; Article 44;~~ 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1;
105-511.3; 105-537; 105-538;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991; July 5, ~~1980~~1980;
Readopted Eff. January 1, 2024.

1 17 NCAC 07B .0904 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .0904 PUBLIC RELATIONS FIRMS**

5 (a) ~~Public Relations Firm-Rendering Professional Services:Services.~~ -- If [Charges] For purposes of G.S. 105-164.4,
6 charges by a public relations firm is ~~retained~~ to plan and conduct a public relations program ~~which that~~ requires it to
7 conduct research, opinion polls and surveys, compile data, ~~analyze all of the foregoing~~ perform analysis, and present
8 a ~~written or oral~~ written, oral, or electronic report of its findings to its client, ~~the charges for these services are not~~
9 subject to sales or use tax.

10 (b) ~~Purchases in Rendering Professional Services.~~ -- ~~The Purchases by a public relations firm shall pay be subject to~~
11 ~~the applicable~~ statutory state and local [rates of] sales or and use taxtax, pursuant to G.S. 105-164.4, on the ~~cost~~ purchase
12 price of any ~~tangible personal property~~ item, as the term item is defined in G.S. 105-164.3, sourced to this State, and
13 purchased for use in ~~performing the aforementioned services-rendering professional services or carrying out the goals~~
14 or objectives of the plan or concept. ~~If the client decides to pursue the plan or concept developed by the public relations~~
15 ~~firm and such action results in the development or acquisition of tangible personal property by the public relations~~
16 ~~firm for its use in carrying out the goals or objectives of the plan or concept, it is liable for paying the applicable~~
17 ~~statutory state and local sales or use tax on such purchases.~~

18 (b)(c) ~~Public Relations Agency-Making Retail Sales:Sales.~~ -- ~~If the plan or concept calls for the production,~~
19 ~~fabrication, purchase or acquisition of tangible personal property by the public relations firm which it sells and delivers~~
20 ~~to its client or sells to its client and delivers to others on behalf of its client, the public relations firm is making retail~~
21 ~~sales which are subject to sales or use tax on the sales price of such property.~~ [Retail] Pursuant to G.S. 105-164.4, retail
22 sales by public relations firms of taxable items are subject to sales or use [tax unless exempt by statute.]tax. Taxable
23 items sold by public relations firms include tangible personal property and certain digital property produced,
24 fabricated, purchased, or acquired by the public relations firm and sold to its client and delivered to the client or to
25 others on behalf of its client. Taxable items sold by public relations firms also include repair, maintenance, and
26 installation services. Tax shall apply to the ~~The~~ sales price of the property and shall include an item includes fees
27 charged for costs directly involved in the production of the property item ~~and those charges specifically associated~~
28 ~~with the fabrication, manufacture-manufacture, or delivery of the property, item,~~ such as charges for commissions,
29 supervision, research, transportation charges, postage, telephone and ~~telegraph~~ electronic messages, copy,copying,
30 models' fees, stage props, printing, printing plates, film,films, positives, negatives, transparencies-transparencies, and
31 color separations even though the firm may separately state such charges on the ~~invoice-invoice, similar billing~~
32 ~~document, rendered to the client and/or~~ in the firm's records.

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

34
35 *History Note:* Authority G.S. 105-164.3; 105-164.4; 105-164.4B; 105-164.6; 105-262; 105-264; [Chapter 105,
36 Articles 39, 40, 42, 43, and 46;]Article 39; Article 40; Article 42; Article 43; Article 44;

1 *Eff. October 1, 1993; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-*
2 *510.1; 105-511.3; 105-537; 105-538;*
3 *Amended Eff. April 1, ~~2006~~2006;*
4 *Readopted Eff. January 1, 2024.*

17 NCAC 07B .1101 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

SECTION .1100 - SALES OF TOBACCO ITEMS: FARM MACHINES AND MACHINERY QUALIFYING AND CONDITIONAL FARMERS

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

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

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

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

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

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

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

- 11 (1) [The farmer] the farmer or other person is a qualified or conditional [farmer, farmer;
12 (2) [The farmer] the farmer or other person has a current exemption certificate [number, number;
13 (3) [The] the item is listed in G.S. [105-164.13E(a), 105-164.13E(a);
14 (4) [The farmer] the farmer or other person primarily uses the item in farming [operations, operations;
15 and
16 (5) [The] the seller complies with the certificate of exemption requirements in G.S. [105-164.28] 105-
17 164.28.

18 ~~(d)(b) The following are examples~~ Examples of sales of farm machinery, attachment and repair parts for farm
19 machinery, and lubricants applied to farm machinery which are exempt when sold to that are exempt from sales and
20 use [tax] tax, pursuant to G.S. 105-164.13E, when purchased by qualifying or conditional farmers and used primarily
21 in farming operations include the following: for use by them in planting, cultivating, harvesting or curing farm crops:

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

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

23 (c) Examples of commercially manufactured equipment, and parts and accessories for equipment, that are exempt
24 from sales and use [tax] tax, pursuant to G.S. 105-164.13E, when used, placed, or installed in a commercially
25 manufactured facility, enclosure, or structure for housing, raising, or feeding animals include:

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

33 (d) Examples of repair, maintenance, and installation services that are exempt from sales and use [tax] tax, pursuant
34 to G.S. 105-164.13E, when purchased by a qualifying or conditional farmer include:

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

- (4) Repair of a fence used for housing, raising, or feeding animals.
- (e) Examples of items which are purchased by a qualifying or conditional farmer from a retailer that are subject to the applicable statutory state [general State,] and [applicable] local [and transit rates of] sales or use tax, pursuant to G.S. 105-164.4, when sold to farmers for general purposes, include:
- (1) lawn mowers;
 - (2) snow plows;
 - (3) oil and fuel storage tanks tanks, mobile or stationery, and their fittings;
 - (4) drainage tile;
 - (5) paint, cleaning compounds and brushes;
 - (6) baler twine; snap bean graders;
 - (7) tobacco sticks and tobacco twine; all-terrain vehicles not used primarily in farming operations;
 - (8) tools for maintaining machinery and equipment equipment;
 - (9) sickle grinders;
 - (10) tobacco balers; and
 - (11) ventilators that are part of a building or structure that have no moving parts and are installed in tobacco barns, other than bulk tobacco barns.
- (f) The items listed in subsections paragraphs (a), (b), and (c) or this Rule must be purchased in accordance with G.S. 105-164.13E and G.S. 105-164.28A in order to be exempt from sales and use tax; otherwise, the items purchased are subject to the general State, and applicable local and transit rates of sales and use tax, pursuant to G.S. 105-164.4. The lists in Paragraphs (d) and (e) of this Rule are not intended to be exclusive, but are for illustrative purposes only. If there is any question as to the tax status of any item which does not appear therein, such question shall be submitted to the secretary, together with a detailed statement of the business of the purchaser, the design and structure of the article, and its use, to the end that the applicable rate of tax may be correctly determined.
- (g) The word farmer as used in this Rule includes crop farmers, dairy operators, poultry farmers, egg producers, livestock farmers, nurserymen, greenhouse operators, farmers who raise fish or water plants, orchardmen and other persons coming within the generally accepted definition of the word. It does not include a person who merely cultivates a garden for personal use.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-164.13E; 105-164.28; 105-164.28A; 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and 46; Article 39; Article 40; Article 42; Article 43; Article 44; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

Eff. February 1, 1976;

Amended Eff. June 1, 2006; August 1, 1996; April 1, 1995; July 1, 1994; October 1, 1993; June 1, 1992; 1992;

Readopted Eff. January 1, 2024.

17 NCAC 07B .1301 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

SECTION .1300 - SALES IN INTERSTATE COMMERCE

17 NCAC 07B .1301 OUT-OF-STATE DELIVERIES

(a) To qualify for the exemption from sales or use tax on out-of-State deliveries set out in G.S. 105-164.13; 105-164.13(33a), a retailer who ~~Sales within the State of tangible personal property that the vendor delivers items, as the term item is defined in G.S. 105-164.3, to the purchaser at a point outside the State, or that the vendor delivers to causes items to be delivered by a common carrier or the United States Postal Service to the mails for transportation and delivery to the purchaser at a point outside the State, are not subject to the applicable state and local sales or use tax if the property is not returned to a point within the State and the vendor furnishes acceptable proof of shall maintain documentation substantiating the transportation and delivery to a point outside the State. The most acceptable proof of~~ Documentation substantiating the transportation and delivery to a point outside the State ~~is shall be~~ any of the following:

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

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

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4B; 105-164.6; 105-164.13; 105-164.22; 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and 46; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;
Eff. February 1, 1976;
Amended Eff. July 1, 1999; August 1, 1998; October 1, 1993; October 1, 1991-1991;
Readopted Eff. January 1, 2024.

1 17 NCAC 07B .1302 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .1302 IN-STATE DELIVERIES**

5 Sales of tangible personal property delivered in this state to the buyer or his agent, if such agent is not a common
6 carrier, are subject to the applicable statutory state and local sales or use tax, notwithstanding that the buyer may
7 subsequently transport, or employ someone else to transport, the property out of this state, except as provided by G.S.
8 105-164.13. [The] Pursuant to G.S. 105-164.4, the sales price of items, as the term item is defined in G.S. 105-164.3,
9 sold at retail that are delivered to a purchaser or the purchaser's agent in this State are subject to [the applicable State,
10 local, and transit rates of] sales and use [tax, unless exempt by statute.] tax. Tax is due even if the purchaser or the
11 purchaser's agent may subsequently transport, or employ someone else to transport the item out of this State.

12
13 *History Note:* Authority G.S. 105-164.3; 105-164.4; 105-164.6; [105-164.13;]105-262; 105-264; [Chapter 105,
14 Articles 39, 40, 42, 43, and 46;]Article 39; Article 40; Article 42; Article 43; Article 44; 105-467;
15 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-
16 538;
17 *Eff. February 1, 1976;*
18 *Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991; January 1, 1982;*
19 *February 8, 1981; 1981;*
20 *Readopted Eff. January 1, 2024.*

1 17 NCAC 07B .1305 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .1305 FOREIGN COMMERCE: PURCHASES FOR EXPORT**

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

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

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

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

12 (1) name of vendor;

13 (2) address of vendor;

14 (3) name of affiant;

15 (4) title of affiant, if applicable;

16 (5) name of vendee;

17 (6) address of vendee;

18 (7) name of foreign country;

19 (8) identification of property purchased;

20 (9) signature of affiant; and

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

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

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

25
26 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; [Chapter 105,*
27 *Articles 39, 40, 42, 43, and 46; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-*
28 *509.1; 105-510.1; 105-511.3; 105-537; 105-538;*

29 *Eff. October 1, 1993; 1993;*

30 *Readopted Eff. [Insert date] January 1, 2024.*

1 17 NCAC 07B .1602 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:
3

4 **17 NCAC 07B .1602 REFUNDS TO NONPROFIT ENTITIES**

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

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

13 (2) ~~Indirect purchases of items purchased for its use and for sales and use tax paid indirectly by it on~~
14 ~~building materials, supplies, fixtures, and equipment that become part of or are annexed to any a~~
15 ~~building or structure if the entity owns or leases leases, and is being erected, altered, or repaired for~~
16 ~~use by the entity in carrying on its nonprofit activities, and uses to conduct its nonprofit activity.~~

17 ~~A claim for refund must be filed on a form provided by the Department.~~ A claim for refund applies to ~~taxes sales and~~
18 ~~use tax~~ paid during the period for which the claim for refund is filed. Taxes for which a refund is allowed under G.S.
19 105-164.14(b) are not an overpayment of tax and do not accrue interest.

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

21 (1) name and address of entity requesting the refund;

22 (2) Federal Employer Identification Number;

23 (3) account number;

24 (4) refund period beginning and ending dates;

25 (5) contact person name and telephone number;

26 (6) designation as either a nonprofit entity or governmental entity;

27 (7) National Taxonomy of Exempt Entities (NTEE) number for nonprofit entities;

28 (8) name of taxing county if taxes were paid in only one county. Where more than one county's sales
29 and use tax has been paid, attach Form E-536E, Schedule of County Sales and Use Taxes for Claims
30 for Refund, and show the amount paid for each county's applicable local and transit rates of tax.

31 (9) total purchases of items for use on which State, food, county and transit sales or use tax was paid
32 directly to the retailer;

33 (10) amount of sales and use tax paid directly to retailers on purchases;

34 (11) amount of sales and use tax paid indirectly to retailers on purchases;

35 (12) amount of use tax paid directly to the Department on purchases;

36 (13) total tax paid;

37 (14) total refund amount requested;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Charges for electricity and telecommunications services; Sales or use tax remitted on taxable [sales made by nonprofit entities.] sales.

(2) Sales or use tax paid on the purchase of "alcoholic beverages" as defined in G.S. 18B-101.

(3) Sales or use tax paid on electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan.

(2)(4) ~~Occupancy~~ Local occupancy taxes levied and administered by paid to certain counties and cities in this State; State.

(3)(5) ~~Prepared~~ Local prepared food and beverage taxes levied by paid to various local governments in this State; State.

(4)(6) Highway use taxes tax or alternate highway use tax paid on the purchase, vehicle subscription, lease, or rental of motor vehicles; vehicles.

(5)(7) The white White goods disposal tax levied paid on purchases of new white goods; goods.

(6)(8) The scrap Scrap tire disposal tax levied paid on purchases of new tires; or tires.

(7)(9) The dry cleaning Dry-cleaning solvent tax levied paid on dry-cleaning solvent purchased by a dry cleaning facility.

1 (10) Solid waste disposal tax.

2 (11) 911 service charge for prepaid wireless telecommunications service.

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

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

7
8 History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.14; 105-241.7; 105-262; 105-264;
9 [Chapter 105, Articles 39, 40, 42, 43, and 46; Article 39; Article 40; Article 42; Article 43; Article
10 44; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3;
11 105-537; 105-538;

12 Eff. February 1, 1976;

13 Amended Eff. April 1, 2006; July 1, 2000; July 1, 1999; August 1, 1998; April 1, 1997;

14 August 1, 1996; October 1, 1993; March 1, 1993; June 1, 1992; October 1, ~~1991~~1991;

15 Readopted Eff. January 1, 2024.

17 NCAC 07B .1701 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

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

17 NCAC 07B .1701 GOVERNMENTAL SALES AND PURCHASES

(a) General Sales to and Purchases by Governmental Entities. -- With the exception of ~~electricity and telecommunication~~ electricity, telecommunications service, and ancillary service, sales to North Carolina State agencies are exempt from State and local sales or use ~~taxes-tax~~ pursuant to G.S. 105-164.13(52), if all of the conditions set out in G.S. 105-164.13(52) are met, and from the privilege tax pursuant to Article 5F of Chapter 105 of the General Statutes. The items must be purchased by the State agency for its own use pursuant to a valid purchase order issued by the agency that contains its exemption number and a description of the property purchased, or the items must be paid for with a State issued check, electronic deposit, credit card, procurement card, or credit account of the agency. For all purchases other than by an agency issued purchase order, the agency must provide to or have on file with the retailer the agency's exemption number. ~~The~~ This exemption does not apply to sales of ~~tangible personal property items~~, as the term item is defined in G.S. 105-164.3, to ~~contractors-a person~~, including a real property contractor, for use in the performance of ~~contracts-a contract~~ with State agencies or to sales of ~~tangible personal property items~~ to employees of State agencies. [Sales] Pursuant to G.S. 105-164.4, sales to counties, cities, and other political subdivisions are subject to the applicable State and [applicable] local [and transit rates of] sales and use tax.

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

(c) DOT Sales to the North Carolina Department of Transportation. – Sales of items to the Department of Transportation are exempt from ~~State and local~~ State, local, and transit rates of sales and use ~~tax-tax~~, pursuant to G.S. 105-164.13(40). This exemption does not apply to sales of ~~tangible personal property items~~ to ~~contractors-a person~~, including a real property contractor, for use in the performance of ~~contracts-a contract~~ with the Department of Transportation ~~nor or~~ to sales of ~~tangible personal property items~~ to ~~employees-an employee~~ of the Department of Transportation.

1 *History Note:* *Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; ~~105-187.52; 105-262; 105-264;~~*
2 *~~[Chapter 105, Articles 39, 40, 42, 43, and 46; Article 39; Article 40; Article 42; Article 43; Article~~*
3 *~~44; Article 46; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1;~~*
4 *~~105-511.3; 105-537; 105-538;~~*
5 *Eff. February 1, 1976;*
6 *Amended Eff. October 1, 2009; August 1, 1998; August 1, 1996; October 1, 1993; October 1, 1991;*
7 *May 1, 1990; February 1, ~~1987, 1987;~~*
8 *Readopted Eff. January 1, 2024.*
9

17 NCAC 07B .1702 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

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

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

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

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

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

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

(c) Records. -- A claim for refund shall be supported by documentation showing the amount of sales and use tax paid. Records shall be maintained by the governmental entity on a county-by-county basis to identify local and transit sales and use tax paid by the governmental entity. Local tax rates by county, including any transit tax can be found on the Department's website at www.ncdor.gov.

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

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

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

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

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

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

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

annexed to the building constructed. Examples of items that shall not be included in the certified statement are scaffolding, forms of concrete, fuel to operate machinery and equipment, tools, equipment repair parts, temporary fencing/netting, and equipment rentals.

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

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

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

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.14; 105-241.7; 105-262; 105-264; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;
Eff. February 1, 1976;
Amended Eff. July 1, 2000; August 1, 1998; April 1, 1997; August 1, 1996; October 1, 1993; October 1, 1991; May 1, 1990; February 1, ~~1997-1997~~;
Readopted Eff. January 1, 2024.

1 17 NCAC 07B .1704 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .1704 GOVERNMENTAL ENTITIES NOT ELIGIBLE FOR REFUNDS**

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

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

13
14 *History Note:* Authority G.S. 105-164.4; 105-164.6; 105-164.14; 105-262; 105-264;
15 *Eff. February 1, 1976;*
16 *Amended Eff. April 1, 1999; October 1, 1993; May 1, 1990; July 5, ~~1980-1980;~~*
17 *Readopted Eff. January 1, 2024.*

17 NCAC 07B .1801 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

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

(a) ~~General-General.~~ -- ~~Hospitals, sanitariums, nursing homes, and rest homes~~Hospitals and similar institutions are primarily engaged in rendering services and are ~~considered the users or consumers of all tangible personal property items~~, as the term item is defined in G.S. 105-164.3, they purchase for use in connection with ~~these institutions~~the operation of the hospital or similar institutions. ~~[Hospitals]~~Pursuant to G.S. 105-164.4, hospitals and similar institutions purchasing items for use, such as linens, soap, toilet paper, facial tissues, and other supplies, shall pay sales or use tax due on the purchase of the ~~[items, unless exempt from tax by statute.]~~items. For purposes of this Rule, similar institutions include nursing homes, ambulatory surgical facilities, psychiatric hospitals, chemical dependency facilities, and other institutions primarily engaged in providing a health service, as the term is defined in G.S. 131E-176(9a).~~These institutions are liable for payment of sales or use tax on their purchases of tangible personal property except as explained in this Rule.~~

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

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

(1) Hospitals and similar institutions are the consumers of food they purchase to furnish meals to patients. ~~[Purchases]~~Pursuant to G.S. 105-164.4 and G.S. 105-467, purchases of food used to furnish meals to patients by hospitals and similar institutions are subject to ~~[the applicable rates of]~~ sales and use ~~[tax, unless exempt by statute.]~~tax. Purchases of food by hospitals, sanitariums, nursing homes, or rest homes for use in furnishing meals to patients are exempt from State tax, but not the 2% local tax, if the food could be purchased under the Food Stamp Program.

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

(3) ~~If the food purchased by the a hospital or similar institution for use in furnishing meals to patients cannot be distinguished from the food purchased for resale through the cafeteria to other persons, the hospital or similar institution may purchase all the food exempt from sales or use [tax] tax, pursuant to G.S. 105-164.13(5), under a certificate of resale exemption, in accordance with 17 NCAC 07B .0106. An A hospital or similar institution that does this purchases food under a~~

1 certificate of exemption assumes liability for payment of sales or use tax due on the purchase price
2 of food used in furnishing meals to its patients and on sales of meals by the cafeteria.~~[at the~~
3 ~~applicable State, local, and transit rates of tax.]~~ patients.

4 ~~(e)(d) Meals to Students~~ Gift Shops and Other Retail Sales. -- A hospital or similar institution that operates a gift shop
5 or other business making retail sales shall register with the Department and collect and remit the sales and use tax due
6 on its retail sales. The tax due shall be computed [at the applicable rates] on the sales price or purchase price of the
7 item sold. If, at the time of sale, a hospital or similar institution cannot distinguish whether an item will be used or
8 resold, the hospital or similar institution may purchase the item exempt from sales and use [tax] tax, pursuant to G.S.
9 105-164.13(5), under a certificate of exemption. A hospital or similar institution that purchases an item under a
10 certificate of exemption which is subsequently used by the hospital, including items used to provide services to
11 patients, must pay the sales or use tax due on the purchase price of the item. ~~Meals and food products sold by a hospital~~
12 ~~operated by a State or private educational institution to student nurses are exempt from tax in accordance with G.S.~~
13 ~~105-164.13(27).~~

14 ~~(d)(c) Purchases for Consumption~~ Use of a Certificate of Exemption. -- Except as provided by Paragraph
15 ~~(b)~~ [sections] paragraphs (c) and (d) of this Rule, a Certificate of Resale, Form E-590, Exemption may not be used by
16 ~~hospitals, sanitariums, nursing homes, or rest homes~~ hospitals or similar institutions when making taxable purchases
17 ~~of tangible personal property items~~ for use or consumption. The sales or use tax due on taxable purchases from North
18 ~~Carolina suppliers or out of state suppliers who charge~~ retailers that collect North Carolina sales or use tax must shall
19 ~~be paid to the suppliers-retailer. An institution that makes~~ [Hospitals] Pursuant to G.S. 105-164.6, hospitals and similar
20 ~~institutions that make taxable purchases from an out of state supplier who does~~ suppliers that do not collect and remit
21 ~~North Carolina sales or use tax must shall~~ register with the department Department and remit monthly the tax due on
22 ~~the purchases.~~ purchase price of items purchased for use or consumption.

24 *History Note:* Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-262; 105-467; 105-264;
25 [Chapter 105, Articles 39, 40, 42, 43, and 46; 105-467; 105-468; 105-469; 105-483; 105-498;
26 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

27 *Eff. February 1, 1976;*

28 *Amended Eff. July 1, 2000; May 1, 1999; August 1, 1998; October 1, 1993; October 1, 1991; July*
29 *1, 1989; 1989;*

30 *Readopted Eff. January 1, 2024.*

17 NCAC 07B .1905 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

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

(a) Sales by Tire Retreaders:

(1) Sales of Retreaded Tires. – ~~The~~ Pursuant to G.S. 105-164.4, the sales price of a retreaded tire is subject to ~~the general State, and applicable local and transit rates of~~ sales and use tax on the sales price of the retreaded tire, without any deduction for any trade-in credit or allowance.

(2) Tire Retreading Services. – ~~The~~ Pursuant to G.S. 105-164.4, the gross receipts derived from tire retreading services are subject to ~~the general State, and applicable local and transit rates of~~ sales and use tax, without any deduction for any trade-in credit or allowance.

(3) Sales of Other Parts or Services. -- The sales price of other items sold by a tire retreader including shoes, valves, dust caps, and repair, maintenance, and installation services are subject to ~~the general State, and applicable local and transit rates of~~ sales and use ~~tax unless exempt by statute.~~ tax, pursuant to G.S. 105-164.4.

(b) Purchases by Tire Retreaders:

(1) Purchases of Ingredient or Component Parts. – ~~A~~ Pursuant to G.S. 105-164.13, a tire retreader may purchase exempt from sales and use tax tangible personal property that enters into or becomes an ingredient or component part of retreaded tires that are resold. Such items may include ~~Sales to tire recappers of camelback or other rubber products, cement and rubber solvent, cord fabric, wheel weights-weights, and other items similar items. of a similar nature which enter into or become an ingredient or component part of the recapped tires or are attached to and delivered with the tires to the customer are exempt from tax.~~

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

~~(c)(2)~~ Purchases of Mill Machinery or Mill Machinery Parts or Accessories. -- ~~Sales to~~ Purchases by tire ~~recappers-retreaders~~ of mill machinery, or mill machinery parts and or accessories therefor, for use exclusively used primarily in the recapping “production” ~~phase, as defined in section 57 of the Department’s Sales and Use Tax Bulletin,~~ phase of the retreading process are exempt from sales and use ~~tax-tax,~~ pursuant to G.S. 105-164.13(5e). For purposes of the Rule, “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 the assembly or processing line

1 turning out a finished product of manufacture for sale. The "Production" phase also includes the
2 following:

3 (A) The movement of raw materials or ingredients from an inventory or a stockpile
4 located on the premises of the manufacturing facility to the assembly or
5 processing line.

6 (B) The movement of goods in process along the assembly or processing line.

7 (C) The movement of manufactured products from the assembly or processing line
8 into shipping or storage areas and yards located on the premises of the
9 manufacturing facility.

10 (D) The work of experimentation and research performed on the manufactured
11 products.

12 "Production" does not include any activity connected with the movement of raw materials or
13 ingredients into inventory nor does it include "distribution" which is any activity connected with the
14 movement of manufactured products within storage warehouses, shipping rooms, and other such
15 finished product storage areas and the removal of such products therefrom for sale or shipment, or
16 "administration" which is any administrative work of offices, promotion of sales, and collection of
17 accounts.

18 Sales to contractors and subcontractors of mill machinery or mill machinery parts and accessories
19 for use by them in the performance of contracts with manufacturing industries and plants and sales
20 to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them
21 in the performance of contracts encompassed in such contracts with manufacturing industries and
22 plants are exempt from sales tax. Such mill machinery or mill machinery parts and accessories must
23 be for use by tire recappers in the production process, as the term "production" is defined in 17
24 NCAC 07D .0102(a)(1), to qualify for the exemption from sales and use tax when purchased by
25 such contractors or subcontractors. Contractors and subcontractors may obtain Streamlined Sales
26 and Use Tax Agreement Certificate of Exemption, Form E-595E, from the Taxpayer Assistance
27 Division, North Carolina Department of Revenue, to be executed by them and furnished to their
28 vendors in connection with such purchases as the vendor's authority to apply the exemption. The
29 following items when sold to tire recappers retreaders for use exclusively primarily in the recapping
30 retreading process are considered to be mill machinery or mill machinery parts and or accessories
31 within the meaning of the Sales and Use Tax Article: exempt from sales and use [tax.] tax, pursuant
32 to G.S. 105-164.13(5e). This is not an all-inclusive list:

- 33 (1) — wire brushes;
34 (2) — mold lube;
35 (3) — curing tubes and rims;
36 (4) — molds and matrices;
37 (5) — buffing equipment;

- (6) ~~buffing discs;~~
- (7) ~~buffing rasps;~~
- (8) ~~rasp teeth;~~
- (9) ~~crayons for marking tires;~~
- (10) ~~tire trimmers;~~
- (11) ~~boilers;~~
- (12) ~~tire handling equipment used exclusively between the beginning and ending steps of the recapping process;~~
- (13) ~~inspection spreaders used exclusively to inspect casings being recapped;~~
- (14) ~~spinners used for applying cement used on casings being recapped;~~
- (15) ~~pre-condensing tanks for air lines used for applying cement, dusting buffed casings, and inflating curing tubes;~~
- (16) ~~casing balancers used exclusively in balancing casings to be recapped;~~
- (17) ~~tread builders used to apply tread rubber to casings being recapped;~~
- (18) ~~air compressors used exclusively in retreading or recapping process;~~
- (19) ~~dust collectors;~~
- (20) ~~knives, stitchers, rollers, shears, awls, and splicing tools used to perform work on the ingredient material or the manufactured product;~~
- (21) ~~thermometers, pyrometers, and durometers used in testing mold heat and cure hardness of the rubber used in the recapping process;~~
- (22) ~~bagging and debagging equipment;~~
- (23) ~~sprayers used exclusively in the recapping process;~~
- (24) ~~matrix loaders;~~
- (25) ~~steam traps and valves used in steam lines for curing molds; and~~
- (26) ~~mold cleaners.~~
- (A) Air compressors.
- (B) Bagging and debagging equipment.
- (C) Boilers.
- (D) Buffing discs.
- (E) Buffing equipment.
- (F) Buffing rasps.
- (G) Casing balancers and balancing casings to be retreaded.
- (H) Crayons for marking tires.
- (I) Curing tubes and rims.
- (J) Dust collectors.
- (K) Inspection spreaders used to inspect casings being retreaded.

- (L) Knives, stitchers, rollers, shears, awls, and splicing tools used to perform work on the ingredient material or the manufactured product.
- (M) Matrix loaders.
- (N) Mold cleaners.
- (O) Mold lube.
- (P) Molds and matrices.
- (Q) Pre-condensing tanks for air lines used for applying cement, dusting buffed casings, and inflating curing tubes.
- (R) Rasp teeth.
- (S) Spinners used for applying cement used on casings being retreaded.
- (T) Sprayers.
- (U) Steam traps and valves used in steam lines for curing molds.
- (V) Thermometers, pyrometers, and durometers used in testing mold heat and cure hardness of the rubber used in the retreading process.
- (W) Tire handling equipment used between the beginning and ending steps for the retreading process.
- (X) Tire trimmers.
- (Y) Tread builders used to apply tread rubber to casings being retreaded.
- (Z) Wire brushes.

~~(d)~~(c) Purchases of items used or consumed. -- Purchases by tire retreaders of items used or consumed by them are subject to the general State, and applicable local and transit rates of]sales and use [tax.]tax, pursuant to G.S. 105-164.4. The following are examples of items ~~which~~ used or consumed by tire retreaders that are subject to the applicable statutory state and local sales or use tax when sold to tire recappers for use or consumption:tax. This is not an all-inclusive list:

- ~~(1) — motor vehicle jacks;~~
 - ~~(2) — tire tools not used between the beginning and ending recapping processes;~~
 - ~~(3) — balancing machinery used after recapping process is completed;~~
 - ~~(4) — equipment used to remove tires from the rim before the recapping process begins;~~
 - ~~(5) — administrative equipment such as office supplies, file cabinets and other office equipment;~~
 - ~~(6) — cleaning compounds for janitorial and sanitary purposes;~~
 - ~~(7) — uniforms for employees;~~
 - ~~(8) — advertising materials;~~
 - ~~(9) — lubricants, repair parts and accessories for motor vehicles;~~
 - ~~(10) — inspection bags; and~~
 - ~~(11) — gloves.~~
- (1) Administrative equipment such as office supplies, file cabinets, and other office equipment.
 - (2) Advertising materials.

- (3) Balancing machinery used after the retreading process is completed.
- (4) Cleaning compounds for janitorial and sanitary purposes.
- (5) Equipment used to remove tires from the rim before the retreading process begins.
- (6) Gloves.
- (7) Inspection bags.
- (8) Motor vehicle jacks.
- (9) Tire tools not used between the beginning and end of the retreading process.
- (10) Uniforms for employees.

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

(d) Purchases of Other Items for Resale. -- Tire retreaders making purchases of items for resale may purchase such items exempt from sales and use tax, pursuant to G.S. 105-164.13(5), and when purchased in accordance with 17 NCAC 07B .0106.

*History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; [Chapter 105, Articles 39, 40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538; Eff. February 1, 1976;
Amended Eff. October 1, 2009; July 1, 1999; October 1, 1993; June 1, 1992; October 1, 1991; May 1, 1985; 1985;
Readopted Eff. January 1, 2024.*

17 NCAC 07B .1907 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .1907 SCRAP TIRE DISPOSAL TAX

(a) The scrap tire disposal tax established in G.S. 105-187.16 applies to the sale or purchase of new tires including new tires for motor vehicles, aircraft, construction equipment, maintenance and industrial equipment, and implements of husbandry, farm tractors, special mobile equipment as defined in G.S. [20-4.01,] 105-164.3, or vehicles designed primarily for use in non-highway work.

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

~~(a)(c) Lessors of tires shall pay the scrap tire disposal tax to the retailer or wholesale merchant when they purchase a new tire. The taxable event for tires that are purchased for the purpose of lease or rental occurs at the time the tires are purchased and the scrap tire tax is due at that time. The receipts from the lease or rental of tires are not subject to the scrap tire disposal tax but they are subject to the sales or use tax, pursuant to G.S. 105-164.4. The scrap tire tax shall be computed on the selling price of the tire including the federal excise tax but excluding the sales tax.~~

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

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

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

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

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

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

9
10 History Note: Authority G.S. 105-164.3; 105-164.29; 105-187.15; 105-187.16; 105-187.17; [105-164.29];
11 105-262; 105-264;
12 Eff. October 1, 1991;
13 Amended Eff. October 1, 1993; June 1, ~~1992~~, 1992;
14 Readopted Eff. January 1, 2024.

Burgos, Alexander N

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Wednesday, October 25, 2023 1:30 PM
To: Rules, Oah
Cc: Peaslee, William W; Ascher, Seth M; Burgos, Alexander N; Furuseth, Andrew O; Jacobs, Tenisha S
Subject: [External] Revisions to Rules objected to by RRC 17 NCAC 07B .0115, .3101, .3107, .4206, .4415, .5002
Attachments: 17 NCAC 07B .0115.docx; 17 NCAC 07B .3101.docx; 17 NCAC 07B .3107.docx; 17 NCAC 07B .4206.docx; 17 NCAC 07B .4415.docx; 17 NCAC 07B .5002.docx

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

On behalf of the Sales and Use Tax Division, please find attached the following six (6) revised Rules objected to by the RRC on 9/21/2023:

- 17 NCAC 07B .0115
- 17 NCAC 07B .3101
- 17 NCAC 07B .3107
- 17 NCAC 07B .4206
- 17 NCAC 07B .4415
- 17 NCAC 07B .5002

Please let me know if you need any additional information.

Thank you.

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

Burgos, Alexander N

From: Ascher, Seth M
Sent: Monday, October 30, 2023 5:33 PM
To: Lansford, Laura L
Cc: Furuseth, Andrew O; Peaslee, William W; Burgos, Alexander N
Subject: RFC 17 NCAC 07B .2101 through .4106
Attachments: DOR RFC 17 NCAC 07B .2101 through .4106.docx

Good afternoon,

Attached is the RFC for the rules between 17 NCAC 07B .2101 through .4106 that have not already received approval or objection from the Commission. Note that I did not include an entry for a repeal when there are no changes needed. Please submit any response and updated rules by November 9, 2023.

Please let me know if you have any questions.

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

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

17 NCAC 07B .0115 RESEARCH SERVICES

For purposes of G.S. 105-164.13, [Sales] purchases of scientific or research equipment, or an attachment or repair part for scientific or research equipment, to independent contract research organizations for use in performing research services for clients are purchased for use, not resale. [subject to the] applicable statutory state [general State,] and [applicable] local [and transit rates of] sales or use tax. [tax, unless exempt by statute.] If a contract research organization qualifies under G.S. 105-187.51B(a)(2), then research equipment that meets the requirements of that subsection are exempt from sales and use tax.

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

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

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

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

(a) Pursuant to G.S. 105-164.4, sales and use tax does not apply to Receipts receipts of radio and television companies for derived from the broadcasting or telecasting of programs are not subject to sales or use tax, unless the receipts are derived from certain digital property, video programming, or satellite digital audio radio service. For example, receipts of radio or television companies from advertisers to broadcast advertisements are not subject to sales and use tax.

(b) Receipts Pursuant to G.S. 105-164.4 and G.S. 105-164.4G, The the gross receipts of motion picture movie theatres derived from admission charges are not subject to the general State, and applicable local and transit rates of sales or and use tax.

(c) Motion picture theatres making taxable sales of tangible Pursuant to G.S. 105-164.4, sales of Tangible tangible personal property property, including food, prepared food, and beverages, sold by movie theatres through concession stands or otherwise must register with the department and must collect and remit the applicable statutory state are subject to the general State, and applicable local and transit rates of sales or and use tax on such sales tax.

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

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

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

(a) For purposes of G.S. 105-164.13, purchases by [Sales to] motion picture production firms a production company, as defined in G.S. 105-164.3, of items including cameras, ~~film~~ machinery, equipment, film, and props or building materials used in the construction of sets ~~which are used in the actual filming of movies for sale, lease or rental are exempt from~~ are purchased for use, not resale, except as provided in subsection (b) of this Rule. These items are also not mill machinery, or mill machinery parts or accessories. [subject to the general State, and applicable local and transit rates of] sales and use tax. The sale ~~Sales of chemicals [chemicals, film,] and equipment used to develop and edit film which is used to [that] produce release prints~~ is exempt from [are subject to the general State, and applicable local and transit rates of] sales and use tax. [tax unless exempt by paragraph (b) of this Rule or other exemption.]

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

~~(c)(b) The purchase~~ Pursuant to G.S. 105-164.13, [Sales] purchases of film ~~by a movie [te] by~~ by a production company ~~which that becomes an ingredient or a component part of release prints that are actually produced and sold, leased, or rented to its customers are exempt from sales and use tax. Also, [Sales] Purchases of chemicals which are used to develop release prints that are for sale, lease lease, or rental that become an ingredient or a component part of the release prints are exempt from sales and use tax.~~

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

Eff. June 1, 1992;

Amended Eff. October 1, 2009; October 1, ~~1993~~ 1993;

Readopted Eff. January 1, 2024.

Burgos, Alexander N

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Wednesday, October 25, 2023 1:30 PM
To: Rules, Oah
Cc: Peaslee, William W; Ascher, Seth M; Burgos, Alexander N; Furuseth, Andrew O; Jacobs, Tenisha S
Subject: [External] Revisions to Rules objected to by RRC 17 NCAC 07B .0115, .3101, .3107, .4206, .4415, .5002
Attachments: 17 NCAC 07B .0115.docx; 17 NCAC 07B .3101.docx; 17 NCAC 07B .3107.docx; 17 NCAC 07B .4206.docx; 17 NCAC 07B .4415.docx; 17 NCAC 07B .5002.docx

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On behalf of the Sales and Use Tax Division, please find attached the following six (6) revised Rules objected to by the RRC on 9/21/2023:

- 17 NCAC 07B .0115
- 17 NCAC 07B .3101
- 17 NCAC 07B .3107
- 17 NCAC 07B .4206
- 17 NCAC 07B .4415
- 17 NCAC 07B .5002

Please let me know if you need any additional information.

Thank you.

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

Burgos, Alexander N

From: Ascher, Seth M
Sent: Tuesday, October 24, 2023 1:37 PM
To: Lansford, Laura L
Cc: Furuseth, Andrew O; Peaslee, William W; Burgos, Alexander N
Subject: RFC 17 NCAC 07B .0901 through .1907
Attachments: DOR RFC 17 NCAC 07B .0901 through .1907.docx

Good afternoon,

Attached is the RFC for the rules between 17 NCAC 07B .901 through .1907 that have not already received approval or objection from the Commission. Note that I did not include an entry for a repeal when there are no changes needed. Please submit any response and updated rules by November 7, 2023.

Please let me know if you have any questions.

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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Burgos, Alexander N

From: Ascher, Seth M
Sent: Friday, October 20, 2023 2:02 PM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Peaslee, William W; Furuseth, Andrew O; Jacobs, Tenisha S
Subject: 17 NCAC 07B .1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, .4109
Attachments: 102023 DOR Objection 17 NCAC 07B .1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, .4109.pdf; Staff Opinion 17 NCAC 07B .1202.doc; Staff Opinion 17 NCAC 07B .1303, .1404, .2001, .2002.doc; Staff Opinion 17 NCAC 07B .1601, .1605, .1705, .2204, .4109.doc

Good afternoon,

Attached is the notice of objection on the above captioned rules with attached staff opinions.

Let me know if you have any questions.

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, October 17, 2023 8:58 AM
To: Lansford, Laura L; Ascher, Seth M
Cc: Burgos, Alexander N; Furuseth, Andrew O; Jacobs, Tenisha S
Subject: RE: [External] Request for oral comment - 10/19/2023 RRC meeting

Thank you. We will advise the Chair.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Tuesday, October 17, 2023 8:57 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>
Subject: [External] Request for oral comment - 10/19/2023 RRC meeting

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Mr. Peaslee and Mr. Ascher,

I am submitting this request to offer oral comments regarding Rules proposed for readoption by the Department of Revenue, Sales and Use Tax Division at the 10/19/2023 Rules Review Commission meeting.

The Director of the Division, Andrew Furuseth, is out of the office, but may wish to address the RRC to speak in favor on Sales and Use Tax Rules on the Commission's 10/19/2023 agenda.

Please let me know if you need any additional information.

Thank you.

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871

Phone: 919.814.1088

Fax: 919.715.0295

Laura.Lansford@ncdor.gov

Burgos, Alexander N

From: Ascher, Seth M
Sent: Monday, October 16, 2023 6:09 PM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Peaslee, William W
Subject: Staff Opinions for 17 NCAC 07B .1202 and 17 NCAC 07B .1601, .1605, .1705, .2204, .4109
Attachments: Staff Opinion 17 NCAC 07B .1202.doc; Staff Opinion 17 NCAC 07B .1601, .1605, .1705, .2204, .4109.doc

Good evening,

Attached are staff opinions regarding the above captioned rules pending at the October 19 RRC meeting. As always, let me know if you have any questions.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: [External] DOR response to RFC Rules 17 NCAC .0104, 0106, .0108, .0112, .0117, .0121, and .0801

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Monday, October 16, 2023 9:40 AM

To: Lansford, Laura L <Laura.Lansford@ncdor.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Peaslee, William W <bill.peaslee@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>

Subject: RE: [External] DOR response to RFC Rules 17 NCAC .0104, 0106, .0108, .0112, .0117, .0121, and .0801

Good morning,

After reviewing your changes and responses, I anticipate recommending approval for 17 NCAC .0104, .0106, .0108, .0112, .0117, .0121, and .0801. I will let you know if anything changes before the meeting.

I am still working through your responses to my draft staff opinion and will keep you updated regarding that set.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: [External] DOR response to draft Staff Opinion on Rules 17 NCAC .1202, .1303, .1404, .1601 .1605, .1705, .2001, .2002, .2204, and .4109

Attachments: DOR response to Staff Opinion .1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, .4109.zip;
DOR Response_Draft Staff Opinion .1202 .1303 .1404 .1601 .1605 .1705 .2001 .2002 .2204 .4109.doc

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Friday, October 13, 2023 4:19 PM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Ascher, Seth M <seth.ascher@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>
Subject: [External] DOR response to draft Staff Opinion on Rules 17 NCAC .1202, .1303, .1404, .1601 .1605, .1705, .2001, .2002, .2204, and .4109

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

On behalf of the Sales and Use Tax Division of the Department of Revenue, please accept this email with attachments in response to ten (10) draft Staff Opinions submitted to the Division by Mr. Ascher on 10/10/2023, for Rules 17 NCAC 07B .1202, .1303, .1404, .1601 .1605, .1705, .2001, .2002, .2204, and .4109, and with a response due date of COB 10/13/2023. I have attached the DOR response document both in the zip folder and as a separate document in case there is any problem opening that document in the zip.

Please let me know if additional information is required.

Thank you.

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

1 17 NCAC 07B .1202 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:
3

4 **17 NCAC 07B .1202 SUPPLIES AND EQUIPMENT FOR AN ACCOMMODATION**

5 ~~Sales to hotels, motels, inns, tourist camps, and tourist cabins and other places in which rooms, lodgings or~~
6 ~~accommodations are furnished for a consideration;~~ A hotel, motel, inn, tourist camp, tourist cabin, or other
7 accommodation provider making purchases of any supplies, equipment, or fixtures including linens, but not limited
8 ~~to beds, bedding, bathroom supplies, cleaning supplies, and furniture are subject to~~ shall pay the applicable
9 ~~statutory state~~ general State, and applicable local and transit rates of sales or use tax. Local tax rates by county,
10 including any transit tax can be found on the Department's website at www.ncdor.gov.
11

12 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; 105-264; [Chapter 105, Articles 39, 40,*
13 *42, 43, and 46;] Article 39; Article 40; Article 42; Article 43; 105-467; 105-468; 105-469; 105-*
14 *483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;*
15 *Article 44; Article 46;*
16 *Eff. February 1, 1976;*
17 *Amended Eff. May 1, 2009; October 1, 1993; October 1, ~~1991~~ 1991;*
18 *Readopted Eff. January 1, 2024.*
19

17 NCAC 07B .1303 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .1303 ~~DELIVERIES~~ GIFTS TO DONEES

(a) A donee is a person to whom the buyer of tangible personal property gives the property that receives an item, as the term item is defined in G.S. 105-164.3, from a purchaser without charge. Retailers making sales of items sourced to this State shall collect and remit the applicable rates of tax due on the sales price of the item, even if the item is given away by the purchaser to a donee or delivered directly to a donee.

(b) The purchaser of items used or consumed in this State is liable for the applicable rates of tax due on the purchase price of the items, even if the items are given away by the purchaser to a donee or delivered directly to a donee, unless the tax is paid to the retailer at the time of purchase. When a North Carolina retailer sells tangible personal property to a buyer and the retailer, at the direction of the buyer, delivers the property to the buyer's donee instead of to the buyer, the sale by the retailer is subject to applicable statutory State and local sales tax only if the delivery to the donee is made inside the State. If the delivery to the donee is made outside the State, no State or local sales or use tax applies.

(c) A retailer who, at the direction of a buyer, delivers property to the buyer's purchaser's donee at a point outside the State must have shall maintain acceptable proof of delivery in accordance with 17 NCAC 07B .1301.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4B; 105-164.6; 105-262; 105-264; [Chapter 105, Articles 39, 40, 42, 43, and 46; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538; Amended Eff. April 1, 2006; July 18, 2002; July 1, 1999; October 1, 1993; October 1, 1991; March 1, 1984; January 3, 1984; 1984-1984; Readopted Eff. January 1, 2024.

17 NCAC 07B .1404 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .1404 MEDICAL ~~SUPPLIES~~ SUPPLIES, INSTRUMENTS, AND EQUIPMENT

Sales to physicians, dentists, hospitals, or other ~~users or~~ consumers of medical ~~supplies, instruments~~ medical instruments, medical equipment, and laboratory equipment used to diagnose, prevent, treat, or cure disease are subject to ~~applicable state~~ the general State, and applicable local and transit rates of sales ~~or and~~ use tax, ~~tax~~, pursuant to G.S. 105-164.4, unless exempt by statute. Local tax rates by county, including any transit tax can be found on the Department's website at www.ncdor.gov. Sales of medical equipment and medical supplies are also subject to applicable state and local sales or use tax, unless their sale is exempt under G.S. 105-164.13(12)d. That statute exempts from tax durable medical equipment and related medical supplies that are covered under the Medicare or Medicaid program and are sold on either a certificate of medical necessity or a written prescription. Items listed below are subject to tax, unless their sale is exempt under G.S. 105-164.13(12)d. Items not included in the list may also be subject to tax. Examples of medical supplies, instruments, and equipment subject to ~~tax~~ sales and use tax include the following:

- (1) ~~Adhesive~~ adhesive tape;
- (2) ~~Alcohol~~ alcohol;
- (3) ~~Bandages~~ bandages;
- (4) ~~Battery~~ battery chargers;
- (5) ~~Bed~~ bed pans;
- (6) ~~Betadine~~ betadine solution;
- (7) ~~Blood~~ blood glucose monitors;
- (8) ~~Blood~~ blood glucose test/reagent strips;
- (9) ~~Blood~~ blood or urine control strips;
- ~~(10) breast pumps;~~
- (10) ~~(11)~~ Breathing breathing circuits;
- (11) ~~(12)~~ CO₂ carbon dioxide (CO₂) saturation monitors and accessories;
- ~~(13)~~ cold packs and hot packs;
- ~~(14)~~ collection bags;
- (12) ~~(15)~~ Cotton; cotton;
- (13) ~~(16)~~ Crutch crutch and cane holders;
- (14) ~~(17)~~ Cylinder cylinder tank carriers;
- ~~(18)~~ denture adhesive;
- (15) ~~(19)~~ Dial a dosedial-a-does insulin delivery devices;
- (16) ~~(20)~~ Dressings; dressings;
- (17) ~~(21)~~ Exam exam and surgical gloves;
- (18) ~~(22)~~ Gauze; gauze;
- ~~(23)~~ glucose for insulin reactions;

1 ~~[(24)](23)~~ incontinence pads, sheets, and liners;
 2 ~~(19) — Knives;~~
 3 ~~(20)[(25)](24)~~ I.V.intravenous (IV) hangers;
 4 ~~(21) — I.V. poles;~~
 5 ~~[(26)](25)~~ knives;
 6 ~~(22)[(27)](26)~~ ~~Lancets;~~lancets;
 7 ~~[(28)](27)~~ lubricants;
 8 ~~(23)[(29)](28)~~ Microscopes;microscopes;
 9 ~~(24)[(30)](29)~~ Mouthpieces;mouthpieces;
 10 ~~(25)[(31)](30)~~ Needles;needles and syringes;
 11 ~~[(32)](31)~~ non-corrective eye lenses;
 12 ~~[(33)](32)~~ ostomy barrier wipes and powders;
 13 ~~[(34)](33)~~ ostomy cleansers, deodorants, and adhesive removers;
 14 ~~(26)[(35)](34)~~ Peak-peak flow meters;
 15 ~~(27)[(36)](35)~~ Percussors;percussors;
 16 ~~(28)[(37)](36)~~ Pulse-pulse oximeters;
 17 ~~(29)[(38)](37)~~ Rollabout-rollabout chairs;
 18 ~~[(39)](38)~~ soap;
 19 ~~(30)[(40)](39)~~ Seissors;scissors;
 20 ~~(31)[(41)](40)~~ Sterile-sterile water;
 21 ~~(32) — Surgical gloves;~~
 22 ~~(33) — Syringes;~~
 23 ~~[(42)](41)~~ tissues;
 24 ~~(34)[(43)](42)~~ Tracheal-trachael suction catheters;
 25 ~~(35)[(44)](43)~~ Tracheostomy-tracheostomy care kits;
 26 ~~(36)[(45)](44)~~ Tracheostomy-tracheostomy cleaning brushes;
 27 ~~(37)[(46)](45)~~ Tracheostomy-tracheostomy masks and collars;
 28 ~~(38)[(47)](46)~~ Tubing;tubing, sold by the linear foot or otherwise;
 29 ~~(39)[(48)](47)~~ Urinals;urinals;
 30 ~~(40)[(49)](48)~~ Urine-urine test or reagent strips or ~~tablets; and~~tablets; or
 31 ~~(41)[(50)](49)~~ X-rayx-ray machines.

33 *History Note:* *Authority G.S. 105-164.4; 105-164.6; 105.164.13; 105-262; 105-264; [Chapter 105, Articles 39,*
 34 *40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-*
 35 *510.1; 105-511.3; 105-537; 105-538;*

36 *Eff. February 1, 1976;*

37 *Amended Eff. July 1, 2000; August 1, 1998; October 1, 1993; October 1, 1991;*

1 Readopted Eff. January 1, 2024.
2

17 NCAC 07B .1601 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

SECTION .1600 – SALES TO OR PURCHASES BY HOSPITALS; EDUCATIONAL; CHARITABLE OR RELIGIOUS INSTITUTIONS; ETCNONPROFIT ENTITIES: SALES BY NONPROFIT ENTITIES; AND REFUNDS THERETOTO NONPROFIT ENTITIES

17 NCAC 07B .1601 SALES TO OR PURCHASES BY NONPROFIT ENTITIES

(a) For purposes of this Rule, a nonprofit entity is an organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and includes entities such as hospitals not operated for profit, educational institutions not operated for profit, churches, and civic groups such as chambers of commerce, fraternities, sororities, clubs, lodges, parent and teacher associations, scout councils, and similar organizations.

~~(a)(b) Sales to nonprofits. -- Sales To Nonprofits~~ Nonprofit entities are not exempt from paying sales and use tax. ~~Sales-Retail sales of taxable tangible personal property items, as the term item is defined in G.S. 105-164.3, to a nonprofit entity for use or consumption by that entity are subject to the applicable rates of sales or and use tax.~~ [tax,]tax, pursuant to G.S. 105-164.4, unless acquired by the nonprofit entity for the purpose of resale. A retailer is liable for collecting and remitting sales and use tax on a sale to a nonprofit entity, unless the nonprofit provides the retailer a Certificate of Exemption in accordance with 17 NCAC 07B .0106. Nonprofit entities include hospitals not operated for profit, educational institutions not operated for profit, churches, and civic groups such as chambers of commerce, fraternities, sororities, and scout clubs. Sales of building materials, supplies, fixtures, and equipment to contractors for use in the performance of contracts with a nonprofit entity are also subject to sales or use tax.

(c) Purchases by nonprofits:

(1) Purchases for Use or Consumption. -- Nonprofit entities are not exempt from paying sales and use tax. Purchases of taxable items by nonprofit entities for use or consumption are subject to the applicable rates of sales and use tax. Any nonprofit entity making taxable purchases from a seller that does not collect North Carolina sales and use tax is required to register with the Department and file returns in accordance with 17 NCAC 07B .0104, and pay the use tax due on such purchases. A nonprofit entity must pay sales tax charged on its purchases and is liable for use tax on its purchases when no sales tax is collected. A nonprofit entity that owes use tax must file a return in accordance with 17 NCAC 7B .0104.

(2) Purchases for Resale. -- Nonprofit entities that make purchases of items for the purpose of resale may purchase such items exempt from sales and use tax in accordance with 17 NCAC 07B .0106.

(c) Real property contracts with nonprofits:

(1) Retail sales of building materials, supplies, fixtures, and equipment to contractors or other persons for use in the performance of real property contracts with a nonprofit entity are subject to sales and use [tax,]tax, pursuant to G.S. 105-164.4H.

1 (2) Purchases of building materials, supplies, fixtures, and equipment by real property contractors or
2 other persons for use in the performance of real property contracts with a nonprofit entity are subject
3 to sale and use ~~[tax.]~~tax, pursuant to G.S. 105-164.4H.

4 ~~(b) Sales By Nonprofits. Sales by nonprofit entities are subject to sales or use tax unless a specific~~
5 ~~exemption applies to the sale. A nonprofit entity that makes taxable retail sales must register with the~~
6 ~~Department and file sales and use tax returns. A nonprofit entity that is registered with the Department may~~
7 ~~execute a Streamlined Sales Tax Agreement Certificate of Exemption, form E-595E. The certificate shall~~
8 ~~not be used for items the nonprofit entity intends to use or consume.~~

9
10 History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4H; 105-164.6; 105-164.13; 105-164.28; 105-
11 164.29; 105-262; 105-264; [Chapter 105, Articles 39, 40, 42, 43, and 46;] Article 39; Article 40;
12 Article 42; Article 43; Article 44; ; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-
13 509.1; 105-510.1; 105-511.3; 105-537; 105-538;
14 Eff. February 1, 1976;
15 Amended Eff. April 1, 2006; July 1, 2000; October 1, 1993; October 1, 1991; January 1, 1982; July
16 5, ~~1980~~1980;
17 Readopted Eff. January 1, 2024.

1 17 NCAC 07B .1605 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .1605 ~~CLUBS; ASSOCIATIONS; ETC.~~SALES BY NONPROFIT ENTITIES**

5 ~~Clubs, lodges, parents and teachers associations, scout councils and similar organizations which~~Nonprofit entities as
6 ~~defined in 17 NCAC 07B .1601(a) that make regular retail sales of taxable tangible personal property must~~shall
7 register with the ~~Department of Revenue and pay the~~Department and file sales and use tax returns in accordance with
8 17 NCAC 07B .0104, and collect and remit the applicable sales tax on such sales except as provided by G.S.
9 105-164.13(34) and G.S. 105-164.13(35) due, unless specifically exempt by statute.

10
11 *History Note:* Authority G.S. 105-164.4; 105-164.8; 105-164.29; 105-262; 105-264; [Chapter 105, Articles 39,
12 40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-
13 510.1; 105-511.3; 105-537; 105-538;

14 *Eff. February 1, 1976;*

15 *Amended Eff. January 1, 1982; July 5, ~~1980-1980;~~*

16 *Readopted Eff. January 1, 2024.*
17

1 17 NCAC 07B .1705 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .1705 HOUSING AUTHORITIES**

5 Sales of ~~taxable tangible personal property~~ items, as the term item is defined in G.S. 105-164.3, to housing authorities
6 created and existing under Chapter 157 of the North Carolina General Statutes for use in carrying on their activities
7 are subject to the **applicable** statutory ~~state and local sales or use tax~~ rates of sales and use tax and such housing
8 authorities are not entitled to refunds under the provisions of G.S. 105-164.14.

9
10 *History Note:* Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; 105-264; [Chapter 105, Articles 39, 40,
11 42, 43, and 46;] Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; 105-467; 105-
12 468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;
13 Eff. February 1, 1976;
14 Amended Eff. May 1, 2009; October 1, 1993; October 1, 1991; August 1, 1988; March 1, 1984; 1984;
15 Readopted Eff. January 1, 2024.

1 17 NCAC 07B .2001 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:
3

4 **SECTION .2000 - SALES AND GIFTS BY EMPLOYERS TO EMPLOYEES ~~OR OTHER USERS~~**

5
6 **17 NCAC 07B .2001 SALES TO EMPLOYEES**

7 ~~Sales of tangible personal property by any employer, manufacturer, processor, wholesaler, distributor or jobber to his~~
8 ~~employees or others for use or consumption are subject to the applicable statutory state and local sales or use tax,~~
9 ~~unless specifically exempt, notwithstanding that such sales are infrequent or comprise only a small fraction of the~~
10 ~~vendor's total business, and every employer, manufacturer, processor, wholesaler, distributor or jobber making such~~
11 ~~sales must register with the department and collect and remit the tax due thereon. The fact that any such vendor only~~
12 ~~makes sales to his employees shall not relieve him of this requirement.~~

13 (a) An employer engaged in business in this State shall collect and remit the sales and use tax due on the retail sale of
14 an item, as the term item is defined in G.S. 105-164.3, to an employee. The tax due shall be computed at the applicable
15 State, local, and transit rates of [tax]tax, pursuant to G.S. 105-164.4, on the sales price of the item. Local tax rates by
16 county, including any transit tax can be found on the Department's website at www.ncdor.gov. An employer required
17 to collect sales or use tax shall register with the Department in accordance with 17 NCAC 07B .0104. The fact that an
18 employer's sales are infrequent, comprise only a small fraction of the total business, or are to employees only, shall
19 not relieve an employer of these requirements.

20 (b) Employees shall pay the sales or use tax due on the purchase of an item from their employer. The tax due shall be
21 computed at the [applicable] State, local, and transit rates of tax on the sales price or purchase price of the item. Local
22 tax rates by county, including any transit tax can be found on the Department's website at www.ncdor.gov.

23
24 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; 105-264; [Chapter 105, Articles 39, 40,*
25 *42, 43, and 46;] Article 39; Article 40; Article 42; Article 43; Article 44; 105-467; 105-468; 105-*
26 *469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;*

27 *Eff. February 1, 1976;*

28 *Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991;*

29 *Readopted Eff. January 1, 2024.*

1 17 NCAC 07B .2002 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:
3

4 **17 NCAC 07B .2002 GIFTS AND WAGES TO EMPLOYEESAN EMPLOYEE OR OTHER PERSON**

5 Gifts of tangible personal property by any employer, manufacturer, processor, wholesaler, distributor or jobber to his
6 employees or other persons are subject to the applicable statutory state and local sales or use tax, unless the donor paid
7 sales or use tax on the sales or purchase price of the donated property at the time he acquired the same. The tax due
8 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
9 donated, irrespective of whether fabricated, produced, manufactured or processed by the donor, or acquired elsewhere.
10 An employer shall pay the sales or use tax due on the purchase of an item, as the term item is defined in G.S. 105-
11 164.3, that is provided to an employee or other person as a gift or as compensation. The tax due shall be computed at
12 the applicable State, local, and transit rates of sales and use [tax]tax, pursuant to G.S. 105-164.4, on the sales price or
13 purchase price of the item given away, irrespective of whether the item is fabricated, produced, manufactured, or
14 processed by the employer, or acquired elsewhere. Local tax rates by county, including any transit tax can be found
15 on the Department's website at www.ncdor.gov.
16

17 *History Note:* *Authority G.S. 105-164.3; 105-164.4; 105-164.4B; 105-164.6; 105-262; 105-264; [Chapter 105,*
18 *Articles 39, 40, 42, 43, and 46;]Article 39; Article 40; Article 42; Article 43; Article 44; 105-467;*
19 *105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-*
20 *538;*
21 *Eff. February 1, 1976;*
22 *Amended Eff. April 1, 2006; October 1, 1993; October 1, ~~1991~~1991;*
23 *Readopted Eff. January 1, 2024.*
24

1 17 NCAC 07B .4109 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .4109 BLUEPRINTS SOLD TO ARCHITECTS**

5 Sales of blueprints, photographs and other ~~tangible personal property~~ items, as the term item is defined in G.S. 105-
6 164.3, to an architectural or engineering firm for use or consumption and not for resale are subject to the general State,
7 and applicable statutory state and local and transit rates of sales or and use tax. Local tax rates by county, including
8 any transit tax can be found on the Department's website at www.ncdor.gov.

9
10 *History Note:* Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264; ~~Article 39; Article 40; Article 42; Article~~
11 ~~43; Article 44;~~ [Chapter 105, Articles 39, 40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-
12 ~~483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;~~
13 Eff. February 1, 1976;
14 Amended Eff. September 1, 2006; October 1, 1993; October 1, ~~1991~~; 1991;
15 Readopted Eff. January 1, 2024.

RRC STAFF OPINION

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, .4109

RECOMMENDATION DATE:

RECOMMENDED ACTION:

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

COMMENT:

Staff recommends objection to these ten rules for substantially the same reasons as 17 NCAC 07B .0115, .3101, and .3107. The Commission objected to those rules at its September 21, 2023, meeting. This memo summarizes those reasons and the distinctions between each rule.

Note that because staff believes these rules are objectionable for fundamentally the same reasons as previously objected to rules, staff provided the agency with a draft of this opinion rather than formal requests for changes. If the Commission disagrees with the recommendation for objection, staff recommends that the Commission take no action on these rules at this time to allow for discussion of any technical changes needed.

I. Necessity

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

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

Seth Ascher
Commission Counsel

The Department is interpreting a law administered by the Secretary, an authority granted by G.S. 105-264(a), which reads in full:

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

G.S. 105-264(a) establishes the Secretary's duty to interpret certain laws and acknowledges that such interpretations might be contained in rules, bulletins, or directives. This Department of Revenue statute does not provide guidance as to what types of interpretations should be adopted by rule or published in a bulletin directive. As a result, the APA's requirement that only "reasonably necessary" rules be approved by this Commission and put in the code would apply.

To the extent that these rules are interpreting statutory language, they appear to be stating that particular objects are "tangible personal property" or that particular categories of sales are retail sales. These interpretations are plain on the face of the statute. As a result, the rule is unnecessary.

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

In considering the cumulative effect of rules proposed for this purpose, staff estimates that of the ninety rules currently pending from the Department of Revenue, at least half raise a similar necessity problem.

The rules appear to make the following "interpretations":

.1202: Purchases of "supplies, equipment, or fixtures" by "accommodation providers" are retail sales of tangible personal property.

This Rule is reasonably necessary to interpret the imposition of tax pursuant to 105-164.4 on items purchased by an accommodation provider and used in the accommodation. This has been an area of confusion in the past and the General Assembly gave relief from assessments in G.S. 105-244.4 for a period of time.

The bill analysis for S.L. 2017-204 (S628) when enacting the relief in 105-244.4 states in part as follows:

*"Allows the Secretary of Revenue to reduce by 90% a sales tax assessment that involves the failure to properly collect sales and use tax on charges for vacation rental linens. The sales tax is a transactional tax. The sale or rental of tangible personal property is subject to sales tax under G.S. 105-164.4(a)(1). The receipts derived from an accommodation rental are subject to tax under G.S. 105-164.4(a)(3). Since 2009, the Department has had a **bulletin** in place that lists various charges that are considered to*

be "derived from the rental of an accommodation." This list includes linen fees. When a linen rental company rents linens to a property management company, the transaction being taxed is the rental of tangible personal property, which is taxable under G.S. 105-164.4(a)(1). When those same linens are included as part of an accommodation rental by the property management company to a vacationer, the gross receipts derived from that accommodation rental are subject to tax under G.S. 105-164.4(a)(3). Since the sales tax is a transactional tax, the application of the law may have the effect of an item being taxed more than once if it is included in more than one transaction.

*Some members of the vacation rental industry have **incorrectly interpreted or applied** the law with respect to the rental of linens as part of a vacation rental and have been assessed by the Department. This section would permit the Department to reduce an assessment by 90% under the [certain] circumstances...." (emphasis added)*

This Rule is reasonably necessary particularly since the relief provided in G.S. 105-244.4 has expired, to provide an interpretation on the imposition of tax in G.S. 105-164.4 that was interpreted in the Department's Sales and Use Tax Bulletin, but still required a relief statute due to ambiguity and misapplication of the statute by affected taxpayers.

.1303: Purchases of items to be given away by the purchaser are retail sales of tangible personal property.

This Rule is reasonably necessary to interpret the imposition of tax pursuant to 105-164.4 and 105-164.4B on items that are sold to a purchaser to be given to a donee or given directly to the donee. Additionally, the Rule interprets 105-164.3(237), the definition of "sales price" and 105-164.3(195), the definition of purchase price by specifying that tax is still due even when an item is gifted to a donee.

.1404: Purchases of medical supplies, instruments, and equipment by consumers of medical supplies are retail sales of tangible personal property. Note that G.S. 105-164.13(12) provides an explicit statutory exception for medical equipment and supplies sold "on prescription.

*This Rule is reasonably necessary to interpret the following statutory definitions 105-164.3(43) – consumer; 105-164.3(227) – retail sale, and 105-164.3(229) – retailer; as well as the imposition of tax by 105-164.4 and 105-164.6, and the exemptions in 105-164.3(12). This Rule interprets the imposition of tax on sales to and purchases by medical providers, hospitals, and other institutions and provides a list of common items that are purchased by these consumers and are subject to tax. For an example of disputes related to medical supplies, see *Feeling Great, Inc. and Sleep Medical Center, Inc. v. N.C. Department of Revenue*, 14 CVS 11139, Wake County Superior Court Division.*

Note: The examples in this rule are amended to reflect that breast pumps are removed from this list as S.L. 2023-134 created an exemption from sales and use tax for breast pumps.

.1601: Purchases of items by nonprofit entities are subject to tax, unless purchased for retail. Note that G.S. 105-164.13(5) provides an explicit statutory exception for items purchased for resale and

that G.S. 105-164.14(b) provides for the refund of certain sales and use taxes paid by nonprofit entities.

This Rule is reasonably necessary as it interprets how the sales and use tax applies to sales to and purchases by non-profits. North Carolina is one of very few states that does not provide an exemption for sales to and purchases by non-profit entities, therefore this Rule is necessary to interpret 105-164.4 and 105-164.14. Additionally, this Rule is necessary to interpret how the sales and use tax imposition applies to real property contracts

.1605: Nonprofit entities that make retail sales are retailers and such sales are subject to taxes.

This Rule is reasonably necessary as it interprets the imposition of tax on non-profits that act as retailers. The Rule makes clear that non-profits making retail sales are retailers. Additionally, this Rule is necessary as North Carolina is one of very few states that does not provide an exemption for sales to and purchases by non-profit entities.

.1705: Sales to housing authorities are taxable sales and housing authorities are not entitled to refunds under G.S. 105-164.14. Note that G.S. 105-164.14(c) states that it “applies only to the following governmental entities” before providing a list. Housing authorities are not on that list.

This Rule is reasonably necessary as it interprets the imposition of tax pursuant to 105-164.4 on housing authorities, and that housing authorities are not eligible for refunds under 105-164.14(b) or (c).

.2001: Retail sales to an employee of the seller are retail sales.

This Rule is reasonably necessary as it interprets the imposition of tax pursuant to 105-164.4 on sales by employers to employees. This Rule explains that an employer engaged in business in this State who makes retail sales of items to their employees is a retailer. Thus, the employer must collect and remit the sales and use tax due on its retail sales to its employees. This situation arises in businesses that are manufacturing items, and sell the manufactured product to their employees. As a manufacturer, the business may not be required to collect and remit sales and use tax, but if they make sales to employees, they are now a retailer.

.2002.: Purchases by an employer of items to provide as gifts or compensation are retail sales of tangible personal property.

This Rule is reasonably necessary as it interprets the imposition of tax pursuant to 105-164.4 on gifts to employees. This Rule explains an employer that purchases items provided to an employee or other person as a gift or as compensation is the consumer of the item. This situation arises in businesses that are manufacturing items, and gift manufactured products to their employees or others. As a manufacturer, the business may not be required to collect and remit sales and use tax, but if they gift the manufactured product to employees or others, they must collect and remit sales and use tax on the gifted item.

.2204: Retail sales of food by transportation companies within this state are retail sales subject to tax.

This Rule is reasonably necessary as it interprets the imposition of tax pursuant to 105-164.4 on the retail sale of food and prepared food by transportation companies when the transaction takes place within the State. This Rule is needed to explain that the tax is imposed when the transaction occurs in NC, even if the transportation originates or terminates elsewhere.

.4109: Sales of blueprints, photographs, and other items to architectural or engineering firms are retail sales of tangible personal property, unless purchased for resale. Note that G.S. 105-164.13(5) provides an explicit statutory exception for items purchased for resale.

This Rule is reasonably necessary as it interprets the imposition of tax pursuant to 105-164.4 on the sale of items to architectural or engineering firms. This Rule is needed to explain that the tax is imposed on items that are frequently thought to be non-taxable service items.

II. Clarity

G.S. 150B-21.9(a)(2) charges the Commission with determining whether a rule is “clear and unambiguous.” These rules also present three clarity problems.

First, identifying piecemeal categories of “tangible personal property” or retail sales for special mention in the rules creates a potential ambiguity. When these categories are already covered by broad rules or statutes with an obvious application, as discussed in the necessity section, the negative implication created by leaving other categories out introduces legal ambiguity.

Second, the text of these rules suggest that the Department of Revenue is “subjecting” certain categories of purchase to sales tax. This is outside the scope of the Department’s authority and is contrary to the Department’s stated intent to “interpret” a statutory term. This distinction is important because G.S. 105-264(a) establishes that “an interpretation by the Secretary is *prima facie* correct,” a different standard than would be applied to a rule enacting a new requirement. Given this statutory language, taxpayers and judges reading the rule should be given a clear indication of the nature of the Department’s enactment of the rule.

Third, these rules include language indicating that sales are subject to “applicable local and transit rates of sales or use tax, unless exempt by statute.” The question of what local and transit taxes are applicable is left unanswered by the rule and the Department has not identified other rules or statutes that would determine the issue. The Department has indicated that the applicable tax rates can be located on their website, which may offer a practical clarification. However, the rule itself is not clear as to how to determine the applicable taxes.

Burgos, Alexander N

Subject: FW: [External] DOR response to RFC Rules 17 NCAC .0104, 0106, .0108, .0112, .0117, .0121, and .0801
Attachments: DOR Response_DOR RFC .0104 .0106 .0108 .0112 .0117 .0121 .0801.docx

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Friday, October 13, 2023 4:19 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Peaslee, William W <bill.peaslee@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>
Subject: RE: [External] DOR response to RFC Rules 17 NCAC .0104, 0106, .0108, .0112, .0117, .0121, and .0801

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Mr. Ascher,

Per your request, I am re-sending the DOR response document. Please let me know if you still have issues opening the document.

Thanks so much.

Laura

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Friday, October 13, 2023 4:16 PM
To: Laura L. Lansford <Laura.Lansford@ncdor.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Peaslee, William W <bill.peaslee@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Andrew O. Furuseth <andrew.furuseth@ncdor.gov>; Tenisha S. Jacobs <Tenisha.Jacobs@ncdor.gov>
Subject: RE: [External] DOR response to RFC Rules 17 NCAC .0104, 0106, .0108, .0112, .0117, .0121, and .0801

CAUTION: This email originated from outside of the organization. Do not click links or attachments unless you recognize the sender.

Laura,

I had the same problem as Bill and can open the updated rules but not the response. It appears that the issue is with the length of the file name of the response not working with the file compression.

Can you either resend the response as just a word document or give it a shorter name before compressing it?

Thanks,

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>

Sent: Friday, October 13, 2023 3:56 PM

To: Rules, Oah <oah.rules@oah.nc.gov>

Cc: Ascher, Seth M <seth.ascher@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>

Subject: [External] DOR response to RFC Rules 17 NCAC .0104, .0106, .0108, .0112, .0117, .0121, and .0801

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

On behalf of the Sales and Use Tax Division of the Department of Revenue, please accept this email with attachments in response to seven (7) Requests for Changes submitted to the Division by Mr. Ascher on 10/9/2023, for Rules 17 NCAC 07B .0104, .0106, .0108, .0112, .0117, .0121, and .0801, and with a response due date of COB 10/13/2023.

Please let me know if additional information is required.

Thank you.

Laura Lansford
Sales and Use Tax Division
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PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

Burgos, Alexander N

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Friday, October 13, 2023 3:56 PM
To: Rules, Oah
Cc: Ascher, Seth M; Peaslee, William W; Burgos, Alexander N; Furuseth, Andrew O; Jacobs, Tenisha S
Subject: [External] DOR response to RFC Rules 17 NCAC .0104, 0106, .0108, .0112, .0117, .0121, and .0801
Attachments: DOR response to RFC .0104, .0106, .0108, .0112, .0117, .0121, .0801.zip

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

On behalf of the Sales and Use Tax Division of the Department of Revenue, please accept this email with attachments in response to seven (7) Requests for Changes submitted to the Division by Mr. Ascher on 10/9/2023, for Rules 17 NCAC 07B .0104, .0106, .0108, .0112, .0117, .0121, and .0801, and with a response due date of COB 10/13/2023.

Please let me know if additional information is required.

Thank you.

Laura Lansford
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Fax: 919.715.0295
Laura.Lansford@ncdor.gov

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0104

DEADLINE FOR RECEIPT: October 13, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Consider rephrasing the first sentence of item 2 (on lines 10 through 12) to be more direct. For example “A person engaged in business that does not pay a required North Carolina sales or use tax on an item, as the term item is defined in G.S. 105-164.3, to a seller or facilitator at the time of purchase shall pay the use tax in accordance with G.S. 105-164.6 on the purchase price of the item.”

See proposed Rule change.

On line 27, “any trade name” suggests that if an entity had more than one trade name, they could provide only one. I think you mean “all trade names”.

See proposed Rule change.

On line 34, item H, what is meant by “knowledge”? Do you just mean “The types of items and services . . .”?

See proposed Rule change.

On p. 2 line 19, “that” is potentially vague since it could refer to the person or the tax return. Consider “who” assuming the liability attaches to the person.

See proposed Rule change.

On p. 2 line 21, add a comma at the end of the form name: “. . . and Use Taxes, to the . . .”

See proposed Rule change.

On p. 2 line 35, add that: “. . . or that makes purchases. . . .”

Seth Ascher
Commission Counsel

Date submitted to agency: October 9, 2023

See proposed Rule change.

On p. 2 line 35, delete comma: “. . . ~~use tax~~, tax is not”

See proposed Rule change.

Regarding the history note, do not include entire articles in the authority section (on lines 11 and 12, “Chapter 105, Articles 39, 40, 42, 43, and 46”). I am not sure that the subject matter of those articles (imposition of local taxes) is necessary for this history note at all, since it does not appear to provide “the authority for the rule,” per 26 NCAC 02C .0406(a), or “cite the law under which the rule is adopted,” per G.S. 150B-21.19.

See proposed Rule change.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0106

DEADLINE FOR RECEIPT: October 13, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

As written, it is unclear if the “certificate of exemption” discussed in the rule is something that is issued by DOR or is the information the purchaser is providing to the seller. The rule seems to suggest it is information provided to the seller, but 105-236(5a) defines “exemption certificate” as “a certificate issued by the Secretary”. This needs to be clarified.

See proposed Rule change revising the sentence to clarify that if a person seeks to purchase items for resale exempt from sales and use tax, they must provide the information required in G.S. 105-164.28.

On lines 8 and 9, I do not think the verb “furnish” and “authority” makes sense in the phrase “shall furnish to each seller the authority”. Do you mean something like “shall notify each seller of the authority for not collecting the tax” or “provide each seller with a copy of the certificate of exemption”?

See proposed Rule change.

On page 2 line 5, what “other” information do you mean? Consider deleting “other” for clarity.

See proposed Rule change.

Regarding paragraph (c), 105-236(5a) provides authority to assess a penalty of \$250.00 for misuse of a certificate of exemption. What is the authority to include a penalty for “other information provided electronically for purposes of obtaining an exemption?”

The authority for “information provided electronically for purposes of obtaining an exemption” is 105-236(7), “Attempt to Evade or Defeat Tax” penalty, which states: “Any person who willfully attempts, or any person who aids or abets any

Seth Ascher
Commission Counsel

Date submitted to agency: October 9, 2023

person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class H felony.”

Similarly, what is the authority that allows revocation of a “certificate of registration for sales and use taxes” under this rule?

The authority that allows revocation of a certificate of registration is 105-164.29(d), which states in part: “The failure of a wholesale merchant or retailer to comply with this Article or G.S. 14-401.18 or the failure of a facilitator to comply with this Article is grounds for revocation of the person's certificate of registration.”

See proposed Rule change adding 105-164.29 to the authority note.

Regarding the history note, do not include entire articles in the authority section (on lines 11 and 12, “Chapter 105, Articles 39, 40, 42, 43, and 46”). I am not sure that the subject matter of those articles (imposition of local taxes) is necessary for this history note at all, since it does not appear to provide “the authority for the rule,” per 26 NCAC 02C .0406(a), or “cite the law under which the rule is adopted,” per G.S. 150B-21.19.

See proposed Rule change.

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

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

Seth Ascher
Commission Counsel

Date submitted to agency: October 9, 2023

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0108

DEADLINE FOR RECEIPT: October 13, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In paragraph (c), what is an "over-allowance"? Is that term defined somewhere?

See proposed Rule change defining an over-allowance as the difference between the trade-in amount and the actual cash value of the trade-in.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0112

DEADLINE FOR RECEIPT: October 13, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 6, what are the “type[s] of item[s]”? How would one know if an item was similar to a type? For example, consider a “bicycle” store, could they make “an occasional and isolated sale” of a car? A skateboard? An exercise bike? A motorcycle?

See proposed Rule change adding an example of that person selling a personal bicycle is not making an occasional and isolated sale if the person operates a bicycle store.

As I read the relevant statutes, the concept of occasional and isolated sales comes from the definition of business in 105-164.3(25): “The term does not include an occasional and isolated sale or transaction by a person who does not claim to be engaged in business.” Under 105-164.4(a), a privilege tax is “imposed on retailers engaged in business”. Is this correct?

The term “business” is defined in 105-164.3(25) and states: “An activity a person engages in or causes another to engage in with the object of gain, profit, benefit, or advantage, either direct or indirect. The term does not include an occasional and isolated sales or transaction by a person who does not claim to be engaged in business.”

G.S. 105-164.4(a) imposes a privilege tax on “retailers engaged in business....”

Given that I assume that the businesses in paragraph (c) would “claim to be engaged in business”, where do you get the authority to create an exception for their occasional and isolated sales?

The term “retailer” is defined in 105-164.3(229)a, and states in part, “[a] person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property, digital property for storage, use, or consumption in this State, or services sourced to this State.”

Seth Ascher

Commission Counsel

Date submitted to agency: October 9, 2023

*G.S. 105-164.3(83)a. defines “engaged in business” as “Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room, warehouse or storage place, or other place of **business** in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, sales representative, marketplace facilitator subject to the requirements of G.S. 105-164.4J, or solicitor operating or transacting **business** by mobile phone application or other applications in this State. The fact that any corporate retailer, agent, or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State is immaterial.” (emphasis added)*

The authority for paragraph (c) of this Rule is the definition of business that specifically excludes occasional and isolated sales, and the definition of “engaged in business” which incorporates the term business in its definition.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0117

DEADLINE FOR RECEIPT: October 13, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On lines 6 and 9, wouldn't this be an "excise tax" under 105-164.6 and not a "sales and use tax" under 105-164.4?

G.S. 105-164.6 is the imposition statute for use tax. While use tax is considered an excise tax, the sales tax imposed by 105-164.4 is considered a privilege tax, and the statutes of Article 5 are combined as the Sales and Use Tax Act. Utilizing "sales and use tax" covers transactions that may be subject to either sales tax or use tax.

On line 6, delete "applicable".

See proposed Rule change.

On line 12, how long is "a substantial period of time"? The rule either needs to explain how this will be determined or use a more concrete term.

See proposed Rule change.

Regarding the history note, do not include entire articles in the authority section (on lines 11 and 12, "Chapter 105, Articles 39, 40, 42, 43, and 46"). I am not sure that the subject matter of those articles (imposition of local taxes) is necessary for this history note at all, since it does not appear to provide "the authority for the rule," per 26 NCAC 02C .0406(a), or "cite the law under which the rule is adopted," per G.S. 150B-21.19.

See proposed Rule change.

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

Seth Ascher
Commission Counsel

Date submitted to agency: October 9, 2023

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0121

DEADLINE FOR RECEIPT: October 13, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

The introductory language of the repeal references 17 NCAC 07B .4204. Please correct.

See corrected introductory language for repeal of Rule.

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0801

DEADLINE FOR RECEIPT: **October 13, 2023**

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*On line 9, consider adding “G.S. ~~105-164.13~~ **105-164.13(62a)**” to improve readability.*

See proposed Rule change adding specific statute citation.

Regarding line 10, how is a manufacturer meant to comply with 17 NCAC 07B .106? .106 deals with sales for resale, while this rule deals with purchases to satisfy a warranty.

The manufacturer would be making a purchase of items for resale as the warranty is part of the purchase price of the original item and therefore the manufacturer may provide the seller of the replacement/repair item a Certificate of Exemption or the required data elements in order to purchase the item exempt from sales tax.

See proposed Rule change.

*On line 26, consider adding “G.S. ~~105-164.12~~ **105-164.12(62a)**” to improve readability.*

See proposed Rule change adding specific statute citation.

Regarding line 27, how is a dealer meant to comply with 17 NCAC 07B .106? .106 deals with sales for resale, while this rule deals with purchases to satisfy a warranty.

The dealer would be making a purchase of items for resale as the warranty is part of the purchase price of the original item and therefore the dealer may provide the seller of the replacement/repair item a Certificate of Exemption or the required data elements in order to purchase the item exempt from sales tax.

See proposed Rule change.

Seth Ascher
Commission Counsel

Date submitted to agency: October 9, 2023

Regarding the history note, do not include entire articles in the authority section (on lines 11 and 12, “Chapter 105, Articles 39, 40, 42, 43, and 46”). I am not sure that the subject matter of those articles (imposition of local taxes) is necessary for this history note at all, since it does not appear to provide “the authority for the rule,” per 26 NCAC 02C .0406(a), or “cite the law under which the rule is adopted,” per G.S. 150B-21.19.

See proposed Rule change.

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

17 NCAC 07B .0104 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .0104 REGISTRATION AND RETURNS

(a) Certificate of Registration:

(1) Before a person engages in business as a retailer, wholesale merchant, or facilitator liable for sales or use tax, the person shall obtain a Certificate of Registration from the Department. A Certificate of Registration contains the sales and use tax account identification number (Account ID). There is no fee to obtain a Certificate of Registration.

(2) A person engaged in business that does not pay the ~~applicable~~ required North Carolina sales or use tax on an item, as the term item is defined in G.S. 105-164.3, to a seller or facilitator at the time of purchase ~~is liable for~~ shall pay use tax in accordance with G.S. 105-164.6 on the purchase price of the item. A person required to pay use tax on its purchases shall register with the Department to obtain a Certificate of Registration.

(3) A person may apply for a Certificate of Registration by:

(A) Registering through the Department's website at www.ncdor.gov;

(B) Register online through the Streamlined Sales Tax Registration System (SSTRS) at <https://www.streamlinedsalestax.org>; or

(C) Calling the Department at telephone number 1-877-252-3052 to request a registration form, and submitting the completed registration by mail to the Department's mailing address set out in 17 NCAC 01A .0101.

(4) Information needed to obtain a Certificate of Registration includes the following:

(A) Ownership information, including North Carolina Secretary of State's business identification number, if applicable.

(B) Federal Employer Identification Number (FEIN) or Social Security Number for proprietorships.

(C) Legal business name, owner's name, physical and mailing address of the business, ~~any~~ all trade ~~name,~~ names, and daytime telephone number.

(D) Responsible person demographics, if applicable, including name, title, Social Security Number, and home address.

(E) Date when sales or purchases will begin.

(F) Whether sales will be retail, wholesale, or both.

(G) Description of business.

(H) ~~Knowledge of the~~ The types of items and services that will be sold by the business.

(I) Estimate of monthly sales tax.

(J) Type of accounting method that will be used whether cash or accrual.

(K) Months sales will be made, if seasonal.

1 (b) Returns:

2 ~~(a)(1) General Returns General.~~ -- G.S. 105-164.16 establishes the filing frequency and the content of sales
3 and use tax ~~returns-returns~~. All sales and use tax returns may be obtained from the Department's
4 website at www.ncdor.gov or by calling the Department at telephone number 1-877-252-3052, and
5 shall contain the information required by 17 NCAC 01C .0622. ~~and the content of the returns.~~ G.S.
6 105-164.4(e) requires a retailer and a wholesale merchant to register with the Department and obtain
7 a certificate of registration. G.S. 105-164.6 requires a retailer who delivers property for storage,
8 use, or consumption but does not have a place of business in this State to register with the
9 Department and obtain a certificate of registration. A person who is engaged in business, is not
10 otherwise required to file a sales and use tax return, and, on two or more occasions within a twelve-
11 month period, purchases property subject to use tax must register with the Department and begin
12 filing sales and use tax returns. A person who is engaged in business, is not otherwise required to
13 file a sales and use tax return, and purchases property subject to use tax only once in a twelve month
14 period must file a return and pay the tax due within 20 days after the end of the month in which the
15 purchase was made.

16 ~~(b)(2) Schedules.~~ -- ~~A retailer who files a return that reports tax payable by more than one location in the~~
17 ~~State must attach two schedules to the return. One schedule must list the amount of State tax due~~
18 ~~for each location in the State and the other must list the amount of local tax due for each county.~~ A
19 person [that] who files a paper sales and use tax return, that is liable for local county tax source to a
20 taxing jurisdiction in this State other than the county where the business is located or in more than
21 one county, shall attach Form E-536, Schedule of County Sales and Use [Taxes] Taxes, to the return
22 listing the amount of tax due for each taxing jurisdiction.

23 (c) ~~No Sales or Purchases By Business-Business.~~ -- ~~A retailer who does not make any~~ person required to file a sales
24 and use tax return that has no sales or purchases during a reporting period ~~must~~ shall file a return for that period and
25 enter ~~0.00 (zero)~~ zero (0.00) as the total tax due ~~on the Total Due line on the return.~~ Similarly, ~~a person who is not a~~
26 ~~retailer but is engaged in business, purchases tangible personal property for the business that is subject to use tax, and~~
27 ~~does not make any taxable purchases during a reporting period must file a return for that period and enter 0.00 (zero)~~
28 ~~on the Total Due line on the return.~~

29 (d) ~~Seasonal Business.~~ -- ~~A retailer who~~ person that engages in business for six or fewer consecutive months in each
30 year may register with the Department as a seasonal filer and indicate the months in which the ~~retailer~~ person engages
31 in business. A ~~retailer who~~ person that is registered as a seasonal filer is not required to file a return for an off-season
32 reporting period in which the retailer did not engage in business.

33 (e) ~~Wholesale Merchant-Merchant.~~ -- A person who engages exclusively in the business of making wholesale sales
34 shall register with the Department, but is not required to file a return. A wholesale merchant that makes taxable sales
35 or [that] makes purchases on which it owes use [tax,] tax is not engaged exclusively in the business of making wholesale
36 sales and shall file sales and use tax returns and pay the tax due. ~~A person who, on two or more occasions within a~~
37 ~~twelve month period, either makes taxable sales to users, consumers, or nonregistered merchants or makes purchases~~

subject to use tax is not engaged exclusively in the business of making wholesale sales and must begin filing sales and use tax returns. A wholesale merchant who is not required to file a sales and use tax return and who, on only one occasion within a twelve month period, either makes taxable sales to users, consumers, or nonregistered merchants or makes purchases subject to use tax must file a return and pay the tax due within 20 days after the end of the month in which the sale or purchase was made.

(f) ~~Non Business Use Tax~~—An individual who is not engaged in the business of selling tangible personal property at retail and who purchases for a non-business purpose tangible personal property that is subject to use tax must report the tax due on an annual basis. An individual who is required to file an individual income tax return must pay the use tax with the individual income tax return for that year. An individual who is not required to file an individual income tax return must report the tax due on Form E-554. Form E-554 is due annually by the date set under G.S. 105-164.16.

(f) Use Tax:

(1) General. -- A business or individual that purchases an item sourced to this State, other than a boat or aircraft, shall accrue and remit the use tax due on the purchase price of the item in accordance with G.S. 105-164.6 when retailers, remote sellers, or facilitators do not collect the applicable tax on taxable transactions.

(2) Business Use Tax. -- A business shall report and remit use tax on a sales and use tax return.

(3) Individual Use Tax. An individual required to file a North Carolina individual income tax return, shall report the use tax liability of taxable items, other than a boat, an aircraft, and food subject to the two percent (2%) rate of tax, on the individual's income tax return. An individual not required to file a North Carolina individual income tax return shall report the use tax liability on taxable items, other than a boat or aircraft, on Form E-554, Consumer Use Tax Return. Form E-554 is due annually by the date set in G.S. 105-164.16.

(A) Form E-554 shall include the following information:

(i) name of filer, spouse's name, if applicable, address, and phone number;

(ii) Social Security Number of filer, and Social Security Number of filer's spouse, if applicable;

(iii) beginning and ending dates for the period the return is filed;

(iv) total amount of purchases subject to use tax at each applicable tax rate, including purchases of food subject to the two percent (2%) food rate;

(v) total tax at each applicable tax rate;

(vi) any credit for sales and use tax paid to another state;

(vii) tax due before any penalty and interest;

(viii) any penalty or interest due;

(ix) total tax due; and

(x) signature, title, contact telephone number of filer, and date return is signed.

(B) Any individual who purchases food subject to the two percent (2%) food rate of sales and use tax shall report the tax on Form E-554, Consumer Use Tax Return.

1 (C) Any individual who purchases a boat or aircraft shall report the tax on Form E-555, Boat
2 and Aircraft Use Tax Return.

3 (D) Form E-555 shall include the following information:

4 (i) name of filer, address, and telephone number;

5 (ii) Social Security Number or Federal Employer Identification Number (FEIN) of
6 filer;

7 (iii) beginning and ending dates for the period the return is filed;

8 (iv) boat registration or document number and total amount of purchase, if applicable;

9 (v) aircraft serial number and total amount of purchase, if applicable;

10 (vi) total tax at each applicable tax rate;

11 (vii) any credit for sales and use tax paid to another state;

12 (viii) tax due before any penalty and interest;

13 (ix) any penalty or interest due;

14 (x) total tax due; and

15 (xi) signature, title, contact telephone number of filer, and date return is signed.

16
17 *History Note:* Authority G.S. 105-164.3; 105-164.4; 105-164.4B; 105-164.6; 105-164.13B; 105-164.16; 105-
18 164.29; 105-164.42C; 105-164.42K; 105-262; 105-264; 105-269.14; [Chapter 105, Articles 39, 40,
19 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1;
20 105-511.3; 105-537; 105-538;

21 Eff. February 1, 1976;

22 Amended Eff. April 1, 2006; August 1, 2002; July 1, 2000; July 1, 1999; August 1, 1998;

23 October 1, 1993; October 1, 1991; October 1, 1990; April 1, 1986-1986;

24 Readopted Eff. January 1, 2024.

17 NCAC 07B .0106 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .0106 CERTIFICATES OF EXEMPTION: SALES FOR RESALE

(a) ~~For a purchaser of tangible personal property who is properly registered with the Sales and Use Tax Division of the North Carolina Department of Revenue or in a taxing jurisdiction outside this State and is engaged in the business of selling tangible personal property at retail or wholesale and makes purchases of tangible personal property for the purpose of resale~~ person purchasing to purchase an item, as the term item is defined in G.S. 105-164.3, for resale exempt from sales and use tax pursuant to G.S. 105-164.13(5), the person shall ~~furnish to~~ provide his vendors as their ~~provide~~ each seller ~~the authority for not collecting the~~ tax, either: sales or use tax by submitting the information required by G.S. 105-164.28(a) on a paper certificate or electronically. The information required includes:

- (1) the purchaser's name;
 - (2) the purchaser's address;
 - (3) the purchaser's certificate of registration number which shall be a North Carolina certificate of registration number, another state's sales and use tax registration number, or a Streamlined Sales Tax ID;
 - (4) the reason for the exemption;
 - (5) the type of business; and
 - (6) if submitted by paper, including fax, the purchaser's signature and date signed.
- ~~(1) Streamlined Sales Tax Agreement Certificate of Exemption, Form E-595E, or~~
~~(2) other evidence in writing adequate to support the conclusion that he is registered with the Department of Revenue or in a taxing jurisdiction outside this State for sales and use tax purposes and that the property is being purchased for the purpose of resale.~~

~~Such certificates or other written evidence shall be completed in duplicate and a copy retained by both the vendor and the vendee in their files. In the absence of such certificates or other adequate written evidence, vendors selling taxable tangible personal property to wholesale and retail merchants shall be deemed to be making retail sales and shall be liable for collecting and paying the tax thereon at the applicable rate.~~

A purchaser shall retain in their records the certificates or electronic information submitted to sellers and an invoice or other statement of the purchase price of any items purchased.

(b) A seller's failure to keep records that establish a sale is exempt from sales and use tax subjects the seller to liability for the tax at the rates applicable to the retail sale of the item. To establish a sale is exempt from tax, sellers shall retain in their records the certificates or electronic information submitted by the purchaser, and records that identify the item purchased, the sales price of the item, and the purchaser of the item.

~~(b) Certificates of exemption being issued for the purpose of resale shall not be used to purchase tangible personal property which is to be used or consumed by the purchaser. The Secretary may revoke the license of any licensed merchant who makes such use of the certificate of exemption. Vendors shall charge the applicable rate of tax on sales to registered merchants when the property sold is for use by the purchaser and not for resale. Merchants purchasing~~

1 ~~tangible personal property for resale on a regular basis from a vendor shall only be required to furnish one certificate~~
2 ~~of exemption or other written evidence to the vendor for such purchases. Whenever a person makes purchases of~~
3 ~~tangible personal property for resale and the property is not generally and ordinarily the type of property the purchaser~~
4 ~~will resell, the vendor shall require certificates of exemption or other written evidence in connection with individual~~
5 ~~purchases supporting that the property is being purchased for resale.~~

6 (c) A person that misuses a certificate of exemption, including [other] information provided electronically for
7 purposes of obtaining an exemption, is subject to penalties set out in G.S. 105-236. The penalty for misuse of an
8 exemption certificate applies to each seller identified by the Department from which the person made a taxable
9 purchase. The misuse of an exemption certificate is grounds for the Secretary to revoke a person's certificate of
10 registration for sales and use taxes.~~Persons who issue certificates of exemption to vendors to obtain property without~~
11 ~~payment of tax when due are subject to assessment of the penalties set out in G.S. 105-236(5) and (5a) and may be~~
12 ~~guilty of a Class H felony. The penalty for misuse of a certificate of exemption is applicable only to a purchaser. The~~
13 ~~act of executing a certificate of exemption by a vendee and furnishing the document to a vendor does not constitute a~~
14 ~~use or misuse of the certificate. The actual use or misuse.~~Misuse occurs when a person makes a taxable purchase and
15 furnishes the information described in section (a) of this Rule to a seller and the seller purchase is made and the vendor,
16 relying on the certificate furnished by the vendee, does not charge sales or use tax thereon on the basis that the sale is
17 a "wholesale sale" as defined in G.S. 105-164.3(24)-105-164.3. A single purchase is considered to be the tangible
18 personal property purchased at one time as reflected on the bill of sale. The penalty shall be applied only once to each
19 invoice or bill of sale for which a misuse of the certificate has occurred. This penalty is subject to the discretionary
20 authority of the Secretary of Revenue pursuant to G.S. 105-237.

21 (d) ~~The Secretary may extend to a registered merchant written permission to make purchases for his own use pursuant~~
22 ~~to the certificate of exemption and assume liability for payment of the applicable tax to the Department when the~~
23 ~~character of the business of the purchaser is such that it would impose undue hardship upon the vendor and vendee to~~
24 ~~determine the transactions upon which the vendor would ordinarily be required to impose the tax. The purchaser shall~~
25 ~~furnish written evidence of such assumption of liability to the purchaser's vendors; the vendors must retain the~~
26 ~~documentation in their files.~~

27 (e) ~~This rule applies to sales to resident and nonresident retail or wholesale merchants. Reference is made to 17~~
28 ~~NCAC 7B .2301 for the treatment of sales to nonresident retail or wholesale merchants.~~

29
30 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.22; 105-164.28; 105-164.29; 105-236;*
31 *105-262; 105-264; [Chapter 105, Articles 39, 40, 42, 43, and 46:] 105-467; 105-468; 105-469;*
32 *105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;*
33 *Eff. February 1, 1976;*
34 *Amended Eff. April 1, 2006; October 1, 1993; February 1, 1988; May 11, 1979; 1979;*
35 *Readopted Eff. January 1, 2024.*
36

1 17 NCAC 07B .0108 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:
3

4 **17 NCAC 07B .0108 TRADE DISCOUNTS AND CASH DISCOUNTS**

5 (a) ~~Trade.~~Trade and Bargaining Discounts. --~~Trade discounts and bargaining discounts are not a part of the sales~~
6 ~~price on which sales tax is computed when the sales price is reduced by the discounts before the computation of tax.~~
7 A trade discount is a price-reduction afforded in the price a seller charges that is extended to a particular customer or
8 customers in a particular trade or group purchaser or group of purchasers without reservation at the time the sale is
9 being negotiated. -A bargaining discount is a price-reduction in the price a seller charges that is extended to a customer
10 purchaser at the time the sale is being negotiated as a result of bargaining between the customer-purchaser and the
11 seller. The sales price of an item, as the term item is defined in G.S. 105-164.3, does not include a trade discount or
12 bargaining discount that is not reimbursed by a third party.

13 (b) ~~Cash.~~Cash and Terms Discounts. -- A cash or terms discount is a reduction in the ~~sales price,~~price a seller charges
14 that is extended to the purchaser for prompt payment of an invoice. The sales price of an item does not include a cash
15 or terms discount that is not reimbursed by a third party. and the tax must be computed and paid on the sales price
16 after allowance for the cash discount. Generally, a cash discount is a deduction from the sales price allowed for prompt
17 payment of the bill. Likewise, cash discounts are not a part of the purchase price on which tax is due. A person who
18 purchases tangible personal property for use or consumption in this State is liable for remitting the tax due on the
19 purchase price after allowance for the cash discount.

20 (c) Trade-ins and Over-allowance. -- The amount of ~~an over allowance to a trade-in, including an over-allowance,~~
21 which is the difference between the trade-in amount and the actual cash value of the trade-in, taken by a purchaser ~~for~~
22 ~~an item taken in trade~~ as a credit or ~~part-partial~~ payment on the sale of ~~a new article~~an item is not a reduction in the
23 sales price of the ~~new article,~~item. The trade-in is consideration given towards the purchase of the item. ~~The tax~~
24 ~~must~~Any applicable sales or use tax shall be computed and paid on the ~~full gross sales price of the new article~~item
25 without any deduction on account of the trade in credit or allowance for a trade-in.

26
27 *History Note:* Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; 105-264;

28 Eff. February 1, 1976.

29 Amended Eff. August 1, 2002-2002;

30 Readopted Eff. January 1, 2024.
31

17 NCAC 07B .0112 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .0112 OCCASIONAL AND ISOLATED SALES OF HOUSEHOLD GOODS

(a) An occasional and isolated sale occurs when the seller sells an item, as the term item is defined in G.S. 105-164.3, that is not of, or similar to, the type of item that the seller is engaged in the business of selling. **For example, a person selling a personally owned bicycle is not making an occasional and isolated sale if the person operates a bicycle store.**

Occasional and isolated sales do not include sales of items by a facilitator liable for collecting and remitting tax on the sale.

(b) Household items. -- Owners making ~~Occasional~~ occasional and isolated sales of household goods-items, on which the sales or use tax has been due was paid at the time of the initial purchase by the owner, are not required to collect and remit sales or use tax on the sale. For example, an individual making an occasional and isolated sale of a personally owned boat, is not required to collect and remit sales or use tax on the sale of the boat. ~~are exempt from the tax when sold by the owner in his capacity as owner and not in the capacity of a retail merchant. Such sales are deemed to be casual or isolated sales by persons not holding themselves out as engaged in business.~~

(c) Business items. -- Businesses making occasional and isolated sales of items owned by the business, upon which the sales or use tax due was paid at the time of the initial purchase by the business, are not required to collect and remit sales or use tax on the sale. For example, a manufacturer's occasional and isolated sale of its worn out, obsolete, or surplus machinery, accessories, and similar items is not subject to sales tax, as long as the manufacturer is not engaged in the business of making retail or wholesale sales of similar property.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; 105-264
Eff. February 1, 1976-1976;
Readopted Eff. January 1, 2024.

17 NCAC 07B .0117 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .0117 PROPERTY TRANSFERS BETWEEN DIVISIONS

~~Firms~~ A business entity having divisions, both ~~within~~ inside and ~~without~~ outside of North Carolina, ~~are~~ is liable for remitting the [applicable] ~~rate~~ rates of sales and use tax on any purchases of ~~tangible personal property~~ items, as the term item is defined in G.S. 105-164.3, for use in North Carolina, including any property purchased outside North Carolina and imported into North Carolina for use in this ~~state~~ State. An item received by the purchaser or on behalf of the purchaser in this State is subject to sales and use tax no matter that the item is designated for ultimate use outside this State. No tax ~~will be~~ is due ~~with respect to those~~ on transfers of property by an out-of-state firm to its North Carolina divisions for their use ~~when if~~ the property was originally purchased for use outside this ~~state~~ State by the out-of-state firm and ~~was was~~, in ~~fact fact~~, used by that firm outside this ~~state~~ State for a substantial period of ~~[time.]~~ time of at least 12 months.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264; [Chapter 105, Articles 39, 40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

Eff. February 1, 1976;

Amended Eff. December 1, 1997; October 1, ~~1993~~ 1993;

Readopted Eff. January 1, 2024.

1 17 NCAC 07B .4204 .0121 is repealed pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-
2 1(D)(4) as follows:

3
4 **17 NCAC 07B .0121 BANKRUPT'S LIABILITY**

5
6 *History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264; 11 U.S.C. 532;*
7 *Eff. February 1, 1976;*
8 *Amended Eff. October 1, ~~1993-1993~~;*
9 *Repealed Eff. January 1, 2024.*
10

1 17 NCAC 07B .0801 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:
3

4 **17 NCAC 07B .0801 MANUFACTURER’S WARRANTY AND DEALER’S WARRANTY;**
5 **ADJUSTMENTS AND REPLACEMENTS**

6 (a) Manufacturer’s Warranty:

7 (1) Exempt Purchases. -- Purchases by a manufacturer of a replacement item, a repair part, or repair,
8 maintenance, and installation services to maintain or repair tangible personal property or a motor
9 vehicle pursuant to a manufacturer’s warranty, as the term is defined in G.S. ~~[405-164.13,]~~ 105-
10 164.13(62a), are exempt from sales and use tax if the manufacturer provides the seller a Certificate
11 of Exemption or required data elements ~~[complies]~~in accordance with 17 NCAC 07B .0106. This
12 exemption also applies when the manufacturer contracts with a dealer or another person to make the
13 repairs on behalf of the manufacturer pursuant to a manufacturer’s warranty and that dealer or person
14 purchases the replacement item, repair part, or repair, maintenance, and installation services.

15 (2) Tax Due On Repair Charges. -- If the manufacturer does not charge the purchaser of the property
16 being repaired for the replacement item, repair parts, or any repair, maintenance, and installation
17 services, no sales or use tax is due on the cost of the replacement item, parts, or services. If the
18 manufacturer charges the purchaser of the property being repaired for the replacement item, repair
19 parts, or any repair, maintenance, and installation services, sales and use tax is due on the sales price
20 of the item, parts, or services. ~~Whenever any taxable article is returned to the manufacturer for~~
21 ~~adjustment, replacement, or exchange under a guaranty as to its quality or service and pursuant~~
22 ~~thereto a new article is given free, or at a reduced price, the sales or use tax shall be computed on~~
23 ~~the actual amount, if any, paid to the manufacturer for the new article.~~

24 (b) Dealer’s Warranty:

25 (1) Exempt Purchases. -- Purchases by a dealer of a replacement item, a repair part, or repair,
26 maintenance, and installation services to maintain or repair tangible personal property or a motor
27 vehicle pursuant to a dealer’s warranty, as the term is defined in G.S. ~~[405-164.13,]~~105-164.13(62a),
28 are exempt from sales and use tax if the dealer provides the seller a Certificate of Exemption or
29 required data elements ~~[complies]~~in accordance with 17 NCAC 07B .0106. This exemption also
30 applies when the dealer contracts with another person to make the repairs on behalf of the dealer
31 pursuant to a dealer’s warranty and that person purchases the replacement item, repair part, or repair,
32 maintenance, and installation services.

33 (2) Tax Due On Repair Charges. -- If the dealer does not charge the purchaser of the property being
34 repaired for the replacement item, repair parts, or any repair, maintenance, and installation services,
35 no sales or use tax is due on the cost of the replacement item, parts, or services. If the dealer charges
36 the purchaser of the property being repaired for the replacement item, repair parts, or any repair,
37 maintenance, and installation services, sales and use tax is due on the sales price of the item, parts,

1 or services. ~~Dealers using tangible personal property to fulfill sales warranties or guaranty~~
2 ~~obligations to a customer without cost to the customer are not liable for the applicable statutory state~~
3 ~~and local sales or use tax on the dealer's cost price of all tangible personal property so used.~~

4
5 History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264;
6 ~~Article 39; Article 40; Article 42; Article 43; Article 44;~~ [Chapter 105, Articles 39, 40, 42, 43, and
7 46;] 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3;
8 105-537; 105-538;
9 *Eff. February 1, 1976;*
10 *Amended Eff. April 1, 2006; October 1, 1993; October 1, ~~1991~~, 1991;*
11 *Readopted Eff. January 1, 2024.*
12

Burgos, Alexander N

Subject: FW: Draft Staff Opinion 17 NCAC 07B .1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, .4109
Attachments: Draft Staff Opinion 17 NCAC 07B .1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, .4109.doc

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Tuesday, October 10, 2023 5:09 PM
To: Lansford, Laura L <Laura.Lansford@ncdor.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>
Subject: Draft Staff Opinion 17 NCAC 07B .1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, .4109

Good afternoon,

Attached is my current draft staff opinion recommending objection to the above captioned rules. Because it appears to me that these rules are subject to substantially the same objection which the Commission issued at the September meeting, I do not believe a request for changes would be productive. Instead, I want to give you an opportunity to respond to my draft if you believe there is additional information that I should consider. Please provide your response or let me know you need more time by COB Friday, October 13. Otherwise, I intend to finalize this staff opinion for discussion at the October 19 Commission meeting.

Let me know if you have any questions.

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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RRC STAFF OPINION

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, .4109

RECOMMENDATION DATE:

RECOMMENDED ACTION:

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

COMMENT:

Staff recommends objection to these ten rules for substantially the same reasons as 17 NCAC 07B .0115, .3101, and .3107. The Commission objected to those rules at its September 21, 2023, meeting. This memo summarizes those reasons and the distinctions between each rule.

Note that because staff believes these rules are objectionable for fundamentally the same reasons as previously objected to rules, staff provided the agency with a draft of this opinion rather than formal requests for changes. If the Commission disagrees with the recommendation for objection, staff recommends that the Commission take no action on these rules at this time to allow for discussion of any technical changes needed.

I. Necessity

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

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

Seth Ascher
Commission Counsel

The Department is interpreting a law administered by the Secretary, an authority granted by G.S. 105-264(a), which reads in full:

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

G.S. 105-264(a) establishes the Secretary's duty to interpret certain laws and acknowledges that such interpretations might be contained in rules, bulletins, or directives. This Department of Revenue statute does not provide guidance as to what types of interpretations should be adopted by rule or published in a bulletin directive. As a result, the APA's requirement that only "reasonably necessary" rules be approved by this Commission and put in the code would apply.

To the extent that these rules are interpreting statutory language, they appear to be stating that particular objects are "tangible personal property" or that particular categories of sales are retail sales. These interpretations are plain on the face of the statute. As a result, the rule is unnecessary.

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

In considering the cumulative effect of rules proposed for this purpose, staff estimates that of the ninety rules currently pending from the Department of Revenue, at least half raise a similar necessity problem.

The rules appear to make the following "interpretations":

.1202: Purchases of "supplies, equipment, or fixtures" by "accommodation providers" are retail sales of tangible personal property.

.1303: Purchases of items to be given away by the purchaser are retail sales of tangible personal property.

.1404: Purchases of medical supplies, instruments, and equipment by consumers of medical supplies are retail sales of tangible personal property. Note that G.S. 105-164.13(12) provides an explicit statutory exception for medical equipment and supplies sold "on prescription.

.1601: Purchases of items by nonprofit entities are subject to tax, unless purchased for retail. Note that G.S. 105-164.13(5) provides an explicit statutory exception for items purchased for resale and that G.S. 105-164.14(b) provides for the refund of certain sales and use taxes paid by nonprofit entities.

.1605: Nonprofit entities that make retail sales are retailers and such sales are subject to taxes.

.1705: Sales to housing authorities are taxable sales and housing authorities are not entitled to refunds under G.S. 105-164.14. Note that G.S. 105-164.14(c) states that it “applies only to the following governmental entities” before providing a list. Housing authorities are not on that list.

.2001: Retail sales to an employee of the seller are retail sales.

.2002.: Purchases by an employer of items to provide as gifts or compensation are retail sales of tangible personal property.

.2204: Retail sales of food by transportation companies within this state are retail sales subject to tax.

.4109: Sales of blueprints, photographs, and other items to architectural or engineering firms are retail sales of tangible personal property, unless purchased for resale. Note that G.S. 105-164.13(5) provides an explicit statutory exception for items purchased for resale.

II. Clarity

G.S. 150B-21.9(a)(2) charges the Commission with determining whether a rule is “clear and unambiguous.” These rules also present three clarity problems.

First, identifying piecemeal categories of “tangible personal property” or retail sales for special mention in the rules creates a potential ambiguity. When these categories are already covered by broad rules or statutes with an obvious application, as discussed in the necessity section, the negative implication created by leaving other categories out introduces legal ambiguity.

Second, the text of these rules suggest that the Department of Revenue is “subjecting” certain categories of purchase to sales tax. This is outside the scope of the Department’s authority and is contrary to the Department’s stated intent to “interpret” a statutory term. This distinction is important because G.S. 105-264(a) establishes that “an interpretation by the Secretary is prima facie correct,” a different standard than would be applied to a rule enacting a new requirement. Given this statutory language, taxpayers and judges reading the rule should be given a clear indication of the nature of the Department’s enactment of the rule.

Third, these rules include language indicating that sales are subject to “applicable local and transit rates of sales or use tax, unless exempt by statute.” The question of what local and transit taxes are applicable is left unanswered by the rule and the Department has not identified other rules or statutes that would determine the issue. The Department has indicated that the applicable tax rates can be located on their website, which may offer a practical clarification. However, the rule itself is not clear as to how to determine the applicable taxes.

Burgos, Alexander N

From: Ascher, Seth M
Sent: Monday, October 9, 2023 11:51 AM
To: Lansford, Laura L; Furuseth, Andrew O; Jacobs, Tenisha S
Cc: Peaslee, William W; Burgos, Alexander N
Subject: RFC for 17 NCAC 07B .0104, .0106, .0108, .0112, .0117, .0121, and .0801
Attachments: DOR RFC .0104, .0106, .0108, .0112, .0117, .0121, .0801.docx

Good morning,

Attached are RFCs for the above captioned rules. As you are aware, these rules received an extension at September meeting and remain pending on the Commission's agenda.

Please respond to these Requests for Changes by October 13, 2023, for consideration at the October 19, 2023 meeting.

Let me know if you have any questions.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, September 19, 2023 9:29 AM
To: Lansford, Laura L
Cc: Furuseth, Andrew O; Jacobs, Tenisha S; Burgos, Alexander N; Ascher, Seth M
Subject: RE: [External] FW: Sales and Use Tax Division response to Requests for Changes

Thank you for your email and for bringing this to our attention. Your point is well taken.

I have spoken with Seth and this is the first we have seen of your responses. I can also confirm that your email was received on Friday, September 15th at OAH.

While we have not reviewed your responses, it is likely that our opinions will change to some extent.

If you would, please copy Seth, Alex and I when emailing oah.rules@oah.rules.gov as a redundancy.

Thank you again.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Tuesday, September 19, 2023 8:59 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>
Subject: [External] FW: Sales and Use Tax Division response to Requests for Changes

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Bill and Seth,

I am in receipt of your staff opinions for the following Rules: 17 NCAC 07B .4206; 17 NCAC 07B .0115; 17 NCAC 07B .3101; and 17 NCAC 07B .3107.

However, upon reviewing the opinions, I am confused by your indication that the "Secretary was unresponsive" and that the "Department has not responded to the request for changes." Please see the below email and attached zip folder where the Department's amended Rules and responses were submitted to the OAH Rules efile email address prior to close of business on Friday, 9/15/2023.

I apologize if this was not the proper mechanism for submitting the responses to the request for changes, however the only instructions within the request for changes that I recall indicated that amended rules should be filed with the OAH Rules email address. On Friday, 9/15/2023, I did attempt to contact Dana McGhee to clarify any efile requirements, however after leaving a message, I did not receive a return call by 4:15pm and did not want to wait any further out of concern for getting the proposed amendments and responses submitted timely.

Please let me know how this affects the staff opinions.

Thanks so much for your assistance.

Laura

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

From: Laura L. Lansford
Sent: Friday, September 15, 2023 4:22 PM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Andrew O. Furuseth (andrew.furuseth@ncdor.gov) <andrew.furuseth@ncdor.gov>; Tenisha S. Jacobs (Tenisha.Jacobs@ncdor.gov) <Tenisha.Jacobs@ncdor.gov>; Anthony Edwards (Anthony.Edwards@ncdor.gov) <Anthony.Edwards@ncdor.gov>
Subject: Sales and Use Tax Division response to Requests for Changes

On behalf of the Sales and Use Tax Division of the Department of Revenue, please accept this email with attachments in response to six (6) Requests for Changes submitted to the Division by Mr. Peaslee and Mr. Ascher on 9/11/2023 and 9/12/2023, and with a response due date of COB 9/15/2023.

Please let me know if additional information is required.

Thank you.

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

Burgos, Alexander N

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Friday, September 15, 2023 4:22 PM
To: Rules, Oah
Cc: Furuseth, Andrew O; Jacobs, Tenisha S; Edwards, Anthony
Subject: [External] Sales and Use Tax Division response to Requests for Changes
Attachments: OAH.zip

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

On behalf of the Sales and Use Tax Division of the Department of Revenue, please accept this email with attachments in response to six (6) Requests for Changes submitted to the Division by Mr. Peaslee and Mr. Ascher on 9/11/2023 and 9/12/2023, and with a response due date of COB 9/15/2023.

Please let me know if additional information is required.

Thank you.

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
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5. You cannot change just one part of a word. For example:
 - Wrong: “~~a~~Association”
 - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
 - Wrong: “day;, and”
 - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:
<https://www.oah.nc.gov/rule-format-examples>

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0115

DEADLINE FOR RECEIPT: September 15, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Why is this rule “reasonably necessary to implement or interpret an enactment of the General Assembly,” per G.S. 150B-21.9(a)(3)? Stated another way, without this rule wouldn’t the sale of any item, including scientific or research equipment, be subject to taxes unless exempted by statute?

This rule is reasonably necessary to explain that sales of scientific or research equipment are subject to tax (per 105-164.4), unless exempt by statute. Since there are multiple possible exemption statutes pertaining to certain scientific or research equipment, this Rule is necessary because the onus of establishing that a transaction is exempt is on the taxpayer. (see Piedmont Canteen Service, Inc. v. Johnson, 256 N.C. 155, 123 S.E.2d 582 (1962) and G.S. 105-164.26). If taxpayers do not understand that scientific or research equipment is subject to sales and use tax unless exempt by statute they can be subject to adverse consequences for over or under collecting tax.

On line 7, how does one determine what the “applicable local and transit rates of sales or use tax” are? “Applicable” is ambiguous without a rule or statute that fills in that detail.

The use of the term “applicable” is needed because tax rates may differ depending on the specific type of transaction and the location of the transaction. If the tax rate is discernable (i.e. general rate, combined rate, fixed rate) the specific rate is referenced in the rule (i.e. “...subject to the general State, and applicable local and transit rates of sales and use tax”). This is done to provide the reader more information than simply a transaction is taxable. The use of the phrase “applicable local and transit rates” is needed because the State has 100 counties that each have their own local rate of sales and use tax as well as some counties that also impose a transit tax. Specifying that a transaction is “...subject to applicable local and transit rates of sales and use tax” provides the reader a prompt that local and transit rates apply in addition to the general State rate.

Seth Ascher
Commission Counsel

Date submitted to agency: September 11, 2023

County tax rates, including any transit tax can be found on the Department's website at this location [Sales and Use Tax Rates / NCDOR](#)

Regarding the history note, do not include entire articles in the authority section (on lines 11 and 12, "Chapter 105, Articles 39, 40, 42, 43, and 46"). I am not sure that the subject matter of those articles (imposition of local taxes) is necessary for this history note at all, since it does not appear to provide "the authority for the rule," per 26 NCAC 02C .0406(a), or "cite the law under which the rule is adopted," per G.S. 150B-21.19.

G.S. 105-467; 105-468; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; are the rate imposition statutes for local sales and use taxes; and 105-469; 105-538 are the statutes that authorize the Secretary to administer the local and transit taxes.

See proposed changes

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

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

3
4 **17 NCAC 07B .0115 RESEARCH SERVICES**

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

10
11 *History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; 105-164.13; 105-264; Chapter 105,*
12 *Articles 39, 40, 42, 43, and 46; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-*
13 *509.1; 105-510.1; 105-511.3; 105-537; 105-538; ~~Article 39; Article 40; Article 42; Article 43;~~*
14 *~~Article 44; Article 46;~~*
15 *Eff. February 1, 1976;*
16 *Amended Eff. October 1, 2009; April 1, 2006; October 1, 1993; October 1, ~~1991~~; 1991;*
17 *Readopted Eff. January 1, 2024.*

Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

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3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: “~~a~~Association”
 - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
 - Wrong: “day,~~;~~ and”
 - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:
<https://www.oah.nc.gov/rule-format-examples>

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .3101

DEADLINE FOR RECEIPT: September 15, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

What is paragraph (a) referring to? Purchases by radio and television companies? Sales by radio and television companies?

Paragraph (a) of this rule is referring to receipts derived from broadcasting or telecasting programs by radio or television companies. It is interpreting the imposition of tax on these products. Examples of receipts that are considered neither "video programming" nor sales or rentals of certain digital property or satellite digital audio radio service include television advertisements or payments from cable or satellite providers to broadcast content. These charges are not subject to the "combined general rate" under G.S. 105-164.4(a)(6) or to the sales or use tax under G.S. 105-164.4(a)(1) or G.S. 105-164.4(a)(2).

On line 8, what is the definition of "broadcasting or telecasting"?

Broadcasting is not defined within the Sales and Use Tax Act, thus the term is given its usual connotation. Merriam-Webster Dictionary defines 'broadcasting' as "to send out or transmit (something, such as a program) by means of radio or television or by streaming over the Internet" and 'telecasting' as "to broadcast by television."

G.S. 105-164.3(277) defines "video programming" as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of method of delivery." As a result, wouldn't all receipts of television companies derived from broadcasting or telecasting of programs be video programming? If so, the exception seems to eliminate the majority of the rule.

Video programming is a taxable receipt for television companies. Examples of charges that are considered neither "video programming" include those listed above.

Seth Ascher
Commission Counsel

Date submitted to agency: September 12, 2023

What is the authority to create the exception or impose the tax in paragraph (a)?

105-164.4 imposes sales and use tax on certain digital property (105-164.4(a)(1)b, video programming (105-164.4(a)(6), and satellite digital audio radio (105-164.4(a)(6a). The Secretary has authority to interpret these provisions pursuant to his authority to adopt rules.

It looks like the changes to (b) change gross receipt of movie theaters from non-taxable to taxable. What was the authority to make these receipts non-taxable and what is the authority to now impose a tax?

The gross receipts on admissions to ‘motion picture shows’ was previously taxed as a privilege tax at the fixed rate of 1% under G.S. 105-38.1. Effective January 1, 2014, via S.L. 2013-316 s. 5(a), G.S. 105-38.1 was repealed and admission charges to ‘a motion pictures or film’ was added to G.S. 105-164.4(a) making it subject to sales and use tax as an entertainment activity, and subsequently all entertainment activities were moved to G.S. 105-164.4G.

Per G.S. 105-164.4G(b), “The gross receipts derived from an admission charge to an entertainment activity are taxed at the general rate.” Assuming there are not other statutes at play from the previous question, why is paragraph (b) “reasonably necessary to implement or interpret an enactment of the General Assembly,” per G.S. 150B-21.9(a)(3)?

This rule is reasonably necessary to interpret the imposition of tax to these business types. The rule explains that the gross receipts derived from admission charges for movie theatres are subject to sales and use tax (per 105-164.4G). If these types of business do not understand their gross receipts on admission charges are subject to sales and use tax they can be subject to adverse consequences for over or under collecting tax including the assessment of tax and penalty.

Does the department know how much the “gross receipts of movie theaters derived from admissions charges” are statewide? If so, how much is it?

A fiscal note was attached to HB 998 in the 2013-2014 legislative session for “Repeal gross receipts tax on live entertainment and movies and other amusements (10/01/2013), include admission fees in tax base (07/01/2014)”

Similarly, does the department have an estimate for the monetary impact of the change to paragraph (b)? If so, what is it?

A fiscal note was attached to HB 998 in the 2013-2014 legislative session for “Repeal gross receipts tax on live entertainment and movies and other amusements (10/01/2013), include admission fees in tax base (07/01/2014)”

Seth Ascher
Commission Counsel

Date submitted to agency: September 12, 2023

On line 13, I believe you are missing a word. Should it be something like “Sales of tangible personal property” or “tangible personal property sales”?

See proposed changes

Why is paragraph (c) “reasonably necessary to implement or interpret an enactment of the General Assembly,” per G.S. 150B-21.9(a)(3)? Doesn’t the statute make all sales of tangible personal property subject to taxation?

This rule is reasonably necessary to interpret the imposition of tax to these business types. The rule explains to these business types that these sales are subject to tax (per 105-164.4). If these types of business do not understand that other retail sales such as concession are subject to sales and use tax (vs. the gross receipts on admission charges) they can be subject to adverse consequences for over or under collecting tax including the assessment of tax and penalty.

On lines 12 and 15-16, how does one determine what the “applicable local and transit rates of sales or use tax” are? “Applicable” is ambiguous without a rule or statute that fills in that detail.

The use of the term “applicable” is needed because tax rates may differ depending on the specific type of transaction and the location of the transaction. If the tax rate is discernable (i.e. general rate, combined rate, fixed rate) the specific rate is referenced in the rule (i.e. “...subject to the general State, and applicable local and transit rates of sales and use tax”). This is done to provide the reader more information than simply a transaction is taxable. The use of the phrase “applicable local and transit rates” is needed because the State has 100 counties that each have their own local rate of sales and use tax as well as some counties that also impose a transit tax. Specifying that a transaction is “...subject to applicable local and transit rates of sales and use tax” provides the reader a prompt that local and transit rates apply in addition to the general State rate.

County tax rates, including any transit tax can be found on the Department’s website at this location [Sales and Use Tax Rates / NCDOR](#)

Regarding the history note, do not include entire articles in the authority section (on lines 11 and 12, “Chapter 105, Articles 39, 40, 42, 43, and 46”). I am not sure that the subject matter of those articles (imposition of local taxes) is necessary for this history note at all, since it does not appear to provide “the authority for the rule,” per 26 NCAC 02C .0406(a), or “cite the law under which the rule is adopted,” per G.S. 150B-21.19.

G.S. 105-467; 105-468; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; are the rate imposition statutes for local sales and use taxes; and 105-469; 105-538 are the statutes that authorize the Secretary to administer the local and transit taxes.

See proposed changes

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

Seth Ascher
Commission Counsel
Date submitted to agency: September 12, 2023

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

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

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

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

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

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

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4G; 105-262; 105-264; [Chapter 105, Articles 39, 40, 42, 43, and 46;]~~Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;~~ 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

Eff. February 1, 1976;

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

Readopted Eff. January 1, 2024.

Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
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 - Wrong: “~~a~~Association”
 - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
 - Wrong: “day,~~;~~ and”
 - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:
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If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .3107

DEADLINE FOR RECEIPT: September 15, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

It looks like the changes to paragraph (a) change cameras, props, building materials used in set construction, chemicals, and equipment used to develop and edit film to produce release prints from non-taxable to taxable. What was the authority to make these goods non-taxable and what is the authority to now impose a tax?

In 2010, the General Assembly clarified (in S.L. 2010-147 s. 2.3) that purchases of cameras, film, props, building materials used in construction of sets, and chemicals/equipment used to develop and edit film do not fall within the scope of mill machinery for privilege tax purposes and are, therefore, subject to the general rate of sales tax beginning January 1, 2011. These items were subject to the 1% up to \$80 tax pursuant to the now repealed 105-187.51 excise tax imposed on mill machinery (105-187.51 repealed in S.L. 2017-57). As the legislature specifically identified production companies are not a manufacturing industry or plant, the items listed in paragraph (a) became subject to sales and use tax under 105-164.4.

Does the department know how much the sales to production companies of cameras, props, building materials used in set construction, chemicals, and equipment used to develop and edit film to produce release prints are statewide? If so, how much is it?

A fiscal note was attached to HB 1973 in the 2009-2010 legislative session. The removal of production companies from 105-187.51 (excise tax on mill machinery) was done in conjunction with enacting income tax credits for production companies that have "qualifying expenses...with respect to a production is allowed a credit against the taxes imposed...."

Similarly, does the department have an estimate for the monetary impact of the change to paragraph (a)? If so, what is it?

A fiscal note was attached to HB 1973 in the 2009-2010 legislative session. The removal of production companies from 105-187.51 (excise tax on mill machinery) was done in conjunction with enacting income tax credits for

Seth Ascher

Commission Counsel

Date submitted to agency: September 12, 2023

production companies that have “qualifying expenses...with respect to a production is allowed a credit against the taxes imposed....”

What other items are included in the list on lines 5 and 6? As written, this rule appears ambiguous.

In 2010, the General Assembly clarified (in S.L. 2010-147 s. 2.3) that purchases of cameras, film, props, building materials used in construction of sets, and chemicals/equipment used to develop and edit film do not fall within the scope of mill machinery for privilege tax purposes and are, therefore, subject to the general rate of sales tax beginning January 1, 2011. Generally, any other tangible personal property, certain digital property, or taxable services would be items subject to tax unless a specific statutory exemption applied. The rule interprets the law as it relates to specific items that would have been exempt under the former law.

*On line 10, the p in Paragraph (b) should be capitalized: “**Paragraph** paragraph (b)”.*

See proposed change to rule.

What is the department’s authority to impose the taxes listed in paragraph (a)?

For sales and use tax, the Secretary has the authority and duty to interpret the impositions of tax found in G.S. 105-164.4 and other similar statutes imposing sales and use tax. G.S. 105-264 specifically provides the Secretary the duty to interpret “all laws administered by the Secretary.” The laws administered by the Secretary included the laws imposing a tax.

It appears that all of the sales in paragraph (a) are sales of tangible personal property that would be subject to sales tax under G.S. 105-164.4(a)(1)a. Why is paragraph (a) “reasonably necessary to implement or interpret an enactment of the General Assembly,” per G.S. 150B-21.9(a)(3)?

This rule is reasonably necessary to explain to these business types the type of items listed in the rule are subject to sales and use tax (per 105-164.4). If these types of business do not understand these types of items are subject to sales and use tax they can be subject to adverse consequences for over or under collecting tax including assessment of tax and penalty.

On line 10, how does one determine what the “applicable local and transit rates of sales or use tax” are? “Applicable” is ambiguous without a rule or statute that fills in that detail.

The use of the term “applicable” is needed because tax rates may differ depending on the specific type of transaction and the location of the transaction. If the tax rate is discernable (i.e. general rate, combined rate, fixed rate) the specific rate is referenced in the rule (i.e. “...subject to the general State, and applicable local and transit rates of sales and use tax”). This is done to provide the reader more information than simply a transaction is taxable.

Seth Ascher
Commission Counsel

Date submitted to agency: September 12, 2023

The use of the phrase “applicable local and transit rates” is needed because the State has 100 counties that each have their own local rate of sales and use tax as well as some counties that also impose a transit tax. Specifying that a transaction is “...subject to applicable local and transit rates of sales and use tax” provides the reader a prompt that local and transit rates apply in addition to the general State rate.

County tax rates, including any transit tax can be found on the Department’s website at this location [Sales and Use Tax Rates / NCDOR](#)

What is the department’s authority to exempt the items in paragraph (b) from sales tax?

G.S. 105-164.13(61b)

The second sentence of paragraph (a) (lines 8 to 11) states that “chemicals . . . used to develop and edit film that produce release prints” are taxable. The second sentence of paragraph (b) (lines 17 to 18) states that “chemicals . . . used to develop release prints” are not taxable. This appears to be a contradiction. Please clarify and explain how this is not.

In paragraph (a), chemicals are listed as a taxable item, when used to “produce release prints.” In paragraph (b), chemicals are listed as exempt when used to “develop release prints for sale, lease, or rental....” In paragraph (a) the chemicals are purchased for the production companies own use and in paragraph (b) the chemicals are purchased to develop a product for resale (i.e. selling the release print), which is exempt pursuant to G.S. 105-164.13(61b).

Regarding the history note, do not include entire articles in the authority section (on lines 21 and 22, “Chapter 105, Articles 39, 40, 42, 43, and 46”). I am not sure that the subject matter of those articles (imposition of local taxes) is necessary for this history note at all, since it does not appear to provide “the authority for the rule,” per 26 NCAC 02C .0406(a), or “cite the law under which the rule is adopted,” per G.S. 150B-21.19.

G.S. 105-467; 105-468; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; are the rate imposition statutes for local sales and use taxes; and 105-469; 105-538 are the statutes that authorize the Secretary to administer the local and transit taxes.

See proposed changes

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

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

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

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

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

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

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; 105-164.13; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; Chapter 105, Articles 39, 40, 42, 43, and 46; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

Eff. June 1, 1992;

Amended Eff. October 1, 2009; October 1, 1993-1993;

Readopted Eff. January 1, 2024.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .4206

DEADLINE FOR RECEIPT: September 15, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Generally, to the Rule: Explain the Secretary's authority to impose a tax.

For sales and use tax, the Secretary has the authority and duty to interpret the impositions of tax found in G.S. 105-164.4 and other similar statutes imposing sales and use tax. G.S. 105-264 specifically provides the Secretary the duty to interpret "all laws administered by the Secretary." The laws administered by the Secretary included the laws imposing a tax.

Generally, to the Rule: Explain why this Rule is necessary pursuant to G.S. 150B-21.9(a)(3). The Rule basically states that sales to federal savings and loan associations, national banks, state banks, and chartered credit unions are subject to "applicable" tax. When would they not be subject to the tax if the tax were applicable?

This rule is reasonably necessary to interpret the imposition of tax in G.S. 105-164.4 and the exemptions from tax found in G.S. 105-164.13, including the exemption found in G.S. 105-164.13(17). The rule interprets that the exemption do not provide a general exemption that would apply to these businesses. If these types of business do not understand they are not considered a federal or state entity or instrumentality thereof they can be subject to adverse consequences for not paying the correct tax, including an assessment or tax and penalties.

The Rule then goes on to state that sales to federal savings and loan associations, national banks, state banks and chartered credit unions are subject to a "applicable" tax "unless exempt by statute." If the sale was exempt, how would the tax be applicable?

William W. Peaslee
Commission Counsel

Date submitted to agency: September 11, 2023

*The rule provides a sale or purchase transaction is subject to the applicable sales and use tax unless there is a statutory exemption or exception. The applicable language is included because the rate cannot be determined without knowing the specific item sold and the county to which the sale or purchase is sourced. "One who claims an exemption or exception from tax coverage has the burden of bringing himself within the exemption or exception. Sabine v. Gill, 229 N.C. 599, 51 S.E.2d 1; Henderson v. Gill, supra; McCanless Motor Co. v. Maxwell, 210 N.C. 725, 188 S.E. 389; Smoky Mountain Canteen Co. v. Kizer, 193 Tenn. 598, 247 S.W.2d 69 (1952)." The act itself provides that "to prevent evasion of the retail sales tax, it shall be presumed that all gross receipts of * * * retailers are subject to the retail sales tax until the contrary is established by the proper records * * *," G.S. § 105-164.26." Piedmont Canteen Service, Inc. v. Johnson, 256 N.C. 155, 123 S.E.2d 582 (1962).*

Line 13: Please cite the specific statutes within the Articles listed.

G.S. 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538

See proposed changes

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

1 17 NCAC 07B .4206 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:
3

4 **17 NCAC 07B .4206 FED SAVINGS/LOAN ASSOC, NATL ~~BANKS/ST~~ BANKS/ST AND STATE**
5 **BANKS, CHARTERED CREDIT UNIONS**

6 (a) Sales ~~of tangible personal property to~~, or purchases by, federal savings and loan associations and national banks
7 ~~for use or consumption of items~~, as the term item is defined in G.S. 105-164.3, are subject to the applicable statutory
8 ~~state~~State and local ~~rates of sales or and use tax-tax~~, unless exempt by statute. See 12 U.S.C. § 1464(h) and 548.

9 (b) Sales ~~of tangible personal property to~~, or purchases by, state banks and state chartered credit unions ~~for use or~~
10 ~~consumption of items~~ are subject to the applicable statutory ~~state~~State and local ~~rates of sales or and use tax-tax~~, unless
11 ~~exempt by statute.~~

12
13 *History Note:* Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-264.26; 105-262; 105-264; Article 39;
14 Article 40; Article 42; Article 43; Article 44; [Chapter 105, Articles 39, 40, 42, 43, and 46;] 105-
15 467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537;
16 105-538; 12 U.S.C. 1464(h); 12 U.S.C. 548;

17 *Eff. February 1, 1976;*

18 *Amended Eff. September 1, 2006; January 1, 1995; October 1, 1993; October 1, 1991;*

19 *Readopted Eff. January 1, 2024.*
20

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .4415

DEADLINE FOR RECEIPT: September 15, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Lines 5-6: Pursuant to G.S. 105-164.4G(b), admission charges to an entertainment activity are taxed.

Pursuant to G.S. 105-164.4G(e)(1), amounts paid “solely to participate” in “sporting activities” are excepted from the tax. The subsection further provides “bowling fees, golf fees, and gym memberships” as examples of the types of charges which are not subject to the tax.

These lines appear to be a mere restatement of the statute regarding bowling fees. Given that the statute specifically addresses “bowling fees” explain why it is reasonably necessary, pursuant to G.S. 150B-21.9(a)(3), that they included in the rule?

The rule is reasonably necessary to interpret the exception provided in 105-164.4G(e)(1) as they relate to bowling fees and skating fees. The relevant statute provides:

“Gross receipts derived from an admission charges to an entertainment activities are taxed at the general rate set in G.S. 105-164.4.” 105-164.4G(b)

“An amount paid solely for the right to participate, other than to be a spectator, in sporting activities. Examples of these types of charges include bowling fees, golf green fees, and gym memberships.” 105-164.4G(e)(1)

This rule is reasonably necessary to establish that businesses of this type do not have to collect and remit sales and use tax on their gross receipts for the admission charge of persons to skate or bowl. Sales and use tax on admission charges is required for persons who are charged an admission fee, with certain

William W. Peaslee
Commission Counsel

Date submitted to agency: September 11, 2023

exceptions. This rule interprets those exceptions to apply to skating rinks and bowling alleys.

Finally, to the extent the brief statement about bowling alleys is found to restate the law, we believe it is “a brief statement that informs the public of a requirement imposed by law” and complies with the exception found in G.S. 105B-19(4).

Line 6-8: Explain the Secretary’s authority to subject anyone to a tax.

For sales and use tax, the Secretary has the authority and duty to interpret the impositions of tax found in G.S. 105-164.4 and other similar statutes imposing sales and use tax. G.S. 105-264 specifically provides the Secretary the duty to interpret “all laws administered by the Secretary.” The laws administered by the Secretary included the laws imposing a tax.

Lines 6-8: If a sale is subject to a tax pursuant to a statute, why is it reasonably necessary to restate, pursuant to G.S. 150B-21.9(a)(3), that the sale is subject to a tax in a rule?

The interpretation is necessary to explain to these business types which activities are subject to tax and which are not. If these types of business do not understand the difference in taxable and non-taxable activities they can be subject to over or under collecting tax. Either scenario subjects the taxpayer to adverse consequences.

Lines 8-9: Explain the Secretary’s authority to subject anyone to a tax.

For sales and use tax, the Secretary has the authority and duty to interpret the impositions of tax found in G.S. 105-164.4 and other similar statutes imposing sales and use tax. G.S. 105-264 specifically provides the Secretary the duty to interpret “all laws administered by the Secretary.” The laws administered by the Secretary included the laws imposing a tax.

Lines 8-9: If a sale is subject to a tax pursuant to a statute, why is it reasonably necessary to restate, pursuant to G.S. 150B-21.9(a)(3), that the sale is subject to a tax in a rule?

Bowling alleys and skating rinks make some sales that are subject to tax and some that are not subject to tax. The rule interprets the statutes as they relate to these businesses and provide the Secretary’s interpretation of the line between taxable and non-taxable sales.

The rule is needed to interpret that the exception allowed by 105-164.4G does not flow to the other activities identified in the rule. The rule interprets both the imposition of tax found generally in 105-164.4 and the scope of the exclusion from tax found in G.S. 105-164.4G.

William W. Peaslee
Commission Counsel

Date submitted to agency: September 11, 2023

The rule specifies that rentals of skates or shoes are subject to sales and use tax at the general State, and applicable local and transit rates of tax (per 105-164.4), as well as retail sales of other tangible personal property, such as concessions, equipment, etc, at the applicable rates of sales and use tax (per 105-164.4), since these items may include food items taxed at the 2% rate or items taxed at the general rate and applicable local and transit rates of tax.

If these types of business do not understand the difference in taxable and non-taxable activities they will be subject to over or under collecting tax. Either scenario subjects the taxpayer to adverse consequences like assessment of additional of tax or refund claims from customers.

Lines 11-12: Please cite the specific statutes within the Articles listed.

G.S. 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538

See proposed changes

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

1 17 NCAC 07B .4415 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:
3

4 **17 NCAC 07B .4415 SKATING RINK AND BOWLING ALLEY RENTAL FEES**

5 ~~Charges-Admission charges~~ for the use of a skating rink or bowling alley to skate or bowl are not subject to sales or
6 use taxes; tax pursuant to the exception in G.S. 105-164.4G. ~~however, if such businesses rent~~ Charges for the rental of
7 tangible personal property, such as skates and ~~shoes, charges for same~~ shoes are subject to the general State, and
8 applicable local and transit rates of sales and use tax. ~~Sales-Retail sales of tangible personal property items~~ by such
9 businesses are subject to the applicable ~~statutory state and local~~ rates of sales or use tax.

10
11 *History Note:* Authority G.S. ~~105-164.3; 105-164.4;~~ 105-164.4G; 105-262; 105-264; ~~[Chapter 105, Articles 39,~~
12 ~~40, 42, 43, and 46;]~~ Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; 105-467;
13 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-
14 538;

15 *Eff. February 1, 1976;*

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

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

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .5002

DEADLINE FOR RECEIPT: September 15, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Lines 5-12, Paragraph (a): If it meets the Secretary's intention, consider:

(a) Pursuant to G.S. 105-164.3(191), prosthetic devices include eye glass frames and the component parts thereof, when sold for the repair or replacement of corrective eyeglasses for human use.

See proposed changes

(b) Any seller claiming that a sale is exempt pursuant to Paragraph (a) shall maintain sales records of the sale for X years after the sale. (Or perhaps in accordance with 17 NCAC 07B .4801, but if .4801 already requires the records, why do you need lines 8-12?

See proposed changes

Line 7, Paragraph (a): "similar items" is ambiguous.

Removed "similar items" and revised sentence to provide additional examples.

Line 7, Paragraph (a): "considered" by whom? Using what criteria? Consider striking language.

Removed "considered" by revising sentence.

Lines 13-15, Paragraph (b): Explain why this Paragraph is necessary pursuant to G.S. 150B-21.9(3). If there is a statute which makes the sale subject to tax, it does not need to be restated in a rule. That which is not exempt is already subject to tax and the Secretary does not have the authority to make anything subject to a tax which is not already subject to a tax.

William W. Peaslee
Commission Counsel

Date submitted to agency: September 12, 2023

This paragraph is reasonably necessary to interpret the scope of the imposition of tax and exemption from tax as it applies to these business types. It is necessary to explain to these business types that the exemptions for prosthetics do not apply to these items and the sales are subject to tax (per 105-164.4), unless a specific exemption applies by statute (i.e. purchaser is buying item for resale, then exempt under 105-164.13(61b)). If these types of business do not understand that eyeglass frames or repair or replacement parts thereof (i.e. non-corrective frames or repair or replacement parts for non-corrective frames) that do not meet the definition of a prosthetic device are taxable they can be subject to adverse consequences for over or under collecting tax including assessment of tax.

Lines 16-18, Paragraph (c): Explain the Secretary's authority to make items sold at wholesale exempt when G.S. 105-164.13 states "the sale at retail."

The Secretary has the authority to interpret the impositions imposed in 105-164.4 and the exemptions provided in G.S. 105-164.13. G.S. 105-164.3(281) defines 'wholesale sale' as "[a] sale of an item for the purpose of resale. The term includes a sale of certain digital property for reproduction into certain digital property or tangible personal property offered for sale. The term does not include a sale to a user or consumer not for resale or, in the case of certain digital property, not for reproduction and sale of the reproduced property."

Multiple exemptions within G.S. 105-164.13 address wholesale sales. For example, G.S. 105-164.13(5) exempts "[m]anufactured products produced and sold by manufacturers or producers to other manufacturers, producers, or registered retailers or wholesale merchants, for the purpose of resale except as modified by G.S. 105-164.3(279). This exemption does not extend to or include retail sales to users or consumers not for resale." Additionally, G.S. 105-164.13(61b) exempts "[i]tems purchased for resale under an exemption certificate in accordance with G.S. 105-164.28 or under a direct pay certificate in accordance with G.S. 105-164.27A."

Line 17, Paragraph (c): "registered" how? Pursuant to what?

Added reference to 17 NCAC 07B .0104, the registration and returns rule.

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

17 NCAC 07B .5002 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4) as follows:

17 NCAC 07B .5002 EYEGLASS FRAMES AND REPAIR PARTS

(a) Eyeglass frames sold in connection with the repair or replacement of corrective eyeglasses for human use ground on prescription of physicians, oculists, or optometrists are not subject to the tax-exempt from sales and use tax as prosthetic devices. Sales of temples and similar items that are considered repair or replacement parts for prosthetic devices devices, such as temples, nose pads, temple hinges, screws, and ear tips, are also exempt from sales and use tax. A person who sells corrective eyeglass frames and repair parts for corrective eyeglasses for human use shall keep sales records that clearly separate its sales of corrective eyeglass frames and repair parts for corrective eyeglasses for human use from sales of other items. Failure of a person to keep records that establish a sale is exempt from sales and use tax subjects the person to liability for the general State, and applicable local and transit rates of sales and use tax on the sale.

(b) Eyeglass frames or other parts sold in connection with the repair or replacement of non-corrective eyeglasses for human use that do not meet the definition of a prosthetic device in G.S. 105-164.3, or are not specifically exempt by statute, are subject to the general State, and applicable local and transit rates of sales and use tax.

~~(b)(c)~~ Sales of eyeglass frames, repair parts for eyeglasses, cases, optical merchandise, and optical supplies by optical supply houses and opticians to registered merchants, including oculists and optometrists, retailers or wholesale merchants merchants, in accordance with 17 NCAC 07B .0104, for resale are not subject to the tax-exempt from sales and use tax.

History Note: Authority G.S. 105-164.3; 105-164.4; ~~105-164.5~~; 105-164.6; 105-164.13; 105-164.22; 105-262; 105-264; [Chapter 105, Articles 39, 40, 42, 43, and 46]; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538.
Eff. February 1, ~~1976~~ 1976.
Readopted Eff. January 1, 2024.

Burgos, Alexander N

From: Ascher, Seth M
Sent: Monday, September 18, 2023 4:34 PM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Peaslee, William W
Subject: Staff Opinions 17 NCAC 07B .0115, .3101, .3107
Attachments: Staff Opinion 17 NCAC 07B 0115.pdf; Staff Opinion 17 NCAC 07B 3101.pdf; Staff Opinion 17 NCAC 07B 3107.pdf

Good afternoon,

Attached please find staff opinions on the above captioned rules.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: [External] RE: DOR Rules

From: Tenisha S. Jacobs <Tenisha.Jacobs@ncdor.gov>

Sent: Thursday, September 14, 2023 12:03 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Lansford, Laura L <Laura.Lansford@ncdor.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Furuseeth, Andrew O <andrew.furuseeth@ncdor.gov>; Edwards, Anthony <anthony.edwards@ncdor.gov>

Subject: RE: [External] RE: DOR Rules

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Mr. Peaslee and Mr. Ascher –

Thank you for allowing the N.C. Department of Revenue (“Department”) the opportunity to discuss with you both the various sales and use tax rules it has submitted for readoption. As the Department explained during our conversation, it believes all of the rules it has submitted for readoption are unambiguous, have necessity, and are within the Secretary’s authority. The Department looks forward to continuing to work with you both to address any concerns you have relating to such matters.

With regards to the matters stated in your memorandum, the Department provides three points of clarification.

First, you note below that directives “often come as letters.” Directives are not letters, but yet another form of written guidance provided by the Department on an as needed basis. The Department does, however, have authority to issue written determinations in the form of “letters.” This includes private letter rulings. See generally N.C. Gen. Stat. § 105-264(b) and N.C. Gen. Stat. § 105-264.2.

Second, with regards to your statements concerning the Department’s ability to interpret through bulletins, the Department notes that adoption of an interpretation in a bulletin may depend on the number of questions the agency had received concerning the matter interpreted and the immediacy of the requests. However, as you note, it is largely within the Secretary’s discretion unless the General Assembly has otherwise directed the specific means by which the Secretary is to provide an interpretation.

Third, the Department would note that your understanding concerning the Department’s issuance of bulletins and directives is generally accurate as of today subject to the clarifications provided above.

Again, I thank you both on behalf of the Department for the opportunity to discuss these matters with you in greater detail.

With Regards,

Tenisha

#

Tenisha S. Jacobs
Pronouns: she/her/hers
General Counsel

tenisha.jacobs@ncdor.gov
O: 919.814.1009

N.C. Department of Revenue | www.ncdor.gov
501 N. Wilmington Street | Raleigh, N.C. 27604



#

Burgos, Alexander N

Subject: FW: [External] RE: DOR Rules
Attachments: RFC 17 NCAC 07B 0115.docx

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Monday, September 11, 2023 5:01 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Lansford, Laura L <Laura.Lansford@ncdor.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>
Subject: RE: [External] RE: DOR Rules

Good afternoon,

Attached please find a Request for Changes for 17 NCAC 07B .0115.

Please respond not later than COB Friday, September 15, 2023.

If you have any questions, please do not hesitate to contact me.

Thank you,

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: [External] RE: DOR Rules

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Friday, September 8, 2023 9:33 AM

To: Lansford, Laura L <Laura.Lansford@ncdor.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>

Subject: RE: [External] RE: DOR Rules

Good morning,

Thank you for taking the time to set up a telephone conference between yourself, Andrew Furuseth, Tenisha Jacobs, and us. This email is to memorialize conversation but is not intended to be a detailed description of the conversation which lasted roughly 1.5 hours. Please feel free to offer any edits which you feel are important for the public to know about the conversation.

Seth and I found the conversation enlightening and grateful for the perspective it provided.

We discussed the Secretary's duty to interpret the law pursuant to G.S. 150B-264 and how, from the agency's perspective, the Secretary could issue the interpretations either by rule, bulletin, or directive, in his discretion.

As a general matter, we understood that bulletins are issued annually while directives, which often come as letters, are for more immediate interpretation issues. Interpretations of a statute could appear in one or more methods, again, in the Secretary's discretion. Not all interpretations provided in a bulletin will be adopted as a rule. The adoption of an interpretation in a bulletin as a rule would largely depend on the number of questions the agency had received concerning the matter interpreted.

We discussed rules, suggested by RRC counsel, which were exemplar of RRC counsels' concerns across multiple rules, including 17 NCAC 07B .4201-.4203 concerning authority and necessity, .4415 concerning necessity, .0901 concerning authority and necessity, and .0115 concerning necessity.

We also discussed the issues around local taxes and the inclusion of Chapter 105, Articles 39, 40, 42, 43, and 46 in history notes.

Finally, we discussed the Commission extending its time for review pursuant to G.S. 150B-21.13 given the volume and complexity of the rules which would provide counsel and agency staff more time for dialog and provide the RRC more time for contemplation.

As always, if you have any questions or concerns please feel free to contact us.

Seth & Bill

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road

Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] RE: DOR Rules

From: Andrew O. Furuseth <andrew.furuseth@ncdor.gov>

Sent: Wednesday, September 6, 2023 4:47 PM

To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Lansford, Laura L <Laura.Lansford@ncdor.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>

Subject: RE: [External] RE: DOR Rules

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Mr. Peaslee and Mr. Ascher,

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

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

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

- 17 NCAC 07B .4415 - SKATING RINK AND BOWLING ALLEY RENTAL FEES
 - Statutes – G.S. 105-105-164.4(a)(1) and 164.4G(e)(1)
 - The rule interprets the exemption allowed per 105-164.4G(e)(1) which excepts from tax "[a]n amount paid solely for the right to participate, other than to be a spectator, in sporting activities. Examples of these types of charges include bowling fees...." In addition, the rule interprets the imposition of tax on tangible personal property for the rental of shoes etc.
- .4201 US Government Exemption
 - Statute - G.S. 105-164.13(17)
 - Explanation – The rule interprets the exemption for sales which the states are without power to tax. The United States Constitution does not expressly provide that the federal government is immune from state taxation, however, numerous Supreme Court cases have held that the United State is generally exempt from direct state taxation.
- .4202 US Government Exemption
 - Statute - G.S. 105-164.13(17)

- Explanation – The rule interprets the exemption for sales which the states are without power to tax. The United States Constitution does not expressly provide that the federal government is immune from state taxation, however, numerous Supreme Court cases have held that the United State is generally exempt from direct state taxation.
- .4203 US Government Contractor’s Exemption
 - Statute - G.S. 105-164.13(17)
 - Explanation – The rule interprets the exemption for sales which the states are without power to tax. In the Supreme Court opinion of *United States v. County of Allegheny*, 322 U.S. 174 (1944), the court found that in instances where contractor purchases of property to which title passes to United States are exempt from state taxation. This was also applied in *General Dynamics v. NCDOR*, 09 REV 05695.
- .4614 Recreational vehicles exemption
 - Statutes - G.S. 105-164.4(a)(1), 105-164.13(32), 105-164.3(149).
 - Explanation – This rule provides the interpretation for certain recreational vehicles being classified as motor vehicles which qualify for exemption from sales and use tax or taxable tangible personal property. Motor vehicles are defined in G.S. 105-164.3(149) and subject to the highway use tax or alternate highway use tax, not the sales and use tax.
- .4700 Commercial printers and publishers’ exemptions
 - Statutes - G.S. 105-164(a)(1), 105-164.13(5e) & (39)
 - Explanation - This rule covers all different types of transactions that a commercial printer or publisher may encounter and provides taxability information on items purchased and whether those items purchased are used or resold to a customer. The rule also covers commercial printers and publishers being classified as a manufacturing industry or plant and covers the taxability with respect to many items that fall under that exemption.
- .4707 Printing Chemicals exemption
 - Statute- 105-164.13(8)
 - Explanation - Exemption allowed for chemicals that become ingredient and component part of printed materials and 105-164.13(5e) which is the mill machinery and mill machinery parts and accessories exemption for chemicals to clean printing machinery.
- .4708 Postage Charges by printers exemption
 - Statute - 105-164.13(17) and 18 USC 8
 - Explanation - The rule interprets the exemption for sales which the states are without power to tax. 18 USC 8 states that stamps are an obligation of the US government and the states generally cannot tax the face value of an obligation of the US government.
- .5002 Eyeglass frames and repair parts exemption
 - Statutes - 105-164.13(12)(a) and 164.4D(a)(1)c
 - Explanation - The rule interprets the exemption for prosthetic devices and bundled transactions on medical devices.
- .5001 Eyeglass and contact lens exemption
 - Statutes - 105-164.13(12) and 105-164.3(192)
 - Explanation - The rule interprets the exemption for prosthetic devices and the definition of prosthetic devices.
- .5004 Optical supply exemption.
 - Statutes - G.S. 105-164.4(a)(1) and 105-164.13(12)a
 - Explanation - The rule interprets the exemption for prosthetic devices and the tax imposed on tangible personal property.
- .0112(c) Exemption for Business engaged in occasional and isolated sales
 - Statutes - 105-164.3(25) and 105-164.4(4b)
 - Explanation – The rule interprets the imposition of tax and the following exclusion in 105-164.3, “[t]he term does not include an occasional and isolated sale or transaction by a person who does not claim to

be engaged in business.” In addition, G.S. 105-164.4(4b) differentiates between a person who sells TPP at a specialty market, who is considered a retailer, from a person who sells their own household items.

- .0901 (a), (b) Advertising services
 - Statutes – 105-164.3(237), 105-164.4(a)(1) and 105-164.13.
 - Explanation – Generally, this rule interprets the imposition of tax on tangible personal property and the lack of imposition on professional services as it relates to advertising agencies. The rule interprets when a sale of tangible personal property takes place versus when a sale is of professional services and the tax consequences of those determinations. The rule also interprets the definition of sales prices for various charges by an advertising agency and the purchase for resale exemption.
- .0902 Advertising artists
 - Statutes – 105-164.3(237), 105-164.4(a)(1) and 105-164.13.
 - Explanation – Generally, this rule interprets the imposition of tax on tangible personal property and the lack of imposition on professional services as it relates to advertising artists. The rule interprets when a sale of tangible personal property takes place versus when a sale is of professional services and the tax consequences of those determinations. The rule also interprets the definition of sales prices for various charges and the purchase for resale exemption.
- .0904 Public relations firms
 - Statutes – 105-164.3(237), 105-164.4(a)(1) and 105-164.13.
 - Explanation – Generally, this rule interprets the imposition of tax on tangible personal property and the lack of imposition on professional services as it relates to public relations firms. The rule interprets when a sale is of tangible personal property versus when a sale is of professional services and the tax consequences of those determinations. The rule also interprets the definition of sales prices for various charges by a public relations firm and the purchase for resale exemption.
- .0115 Research Services
 - Statute – 105-164.4(a)(1)
 - Explanation - The rule interprets the imposition of tax on research equipment used by research firms.
- .1202 Supplies and Equipment for an Accommodation
 - Statutes - GS 105-164.4(a)(1), GS 105-164.6, 105-164.13.
 - Explanation – The rule interprets the imposition of tax on items purchased by an accommodation provider and used in the accommodation. This has been an area of confusion in the past and the legislature gave relief from assessments in G.S. 105-244.4 for a period of time.
- .1302 In-state deliveries
 - Statutes - G.S. 105-164.4(a)(1) and G.S. 105-164.13(33a)
 - Explanation - This rule interprets the imposition of tax on items sold at retail to the purchaser or purchaser’s agent even when they may be taken about of State. Even though these items could be transported out of this State, because they are delivered in this State to the purchaser or purchaser’s agent in this State, they are subject to North Carolina use tax.
- .1303 Gifts to donees
 - Statutes - G.S. 105-164.4(a)(1) and 105-164.4B.
 - Explanation - This rule interprets the imposition of tax on items that are sold to a purchaser to be given to a donee or given directly the donee.
- .1404 Medical supplies, instruments, and equipment
 - Statutes - G.S. 105-164.3(229), 105-164.3(227), 105-164.3(43), 105-164.4(a)(1), 105-164.6.
 - Explanation - This rule interprets the treatment of sales to and purchases by hospitals and other institutions. For an example of disputes related to medical supplies, *see Feeling Great, Inc. and Sleep Medical Center, Inc. v. N.C. Department of Revenue*, 14 CVS 11139, Wake County Superior Court Division.
- .1601 Sales to or purchases by nonprofit entities
 - Statutes - G.S. 105-164.4 and 105-164.14

- Explanation – This rule interprets how the sales and use tax applies to purchases by and for non-profits. North Carolina is one of very few States that does not provide an exemption for these sales.
- .1605 Sales by nonprofit entities
 - Statutes – G.S. 105-164.4 and 105-164.3(229)
 - Explanation – The rule interprets the imposition of tax on nonprofits that act as retailers. The rule makes clear that nonprofits making retail sales are retailers.
- .1705 Housing authorities
 - Statutes – G.S. 105-164.4 and 105-164.14(c)
 - Explanation – This rule interprets the imposition of tax on housing and authorities and the non-profits eligible for refund. The housing authorities listed in the statute do not meeting the requirements of 105-164.14(c) and thus are not eligible for a refund.
- .1801 Sales to hospitals
 - Statutes – G.S. 105-164.4 and 105-164.13(12) and –(13).
 - Explanation – The rule interprets various impositions and exemptions and how they apply to hospitals. The rule interprets which items are purchased for use, which items are purchased for resale, and which items are subject to exemption.
- .1905 Tire retreaders
 - Statutes – G.S. 105-164.4(a)(1)a., G.S. 105-164.4(a)(1)c.
 - Explanation – The rule interprets the imposition of tax on tangible personal property and repair, maintenance and installation services as they relate to tire retreaders. In addition, the rule interprets which items purchased by tire retreaders are subject to the exemption provided in G.S. 105-164.13(61b)
- .2001 Sales to employees
 - Statutes - G.S. 105-164.4
 - Explanation – The rule interprets the imposition of tax on sales by employers to employees. This rule explains an employer engaged in business in this State that makes retail sales of items to their employees is a retailer. Therefore, the employer must collect and remit the sales and use tax due on its retail sales to employees.
- .2002 Gifts to employees
 - Statutes – GS 105-164.4
 - Explanation - The rule interprets the imposition of tax on gifts to employees. This rule explains an employer that purchases items provided to an employee or other person as a gift or as compensation is the consumer of the items.

Thank You,

Andrew O. Furuseth

Director, Sales and Use Tax Division

N.C. Department of Revenue

PO Box 871

Raleigh, NC 27602-0871

Mobile: 919.608.1115

Fax: 919.715.0295

andrew.furuseth@ncdor.gov

Burgos, Alexander N

Subject: FW: [External] RE: DOR Rules

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Tuesday, September 5, 2023 4:33 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Lansford, Laura L <Laura.Lansford@ncdor.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>

Subject: RE: [External] RE: DOR Rules

Greetings,

I have not yet finished reviewing the rules assigned to me, but I have noted the following rules where I am having difficulty identifying the authority within the history note:

.0112(c) Exemption for Business engaged in occasional and isolated sales

.0901 (a), (b) Advertising services

.0902 Advertising artists

.904 Public relations firms

The more common question I am having is why it is necessary to have rules singling out industries or purchase types which seem to restate the general tax provisions. These include:

.0115 Research Services

.1202 Supplies and Equipment for an Accommodation

.1302 In-state deliveries

.1303 Gifts to donees

.1404 Medical supplies, instruments, and equipment

.1601 Sales to or purchases by nonprofit entities

.1605 Sales by nonprofit entities

.1705 Housing authorities

.1801 Sales to hospitals

.1905 Tire retreaders

.2001 Sales to employees

.2002 Gifts to employees

Note that we are hoping to understand these repeating issues now in hopes of streamlining our review. There will still be more specific issues to address in our full requests for changes. Similarly, there may be more rules in my section that have these repeating issues but our discussion Thursday will frame how I move forward with later rules.

Sincerely,

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, September 5, 2023 3:00 PM
To: Lansford, Laura L <Laura.Lansford@ncdor.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>
Subject: RE: [External] RE: DOR Rules

Good afternoon,

The following is a list of the rules which have been assigned to me where I am having difficulty identifying the authority within the history note.

.4201 US Government Exemption (perhaps 105-164.13(17)?)
.4202 US Government Exemption (perhaps 105-164.13(17)?)
.4203 US Government Contractor's Exemption (perhaps 105-164.13(17)?)
.4614 Recreational vehicles exemption
.4700 Commercial printers and publishers' exemptions
.4707 Printing Chemicals exemption
.4708 Postage Charges by printers exemption
.5002 Eyeglass frames and repair parts exemption
.5001 Eyeglass and contact lens exemption
.5004 Optical supply exemption.

I think it would be helpful for our meeting if you could reply in advance thereof. Thank you for your assistance.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Burgos, Alexander N

Subject: FW: [External] RE: DOR Rules

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Friday, September 1, 2023 10:29 AM

To: Lansford, Laura L <Laura.Lansford@ncdor.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>

Subject: RE: [External] RE: DOR Rules

Hi Laura,

Thank you for your email.

We will attempt to provide additional examples in the time remaining; however, as a starting point, every rule where the Secretary has cited entire “articles” in the history note would be inclusive of the examples. Please see Chapter 9 of the RRC [style guide](#). Surely not ever statute within the articles listed addresses authority.

Thank you and have a safe Labor Day weekend.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

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Bill.Peaslee@oah.nc.gov

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From: Laura L. Lansford <Laura.Lansford@ncdor.gov>

Sent: Friday, September 1, 2023 10:07 AM

To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>

Subject: RE: [External] RE: DOR Rules

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Bill and Seth,

Thank you for your emails identifying questions you have with our proposed rules for re-adoption. The specific examples you provided are very helpful, in that they allow us an opportunity to gather the information necessary to

respond to your questions. With that said, if possible, we would ask that prior to our meeting on September 7th, if you identify additional examples during your review process, if you would continue forwarding those examples to us. This will allow us to prepare our response to those examples, to best optimize our meeting time.

Thank you for assistance in this process.

Laura

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Thursday, August 31, 2023 5:46 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Laura L. Lansford <Laura.Lansford@ncdor.gov>; Andrew O. Furuseth <andrew.furuseth@ncdor.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] RE: DOR Rules

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To follow up, I can also provide a couple of examples of the broader questions that keep coming up in my review:

Similar to Bill, there are several rules that appear to provide for exemptions that I do not see any statutory context for. For example, paragraphs (a) and (b) of 17 NCAC 07B .0901 single out “advertising” and “professional services” for exceptions to sales tax, but I do not see those categories referenced in the revenue statutes at all.

Additionally, there are several rules (or parts of rules) that seem to repeat that the general rules for sales tax apply to specific industries. Is there a reason we are missing that it is necessary to single out some retail purchases and not others? For example, 17 NCAC 07B .1202 seems to say that purchases made by accommodation providers are subject to sales tax. But it appears that the general rules and statutes would already subject those purchases to sales tax without that rule, which would mean the rule is unnecessary.

Thanks,

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Thursday, August 31, 2023 4:00 PM
To: Lansford, Laura L <Laura.Lansford@ncdor.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>
Cc: Ascher, Seth M <seth.ascher@oah.nc.gov>
Subject: RE: [External] RE: DOR Rules

Good afternoon,

I believe it would significantly shorten our meeting if you could, before the meeting, identify the specific authority by which the Secretary grants or interprets exemptions in the DOR rules before the RRC.

For example, it would appear that the authority for Rule 17 NCAC 07B .4415 concerning bowling alleys flows from G.S.105-164.13(60). However, the authority for the exemption of recreational vehicles in 17 NCAC 07B .4614 does not explicitly appear and the statutes cited in the history note are unrevealing.

Thank you in advance.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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1711 New Hope Church Road
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(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Wednesday, August 30, 2023 12:38 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>
Cc: Ascher, Seth M <seth.ascher@oah.nc.gov>
Subject: RE: [External] RE: DOR Rules

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Hi Bill,

The staff at DOR are still working remotely for the most part, so I think meeting via a "Teams" meeting would work best for us.

So you are aware, the employees from DOR who will be attending the meeting are as follows:

Laura Lansford – Revenue Administration Officer & Rule-making coordinator for the Sales & Use Tax Division
Andrew Furuseth – Director, Sales & Use Tax Division
Tenisha Jacobs – General Counsel, NC Dept. of Revenue

I will send out a "Teams" meeting request shortly to include you and Mr. Ascher.

Thank you.

Laura

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Wednesday, August 30, 2023 10:19 AM
To: Laura L. Lansford <Laura.Lansford@ncdor.gov>; Andrew O. Furuseth <andrew.furuseth@ncdor.gov>
Cc: Ascher, Seth M <seth.ascher@oah.nc.gov>
Subject: RE: [External] RE: DOR Rules

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Good morning,

We don't have a preference. What is your pleasure?

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Wednesday, August 30, 2023 8:14 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>
Cc: Ascher, Seth M <seth.ascher@oah.nc.gov>
Subject: RE: [External] RE: DOR Rules

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Good Morning Bill,

I just want to clarify whether the meeting we have scheduled for September 7, 2023 at 11am will be in-person (at the OAH office) or telephonic? If the meeting can be conducted telephonically, I can send out a "Teams" meeting request for the designated date and time if that is helpful.

Please let me know how you would like to conduct the meeting.

Thanks so much.

Laura

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, August 29, 2023 3:02 PM
To: Andrew O. Furuseth <andrew.furuseth@ncdor.gov>
Cc: Ascher, Seth M <seth.ascher@oah.nc.gov>; Laura L. Lansford <Laura.Lansford@ncdor.gov>
Subject: RE: [External] RE: DOR Rules

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Good afternoon,

Let plan on Thursday Sept 7 at 11:00 am. Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Andrew O. Furuseth <andrew.furuseth@ncdor.gov>
Sent: Tuesday, August 29, 2023 12:45 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Ascher, Seth M <seth.ascher@oah.nc.gov>; Lansford, Laura L <Laura.Lansford@ncdor.gov>
Subject: [External] RE: DOR Rules

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Mr. Peaslee,

Laura is out today, but asked that I send you times that we are available for a meeting. We are available next Wednesday, 9/6, from 1pm until 5pm. We are also available next Thursday, 9/7 from 11 am until 3pm.

Please let us know if none of these times work and we can look for additional availability.

Thank You,
Andrew O. Furuseth
Director, Sales and Use Tax Division
N.C. Department of Revenue
PO Box 871
Raleigh, NC 27602-0871
Mobile: 919.608.1115
Fax: 919.715.0295
andrew.furuseth@ncdor.gov

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Thursday, August 24, 2023 11:23 AM
To: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Cc: Ascher, Seth M <seth.ascher@oah.nc.gov>
Subject: DOR Rules

CAUTION: This email originated from outside of the organization. Do not click links or attachments unless you recognize the sender.

Good morning Laura,

Seth Ascher and I are the attorneys assigned to review the DOR rule pending before the Rules Review Commission. Please call me at your convenience. We would like to set up a meeting with DOR staff to have a better understanding of the Secretary's authority and the goals of the rules.

Thank you.

William W. Peaslee
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