

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>; Furuseth, Andrew O <andrew.furuseth@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 12/14/2023 meeting

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Monday, January 15, 2024 9:55 AM

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

Cc: Ascher, Seth M <seth.ascher@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 12/14/2023 meeting

Good morning,

It is my intention to recommend approval of the revised 17 NCAC 07B .4614 and .17 NCAC 07B .5002 at the January RRC meeting.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

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Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Friday, January 12, 2024 12:12 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 12/14/2023 meeting
Attachments: 17 NCAC 07B .4614.docx; 17 NCAC 07B .5002.docx

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On behalf of the Sales and Use Tax Division of the Department of Revenue, please find attached the following 2 revised Rules objected to by the RRC on 12/14/2023:
17 NCAC 07B .4614 and .17 NCAC 07B .5002.

Please let me know if additional information is required.

Thank you.

Laura Lansford
Sales and Use Tax Division
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Fax: 919.715.0295
Laura.Lansford@ncdor.gov

1 17 NCAC 07B .4614 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 .4614 ~~PICKUP CAMPERS; TRAILERS~~RECREATIONAL VEHICLES**

5 ~~Retail sales of~~The definition of motor vehicle in G.S. 105-164.3 includes camper trailers-trailers, fifth-wheel trailers,
6 motor homes, and travel ~~[trailers]~~trailers, as defined in G.S. 20-4.01, ~~which that~~ are designed ~~to run on the streets and~~
7 ~~highways and~~ which are pulled by a self-propelled vehicle~~[motor vehicle, or are self-propelled,]~~ are classified as sales
8 of motor vehicles and exempt from sales ~~[and use]~~ tax primarily for use upon the highways. The definition of motor
9 vehicle in G.S. 105-164.3 does not include truck campers, as defined in G.S. 20-4.01. ~~Retail sales of such camper~~
10 ~~trailers[items]~~ are subject to the highway use tax. ~~Retail sales of slide-in pickup camper units[truck campers]~~ are
11 subject to the ~~[general State, and]~~ applicable statutory state and local ~~[and transit rates of]~~ sales or ~~[and]~~ use tax.

12
13 *History Note:* Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-187.3; 105-262; 105-264;
14 Article 39; Article 40; Article 42; Article 43; Article 44;
15 Eff. February 1, 1976;
16 Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991; October 1, 1990; July 1,
17 1990-1990;
18 Readopted Eff. January 1, 2024.

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~~, pursuant to G.S. 105-164.13(12), 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)](b)~~ Sales Pursuant to G.S. 105-164.13(61b), sales of eyeglass frames, repair parts for eyeglasses, cases, optical merchandise ~~merchandise~~, and optical supplies by ~~optical supply houses and opticians to registered merchants, including oculists and optometrists, retailers or wholesale merchants for resale are not subject to the tax exempt from sales and use tax.~~ tax, when the purchaser complies with the requirements of 17 NCAC 07B .0106.

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

Subject: FW: [External] RE: 17 NCAC 07B .4404
Attachments: 17 NCAC 07B .4404.docx

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Thursday, January 4, 2024 3:38 PM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Peaslee, William W <bill.peaslee@oah.nc.gov>; Ascher, Seth M <seth.ascher@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: FW: [External] RE: 17 NCAC 07B .4404

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.

Per Mr. Peaslee's below email, I have made the recommended revisions to Paragraph (c) and deleted the last paragraph, and am resubmitting the above referenced Rule.

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

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Thursday, January 4, 2024 2:47 PM
To: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Cc: Andrew O. Furuseth <andrew.furuseth@ncdor.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: 17 NCAC 07B .4404

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

I believe the revisions below resolve the ambiguity. If filed, it would be my intention to recommend approval.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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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.

17 NCAC 07B .4404 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 .4404 EQUIPMENT FURNISHED WITH OPERATOR

(a) ~~If the owner of a~~ person transaction that provides equipment or other tangible personal property ~~furnishes with~~ an operator for a fixed or indeterminate period of time, or crew to operate such property, such owner is not deemed to ~~be renting or leasing the property but~~ is not a lease or rental, as defined in G.S. 105-164.3(121), but is rendering a service if the operator is necessary for the equipment or other tangible personal property to ~~[perform as designed]~~ "perform as designed." ~~and the~~ The receipts ~~therefrom~~ from such services are not subject to the sales or use ~~tax, tax~~ imposed by G.S. 105-164.4 unless the service is a repair, maintenance, and installation service or other taxable service. An operator is necessary for equipment or other tangible personal property to ~~[perform as designed]~~ "perform as designed" when the operator's presence, skill, knowledge, and expertise are necessary ~~[for]~~ to bring about the desired effect of the equipment or other tangible personal ~~[property to perform as designed,]~~ property. An operator who only maintains, sets-up, ~~[inspects, or monitors]~~ or inspects the equipment or other tangible personal property, or any combination of such actions, is not necessary for the equipment or other tangible personal property to ~~[perform as designed,]~~ "perform as designed."

(b) ~~[A]~~ For purposes of G.S. 105-164.13, a person that purchases equipment or other tangible personal property to provide a service identified in ~~[paragraph]~~ Paragraph (a) of this Rule is not purchasing the equipment or other tangible personal property for resale and shall pay [the applicable rates of] sales and use tax on the purchase price of the equipment or other tangible personal ~~[property,]~~ property, pursuant to G.S. 105-164.4, as the consumer thereof.

(c) A person that leases or rents items of equipment or tangible personal property similar to those items provided by that person in rendering a service pursuant to Paragraph (a) of this Rule shall maintain records that establish the purchase of items used in the provision of a service pursuant to Paragraph (a) from those held for lease or rent. A person who fails to maintain the records as required by this Paragraph shall pay sales and use tax on the purchase of all equipment pursuant to G.S. 105-164.4 notwithstanding that some equipment may be held for lease or rental equipment, and the exemptions provided by G.S. 105-164.13 for items held for resale shall not be applicable. The records shall be maintained until the statute of limitations to request a refund and to be issued a proposed assessment have expired, as set out in G.S. 105-241.6 and G.S. 105-241.8.

~~[(c)]~~ (d) ~~Persons purchasing~~ A person that provides the type of service described in [paragraph] Paragraph (a) of this Rule that purchases repair parts, ~~lubricants~~ lubricants, and other tangible personal ~~property~~ property, or repair, maintenance, and installation services to maintain or repair equipment or other tangible personal property for use in rendering such service are liable for payments shall pay [the applicable rates] of sales or and use tax pursuant to G.S. 105-164.4, at the applicable rate on the purchase price-price of such [items,] items, as the consumer of the repair parts, lubricants, other tangible personal property, or repair, maintenance, and installation services.

[(d)] Failure of a person to keep records that establish the service is exempt from tax subjects the person to liability for sales and use tax on the receipts derived from the transaction.

1 *History Note:* *Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-164.22; 105-262; 105-264;*
2 *[Chapter 105, Articles 39, 40, 42, 43, and 46; 105-467; 105-468; 105-469; 105-483; 105-498;*
3 *105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;*
4 *Eff. February 1, 1976.1976;*
5 *Readopted Eff. January 1, 2024.*

Burgos, Alexander N

Subject: FW: [External] RE: 17 NCAC 07B .4404

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Thursday, January 4, 2024 2:47 PM

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

Cc: Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] RE: 17 NCAC 07B .4404

I believe the revisions below resolve the ambiguity. If filed, it would be my intention to recommend approval.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

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Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] RE: 17 NCAC 07B .4404

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Thursday, January 4, 2024 2:41 PM

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

Cc: Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] RE: 17 NCAC 07B .4404

Yes, it appears that (e) would be redundant.

William W. Peaslee

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Burgos, Alexander N

Subject: FW: [External] RE: 17 NCAC 07B .4404

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

Sent: Thursday, January 4, 2024 12:39 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: [External] RE: 17 NCAC 07B .4404

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Hi Bill,

We have reviewed your proposed language to section (c) of the above referenced rule, and have made some adjustments to the language (highlighted in yellow) as follows:

(c) A person that leases or rents items of equipment or tangible personal property similar to those items provided by that person in rendering a service pursuant to Paragraph (a) shall maintain records **that establish** the purchase of items used in the provision of a service pursuant to Paragraph (a) from those held for lease or rent. A person who fails to maintain the records **as required by this Paragraph** shall pay sales and use tax on the purchase of all equipment pursuant to G.S. 105-164.4 **notwithstanding that some equipment may be held for lease or rental equipment**, and the exemptions provided by G.S. 105-164.13 **for items held for resale** shall not be applicable. The records shall be maintained **until the statute of limitations to request a refund and to be issued a proposed assessment have expired, as set out in G.S. 105-241.6 and G.S. 105-241.8.**

Using this language, we would also remove section (e) from the revised rule.

We changed “which delineate” to “that establish” since this tracks the language used in the record keeping statute (G.S. 105-164.22). We also added the language used in other rules for how long the records must be maintained. If you are okay with the adjustments we have made, and revising this section will allow you to recommend approval of this rule, the Department will make the change and resubmit the rule.

Thank you 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

Burgos, Alexander N

Subject: FW: [External] RE: 17 NCAC 07B .4404

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

Sent: Thursday, January 4, 2024 8:27 AM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: [External] RE: 17 NCAC 07B .4404

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Hi Bill,

We are still evaluating your proposed language, but I wanted to check with you because the proposed language overlaps with section (e) of the rule as well, and I wanted to see if you were of the opinion that using the proposed language would eliminate the need for section (e)?

Thanks.

Laura

Laura Lansford
Sales and Use Tax Division
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Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

Burgos, Alexander N

Subject: FW: [External] FW: 17 NCAC 07B .4203

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Wednesday, January 3, 2024 3:41 PM

To: Rules, Oah <oah.rules@oah.nc.gov>

Cc: Ascher, Seth M <seth.ascher@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>; Lansford, Laura L <Laura.Lansford@ncdor.gov>

Subject: RE: [External] FW: 17 NCAC 07B .4203

Good afternoon,

It is my intention to recommend approval of this rule as revised.

Thank you.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

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(984) 236-1939

Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Wednesday, January 3, 2024 8:50 AM
To: Rules, Oah
Cc: Peaslee, William W; Ascher, Seth M; Burgos, Alexander N; Furuseth, Andrew O; Jacobs, Tenisha S
Subject: [External] FW: 17 NCAC 07B .4203
Attachments: 17 NCAC 07B .4203.docx

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Per Mr. Peaslee's below email, I have struck the last sentence at lines 15-17 and am resubmitting the above referenced rule.

Thank you.

Laura Lansford
Sales and Use Tax Division
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Phone: 919.814.1088
Fax: 919.715.0295
Laura.Lansford@ncdor.gov

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, January 2, 2024 11:34 AM
To: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Cc: Ascher, Seth M <seth.ascher@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Andrew O. Furuseth <andrew.furuseth@ncdor.gov>
Subject: 17 NCAC 07B .4203

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Good morning Laura. I hope you had a good holiday.

In the above captioned rule, if the Secretary were to strike the last sentence, I would be in a position to recommend approval to the RRC. A) the last sentence it is unnecessary given the Lines 11-15 and B) it is an incorrect statement of the law as there may be other applicable exemptions.

Please let me know by COB Wednesday January 3rd.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison

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17 NCAC 07B .4203 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 .4203 CONTRACTORS FOR THE FEDERAL GOVERNMENT

Sales of tangible personal property [items, as the term item is defined in G.S. 105-164.3,] to contractors for use in performing contracts with the United States Government or its agencies and instrumentalities are subject to the applicable statutory state [general State,] and [applicable] local [and transit rates of] sales or [and] use tax. [tax unless the terms of the contract between the contractor and the United States Government contain title passage provisions of the Federal Acquisition Regulations where the title to the items purchased by the contractor is transferred to the United States Government on a regular, recurring, and routine basis.]

Sales of items, as the term item is defined in G.S. 105-164.3, to a contractor are exempt from sale and use tax pursuant to G.S. 105-164.13(17), when a contract between the United States Government, or its agencies and instrumentalities, and a contractor contains a title passage clause from the Federal Acquisition Regulation as set out in 48 C.F.R. 1, such that title to items purchased by the contractor for use in performing the contract, pass from the contractor to the United States Government, or its agencies and instrumentalities, prior to any use by the contractor. [When the contract does not include a Federal Acquisition Regulation title passage clause, items purchased by the contractor for use in performing the contract are subject to sales and use tax pursuant to G.S. 105-164.4.]

History Note: Authority G.S. 105-164.3; 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;

Readopted Eff. January 1, 2024.

Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, January 2, 2024 4:13 PM
To: Lansford, Laura L
Cc: Furuseth, Andrew O; Ascher, Seth M; Burgos, Alexander N
Subject: 17 NCAC 07B .4404

Good afternoon

I have taken the liberty of re-writing Paragraph (c) of the above captioned rule for your consideration using my understanding of the intention of the rule as currently written. Please look at the following as I think it provides greater clarity.

(c) A person that leases or rents items of equipment or tangible personal property similar to those items provided by that person in rendering a service pursuant to Paragraph (a) shall maintain records which delineate the purchase of items used in the provision of a service pursuant to Paragraph (a) from those held for lease or rent. A person who fails to maintain the records shall pay sales and use tax on the purchase of all equipment pursuant to G.S. 105-164.4 notwithstanding the use of the equipment, and the exemption provided by G.S. 105-164.13(5)(?) shall not be applicable. The records shall be maintained for a period of ____ years.

Thank you in advance for your prompt reply.

William W. Peaslee
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Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, January 2, 2024 11:34 AM
To: Lansford, Laura L
Cc: Ascher, Seth M; Burgos, Alexander N; Furuseth, Andrew O
Subject: 17 NCAC 07B .4203

Good morning Laura. I hope you had a good holiday.

In the above captioned rule, if the Secretary were to strike the last sentence, I would be in a position to recommend approval to the RRC. A) the last sentence it is unnecessary given the Lines 11-15 and B) it is an incorrect statement of the law as there may be other applicable exemptions.

Please let me know by COB Wednesday January 3rd.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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Burgos, Alexander N

Subject: FW: [External] FW: 17 NCAC 07B .4701

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Friday, December 29, 2023 5:06 PM

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

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>

Subject: RE: [External] FW: 17 NCAC 07B .4701

Good afternoon,

It is my intention to recommend approval of the above captioned rule as revised.

It is also my intention to recommend approval of 17 NCAC 07B .4210 as revised.

The remaining rules are under review.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

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(984) 236-1939

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Burgos, Alexander N

Subject: FW: [External] FW: 17 NCAC 07B .4701
Attachments: 17 NCAC 07B .4701.docx

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Friday, December 29, 2023 4:53 PM
To: 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>
Subject: [External] FW: 17 NCAC 07B .4701

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.

Per Mr. Peaslee's below email, I have corrected the hanging "sales" from page 5 line 9 and am resubmitting the above referenced rule.

Thank you.

Laura Lansford
Sales and Use Tax Division
N.C. Department of Revenue
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17 NCAC 07B .4701 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 .4700 - PRINTERS AND NEWSPAPER OR MAGAZINE PUBLISHERS

17 NCAC 07B .4701 COMMERCIAL PRINTERS AND PUBLISHERS

(a) Pursuant to G.S. 105-164.4, retail sales of tangible personal property items, as the term item is defined in G.S. 105-164.3, by commercial printers or publishers are subject to the applicable statutory state and local rates of sales or and use tax unless the sales are subject to a lesser rate of tax under the provisions of G.S. 105-164.4(a) or are exempt under the provisions of G.S. 105-164.13, [by statute.] including subscriptions, plates and dies sold to customers, book binding, and other repair, maintenance, and installation services.

(1) Subscriptions. Retail sales of advertising circulars, catalogues, booklets, pamphlets, forms, tickets, letterheads, envelopes, and similar items and retail sales of books, magazines, periodicals, newspapers and other publications are subject to the general State, and applicable local and transit rates of sales and use tax unless the sales are exempt from tax under G.S. 105-164.13. When publications are sold by subscription, the tax accrues at the time the subscription is accepted.

(2) Plates and Dies. When, at the request of the customer, commercial printers purchase custom-made printing plates and dies for use in the direct production of the printed matter and title to the custom-made printing plates and dies passes to the printer's customer, such items can be purchased by the commercial printer exempt from sales and use tax in accordance with 17 NCAC 07B .0106. The printer is liable for collecting and remitting the general State, and applicable local and transit rates of sales and use tax on the sales price of the printing plates and dies. The printer's sales invoices and records shall show that the plates and dies are actually sold to the customer.

(3) Book Binding and other Repair, Maintenance, and Installation Services. The gross receipts derived from repair, maintenance, and installation services, including book binding and imprinting, are subject to the general State, and applicable local and transit rates of sales and use tax unless exempt by statute.]

(b) Exempt Sales by Commercial Printers and Publishers. The following transactions are also exempt from sales or use tax:

(1) charges [Charges] for advertising space in newspapers, magazines and other publications; [publications.]

(2) charges [Charges] made by printers for imprinting or binding books or forms or other similar items which are owned by their customers; [when such items are purchased for resale in accordance with 17 NCAC 07B .0106.]

(3) Printed material sold by a retailer when the printed material is delivered by the retailer in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the

1 purchaser's designee outside this State, and the purchaser does not subsequently use the printed
2 material in this State.]

3 (3)(4) Printed material which is sold by a retailer to a purchaser within or without this state when the
4 printed material is delivered by the printer directly to a mailing house [house,] or to a common
5 carrier [carrier,] or to the United States Postal Service for delivery to a mailing house in this state
6 which [State that] will preaddress and presort the material and deliver it to a common carrier or to
7 the United States Postal Service for delivery to recipients outside this state [State] designated by the
8 purchaser.

9 (A) Sales of printed material by a retailer located within or without this state which is delivered
10 directly to the purchaser in this state for the original purpose of preparing and delivering
11 the printed material to the United States Postal Service or a common carrier for delivery to
12 prospective customers or other recipients outside this state are exempt from sales and use
13 tax provided the purpose is consummated. A purchaser of the printed material for
14 preparation and delivery to prospective customers and other recipients outside this state
15 must furnish the vendor a written statement certifying that the printed material is being
16 purchased for use in a mailing program which is in place at the time of purchase; otherwise,
17 the vendor must collect and remit the tax on the sales. Sales of printed materials to a user
18 or consumer in this state to be placed in the purchaser's inventory for use as needed are
19 subject to sales or use taxes notwithstanding that all or a portion of the printed material
20 may be delivered to the United States Postal Service or a common carrier for delivery to
21 prospective customers or other recipients outside this state.

22 (B) A retailer who sells printed material delivered to a common carrier or the United States
23 Postal Service for delivery to the purchaser at a point within this state who prepares the
24 material to be mailed to prospective customers or other recipients without charge and
25 transports the material outside this state to be delivered to the United States Postal Service
26 or a common carrier or to a mailing house outside this state for delivery to designated
27 recipients is liable for sales or use tax except as provided in this Rule.

28 (b) Retail sales of advertising circulars, catalogues, booklets, pamphlets, forms, tickets, letterheads, envelopes and
29 similar items and retail sales of books, magazines, periodicals, newspapers and other publications are subject to the
30 applicable statutory state and local sales or use tax unless the sales are exempt from tax under the provisions of G.S.
31 105-164.13. When publications, other than magazines, are sold by subscription, the tax accrues at the time the
32 subscription is accepted.

33 (e)(b) Exempt Purchases of Mill Machinery or Mill Machinery Parts or Accessories by Commercial Printers or
34 Publishers. -- Sales to [Purchases] Pursuant to G.S. 105-164.13(5e), purchases by commercial printers and publishers
35 of mill machinery and or mill machinery equipment and parts therefor and or accessories thereto for use directly in the
36 production [phase, as the term "production" is defined in Section 57 of the Sales and Use Tax Bulletins,] phase of
37 printing and publishing, are exempt from sales and use tax. For purposes of this Rule, "Production" as a phase of

1 industrial or manufacturing operations shall mean all steps performed in processing and refining rooms, and in other
2 quarters and departments of a plant, where conditioning, treating, or other operations are done on ingredient materials
3 as an actual routine on the assembly or processing line turning out a finished product of manufacture for sale. The
4 “Production” phase also includes the following:

5 (1) The movement of raw materials or ingredients from an inventory or a stockpile located on the
6 premises of the manufacturing facility to the assembly or processing line.

7 (2) The movement of goods in process along the assembly or processing line.

8 (3) The movement of manufactured products from the assembly or processing line into shipping or
9 storage areas and yards located on the premises of the manufacturing facility.

10 (4) The work of experimentation and research performed on the manufactured products.

11 “Production” does not include any activity connected with the movement of raw materials or ingredients into inventory
12 nor does it include “distribution” which is any activity connected with the movement of manufactured products within
13 storage warehouses, shipping rooms, and other such finished product storage areas and the removal of such products
14 therefrom for sale or shipment, or “administration” which is any administrative work of offices, promotion of sales,
15 and collection of accounts. Items that ~~commercial printers and publishers may purchase exempt from sales and use~~
16 ~~tax as~~ are mill machinery or mill machinery parts or accessories when purchased by a commercial printer or publisher
17 include the following:

18 (1) Machinery and equipment and parts or accessories thereto for use directly in the production of
19 newspapers, ~~magazines~~ magazines, and other printed ~~matter~~ material for sale are exempt from sales
20 tax sale.

21 (2) ~~Included herein are custom~~ Custom made plates and dies for use directly in the production of
22 newspapers, magazines, and other printed material for sale when title ~~thereto~~ to the plates and dies
23 does not pass to the printers' customers.

24 (3) ~~Sales to commercial printers and publishers of tangible~~ Tangible personal property such as wood and
25 metal which is used to fabricate plates and dies for use in the production of printed ~~matter~~ material
26 for sale are exempt from sales tax when title to the plates and dies does not pass to the printers'
27 customers.

28 (4) ~~Sales to commercial printers and publishers of machinery,~~ Machinery, equipment, film, and similar
29 ~~items of other~~ tangible personal property for use or consumption directly in that are used or consumed
30 by the printer in the production of the plates and dies are also exempt from sales tax that are directly
31 used in the production of newspapers, magazines, and other printed material for sale.

32 (5) Lithographic and gravure plates and dies retained by the printer or publisher that are directly used
33 in the production of newspapers, magazines and other printed material for sale. It is a printing trade
34 practice that title to lithographic and gravure plates and dies is ~~be~~ retained by the printer or
35 publisher. Unless it is otherwise agreed in writing, the items purchased by the printer or
36 publisher ~~these plates and dies~~ are exempt from sales tax. ~~tax as items purchased by the printer or~~
37 ~~publisher for use.~~

- (6) Photo engravings, electrotypes, and lithographs for direct use in printing tangible personal property for sale.
- (7) Printing presses for direct use in printing tangible personal property for sale.
- (8) Cushion paper, cover paper, and tissue for use in building up the printing surface of the press for direct use in printing tangible personal property for sale.
- (9) Offset or direct relief duplicating machines and repair parts or accessories for such machines, including offset blankets and plates.
- (10) Positives and negatives for use in preparing plates for use in the printing process. ~~[Purchases of such items by non-commercial printers for use or consumption are subject to the general State, and applicable local and transit rates of sales and use tax.]~~
- (11) Chemicals used to clean printing machinery. ~~[Chemicals used for sanitation purposes are subject to the general State, and applicable local and transit rates of sales and use tax.]~~
- (12) Metal for making type.
- (13) Computers used in the printing process. ~~[Computers used for administrative purposes are subject to the general State, and applicable local and transit rates of sales and use tax.]~~
- (14) Mounting tape for use in the preparation of plates.
- (15) Printing machines when the machines are used to produce newspapers or other printed material for sale. ~~[Purchases of printing machines for use in printing customers' addresses and addressograph plates for use in the mailing and shipping process are subject to the general State, and applicable local and transit rates of sales and use tax.]~~
- (16) Photographs to be reproduced in newspapers. ~~[These are classified as accessories to the manufacturing process.]~~

~~(d) Sales to commercial printers of custom made plates and dies for resale are exempt from sales or use tax when supported by Streamlined Sales and Use Tax Agreement Certificates of Exemption, Form E-595E. Sales to commercial printers of tangible personal property as wood and metal which becomes a component part of printing plates produced by the printers for sale to customers are likewise exempt from sales or use tax when supported by certificates of exemption. However, sales to commercial printers of machinery, equipment, film, and similar items of tangible personal property which do not enter into or become a component part of the plates and dies but are used or consumed by the printer in the direct production of the plates and dies are exempt from sales tax. When, at the request of the customer, commercial printers purchase custom made printing plates and dies for use in the direct production of the printed matter or when they purchase wood and metal which becomes a component part of printing plates and dies fabricated by the printer for use in the direct production of printed matter and title to the plates and dies passes to the printers' customers, the items may be purchased for resale. The printer is liable for collecting and remitting the applicable statutory state and local sales or use tax on the total retail sales price of the plates and dies including charges for tangible personal property and art work or any other services that go into the manufacture or delivery thereof. In such cases, the printer's sales invoices and records must show that the plates and dies are actually sold to the customer; otherwise, the items are deemed to have been used by the printer, and the cost price of same is exempt from sales tax.~~

1 (e)(d) Sales to commercial printers and publishers of tangible personal property which is not resold as such or
2 which resold, does not become an ingredient or component part of the tangible personal property which they produce
3 for sale sale, or which and is not production mill machinery or mill machinery parts therefor and or accessories
4 thereto are subject to the general State, and applicable statutory state and local and transit rates of sales or and
5 use tax.

6 (f)(e) In-House Printers. -- The provisions of Paragraph (d)(e)(b) of this Rule have no application do not apply to
7 sales of printing equipment and supplies to firms which businesses that operate print shops for the production of printed
8 matter for their own use and not for sale. Purchases of printing equipment and supplies by such firms businesses are
9 subject to the general State, and applicable statutory state and local and transit rates of sales or and use tax.

10
11 History Note: Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-164.13; 105-262; 105-264; Chapter 105,
12 Articles 39, 40, 42, 43, and 46; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
13 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-
14 537; 105-538;

15 Eff. February 1, 1976;

16 Amended Eff. October 1, 2009; April 1, 2001; October 1, 1993; June 1, 1992; October 1, 1991;
17 February 1, 1988; 1988;

18 Readopted Eff. January 1, 2024.

Burgos, Alexander N

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Friday, December 29, 2023 4:47 PM
To: Peaslee, William W
Cc: Burgos, Alexander N; Furuseth, Andrew O
Subject: [External] RE: 17 NCAC 07B .4701

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Hi Bill,

It was a very pleasant holiday. I hope yours was nice as well.

I will get the rule corrected and resubmitted shortly.

Happy New Year!

Laura

Laura Lansford
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From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, December 29, 2023 4:36 PM
To: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Andrew O. Furuseth <andrew.furuseth@ncdor.gov>
Subject: 17 NCAC 07B .4701

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

Good afternoon,

I hope you had a pleasant holiday.

In the above captioned rule, on Page 5, Line 9, it appears that “sales” is a hanging chad as it were.

If you strike that and resubmit, it is my intention to recommend approval.

Please respond at your earliest convenience. Thank you.

Happy New Year!

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.

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
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17 NCAC 07B .4203 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 .4203 CONTRACTORS FOR THE FEDERAL GOVERNMENT

Sales of tangible personal property [items, as the term item is defined in G.S. 105-164.3,] to contractors for use in performing contracts with the United States Government or its agencies and instrumentalities are subject to the applicable statutory state [general State,] and [applicable] local [and transit rates of] sales or [and] use tax. [tax unless the terms of the contract between the contractor and the United States Government contain title passage provisions of the Federal Acquisition Regulations where the title to the items purchased by the contractor is transferred to the United States Government on a regular, recurring, and routine basis.]

Sales of items, as the term item is defined in G.S. 105-164.3, to a contractor are exempt from sale and use tax pursuant to G.S. 105-164.13(17), when a contract between the United States Government, or its agencies and instrumentalities, and a contractor contains a title passage clause from the Federal Acquisition Regulation as set out in 48 C.F.R. 1, such that title to items purchased by the contractor for use in performing the contract, pass from the contractor to the United States Government, or its agencies and instrumentalities, prior to any use by the contractor. When the contract does not include a Federal Acquisition Regulation title-passage clause, items purchased by the contractor for use in performing the contract are subject to sales and use tax pursuant to G.S. 105-164.4.

History Note: Authority G.S. 105-164.3; 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.

17 NCAC 07B .4210 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 .4210 ~~CHEROKEE INDIAN RESERVATION~~ NATIVE AMERICAN INDIAN COUNTRY

(a) Sales by Merchants on the Eastern Band of Cherokee Indian (EBCI) Reservation:

(1) ~~Sales~~ Pursuant to G.S. 105-164.13(25), sales of tangible personal property items, as the term item is defined in G.S. 105-164.3, by merchants on the ~~Cherokee Indian~~ EBCI Reservation are exempt from sales and use ~~taxes-tax~~ when such merchants are authorized to do business on the EBCI Reservation and are paying the tribal gross receipts levy to the Tribal Council. ~~The above exemption from the tax is applicable to all sales by merchants on the Reservation~~ This exemption applies without regard to the status of the purchaser whether a purchaser is an enrolled member of the EBCI.

(2) Admission charges to an entertainment activity [sourced to] on the EBCI Reservation are exempt from sales and use tax, pursuant to G.S. 105-164.13(25), provided the retailer that offers the entertainment activity is authorized to do business on the EBCI Reservation and pays the tribal gross receipts levy to the Tribal Council. This exemption applies without regard to whether a purchaser is an enrolled member of the EBCI.

(3) For purposes of this rule, a sale occurs on the ECBI reservation when it is sourced to the reservation pursuant to G.S. 105-164.4B.

(b) Sales to Federally Recognized Native American Nations:

(1) Items Sourced to a Native American Nation's Indian Country. – ~~Sales~~ Pursuant to G.S. 105-164.13(17), retail sales of tangible personal property items to a federally recognized Native American nation or an enrolled member of the federally recognized Native American nation residing within that nation's Indian Country, as the term Indian Country is defined in 18 U.S.C. 1151, by in-state vendors or out of state vendors to the Eastern Band of Cherokee Indians or to individual Indians of the band are exempt from sales and use ~~taxes-tax~~ when delivery of the property occurs on the Reservation such items are sourced to the nation's Indian Country.

(2) Items Sourced Outside a Native American Nation's Indian Country. -- ~~Sales~~ Retail sales of tangible personal property by in-state or out of state vendors items to the Eastern Band of Cherokee Indians, a federally recognized Native American nation or to individual Indians of the band, to contractors or anyone else representing Indians an enrolled member of the federally recognized Native American nation are subject to [the applicable rates of] sales or and use taxes [tax]-tax, pursuant to G.S. 105-164.4, when delivery thereof occurs sourced outside the Reservation nation's Indian Country even though such property items may be used, or incorporated into improvements on the Reservation within the nation's Indian Country.

(c) Real Property Contracts with Federally Recognized Native American Nations: The sale of items to a real property contractor are exempt from sale and use tax, pursuant to G.S. 105-164.13(17), provided that the items are sourced to a federally recognized Native American nation's Indian Country, the purchase of the item is to fulfill a real property

1 contract with the nation or an enrolled member of the nation, and the item is used or installed within the sourced-
2 nation's Indian Country by the contractor or the contractor's subcontractor.

3 ~~[(1) — A real property contractor is the consumer of an item that the real property contractor purchases,~~
4 ~~installs, or applies the item for others to fulfill a real property contract.]~~ Contractors are users or
5 consumers of all tangible personal property which they purchase within or without this State for use
6 in the performance of contracts.

7 ~~[(2) — A real property contractor purchasing items sourced outside the nation's Indian Country]~~ Contractors
8 are ~~[is]~~ liable for remitting the applicable ~~[rates of]~~ sales or ~~[and]~~ use tax ~~[even if the real property~~
9 ~~contractor will use an item to fulfill a real property contract within the nation's Indian Country.]~~ on
10 all tangible personal property purchased within or without this State when delivery occurs off the
11 Reservation even though the contractors may use it or incorporate it in improvements on the
12 Reservation.

13 ~~[(3)]~~ Property purchased ~~[Purchases]~~ by ~~[a real property contractor of items sourced]~~ and delivered to a
14 contractor on a Reservation ~~[federally recognized Native American nation's Indian Country]~~ to be
15 incorporated in an improvement ~~[used within the nation's Indian Country]~~ to ~~[fulfill a]~~ real property
16 ~~[contract with that federally recognized Native American nation or an enrolled member of that~~
17 ~~federally recognized Native American nation]~~ is not subject to ~~[exempt from]~~ sales or ~~[and]~~ use tax.
18 Property purchased by and delivered to contractors on a reservation for use in performing a contract
19 (but where the property is not incorporated in an improvement) is subject to sales or use tax unless
20 sold by merchants on the Cherokee Indian Reservation who are authorized to do business there and
21 who pay the tribal levy on the transaction which property is, therefore, exempt under G.S.
22 105-164.13(25).

24 *History Note:* Authority G.S. 105-164.3; 105-164.4; 105-164.4B; 105-164.4H; 105-164.6; 105-164.13; 105-262;
25 105-264; /Chapter 105, Articles 39, 40, 42, 43, and 46; / 105-467; 105-468; 105-469; 105-483;
26 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;

27 *Eff. February 1, 1976;*

28 *Amended Eff. January 1, 1982-1982;*

29 *Readopted Eff. January 1, 2024.*

17 NCAC 07B .4404 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 .4404 EQUIPMENT FURNISHED WITH OPERATOR

(a) If the owner of a ~~person~~ transaction that provides equipment or other tangible personal property furnishes with an operator for a fixed or indeterminate period of time, ~~or crew to operate such property, such owner is not deemed to be renting or leasing the property but~~ is not a lease or rental, as defined in G.S. 105-164.3(121), but is rendering a service if the operator is necessary for the equipment or other tangible personal property to ~~perform as designed~~ "perform as designed." and the receipts therefrom from such services are not subject to the sales or use tax imposed by G.S. 105-164.4 unless the service is a repair, maintenance, and installation service or other taxable service. An operator is necessary for equipment or other tangible personal property to ~~perform as designed~~ "perform as designed" when the operator's presence, skill, knowledge, and expertise are necessary ~~for~~ to bring about the desired effect of the equipment or other tangible personal ~~property to perform as designed~~ property. An operator who only maintains, sets-up, ~~inspects, or monitors~~ or inspects the equipment or other tangible personal property, or any combination of such actions, is not necessary for the equipment or other tangible personal property to ~~perform as designed~~ "perform as designed."

(b) ~~A~~ For purposes of G.S. 105-164.13, a person that purchases equipment or other tangible personal property to provide a service identified in ~~paragraph~~ Paragraph (a) of this Rule is not purchasing the equipment or other tangible personal property for resale and shall pay ~~the applicable rates of~~ sales and use tax on the purchase price of the equipment or other tangible personal ~~property~~ property, pursuant to G.S. 105-164.4, as the consumer thereof.

(c) A person that provides equipment or other tangible personal property with an operator identified in ~~paragraph~~ Paragraph (a) of this Rule and leases or rents similar items of equipment or other tangible personal property shall pay ~~the applicable rates of~~ sales and use tax pursuant to G.S. 105-164.4, on the purchase price of all items of tangible personal property it purchases unless it keeps separate inventory of items purchased to lease or rent.

~~(c)~~ (d) ~~Persons purchasing~~ A person that provides the type of service described in ~~paragraph~~ Paragraph (a) of this Rule that purchases repair parts, lubricants-lubricants, and other tangible personal ~~property~~ property, or repair, maintenance, and installation services to maintain or repair equipment or other tangible personal property for use in rendering such service are liable for payment shall pay ~~the applicable rates~~ of sales or and use tax pursuant to G.S. 105-164.4, at the applicable rate on the purchase price-price of such ~~items~~ items, as the consumer of the repair parts, lubricants, other tangible personal property, or repair, maintenance, and installation services.

~~(d)~~ (e) Failure of a person to keep records that establish the ~~service is exempt from tax~~ provision of equipment with an operator is a service, subjects the person to liability for sales and use tax on the receipts derived from the transaction.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 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;

17 NCAC 07B .4503 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 .4503 EQUIPMENT AND SUPPLIES FOR LAUNDRIES: ETC.

(a) Pursuant to G.S. 105-164.13(10), sales to commercial laundries, and pressing and dry cleaning plants [establishments,] and similar businesses establishments of laundry and dry cleaning machinery used in the direct performance of the laundering or the pressing and cleaning service, as well as parts and accessories attached to such equipment and lubricants applied to such equipment, and tangible personal property listed in G.S. 105-164.13(10)a and parts and accessories thereto are exempt from sales and use tax. [Parts and accessories attached to such equipment and lubricants applied to such equipment are also exempt from sales and use tax when purchased by commercial laundries and pressing and dry cleaning establishments. In addition, certain tangible personal property listed in G.S. 105-164.13(10)a. is exempt from tax when purchased by commercial laundries and pressing and dry cleaning establishments.] The following items are exempt when sold to the herein named businesses: [Items] Examples of items exempt from sales and use tax when purchased by commercial laundries and pressing and dry cleaning establishments include the following:

- (1) washing machines, water heaters, water softener tanks, central control collection systems, pressing machines, marking machines, packaging machines, and folding machines and similar cleaning machines;
- (2) hydraulic fluids used in laundry and dry cleaning machinery;
- (3) boiler compounds used in boilers furnishing water or steam to the laundering, pressing or cleaning machinery;
- (4) steam hose leading directly from the boiler to the laundering and dry cleaning machinery;
- (5) press pads and covers for laundering and dry cleaning machinery;
- (6) baskets, hampers, casters, or other containers used between the laundering and cleaning processes to transport or contain garments being laundered or cleaned;
- (7) carbon and carbon filters used for reprocessing cleaning compounds;
- (8) lint rolls and refills therefore; refills;
- (9) conveyors used to transport garments along the laundering, cleaning, and pressing line during the process but not conveyors used before the laundering, cleaning, and pressing process begins or after it has been completed;
- (10) boiler room machinery, including valves, fittings and water pumps; and
- (11) transformers located on or adjacent to motors which that power machinery used in the direct performance of laundering and cleaning services.
- (12) lubricants used in laundering, pressing, or cleaning machines;
- (13) fuel and piped natural gas used in the direct performance of the laundering or pressing and cleaning service, but not electricity;

1 ~~[(14) — tags or labels used to identify garments being laundered or dry cleaned that are applied directly to~~
2 ~~garments in the direct performance of laundering or the pressing and cleaning service;]~~

3 ~~[(15) — bags, paper, and hangers applied directly to garments in the direct performance of laundering or the~~
4 ~~pressing and cleaning service; and]~~

5 ~~[(16) — starch, soaps, detergents, cleaning fluids, and other compounds or chemicals applied directly to~~
6 ~~garments in the direct performance of laundering or the pressing and cleaning service;]~~

7 (b) ~~The following items are~~Items ~~not classified as laundering, pressing or~~not classified as laundering and dry cleaning machinery or
8 ~~parts and or accessories thereto and are, therefore, are subject to the [general State, and] applicable statutory state and~~
9 ~~local [and transit rates of] sales or and use tax [tax.] tax, pursuant to G.S. 105-164.4. [Items]~~Examples of items ~~not~~
10 classified as laundering and dry cleaning machinery or parts or accessories include the following: when sold to the
11 herein named businesses:

12 (1) coin operated musical devices, amusement devices, coin changers, vending ~~machines~~machines, and
13 repair or replacement parts for such machines;

14 (2) baskets, hampers, casters, or containers used for general purposes such as to pick up soiled garments
15 or deliver clean garments;

16 (3) smoke stacks, including ~~the any attached steel ladders attached thereto;~~ladders;

17 (4) wiring used in the general wiring ~~system and the transformers used in connection therewith;~~system;

18 (5) sewing machines used in repairing or altering the customers' property and the replacement or repair
19 parts to ~~such the~~ machines;

20 (6) tailoring supplies such as buttons, ~~threads~~threads, and zippers for use in repairing or altering
21 garments for which no charge is made to the customer;

22 (7) letterheads, monthly reports, envelopes and other office supplies;

23 (8) protective clothing for employees such as rubber gloves, aprons, protective shoes, etc. whether paid
24 for by the employer or the employee;

25 (9) steam hose or pipe used in the general heating system;

26 (10) janitorial supplies;

27 (11) office furniture, fixtures and equipment, including cash registers;

28 (12) uniforms for employees;

29 (13) advertising materials;

30 (14) structural or building materials, supplies, fixtures and equipment ~~which that~~ shall become a part of
31 or be annexed to any building or structure being erected, altered or repaired;

32 (15) equipment used in the storage process to revitalize furs;

33 (16) conveyors used before or after the laundering, ~~pressing~~pressing, and cleaning process to transport
34 ~~garments~~garments, but not those conveyors used to move the garments along the laundering,
35 pressingpressing, and cleaning line;

36 (17) ~~lubricants used in laundering, pressing, or cleaning machines.~~

37 (18)(17) transformers used in connection with general wiring and power supply; and

1 ~~(19)~~(18) water softener chemicals.

2
3 *History Note:* *Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; [Chapter 105, Articles 39,*
4 *40, 42, 43, and 46;]Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; 105-467;*
5 *105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-*
6 *538;*
7 *Eff. February 1, 1976;*
8 *Amended Eff. August 1, 2009; October 1, 1993; October 1, 1991; January 1, ~~1982-1982;~~*
9 *Readopted Eff. January 1, 2024.*
10

17 NCAC 07B .4609 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 .4609 FIRE TRUCKS AND EQUIPMENT

~~[(a) Fire Trucks Sold to Municipalities, Counties, Rural Fire Protection Districts, and Volunteer Fire Departments. -- Sales of fire trucks to municipalities, counties, rural fire protection districts, and volunteer fire departments organized under Chapter 69 of the North Carolina General Statutes are exempt from sales and use tax and subject to the three percent (3%) highway use tax unless exempt under Article 5A of Chapter 105 of the North Carolina General Statutes. The highway use tax is administered by the Division of Motor Vehicles. The highway use tax shall be paid to the Commissioner of Motor Vehicles by the dealer, the purchaser, or other applicant for a certificate of title at the time of making application.]~~

~~[(b)](a) Firefighting Equipment. -- Retail sales of items such as axes, brooms, buckets, shovels, ropes, general purpose tools, gas masks, first aid kits, blankets, portable pumps, and portable fire extinguishers and like articles [similar items] 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. Such items are subject to sales and use tax even if they are sold with fire trucks, as the items are considered to be other fire fighting firefighting equipment rather than accessories to the fire truck, truck, and sales of such items at retail are subject to the applicable statutory state and local sales or use tax without any maximum tax applicable thereto notwithstanding such sales are made to the above type customers or that the items are sold with fire trucks.~~

~~[(c)](b) Privately Owned Fire Trucks. -- Privately Retail sales of privately owned fire trucks or vehicles on which that have permanently attached fire fighting firefighting equipment has been mounted that and are used only for fire fighting firefighting purposes are classified as special mobile equipment, not a motor vehicle as defined in G.S. 105-164.3, and sales thereof are not exempt under G.S. 105-164.13(32), but 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.~~

~~[(d) Repair Parts and Services for Fire Trucks. --] Sales [Retail sales] of repair parts [and repair, maintenance, and installation services] to municipalities, counties, rural fire protection districts, and industrial users for use in repairing fire trucks are subject to the general State and applicable statutory state and local and transit rates of sales or [and] use tax.~~

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 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. September 1, 2006; October 1, 1993; October 1, 1991; July 1, 1990; January 3, 1984.1984;

Readopted Eff. January 1, 2024.

17 NCAC 07B .4701 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 .4700 - PRINTERS AND NEWSPAPER OR MAGAZINE PUBLISHERS

17 NCAC 07B .4701 COMMERCIAL PRINTERS AND PUBLISHERS

(a) Pursuant to G.S. 105-164.4, retail sales of tangible personal property items, as the term item is defined in G.S. 105-164.3, by commercial printers or publishers are subject to the applicable statutory state and local rates of sales or and use tax unless the sales are subject to a lesser rate of tax under the provisions of G.S. 105-164.4(a) or are exempt under the provisions of G.S. 105-164.13, [by statute.] including subscriptions, plates and dies sold to customers, book binding, and other repair, maintenance, and installation services.

(1) Subscriptions. Retail sales of advertising circulars, catalogues, booklets, pamphlets, forms, tickets, letterheads, envelopes, and similar items and retail sales of books, magazines, periodicals, newspapers and other publications are subject to the general State, and applicable local and transit rates of sales and use tax unless the sales are exempt from tax under G.S. 105-164.13. When publications are sold by subscription, the tax accrues at the time the subscription is accepted.

(2) Plates and Dies. When, at the request of the customer, commercial printers purchase custom-made printing plates and dies for use in the direct production of the printed matter and title to the custom-made printing plates and dies passes to the printer's customer, such items can be purchased by the commercial printer exempt from sales and use tax in accordance with 17 NCAC 07B .0106. The printer is liable for collecting and remitting the general State, and applicable local and transit rates of sales and use tax on the sales price of the printing plates and dies. The printer's sales invoices and records shall show that the plates and dies are actually sold to the customer.

(3) Book Binding and other Repair, Maintenance, and Installation Services. The gross receipts derived from repair, maintenance, and installation services, including book binding and imprinting, are subject to the general State, and applicable local and transit rates of sales and use tax unless exempt by statute.]

(b) Exempt Sales by Commercial Printers and Publishers. The following transactions are also exempt from sales or use tax:

(1) charges [Charges] for advertising space in newspapers, magazines and other publications; [publications.]

(2) charges [Charges] made by printers for imprinting or binding books or forms or other similar items which are owned by their customers; [when such items are purchased for resale in accordance with 17 NCAC 07B .0106.]

(3) Printed material sold by a retailer when the printed material is delivered by the retailer in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the

1 purchaser's designee outside this State, and the purchaser does not subsequently use the printed
2 material in this State.]

3 (3)(4) Printed material which is sold by a retailer to a purchaser within or without this state when the
4 printed material is delivered by the printer directly to a mailing house [house,] or to a common
5 carrier [carrier,] or to the United States Postal Service for delivery to a mailing house in this state
6 which [State that] will preaddress and presort the material and deliver it to a common carrier or to
7 the United States Postal Service for delivery to recipients outside this state [State] designated by the
8 purchaser.

9 (A) — Sales of printed material by a retailer located within or without this state which is delivered
10 directly to the purchaser in this state for the original purpose of preparing and delivering
11 the printed material to the United States Postal Service or a common carrier for delivery to
12 prospective customers or other recipients outside this state are exempt from sales and use
13 tax provided the purpose is consummated. A purchaser of the printed material for
14 preparation and delivery to prospective customers and other recipients outside this state
15 must furnish the vendor a written statement certifying that the printed material is being
16 purchased for use in a mailing program which is in place at the time of purchase; otherwise,
17 the vendor must collect and remit the tax on the sales. Sales of printed materials to a user
18 or consumer in this state to be placed in the purchaser's inventory for use as needed are
19 subject to sales or use taxes notwithstanding that all or a portion of the printed material
20 may be delivered to the United States Postal Service or a common carrier for delivery to
21 prospective customers or other recipients outside this state.

22 (B) — A retailer who sells printed material delivered to a common carrier or the United States
23 Postal Service for delivery to the purchaser at a point within this state who prepares the
24 material to be mailed to prospective customers or other recipients without charge and
25 transports the material outside this state to be delivered to the United States Postal Service
26 or a common carrier or to a mailing house outside this state for delivery to designated
27 recipients is liable for sales or use tax except as provided in this Rule.

28 (b) Retail sales of advertising circulars, catalogues, booklets, pamphlets, forms, tickets, letterheads, envelopes and
29 similar items and retail sales of books, magazines, periodicals, newspapers and other publications are subject to the
30 applicable statutory state and local sales or use tax unless the sales are exempt from tax under the provisions of G.S.
31 105-164.13. When publications, other than magazines, are sold by subscription, the tax accrues at the time the
32 subscription is accepted.

33 (e)(b) Exempt Purchases of Mill Machinery or Mill Machinery Parts or Accessories by Commercial Printers or
34 Publishers. -- Sales to [Purchases] Pursuant to G.S. 105-164.13(5e), purchases by commercial printers and publishers
35 of mill machinery and or mill machinery equipment and parts therefor and or accessories thereto for use directly in the
36 production [phase, as the term "production" is defined in Section 57 of the Sales and Use Tax Bulletins,] phase of
37 printing and publishing, are exempt from sales and use tax. For purposes of this Rule, "Production" as a phase of

1 industrial or manufacturing operations shall mean all steps performed in processing and refining rooms, and in other
2 quarters and departments of a plant, where conditioning, treating, or other operations are done on ingredient materials
3 as an actual routine on the assembly or processing line turning out a finished product of manufacture for sale. The
4 “Production” phase also includes the following:

5 (1) The movement of raw materials or ingredients from an inventory or a stockpile located on the
6 premises of the manufacturing facility to the assembly or processing line.

7 (2) The movement of goods in process along the assembly or processing line.

8 (3) The movement of manufactured products from the assembly or processing line into shipping or
9 storage areas and yards located on the premises of the manufacturing facility.

10 (4) The work of experimentation and research performed on the manufactured products.

11 “Production” does not include any activity connected with the movement of raw materials or ingredients into inventory
12 nor does it include “distribution” which is any activity connected with the movement of manufactured products within
13 storage warehouses, shipping rooms, and other such finished product storage areas and the removal of such products
14 therefrom for sale or shipment, or “administration” which is any administrative work of offices, promotion of sales,
15 and collection of accounts. Items that ~~commercial printers and publishers may purchase exempt from sales and use~~
16 ~~tax as~~ are mill machinery or mill machinery parts or accessories when purchased by a commercial printer or publisher
17 include the following:

18 (1) Machinery and equipment and parts or accessories thereto for use directly in the production of
19 newspapers, ~~magazines~~ magazines, and other printed ~~matter~~ material for sale are exempt from sales
20 tax sale.

21 (2) ~~Included herein are custom~~ Custom made plates and dies for use directly in the production of
22 newspapers, magazines, and other printed material for sale when title ~~thereto~~ to the plates and dies
23 does not pass to the printers' customers.

24 (3) ~~Sales to commercial printers and publishers of tangible~~ Tangible personal property such as wood and
25 metal which is used to fabricate plates and dies for use in the production of printed ~~matter~~ material
26 for sale are exempt from sales tax when title to the plates and dies does not pass to the printers'
27 customers.

28 (4) ~~Sales to commercial printers and publishers of machinery,~~ Machinery, equipment, film, and similar
29 ~~items of other~~ tangible personal property for use or consumption directly in that are used or consumed
30 by the printer in the production of the plates and dies are also exempt from sales tax that are directly
31 used in the production of newspapers, magazines, and other printed material for sale.

32 (5) Lithographic and gravure plates and dies retained by the printer or publisher that are directly used
33 in the production of newspapers, magazines and other printed material for sale. It is a printing trade
34 practice that title to lithographic and gravure plates and dies is ~~be~~ retained by the printer or
35 publisher. Unless it is otherwise agreed in writing, the items purchased by the printer or
36 publisher ~~these plates and dies~~ are exempt from sales tax. ~~tax as items purchased by the printer or~~
37 ~~publisher for use.~~

- (6) Photo engravings, electrotypes, and lithographs for direct use in printing tangible personal property for sale.
- (7) Printing presses for direct use in printing tangible personal property for sale.
- (8) Cushion paper, cover paper, and tissue for use in building up the printing surface of the press for direct use in printing tangible personal property for sale.
- (9) Offset or direct relief duplicating machines and repair parts or accessories for such machines, including offset blankets and plates.
- (10) Positives and negatives for use in preparing plates for use in the printing process. [Purchases of such items by non-commercial printers for use or consumption are subject to the general State, and applicable local and transit rates of sales and use tax.]
- (11) Chemicals used to clean printing machinery. [Chemicals used for sanitation purposes are subject to the general State, and applicable local and transit rates of sales and use tax.]
- (12) Metal for making type.
- (13) Computers used in the printing process. [Computers used for administrative purposes are subject to the general State, and applicable local and transit rates of sales and use tax.]
- (14) Mounting tape for use in the preparation of plates.
- (15) Printing machines when the machines are used to produce newspapers or other printed material for sale. [Purchases of printing machines for use in printing customers' addresses and addressograph plates for use in the mailing and shipping process are subject to the general State, and applicable local and transit rates of sales and use tax.]
- (16) Photographs to be reproduced in newspapers. [These are classified as accessories to the manufacturing process.]

~~(d) Sales to commercial printers of custom made plates and dies for resale are exempt from sales or use tax when supported by Streamlined Sales and Use Tax Agreement Certificates of Exemption, Form E-595E. Sales to commercial printers of tangible personal property as wood and metal which becomes a component part of printing plates produced by the printers for sale to customers are likewise exempt from sales or use tax when supported by certificates of exemption. However, sales to commercial printers of machinery, equipment, film, and similar items of tangible personal property which do not enter into or become a component part of the plates and dies but are used or consumed by the printer in the direct production of the plates and dies are exempt from sales tax. When, at the request of the customer, commercial printers purchase custom made printing plates and dies for use in the direct production of the printed matter or when they purchase wood and metal which becomes a component part of printing plates and dies fabricated by the printer for use in the direct production of printed matter and title to the plates and dies passes to the printers' customers, the items may be purchased for resale. The printer is liable for collecting and remitting the applicable statutory state and local sales or use tax on the total retail sales price of the plates and dies including charges for tangible personal property and art work or any other services that go into the manufacture or delivery thereof. In such cases, the printer's sales invoices and records must show that the plates and dies are actually sold to the customer; otherwise, the items are deemed to have been used by the printer, and the cost price of same is exempt from sales tax.~~

1 (e)(d) Sales to commercial printers and publishers of tangible personal property which is not resold as such or
2 which resold, does not become an ingredient or component part of the tangible personal property which they produce
3 for sale sale, or which and is not production mill machinery or mill machinery parts therefor and or accessories
4 thereto are subject to the general State, and applicable statutory state and local and transit rates of sales or and
5 use tax.

6 (f)(e) In-House Printers. -- The provisions of Paragraph (d)(e)(b) of this Rule have no application do not apply to
7 sales of printing equipment and supplies to firms which businesses that operate print shops for the production of printed
8 matter for their own use and not for sale. Purchases of printing equipment and supplies by such firms businesses are
9 subject to the general State, and applicable statutory state and local and transit rates of sales or and use tax.

10
11 History Note: Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-164.13; 105-262; 105-264; Chapter 105,
12 Articles 39, 40, 42, 43, and 46; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
13 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-
14 537; 105-538;

15 Eff. February 1, 1976;

16 Amended Eff. October 1, 2009; April 1, 2001; October 1, 1993; June 1, 1992; October 1, 1991;
17 February 1, 1988; 1988;

18 Readopted Eff. January 1, 2024.

Burgos, Alexander N

From: Peaslee, William W
Sent: Monday, December 11, 2023 3:11 PM
To: Lansford, Laura L; Ascher, Seth M; Burgos, Alexander N
Cc: Furuseth, Andrew O; Jacobs, Tenisha S
Subject: RE: [External] Request for oral comment - 12/14/2023 RRC meeting

Received, thank you.

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: Monday, December 11, 2023 3:09 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>
Cc: Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>
Subject: [External] Request for oral comment - 12/14/2023 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 12/14/2023 Rules Review Commission meeting.

Either myself, or Tenisha Jacobs, the Department's General Counsel, may wish to address the RRC to speak in favor on Sales and Use Tax Rules on the Commission's 12/14/2023 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

Subject: FW: [External] RE: where we are

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Monday, December 11, 2023 2:57 PM

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

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>

Subject: RE: [External] RE: where we are

That is correct. Thank you.

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: Monday, December 11, 2023 2:54 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>

Subject: [External] RE: where we are

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 Bill,

The only difference I have between your list below and mine, is that I have Rule .4503 in the list of rules objected to in November, along with .4203, .4210, .4404, .4609, .4701.

All the rules you listed for the December RRC meeting match what I have as well.

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

Burgos, Alexander N

From: Peaslee, William W
Sent: Monday, December 11, 2023 12:28 PM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Ascher, Seth M
Subject: where we are

Hi Laura,

Just to make sure we are on the same page, we have not received, nor did we expect, revisions to the DOR rules objected to in November. (.4203, .4210, .4404, .4609, .4701) Those will be no action items at the December meeting then.

For the December RRC meeting, I have issued opinions on .4415, .4614, .4707, and .5002.

I am recommending approval on .4201, .4202, .4206, .4510, .4708, .4801, .5001, and .5004 as revised.

I think that covers the outstanding rules.

Do you concur?

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.

Burgos, Alexander N

From: Peaslee, William W
Sent: Monday, December 11, 2023 12:08 PM
To: Lansford, Laura L; Rules, Oah
Cc: Ascher, Seth M; Burgos, Alexander N; Furuseth, Andrew O; Jacobs, Tenisha S
Subject: RE: [External] DOR response to RFC on 17 NCAC 07B .5004

Thank you for your email.

It is my intention to recommend approval as revised.

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: Monday, December 11, 2023 12:02 PM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Peaslee, William W <bill.peaslee@oah.nc.gov>; Ascher, Seth M <seth.ascher@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 on 17 NCAC 07B .5004

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
PO Box 871
Raleigh, NC 27602-0871
Phone: 919.814.1088
Fax: 919.715.0295

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

Subject: FW: [External] RE: 17 NCAC 07B .5004

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Monday, December 11, 2023 10:11 AM

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

Cc: Ascher, Seth M <seth.ascher@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] RE: 17 NCAC 07B .5004

Hi Laura,

Thank you for your email.

So essentially the rule is saying that corrective eyeglasses and corrective contacts are “exempt items” as used in G.S. 105-164.4D, presumably G.S. 105-164.4D(a)(1)(c).

Please submit the rule in rule format as revised. It is my intention to recommend approval if submitted as revised.

Thank you. I’m glad to have another one on which I can recommend approval.

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: 17 NCAC 07B .5004

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

Sent: Monday, December 11, 2023 9:35 AM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Ascher, Seth M <seth.ascher@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] RE: 17 NCAC 07B .5004

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Hi Bill,

Upon review the Department would consider using the suggested rule language with the following edits, highlighted in yellow:

- (a) The sale to customers of solutions for cleaning eyeglasses, eyeglass cleaning cloths or wipes, eyeglass cases, eyeglass chains or cords, and similar eyeglass supplies are exempt from sales and use tax pursuant to ~~G.S. 105-164.14(12)~~, G.S. 105-164.13(12), provided that:
- (1) The items are sold with corrective eyeglasses and the items are not billed separate and apart from the corrective eyeglasses, ~~or~~and;
 - (2) The sale is a bundled transaction pursuant to G.S. 105-164.4D
- (b) The sale to customers of aseptors, salt tablets, squeeze bottles, carrying cases, contact lens instruction booklets, contact lens care kits, and similar contact lens supplies are exempt from sales and use tax pursuant to ~~G.S. 105-164.14(12)~~, G.S. 105-164.13(12), provided that:
- (1) The items are sold with corrective contact lens and the items are not billed separate and apart from the contact lens, ~~or~~and;
 - (2) The sale is a bundled transaction pursuant to G.S. 105-164.4D

Please let me know the next steps for getting this rule closer to approval!

Thanks Bill!

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

Burgos, Alexander N

Subject: FW: 17 NCAC 07B .5004

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Friday, December 8, 2023 2:51 PM

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

Cc: Ascher, Seth M <seth.ascher@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: 17 NCAC 07B .5004

Please correct me if I am wrong, but does not the following language state the same as Rule .5004 just more succinctly and clearly? Is this something the Secretary would consider?

- (a) The sale to customers of solutions for cleaning eyeglasses, eyeglass cleaning cloths or wipes, eyeglass cases, eyeglass chains or cords, and similar eyeglass supplies are exempt from sales and use tax pursuant to G.S. 105-164.14(12), provided that:
- (1) The items are sold with corrective eyeglasses and the items are not billed separate and apart from the corrective eyeglasses, or;
 - (2) The sale is a bundled transaction pursuant to G.S. 105-164.4D
- (b) The sale to customers of aseptors, salt tablets, squeeze bottles, carrying cases, contact lens instruction booklets, contact lens care kits, and similar contact lens supplies are exempt from sales and use tax pursuant to G.S. 105-164.14(12), provided that:
- (1) The items are sold with corrective contact lens and the items are not billed separate and apart from the contact lens, or;
 - (2) The sale is a bundled transaction pursuant to G.S. 105-164.4D

Please respond no later than 11:00 am Monday. 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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Burgos, Alexander N

Subject: FW: [External] RE: 17 NCAC 07B .5002
Attachments: Revenue Dept Staff Opinion 17 NCAC 07B .5002 122023.doc

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Thursday, December 7, 2023 4:59 PM
To: Lansford, Laura L <Laura.Lansford@ncdor.gov>
Cc: Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: 17 NCAC 07B .5002

Good afternoon,

Attached please find the staff opinion on the above captioned revised rule.

As always if you have any questions please feel free to contact me.

Thank you.

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, December 5, 2023 11:09 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>
Subject: [External] RE: 17 NCAC 07B .5002

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Bill,

Sorry for the delay in getting this response to you. Unfortunately, this email got over-looked amongst all my other rules related emails.

We are trying to say that frames and repair or replacement parts for non-corrective eyeglasses are not prosthetic devices, however there are instances where they might be.

For example, this issue comes up with post mydriatic spectacles. These are generally used after a person's eyes get dilated during eye exams or other optical procedures. However, some people like to use post mydriatic spectacles while driving, as they fit over a person's corrective eyeglasses. If these types of non-corrective eyewear are provided as part of an eye exam or procedure, they would be tax exempt as a prosthetic device, however if a customer who wants to use them as sunglasses over their corrective lenses, is purchasing repair or replacement parts for them, they are considered non-corrective and not exempt as a prosthetic device, and therefore subject to tax.

I hope this is helpful.

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

Burgos, Alexander N

From: Peaslee, William W
Sent: Monday, November 20, 2023 5:08 PM
To: Lansford, Laura L
Cc: Burgos, Alexander N
Subject: 17 NCAC 07B .4707 staff opinion
Attachments: Revenue Dept Staff Opinion 17 NCAC 07B .4707 122023.doc

Good afternoon,

Attached please find a staff opinion concerning the above captioned rule. Which will be considered at the December 2023 RRC meeting.

As always if you have any questions please feel free to contact me.

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] Revisions to Rules objected to by RRC at 10/19/2023 meeting

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Monday, November 20, 2023 4:42 PM

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

Cc: Ascher, Seth M <seth.ascher@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>; Rules, Oah <oah.rules@oah.nc.gov>

Subject: RE: [External] Revisions to Rules objected to by RRC at 10/19/2023 meeting

Good afternoon:

It is my present intention to recommend approval of 17 NCAC 07B .4201, .4202, .4510, .4708, .4801, and .5001 at the December RRC meeting.

As always if you have any questions, please do not hesitate to contact me.

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

From: Peaslee, William W
Sent: Friday, November 17, 2023 9:44 AM
To: jloper@loper-law.com
Cc: Burgos, Alexander N
Subject: 21 NCAC 42D .0102 objection letter
Attachments: 11.2023 Optometry Examiners.docx; 10.2023 Staff Opinion 21 NCAC 42D.0102.doc

Good morning,

Attached please find the Rules Review Commission's notice of objections to the above captioned rules.

As always if you have any questions or concerns, please do not hesitate to contact me.

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.

Burgos, Alexander N

Subject: FW: [External] DOR response to draft Staff Opinion on Rules 17 NCAC .4206, .4415 .4614, and .5002
Attachments: 17 NCAC 07B .4206.docx

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, November 17, 2023 12:07 PM
To: Rules, Oah <oah.rules@oah.nc.gov>; Lansford, Laura L <Laura.Lansford@ncdor.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: FW: [External] DOR response to draft Staff Opinion on Rules 17 NCAC .4206, .4415 .4614, and .5002

It is my intention to recommend approval to Rule .4206 as revised at the December RRC meeting.

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.

17 NCAC 07B .4206 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 .4206 FED SAVINGS/LOAN ASSOC, NATL ~~BANKS/ST~~ BANKS/ST AND STATE
BANKS, CHARTERED CREDIT UNIONS**

(a) Sales of tangible personal property to ~~to, or purchases by,~~ federal savings and loan associations and national banks for use or consumption ~~of items, as the term item is defined in G.S. 105-164.3,~~ are subject to the applicable statutory 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.

(b) Sales of tangible personal property to ~~to, or purchases by,~~ state banks and state chartered credit unions ~~for use or consumption of items~~ are subject to the applicable statutory state ~~State~~ and local ~~rates of~~ sales or ~~and~~ use tax. ~~tax, unless exempt by statute.~~

For purposes of G.S. 105-164.13(17), sales which a state would be without power to tax under the Constitution or laws of the United States or under the Constitution of this State do not include the following sales:

(a) Sales to federal savings and loan associations and national banks.

(b) Sales to state banks and state chartered credit unions.

History Note: Authority G.S. ~~[105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-264.26; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; Chapter 105, Articles 39, 40, 42, 43, and 46; 12 U.S.C. 1464(h); 12 U.S.C. 548;~~
Eff. February 1, 1976;
Amended Eff. September 1, 2006; January 1, 1995; October 1, 1993; October 1, ~~1991~~ 1991;
Readopted Eff. January 1, 2024.

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

17 NCAC 07B .4201 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 .4200 - SALES TO THE UNITED STATES GOVERNMENT OR AGENCIES THEREOF

17 NCAC 07B .4201 IN GENERAL

(a) Sales made directly to the United States Government, or any qualifying agency or instrumentality thereof, are not subject to the sales ~~or~~ and use ~~tax-tax~~, pursuant to G.S. 105-164.13(17). Qualifying United States Government agencies [and instrumentalities] are divisions of the federal [government]government. Qualifying United States instrumentalities are non-governmental agencies that act independently and whose obligations are backed by the federal government, whose enabling legislation or charter is [created]to provide a necessary public service and are immune from sales and use tax under federal law. In order for a transaction to be a sale to the United States Government, the government or qualifying agency or instrumentality thereof, the entity involved must make the shall purchase of the property, obtain title to the property before or at the time it is delivered, and paythe item directly to from the vendor the purchase price of such property or use a government bankcard to pay the vendor the purchase price of such property-retailer and make payment directly to the retailer with its own funds. For example, meals and lodging billed to and paid for by the federal government are not subject to sales and use tax, however meals and lodging billed to and paid for by a federal employee who is subsequently reimbursed by the federal government are subject to sales and use tax.

(b) ~~Nontaxable federal~~ [Qualifying]Examples of qualifying United States Government agencies and instrumentalities thereof [that are not subject to sales and use tax] include the United States Postal Service, Departments of Defense, [Army, Navy and Air Force,]United States Armed Forces, [United States]federally operated hospitals, American Red Cross, federal reserveFederal Reserve banks, federal land banks, federal housing projects, federal housing authorities, United States Postal Service, or any other department ~~or departments~~ of the federal government whose activities are directly under federal control and whose purchases are paid for from the federal treasury.

(c) Sales made to the following organizations shall not be subject to sales and use tax, pursuant to G.S. 105-164.13(17), provided that the organization is authorized by the regulations of the Departments of Defense or a branch of the United States Armed Forces: [Army, Navy and Air Force]United States Armed Forces Activities Funds, post exchanges, officers' mess funds, noncommissioned officers funds and other voluntary unincorporated organizations of [Army, Navy, Marine Corps, Air Force, or Coast Guard personnel]United States Armed Forces personnel. [authorized by regulations issued by the Departments of Defense, Army, Navy or Air Force are likewise exempt fromnot subject to sales and use tax.]

*History Note: Authority G.S. 105-164.13; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. August 1, 1988-1988;
Readopted Eff. January 1, 2024.*

17 NCAC 07B .4202 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 .4202 EXEMPT SALES TO THE UNITED STATES GOVERNMENT

(a) ~~Purchase Requisitions:Retailer Records. -- A vendor making~~retailer that makes sales directly to the United States Government, or ~~any a~~qualifying agency or instrumentality thereof, ~~that issues purchase requisitions or affidavits must obtain and keep~~shall retain copies of such ~~any~~ Certificates of Exemption, Form E-595E, purchase requisitions or ~~affidavits~~affidavits, signed by the purchasing officer stating that such sales are being made directly to the United States Government or an agency or instrumentality thereof or other informationdocumentation provided to substantiate the exemption from sales and use ~~tax,~~tax, pursuant to G.S. 105-164.13(17). Qualifying United States Government agencies are divisions of the federal government and qualifying instrumentalities are non-governmental agencies that act independently and whose obligations are backed by the federal government, whose enabling legislation or charter is to provide a necessary public service and are immune from sales and use tax under federal law. CopiesPursuant to G.S. 105-164.22, copies of such purchase requisitions or affidavits ~~must~~the documentation be retained by the vendor in his files for three years following the date of sale and ~~must~~shall be available for inspection by the Secretary of Revenue or ~~her~~the Secretary's agents upon request. Documentation shall be kept until the statute of limitations to request a refund and to be issued a proposed assessment have expired, as set out in G.S. 105-241.6 and G.S. 105-241.8.

(b) United States Government Credit Card Program – GSA ~~Smartpay:Smartpay.~~ -- Under the program, credit cards may be centrally billed or individually billed.~~Card designs may be viewed on the following Internet website: <http://www.gsa-smartpay.org/gsa-howidentify.html>.~~

(1) ~~Fleet Cards: All Federal Government fleet cards are centrally billed. This means that all charges are billed directly to and paid directly by the Federal Government and are exempt from the general rate of State tax and any applicable local sales and use tax.~~Centrally billed charges are billed directly to and paid directly by the United States Government and are exempt from sales and use ~~tax-tax,~~tax, pursuant to G.S. 105-164.13(17).

(2) ~~Purchase Cards: All Federal Government purchase cards are centrally billed. This means that all charges are billed directly to and paid directly by the Federal Government and are exempt from the general rate of State tax and any applicable local sales and use tax.~~Individually billed charges are billed to and paid by the federal employee who is then reimbursed by the United States Government. Individually billed charges are subject to ~~the applicable rates of]~~sales and use ~~tax.]tax,~~tax, pursuant to G.S. 105-164.4.

(3) ~~Travel Cards: Federal Government travel cards may be centrally billed or individually billed. Individually billed charges are billed to and paid by the Federal employee who is then reimbursed by the Federal Government. These charges are subject to the general rate of State tax and any applicable local sales and use tax. Centrally billed charges are billed directly to and paid directly~~

1 by the Federal Government and are exempt from to the general rate of State tax and any applicable
2 local sales and use tax.

3 (4) ~~Integrated Cards: Federal Government integrated cards include fleet, travel, purchase transactions~~
4 ~~or any combination thereof and offer the Federal Government a single card for all of its purchases.~~
5 ~~This card is in use only at the Department of the Interior. All fleet and purchase type transactions~~
6 ~~on an integrated card are centrally billed, and travel type transactions may be centrally billed or~~
7 ~~individually billed. Centrally billed charges are billed directly to and paid directly by the Federal~~
8 ~~Government and are exempt from the general rate of State tax and any applicable local sales and~~
9 ~~use tax. Individually billed charges are billed to and paid by the Federal employee and then~~
10 ~~reimbursed by the Federal Government. These charges are subject to the general rate of State tax~~
11 ~~and any applicable local sales and use tax.~~

12 (c) [Other]Non-GSA Smartpay credit card programs implemented by qualifying agencies or instrumentalities of the
13 United States Government are exempt from sales and use [tax]tax, pursuant to G.S. 105-164.13(17), when the charges
14 are centrally billed and directly paid by the qualifying agency or instrumentality.

15
16 *History Note: Authority G.S. 105-164.4; 105-164.13; 105-164.22; 105-262; 105-264; Article 39; Article 40;*
17 *Article 42; Article 43; Article 44;*
18 *Eff. February 1, 1976;*
19 *Amended Eff. September 1, 2006; April 1, 1997; January 1, 1995; October 1, 1993; October 1,*
20 *1991; August 1, 1988-1988;*
21 *Readopted Eff. January 1, 2024.*
22

1 17 NCAC 07B .4510 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 .4510 INDEPENDENT CLEANING SOLICITORS**

5 (a) Independent Cleaning Solicitors. -- For purposes of this Rule, an independent cleaning solicitor is a person engaged
6 in the business of soliciting laundry, dry cleaning, or hat blocking services to customers but engages another business
7 to perform the laundering, dry cleaning, or hat blocking.

8 (b) Sales by Independent Cleaning Solicitors. -- An independent operator cleaning solicitor that owns his truck and
9 solicits business but engages a laundry, dry cleaning, or hat blocking firm or similar type business to perform the
10 laundering, cleaning, or other service making sales is a retailer, as defined in G.S. 105-164.3, and is liable for collecting
11 and remitting the [general State, and applicable statutory state and local [and transit rates of] sales or and use tax on
12 his their gross receipts receipts derived from laundry, dry cleaning, or hat blocking services it [solicits,] solicits,
13 pursuant to G.S. 105-164.4.

14 (c) Purchases by Independent Cleaning Solicitors. -- The purchase of laundry, dry cleaning, or hat blocking services
15 by an independent cleaning solicitor to sell to its customers from a company that performs the laundering, cleaning,
16 or other service is [a sale for resale,] exempt as a wholesale sale, pursuant to G.S. 105-164.13(61b). [The
17 independent] Independent cleaning [solicitor] solicitors shall comply with 17 NCAC 07B .0106 when [making such a
18 purchase,] purchasing laundry, dry cleaning, or hat blocking services, for the purpose of resale. If the solicitor is not
19 registered with the Department of Revenue for remitting the tax on his gross receipts, the firm performing the
20 laundering, cleaning or similar type services shall collect and remit the tax on the total charge for the services
21 performed for the independent operator without any deduction of any allowance to the solicitor. The firm performing
22 the service shall secure from the solicitor a Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form
23 E-595E, which shall be accepted as evidence that the solicitor is registered for payment of the tax and as authority for
24 not charging tax on the gross receipts from the service performed for the solicitor.

25
26 *History Note: Authority G.S. 105-164.4; 405-164.5; 105-164.13; 105-262; 105-264; [Chapter 105, Articles 39,*
27 *40, 42, 43, and 46;] Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; 105-467;*
28 *105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-*
29 *538;*

30 *Eff. February 1, 1976;*

31 *Amended Eff. August 1, 2009; October 1, 1993-1993;*

32 *Readopted Eff. January 1, 2024.*
33

17 NCAC 07B .4707 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 .4707 PRINTING CHEMICALS

(a) Pursuant to G.S. 105-164.13, sales of the following chemicals to commercial printers or publishers which enter into or become an ingredient or component part of printed matter which such purchasers sell are exempt from sales and use tax:

(1) Chemicals that enter into or become an ingredient or component part of printed material for resale.

(2) Chemicals used to clean printing machinery.

(b) Sales of chemicals not listed in paragraph (a), including chemicals used by commercial printers and publishers for sanitation, cleaning, disinfecting, or sanitizing purposes, are subject to the applicable statutory state [general State] and [applicable] local [and transit rates of] sales or and use tax, pursuant to G.S. 105-164.4.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-164.28; 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.

17 NCAC 07B .4708 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 .4708 POSTAGE CHARGES BY PRINTERS

When ~~[The amount]~~ a printer purchases ~~[charges its customers for]~~ postal cards or stamped envelopes and prints and sells them to customers for use, the printer is liable for collecting and remitting the applicable statutory state and local sales or use tax on the charge to the customer; ~~[that are printed and sold for use by the customer is subject to the general State and applicable local and transit rates of sales and use tax,]~~ except the ~~[face value of stamps or]~~ postage charges on the printed cards or envelopes are ~~[is]~~ exempt from tax when separately stated on the customer's invoice, ~~[invoice or similar billing document given to the customer at the time of the sale.]~~

Pursuant to G.S. 105-164.13(17) and 18 USC 8, the face value of United State Postal Service postage sold by commercial printers for printed postal cards or envelopes, that are sold for use by the commercial printers' customer, is exempt from sale and use tax when the postage is printed or affixed to the printed postcards or envelopes prior to sale, and when the value of the postage is stated separately from other charges on the invoice or similar billing document given to the customer at the time of sale.

History Note: Authority G.S. 105-164.3; 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. April 1, 2006; October 1, 1993; October 1, 1991; July 5, 1980-1980;
Readopted Eff. January 1, 2024.

17 NCAC 07B .4801 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 .4800 - BASIS OF REPORTING

17 NCAC 07B .4801 **VENDOR'S RECORDS REQUIRED TO BE KEPT**

(a) ~~Persons making sales or purchases of an item, as the term item is defined in G.S. 105-164.3, shall keep records as required in G.S. 105-164.22 that establish~~ Every vendor must keep adequate and complete records as required by G.S. 105-164.31 to determine the amount of the person's sales and use tax for which he may be liable. Documentation shall be kept until the statute of limitations to request a refund and to be issued a proposed assessment have expired, as set out in G.S. 105-241.6 and G.S. 105-241.8.

Records to establish a person's sales and use tax liability include the following:

- (1) All cash and credit sales, including sales under any type of financing or installation plan.
- (2) The amount of all items purchased and copies of all bills of lading, invoices, and purchase orders.
- (3) Copies of all sales invoices furnished by wholesale merchants that shall show the name and address of the purchaser, the date of purchase, the item or items purchased, and the purchase price of the item.
- (4) All deductions and exemptions claimed in sales and use tax returns for each transaction.
- (5) All purchase, sales, and inventory records for items, as the term item is defined in G.S. 105-164.3, used or consumed in the conduct of business.
- (6) A true and complete inventory of the value of the [stock]the materials, supplies, goods or merchandise on hand
- (7) All exemption certificates, and records of all sales made to a person furnishing an exemption certificate.
- (8) All affidavits of capital improvement or other records that establish a transaction is a real property contract. For purposes of this Rule, other records means written records that establish a transaction is a capital improvement.
- (9) All affidavits certifying tax paid by the purchaser on an item that becomes a part of real property.
- (10) Records of all sales made through a facilitator engaged in business in the State.
- (11) All affidavits of export.
- (12) All shipping records for items that are delivered.
- (13) All agreements with facilitators.
- (14) All bank account records.
- (15) All point-of-sale records and cash register z-tapes.
- (16) Any other document, report, form, or other similar record that establishes a person's sales and use tax liability.

1 (b) Except for persons listed in G.S. 105-164.20(b), ~~Vendors~~ person's having both cash and credit sales may elect to
2 report their tax liability on either the cash or accrual basis of accounting provided their records are kept in such a
3 manner that they can determine their tax liability correctly on the basis used. If a [taxpayer] person wishes to change
4 [from one] the basis of reporting selected when applying for a Certificate of Registration in accordance with 17 NCAC
5 07B .0104 to another, he must the [taxpayer] person shall apply to the Secretary of Revenue by written letter signed by
6 the [taxpayer] person and mailed to the attention of the Sales and Use Tax Division to the Department's mailing address
7 set out in 17 NCAC 01A .0101 for permission to make such change. A [taxpayer's] person's selected basis continues
8 in effect until the person receives permission from the Secretary, or the Secretary's designee, to change the basis
9 selected. The Secretary, or the Secretary's designee, shall only grant permission allowing a person to change the basis
10 of reporting upon a showing that the person's accounting system and processes shall establish the amount of the
11 person's sales and use tax liability using the requested basis of accounting.

12
13 *History Note:* Authority G.S. 105-164.20; 105-164.22; 105-262; 105-264;
14 Eff. February 1, 1976;
15 Amended Eff. October 1, 1993-1993;
16 Readopted Eff. January 1, 2024.
17

17 NCAC 07B .5001 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 .5000 - ~~EYEGLASSES~~ EYEGLASSES, CONTACT LENSES, AND OTHER OPHTHALMIC
OPTICAL AIDS AND SUPPLIES: ~~SUPPLIES~~ ~~OCULISTS: OPTOMETRISTS AND OPTICIANS~~**

17 NCAC 07B .5001 PRESCRIPTION EYEGLASSES AND CONTACT LENSES

(a) Eyeglasses:

(1) Corrective Eyeglasses. -- Sales of corrective eyeglasses for human use, ground on prescription of physicians, oculists or optometrists, including frames as an integral part thereof, are not subject to the tax, exempt from sales and use tax as prosthetic [devices.] devices, pursuant to G.S. 105-164.13(12). When eyeglass cases, lens wipes, and lens solution are given to the purchaser as part of the sale and included in the sales price of corrective eyeglasses for human use, they are also exempt under G.S. 105-164.13(12) from sales and use tax.

Corrective eyeglasses, whether prescription eyeglasses or reading glasses, are not required to be sold on prescription in order [to be exempt] for the exemption from sales and use [tax.] tax to apply.

(2) Record Keeping. -- A person who sells corrective eyeglasses shall keep sales records that clearly separate it sales of corrective eyeglasses from sales of other items. [Failure] Pursuant to G.S. 105-164.22, 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.

[(2) Non-Corrective Eyeglasses. -- Sales of non-corrective eyeglasses for human use are subject to the general State, and applicable local and transit rates of sales and use tax unless specifically exempt by statute.]

(b) Contact Lenses:

(1) Corrective Contact Lenses. -- Sales of corrective contact lenses for human use are exempt from sales and use tax as prosthetic [devices.] devices, pursuant to G.S. 105-164.13(12). When carrying cases, patient instruction booklets, patient care kits, aseptors, salt tablets, lens solution, and squeeze bottles are given to the purchaser as part of the sale and included in the sales price of corrective contact lenses for human use, they are also exempt under G.S. 105-164.13(12) from sales and use tax.

(2) Record Keeping. -- A person who sells corrective contact lenses shall keep sales records that clearly separate its sales of corrective contact lenses from sales of other items. [Failure] Pursuant to G.S. 105-164.22, 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.

1 ~~(2) Non-Corrective Contact Lenses. Sales of non-corrective contact lenses for human use are subject~~
2 ~~to the general State, and applicable local and transit rates of sales and use tax unless specifically~~
3 ~~exempt by statute.]~~

4
5 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4D; 105-164.13; 105-164.22; 105-262; 105-*
6 ~~*164.264; [Chapter 105, Articles 39, 40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483;*~~
7 ~~*105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;*~~
8 ~~*Eff. February 1, 1976.*~~
9 ~~*Readopted Eff. January 1, 2024.*~~

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 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 when such sales are made separate and apart from a corrective eyeglass sale or when they are sold with corrective eyeglasses, but billed separate and apart from the corrective eyeglasses, and do not meet the definition of a bundled transaction, as defined in G.S. 105-164.3,~~ 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-]tax, pursuant to G.S. 105-164.4.~~ 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.

(b) Supplies for Corrective Contact Lenses - Sales to consumers of aseptors, salt tablets, squeeze bottles, carrying cases, patient instruction booklets, patient care kits, and similar corrective contact lens supplies when such sales are made separate and apart from a corrective contact lens sale or when they are sold with corrective contact lenses, but billed separate and apart from the corrective contact lenses, and do not meet the definition of a bundled transaction, as defined in G.S. 105-164.3, 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.~~

(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-]tax, pursuant to G.S. 105-164.4, unless sold as a bundled transaction.~~

~~[(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;

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

Readopted Eff. January 1, 2024.

Burgos, Alexander N

Subject: FW: [External] DOR response to draft Staff Opinion on Rules 17 NCAC .4614
Attachments: 17 NCAC 07B .4614.docx; Revenue Dept Staff Opinion 17 NCAC 07B .4614 122023.doc

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Saturday, November 18, 2023 1:13 PM
To: Lansford, Laura L <Laura.Lansford@ncdor.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>
Subject: FW: [External] DOR response to draft Staff Opinion on Rules 17 NCAC .4614

Good afternoon,

Attached please find the staff opinion on the above captioned rule which is attached as a reference.

Please do not submit another revision until the RRC has considered the attached at is December meeting.

As always, if you have any questions please do not hesitate to contact me.

William W. Peaslee
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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: North Carolina Department of Revenue

RULE CITATION: 17 NCAC 07B .4614

RECOMMENDATION DATE: November 18, 2023

RECOMMENDED ACTION:

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

COMMENT:

While the revision to the Rule has resolved issues of authority and provided some clarity, the revised rule is not reasonably necessary in part and some ambiguity remains.

I.

The essence of the first sentence of the rule is that motor vehicles, as defined by G.S. 105-164.3(149), are subject to the highway tax pursuant to G.S. 105-187.3 notwithstanding an exemption from the sales and use tax pursuant to G.S. 105-164.13(32).¹

The sale of all motor vehicles is exempt from sales and use tax pursuant to G.S. 105-164.13(32).

All motor vehicles are subject to the highway tax pursuant to G.S. 105-187.3.

¹ Note that the rule does not establish or categorize that camper trailers, fifth-wheel trailers, motor homes, and travel trailers are motor vehicles. It states if those “meet the definition” of motor vehicles, they are exempt from sales and use tax but remain subject to the highway tax.

There does not appear to be any language in either statute which would lead a taxpayer to reasonably believe or aver that exemption from one tax would lead to an exemption from another.

Where is the ambiguity in these statutes? In the absence of any ambiguity, this language cannot be reasonably necessary.

Accordingly, staff counsel recommends objection to the rule as revised pursuant to G.S. 150B-29.9(a)(3) for lack of reasonable necessity.

II.

Th the extent that “camper trailers, fifth-wheel trailers, motor homes, and travel trailers” are relevant to the rule, these are undefined terms in Article 5 of Chapter 105 and Title 17 of the North Carolina Administrative Code.

Accordingly, staff recommends objection to the rule pursuant to G.S. 150B-21.9(a)(2) for lack of clarity and ambiguousness.

This can easily be fixed by referencing G.S. 105-187.1(a)(4) in Article 5A, the Highway Use Tax Article, or G.S. 20-4.01 if those definitions meet the Secretary’s intention.

§ 150B-2. Definitions.

As used in this Chapter, the following definitions apply:

- (8a) Rule. - Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
 - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
 - c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
 - d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
 - e. Statements of agency policy made in the context of another proceeding, including:
 - 1. Declaratory rulings under G.S. 150B-4.
 - 2. Orders establishing or fixing rates or tariffs.
 - f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
 - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
 - h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.
 - i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
 - j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
 - k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by

the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.

- l.* Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.

§ 105-262. Rules.

(a) Authority. - The Secretary of Revenue may adopt rules needed to administer a tax collected by the Secretary or to fulfill another duty delegated to the Secretary. G.S. 150B-1 and Article 2A of Chapter 150B of the General Statutes set out the procedure for the adoption of rules by the Secretary.

(b) Repealed by Session Laws 2012-43, s. 1, effective June 20, 2012, and Session Laws 2012-79, s. 1.14(d), effective June 26, 2012.

(c) Fiscal Note. - The Secretary must ask the Office of State Budget and Management to prepare a fiscal note for a proposed new rule or a proposed change to a rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The Secretary shall not take final action on a proposed rule change that has a substantial economic impact until at least 60 days after the fiscal note has been prepared. (1939, c. 158, s. 931; 1955, c. 1350, s. 2; 1973, c. 476, s. 193; 1981, c. 859, s. 80; c. 1127, s. 53; 1991, c. 45, s. 28; c. 477, s. 7; 1995, c. 507, s. 27.8(p); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2007-491, s. 39; 2010-31, s. 31.10(f); 2012-43, s. 1; 2012-79, s. 1.14(d).)

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

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

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

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

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

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

(d) Fee. - The Secretary may charge a fee for providing a written determination at the request of a taxpayer. The fee is a receipt of the Department and must be applied to the costs of providing the written determination. The proceeds of the fee must be credited to a special account within the Department and do not revert but remain in the special account until spent by the Department for the costs of providing the written determination. The Secretary may adopt a tiered fee structure based on the taxpayer's income or gross receipts, the relative complexity of the advice requested, or the tax schedule for which advice is requested. The fee shall not be less than one hundred dollars (\$100.00) or more than five thousand dollars (\$5,000). The fee may be waived by the Secretary. The term "written determination" has the same meaning as defined in G.S. 105-264.2. (1939, c. 158, s. 933; 1955, c. 1350, s. 4; 1957, c. 1340, s. 14; 1973, c. 476, s. 193; 1991, c. 45, s. 29; 1993, c. 532, s. 9; 1998-98, s. 21; 2008-107, s. 28.16(e); 2010-31, s. 31.7A(a); 2011-390, s. 6; 2016-103, s. 6.)

§ 105-164.3. Definitions.

The following definitions apply in this Article:

...

- (149) Motor vehicle. – A vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:
- a. A moped.
 - b. Special mobile equipment.
 - c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11).
 - d. A farm tractor or other implement of husbandry.
 - e. A manufactured home, a mobile office, or a mobile classroom.
 - f. Road construction or road maintenance machinery or equipment.

§ 105-164.13. Retail sales and use tax.

The sale at retail and the use, storage, or consumption in this State of the following items are specifically exempted from the tax imposed by this Article:

...

(32) Sales of motor vehicles, the sale of a motor vehicle body to be mounted on a motor vehicle chassis when a certificate of title has not been issued for the chassis, and the sale of a motor vehicle body mounted on a motor vehicle chassis that temporarily enters the State so the manufacturer of the body can mount the body on the chassis. For purposes of this subdivision, a park model RV, as defined in G.S. 105-187.1, is a motor vehicle.

§ 105-187.3. Rate of tax.

(a) Tax Base. - The tax imposed by this Article is applied to the sum of the retail value of a motor vehicle for which a certificate of title is issued and any fee regulated by G.S. 20-101.1. The tax does not apply to the sales price of a service contract, provided the charge is separately stated on the bill of sale or other similar document given to the purchaser at the time of the sale.

(a1) Tax Rate. - The tax rate is three percent (3%). The maximum tax is two thousand dollars (\$2,000) for each certificate of title issued for a Class A or Class B motor vehicle that is a commercial motor vehicle, as defined in G.S. 20-4.01, and for each certificate of title issued for a recreational vehicle. The tax is payable as provided in G.S. 105-187.4.

(b) Retail Value. - The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a retailer is the sales price of the motor vehicle, including all accessories attached to the vehicle when it is delivered to the purchaser, less the amount of any allowance given by the retailer for a motor vehicle taken in trade as a full or partial payment for the purchased motor vehicle.

The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a seller who is not a retailer is the market value of the vehicle, less the amount of any allowance given by the seller for a motor vehicle taken in trade as a full or partial payment for the purchased motor vehicle. A transaction in which two parties exchange motor vehicles is considered a sale regardless of whether either party gives additional consideration as part of the transaction.

The retail value of a motor vehicle for which a certificate of title is issued because of a reason other than the sale of the motor vehicle is the market value of the vehicle. The market value of a vehicle is presumed to be the value of the vehicle set in a schedule of values adopted by the Commissioner.

The retail value of a vehicle for which a certificate of title is issued because of a transfer by a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad is the sales price paid by the State agency, unit of local government, volunteer fire department, or volunteer rescue squad.

(c) Schedules. - In adopting a schedule of values for motor vehicles, the Commissioner shall adopt a schedule whose values do not exceed the wholesale values of motor vehicles as published in a recognized automotive reference manual. (1989, c. 692, ss. 4.1, 4.2; c. 770, s. 74.13; 1993, c. 467, s. 3; 1995, c. 349, s. 1; c. 390, s. 30; 2001-424, s. 34.24(a); 2001-497, s. 2(a); 2009-550, s. 2(e); 2010-95, s. 5; 2013-360, s. 34.29(a); 2013-363, s. 8.1; 2014-3, s. 6.1(g); 2014-39, s. 3; 2015-241, s. 29.34A(a); 2015-259, s. 5(d); 2015-268, s. 10.1(d).)

§ 20-4.01. Definitions.

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(32b) **Recreational Vehicle.** - A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motive power or is mounted on, or towed by, another vehicle. **The basic entities are camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper.** This term shall not include a manufactured home as defined in G.S. 143-143.9(6). The basic entities are defined as follows:

- a. **Camping trailer.** - A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.
- b. **Fifth-wheel trailer.** - A vehicular unit mounted on wheels designed to provide temporary living quarters for recreational, camping, or travel use, of a size and weight that does not require a special highway movement permit and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.
- c. **Motor home.** - As defined in G.S. 20-4.01(27)k.
- d. **Travel trailer.** - A vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of a size or weight that does not require a special highway movement permit when towed by a motorized vehicle.
- e. **Truck camper.** - A portable unit that is constructed to provide temporary living quarters for recreational, camping, or travel use, consisting of a roof, floor, and sides and is designed to be loaded onto and unloaded from the bed of a pickup truck.

1 17 NCAC 07B .4614 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 .4614 ~~PICKUP CAMPERS; TRAILERS~~RECREATIONAL VEHICLES**

5 Retail sales of camper ~~trailers~~ trailers, fifth-wheel trailers, motor homes, and travel trailers ~~which that~~ are designed to
6 run on the streets and highways and which are pulled by a self-propelled vehicle meet the definition of a motor vehicle,
7 as defined in G.S. 105-164.3(149) ~~[or are self-propelled,]~~ are classified as sales of motor vehicles and exempt from
8 sales and use ~~tax-tax,~~ pursuant to G.S. 105-164.13(32), but ~~Retail sales of such camper trailers~~ items are subject to
9 the highway use ~~tax-tax,~~ pursuant to G.S. 105-187.3. Retail sales of ~~slide-in pickup camper units~~ truck
10 ~~campers~~ campers, as defined in G.S. 20-4.01, are not motor vehicles pursuant to G.S. 105-164.3(149) and are subject
11 to the ~~[general State, and] applicable statutory state and local~~ [and transit rates of] not exempt from sales ~~or and~~ use
12 ~~tax-tax~~ under G.S. 105-164.13(32).

13
14 *History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264; Article 39; Article 40; Article 42; Article*
15 *43; Article 44;*
16 *Eff. February 1, 1976;*
17 *Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991; October 1, 1990; July 1,*
18 *1990-1990;*
19 *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: North Carolina Department of Revenue

RULE CITATION: 17 NCAC 07B .4415

RECOMMENDATION DATE: November 18, 2023

RECOMMENDED ACTION:

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

COMMENT:

G.S. 105-164.4G IMPOSES A TAX ON ADMISSION CHARGES TO ENTERTAINMENT ACTIVITIES. G.S. 105-164.4G(E) PROVIDES EXCEPTIONS TO THE TAX INCLUDING:

- (1) *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. (EMPHASIS ADDED)*
- (6) *AN AMOUNT PAID FOR THE RIGHT TO PARTICIPATE, OTHER THAN TO BE A SPECTATOR, IN THE FOLLOWING ACTIVITIES:*
 - A. **ROCK CLIMBING, SKATING**, SKIING, SNOWBOARDING, SLEDDING, ZIP LINING, OR OTHER SIMILAR ACTIVITIES. (EMPHASIS ADDED)*

IT APPEARS TO STAFF THAT THE RULE IS A MERE REITERATION OF THE LAW UNAMBIGUOUSLY ESTABLISHED BY THE STATUTE. ACCORDINGLY, STAFF RECOMMENDS THAT THE COMMISSION CONTINUE TO OBJECT TO THE RULE PURSUANT TO G.S. 150B-21.9(A)(3) FOR LACK OF NECESSITY.

*WILLIAM W. PEASLEE
COMMISSION COUNSEL*

Burgos, Alexander N

Subject: FW: [External] DOR response to draft Staff Opinion on Rules 17 NCAC .4415
Attachments: 17 NCAC 07B .4415.docx; Revenue Dept Staff Opinion 17 NCAC 07B .4415 122023.doc

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Saturday, November 18, 2023 11:26 AM
To: Lansford, Laura L <Laura.Lansford@ncdor.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>
Subject: FW: [External] DOR response to draft Staff Opinion on Rules 17 NCAC .4415

Good morning,

Attached please find the staff opinion on the above captioned rule which is attached as a reference.

Please do not submit another revision until the RRC has considered the attached at is December meeting.

As always, if you have any questions please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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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-tax, pursuant to G.S. 105-164.4, and are not part of the admission
9 charge. Sales ~~[Retail sales-]~~of tangible personal property~~[items]~~ by such businesses are subject to the applicable
10 statutory state and local~~[rates of]~~ sales or use tax.
11

12 *History Note:* Authority G.S. ~~105-164.3; 105-164.4;~~ 105-164.4G; 105-262; 105-264; ~~[Chapter 105, Articles 39,~~
13 ~~40, 42, 43, and 46;]~~Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; 105-467;
14 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-
15 538;

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

Agency Response, dated November 8, 2023, to the RRC Objection/Staff opinion dated October 27, 2023 and adopted by the Commission on November 16, 2023

“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 business 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, but do have to charge sales and use tax to those persons who are not participating, but rather just spectating. Sales and use tax on admission charges is required for persons who are charged an admission fee, with certain 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).”

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

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

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

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

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

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

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

§ 150B-2. Definitions.

As used in this Chapter, the following definitions apply:

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

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

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

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

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

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

- (1) Implements or interprets a law unless that law or another law specifically authorizes the agency to do so.
- (2) Enlarges the scope of a profession, occupation, or field of endeavor for which an occupational license is required.
- (3) Imposes criminal liability or a civil penalty for an act or omission, including the violation of a rule, unless a law specifically authorizes the agency to do so or a law declares that violation of the rule is a criminal offense or is grounds for a civil penalty.
- (4) Repeats the content of a law, a rule, or a federal regulation. A brief statement that informs the public of a requirement imposed by law does not violate this subdivision and satisfies the "reasonably necessary" standard of review set in G.S. 150B-21.9(a)(3).
- (5) Establishes a fee or other charge for providing a service in fulfillment of a duty unless a law specifically authorizes the agency to do so or the fee or other charge is for one of the following:
 - a. A service to a State, federal, or local governmental unit.
 - b. A copy of part or all of a State publication or other document, the cost of mailing a document, or both.
 - c. A transcript of a public hearing.
 - d. A conference, workshop, or course.
 - e. Data processing services.
- (6) Allows the agency to waive or modify a requirement set in a rule unless a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement.
- (7) Repealed by Session Laws 2011-398, s. 61.2, effective July 25, 2011. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 7.10(a); 2011-13, s. 1; 2011-398, s. 61.2.)

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

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

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

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

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

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

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

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

From: [Andrew O. Furuseth](#)

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

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

Subject: RE: [External] RE: DOR Rules

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

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,

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.

WILLIAM W. PEASLEE
COMMISSION COUNSEL

.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.

WILLIAM W. PEASLEE
COMMISSION COUNSEL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.1303 Gifts to donees

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

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

.1404 Medical supplies, instruments, and equipment

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

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

.1601 Sales to or purchases by nonprofit entities

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

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

.1605 Sales by nonprofit entities

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

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

.1705 Housing authorities

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

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

.1801 Sales to hospitals

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

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

.1905 Tire retreaders

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

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

.2001 Sales to employees Statutes -

G.S. 105-164.4

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

.2002 Gifts to employees Statutes
– GS 105-164.4

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

Thank You,

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
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WILLIAM W. PEASLEE
COMMISSION COUNSEL

§ 105-164.4G. Entertainment activity.

(a) Repealed by Session Laws 2019-246, s. 4(i), effective February 1, 2020, and applicable to sales occurring on or after that date.

(b) **Tax.** - The gross receipts derived from an admission charge to an entertainment activity are taxed at the general rate set in G.S. 105-164.4. The tax is due and payable by the retailer in accordance with G.S. 105-164.16. For purposes of the tax imposed by this section, the retailer is the applicable person listed below:

- (1) The operator of the venue where the entertainment activity occurs, unless the retailer and the admission facilitator have a contract between them allowing for dual remittance, as provided in subsection (d) of this section.
- (2) The person that provides the entertainment and that receives admission charges directly from a purchaser.
- (3) A person other than a person listed in subdivision (1) or (2) of this subsection that receives gross receipts derived from an admission charge sold at retail.

(c) **Admission Facilitator.** - An admission facilitator must report to the retailer with whom it has a contract the admission charge a consumer pays to the admission facilitator for an entertainment activity. The admission facilitator must send the retailer the portion of the gross receipts the admission facilitator owes the retailer and the tax due on the gross receipts derived from an admission charge no later than 10 days after the end of each calendar month. An admission facilitator that does not send the retailer the tax due on the gross receipts derived from an admission charge is liable for the amount of tax the admission facilitator fails to send to the retailer. An admission facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from an admission facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from an admission facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from an admission facilitator. The requirements imposed by this subsection on a retailer and an admission facilitator are considered terms of the contract between the retailer and the admission facilitator.

(d) **Dual Remittance.** - The tax due on the gross receipts derived from an admission charge may be partially reported and remitted to the operator of the venue for remittance to the Department and partially reported and remitted by the admission facilitator directly to the Department. The portion of the tax not reported and remitted to the operator of the venue must be reported and remitted directly by the admission facilitator to the Department. An admission facilitator that elects to remit tax under the dual remittance option is required to obtain a certificate of registration in accordance with G.S. 105-164.29. An admission facilitator is subject to the provisions of Article 9 of this Chapter.

(e) **Exceptions.** - The tax imposed by this section does not apply to the following:

- (1) 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.
 - (2) Tuition, registration fees, or charges to attend instructional seminars, conferences, or workshops for educational purposes, notwithstanding that entertainment activity may be offered as an ancillary purpose of an event listed in this subdivision.
 - (3) A political contribution.
 - (4) A charge for lifetime seat rights, lease, or rental of a suite or box for an entertainment activity, provided the charge is separately stated on an invoice or similar billing document given to the purchaser at the time of sale.
 - (5) An amount paid solely for transportation.
 - (6) An amount paid for the right to participate, other than to be a spectator, in the following activities:
 - a. Rock climbing, skating, skiing, snowboarding, sledding, zip lining, or other similar activities.
 - b. Instruction classes related to the activities included in subdivision a. of this subdivision.
 - c. Riding on a carriage, boat, train, plane, horse, chairlift, or other similar rides.
 - d. Amusement rides, including a waterslide.
- (f) Exemptions. - The sale at retail and the use, storage, or consumption in this State of the following gross receipts derived from an admission charge to an entertainment activity are specifically exempt from the tax imposed by this Article:
- (1) The portion of a membership charge that is deductible as a charitable contribution under section 170 of the Code or that is described in section 170(l)(2) of the Code.
 - (2) A donation that is deductible as a charitable contribution under section 170 of the Code or that is described in section 170(l)(2) of the Code.
 - (3) Charges for an amenity. If charges for amenities are separately stated on a billing document given to the purchaser at the time of the sale, then the tax does not apply to the separately stated charges for amenities. If charges for amenities are not separately stated on the billing document given to the purchaser at the time of the sale, then the transaction is a bundled transaction and taxed in accordance with G.S. 105-164.4D except that G.S. 105-164.4D(a)(3) does not apply.
 - (4) An event that is sponsored by an elementary or secondary school. For purposes of this exemption, the term "school" is an entity regulated under Chapter 115C of the General Statutes.

- (5) An event sponsored solely by a nonprofit entity that is exempt from tax under Article 4 of this Chapter if all of the following conditions are met:
 - a. The entire proceeds of the activity are used exclusively for the entity's nonprofit purposes.
 - b. The entity does not declare dividends, receive profits, or pay salary or other compensation to any members or individuals.
 - c. The entity does not compensate any person for participating in the event, performing in the event, placing in the event, or producing the event. For purposes of this subdivision, the term "compensate" means any remuneration included in a person's gross income as defined in section 61 of the Code.
- (6) An event sponsored by a farmer that takes place on farmland and is related to farming activities, such as a corn maze or a tutorial on raising crops or animals. For purposes of this exemption, a farmer is a person who holds a qualifying farmer sales tax exemption certificate and farmland is land that is enrolled in the present-use value program under G.S. 105-277.3.

(g) Sourcing. - An admission charge to an entertainment activity is sourced to the location where admission to the entertainment activity may be gained by a person. When the location where admission may be gained is not known at the time of the receipt of the gross receipts for an admission charge, the sourcing principles in G.S. 105-164.4B(a) apply. (2014-3, s. 5.1(c); 2015-6, s. 2.11; 2016-5, s. 3.4; 2017-204, s. 2.10(a); 2018-5, s. 38.5(e), (u); 2019-169, s. 3.3(c); 2019-246, s. 4(i).)

Burgos, Alexander N

Subject: FW: 17 NCAC 07B .5002

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Friday, November 17, 2023 3:18 PM

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

Cc: Ascher, Seth M <seth.ascher@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: 17 NCAC 07B .5002

Good afternoon:

Paragraph (b) of the above captioned rule is confusing. Anything, including parts of non-corrective eyeglasses, that doesn't meet the definition of prosthetic device is not exempt as a prosthetic device. Put another way, what non-corrective eyeglasses could possibly meet the definition of a prosthetic device?

Or are you saying that non-corrective eyeglasses are not prosthetic devices?

Thank you in advance for your prompt response.

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

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

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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

Subject: FW: [External] RE: 17 NCAC 07B .4411 & .4413

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Wednesday, November 15, 2023 1:58 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>; Ascher, Seth M <seth.ascher@oah.nc.gov>

Subject: RE: [External] RE: 17 NCAC 07B .4411 & .4413

Thank you for your email.

The absence of an objection is not an approval. While rules .4411 and .4413 were on the agenda, they were no action items as they were subject to an extension. They will be considered at the November RRC meeting.

As always, if you have any questions please feel free to contact me.

Thank you.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

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Burgos, Alexander N

Subject: FW: [External] RE: 17 NCAC 07B .4411 & .4413

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

Sent: Wednesday, November 15, 2023 12:39 PM

To: Peaslee, William W <bill.peaslee@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] RE: 17 NCAC 07B .4411 & .4413

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Hi Bill,

In addition to the rules you've indicated you will recommend for approval in this email and your 11/11/2023 email, will you also be including rules .4411 and .4413 at the November RRC meeting? These rules were previously reviewed and were not objected to at the October RRC meeting.

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

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

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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
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Burgos, Alexander N

From: Peaslee, William W
Sent: Monday, November 13, 2023 5:03 PM
To: Lansford, Laura L
Cc: Burgos, Alexander N
Subject: 17 NCAC 07B .4404
Attachments: Revenue Dept Staff Opinion 17 NCAC 07B .4404.doc

Good afternoon,

Attached please find the staff opinion on the above captioned rule.

It is my present intention to recommend approval of 17 NCAC 07B .4403 and .4406.

I believe that I have now informed you of the status of all rules being reviewed by me. If you disagree, please let me know.

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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Burgos, Alexander N

From: Peaslee, William W
Sent: Saturday, November 11, 2023 2:14 PM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Ascher, Seth M
Subject: 17 NCAC 07B
Attachments: Revenue Dept Staff Opinion 17 NCAC 07B .4203.doc; Revenue Dept Staff Opinion 17 NCAC 07B .4210.doc; Revenue Dept Staff Opinion 17 NCAC 07B .4301.doc; Revenue Dept Staff Opinion 17 NCAC 07B .4503.doc; Revenue Dept Staff Opinion 17 NCAC 07B .4609.doc; Revenue Dept Staff Opinion 17 NCAC 07B .4701.doc

Good afternoon

Attached please find staff opinions for consideration at the November RRC meeting.

It is my present intention to recommend approval of .4205, .4302, and .4401.

I am still considering .4403, .4404, and .4406.

William W. Peaslee
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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 3:52 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 draft Staff Opinion on Rules 17 NCAC .4206, .4415 .4614, and .5002
Attachments: DOR response to Staff Opinion 17 NCAC 07B .4206.doc; 17 NCAC 07B .4206.docx; DOR response to Staff Opinion 17 NCAC 07B .4415 112023 (002).doc; 17 NCAC 07B .4415.docx; DOR response to Staff Opinion 17 NCAC 07B .4614.doc; 17 NCAC 07B .4614.docx; DOR response to Staff Opinion 17 NCAC 07B .5002 112023.doc; 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 of the Department of Revenue, please accept this email with attachments in response to four (4) separate Staff Opinions submitted to the Division by Mr. Peaslee as follows:

- 17 NCAC 07B .4614, submitted on 10/24/2023;
- 17 NCAC 07B .4415, revised opinion submitted 10/28/2023;
- 17 NCAC 07B .5002, submitted on 10/31/2023; and
- 17 NCAC 07B .4206, submitted on 10/31/2023.

Please let me know if additional information is required.

Thank you.

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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: North Carolina Department of Revenue

RULE CITATION: 17 NCAC 07B .4206

RECOMMENDATION DATE: October 31, 2023

RECOMMENDED ACTION:

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

COMMENT:

AS REVISED, THE RULE CONTINUES TO BE UNCLEAR WHETHER THE SECRETARY INTENDS THE LANGUAGE OF THE RULE TO BE A RESTATEMENT OF EXISTING LAW, AN ATTEMPT TO IMPOSE REGULATION, OR AN INTERPRETATION OF EXISTING LAW. WHILE THE LANGUAGE OF THE RULE NOW STATES THAT IT IS PURSUANT TO G.S. 105-164.13, THE STATUTE PROVIDES SEVENTY-THREE EXEMPTIONS TO THE STATE SALES AND USE TAX NONE OF WHICH INCLUDE THE WORDS "BANK", "CREDIT UNION", OR "SAVINGS AND LOAN ASSOCIATION." FURTHER, WHILE G.S. 105-164.13 IS AN EXEMPTION STATUTE, THE REVISED RULE DOES NOT PROVIDE FOR ANY EXEMPTIONS.

STAFF RECOMMENDS THAT THE COMMISSION FIND THAT THE SECRETARY HAS NOT SATISFIED OBJECTIONS I-IV OF THE SEPTEMBER COMMISSION OBJECTIONS.

See proposed Rule change inserting specific citation of G.S. 105-164.13(17) and interpreting that sales to federal savings and loan associations and national banks, and sales to state banks and state chartered credit unions do not fall within the exemption.

STAFF FURTHER RECOMMENDS THAT THE COMMISSION FIND THAT THE SECRETARY HAS SATISFIED OBJECTION V OF THE SEPTEMBER COMMISSION OBJECTIONS.

*WILLIAM W. PEASLEE
COMMISSION COUNSEL*

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

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

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

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

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

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

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

§ 150B-2. Definitions.

As used in this Chapter, the following definitions apply:

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

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

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

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

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

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

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

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

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

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

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

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

From: [Andrew O. Furuseth](#)

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

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

Subject: RE: [External] RE: DOR Rules

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

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,

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. 105-164.4(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.

WILLIAM W. PEASLEE
COMMISSION COUNSEL

.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.

WILLIAM W. PEASLEE
COMMISSION COUNSEL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.1303 Gifts to donees

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

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

.1404 Medical supplies, instruments, and equipment

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

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

.1601 Sales to or purchases by nonprofit entities

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

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

.1605 Sales by nonprofit entities

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

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

.1705 Housing authorities

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

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

.1801 Sales to hospitals

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

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

.1905 Tire retreaders

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

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

.2001 Sales to employees Statutes -

G.S. 105-164.4

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

.2002 Gifts to employees Statutes
– GS 105-164.4

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

Thank You,

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WILLIAM W. PEASLEE
COMMISSION COUNSEL

17 NCAC 07B .4206 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 .4206 FED SAVINGS/LOAN ASSOC, NATL ~~BANKS/ST~~ BANKS/ST AND STATE
BANKS, CHARTERED CREDIT UNIONS**

(a) Sales of tangible personal property to ~~to, or purchases by,~~ federal savings and loan associations and national banks for use or consumption ~~of items, as the term item is defined in G.S. 105-164.3,~~ are subject to the applicable statutory 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.

(b) Sales of tangible personal property to ~~to, or purchases by,~~ state banks and state chartered credit unions ~~for use or consumption of items~~ are subject to the applicable statutory state ~~State~~ and local ~~rates of~~ sales or ~~and~~ use tax. ~~tax, unless exempt by statute.~~

For purposes of G.S. 105-164.13(17), sales which a state would be without power to tax under the Constitution or laws of the United States or under the Constitution of this State do not include the following sales:

(a) Sales to federal savings and loan associations and national banks.

(b) Sales to state banks and state chartered credit unions.

History Note: Authority G.S. ~~[105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-264.26; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; Chapter 105, Articles 39, 40, 42, 43, and 46; 12 U.S.C. 1464(h); 12 U.S.C. 548;~~
Eff. February 1, 1976;
Amended Eff. September 1, 2006; January 1, 1995; October 1, 1993; October 1, ~~1991~~ 1991;
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: North Carolina Department of Revenue

RULE CITATION: 17 NCAC 07B .4415

RECOMMENDATION DATE: October 27, 2023

RECOMMENDED ACTION:

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

COMMENT:

THE SECRETARY HAS CHANGED THE RULE TO ADDRESS SOME OF THE OBJECTIONS RAISED BY THE RULES REVIEW COMMISSION'S OBJECTIONS OF SEPTEMBER 2023. IN THE REVISED RULE THE SECRETARY REFERENCES G.S. 105-164.4G. GIVEN THE LIMITED SCOPE OF THE STATUTE, IT APPEARS THAT THE SECRETARY IS INTERPRETING A STATUTE RATHER THAN ESTABLISHING LAW OF HIS OWN ACCORD. ACCORDINGLY, STAFF RECOMMENDS THAT THE COMMISSION FIND THAT THE SECRETARY HAS MET OBJECTIONS I-III.

HOWEVER, NOW THAT THE SECRETARY'S INTENTIONS HAVE BEEN MADE CLEAR IN THE RULE, THE RE-WRITTEN RULE MUST ANALYZED ANEW.

G.S. 105-164.4G IMPOSES A TAX ON ADMISSION CHARGES TO ENTERTAINMENT ACTIVITIES. G.S. 105-164.4G(E) PROVIDES EXCEPTIONS TO THE TAX INCLUDING:

- (1) *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. (EMPHASIS ADDED)*
- (6) *AN AMOUNT PAID FOR THE RIGHT TO PARTICIPATE, OTHER THAN TO BE A SPECTATOR, IN THE FOLLOWING ACTIVITIES: A. ROCK CLIMBING, **SKATING**, SKIING, SNOWBOARDING, SLEDDING, ZIP LINING, OR OTHER SIMILAR ACTIVITIES. (EMPHASIS ADDED)*

I.

*WILLIAM W. PEASLEE
COMMISSION COUNSEL*

PARAGRAPH (A) OF THE RULE IS A MERE RESTATEMENT OF THE LAW PROVIDED IN G.S. 105-164.4G(E). ACCORDINGLY, IT IS NOT REASONABLY NECESSARY PURSUANT TO G.S. 150B-21.9(A)(3).

II.

IN PARAGRAPH (B)(1), THE RULE STATES THAT THE RENTAL OF TANGIBLE PERSONAL PROPERTY COMMENSURATE WITH SKATING OR BOWLING IS NOT EXEMPT PURSUANT TO G.S. 105-164.4G(E). GIVEN THE CLEAR LANGUAGE OF THE STATUTE, NO REASONABLE READING OF THE STATUTE WOULD LEAD TO THE CONCLUSION THAT THE RENTALS WOULD BE EXEMPT. PUT ANOTHER WAY, IF THIS SUBPARAGRAPH WAS 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. ACCORDINGLY, STAFF RECOMMENDS OBJECTION PURSUANT TO G.S. 150B-21.9(A)(3) FOR LACK OF NECESSITY.

III.

IN PARAGRAPH (B)(2), THE RULE STATES THAT THE SALE OF ITEMS, AS DEFINED IN G.S. 105-164.3, ARE NOT EXEMPT PURSUANT TO G.S. 105-164.4G(E). GIVEN THE CLEAR LANGUAGE OF THE STATUTE, NO REASONABLE READING OF THE STATUTE WOULD LEAD TO THE CONCLUSION THAT THE RENTALS WOULD BE EXEMPT. PUT ANOTHER WAY, THIS SUBPARAGRAPH WAS 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. ACCORDINGLY, STAFF RECOMMENDS OBJECTION PURSUANT TO G.S. 150B-21.9(A)(3) FOR LACK OF NECESSITY.

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 business 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, but do have to charge sales and use tax to those persons who are not participating, but rather just spectating. Sales and use tax on admission charges is required for persons who are charged an admission fee, with certain 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).

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

WILLIAM W. PEASLEE
COMMISSION COUNSEL

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

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

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

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

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

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

§ 150B-2. Definitions.

As used in this Chapter, the following definitions apply:

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

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

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

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

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

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

- (1) Implements or interprets a law unless that law or another law specifically authorizes the agency to do so.
- (2) Enlarges the scope of a profession, occupation, or field of endeavor for which an occupational license is required.
- (3) Imposes criminal liability or a civil penalty for an act or omission, including the violation of a rule, unless a law specifically authorizes the agency to do so or a law declares that violation of the rule is a criminal offense or is grounds for a civil penalty.
- (4) Repeats the content of a law, a rule, or a federal regulation. A brief statement that informs the public of a requirement imposed by law does not violate this subdivision and satisfies the "reasonably necessary" standard of review set in G.S. 150B-21.9(a)(3).
- (5) Establishes a fee or other charge for providing a service in fulfillment of a duty unless a law specifically authorizes the agency to do so or the fee or other charge is for one of the following:
 - a. A service to a State, federal, or local governmental unit.
 - b. A copy of part or all of a State publication or other document, the cost of mailing a document, or both.
 - c. A transcript of a public hearing.
 - d. A conference, workshop, or course.
 - e. Data processing services.
- (6) Allows the agency to waive or modify a requirement set in a rule unless a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement.
- (7) Repealed by Session Laws 2011-398, s. 61.2, effective July 25, 2011. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 7.10(a); 2011-13, s. 1; 2011-398, s. 61.2.)

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

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

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

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

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

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

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

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

From: [Andrew O. Furuseth](#)

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

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

Subject: RE: [External] RE: DOR Rules

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

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,

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.

WILLIAM W. PEASLEE
COMMISSION COUNSEL

.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.

WILLIAM W. PEASLEE
COMMISSION COUNSEL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.1303 Gifts to donees

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

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

.1404 Medical supplies, instruments, and equipment

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

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

.1601 Sales to or purchases by nonprofit entities

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

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

.1605 Sales by nonprofit entities

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

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

.1705 Housing authorities

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

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

.1801 Sales to hospitals

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

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

.1905 Tire retreaders

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

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

.2001 Sales to employees Statutes -

G.S. 105-164.4

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

.2002 Gifts to employees Statutes
– GS 105-164.4

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

Thank You,

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WILLIAM W. PEASLEE
COMMISSION COUNSEL

§ 105-164.4G. Entertainment activity.

(a) Repealed by Session Laws 2019-246, s. 4(i), effective February 1, 2020, and applicable to sales occurring on or after that date.

(b) **Tax.** - The gross receipts derived from an admission charge to an entertainment activity are taxed at the general rate set in G.S. 105-164.4. The tax is due and payable by the retailer in accordance with G.S. 105-164.16. For purposes of the tax imposed by this section, the retailer is the applicable person listed below:

- (1) The operator of the venue where the entertainment activity occurs, unless the retailer and the admission facilitator have a contract between them allowing for dual remittance, as provided in subsection (d) of this section.
- (2) The person that provides the entertainment and that receives admission charges directly from a purchaser.
- (3) A person other than a person listed in subdivision (1) or (2) of this subsection that receives gross receipts derived from an admission charge sold at retail.

(c) **Admission Facilitator.** - An admission facilitator must report to the retailer with whom it has a contract the admission charge a consumer pays to the admission facilitator for an entertainment activity. The admission facilitator must send the retailer the portion of the gross receipts the admission facilitator owes the retailer and the tax due on the gross receipts derived from an admission charge no later than 10 days after the end of each calendar month. An admission facilitator that does not send the retailer the tax due on the gross receipts derived from an admission charge is liable for the amount of tax the admission facilitator fails to send to the retailer. An admission facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from an admission facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from an admission facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from an admission facilitator. The requirements imposed by this subsection on a retailer and an admission facilitator are considered terms of the contract between the retailer and the admission facilitator.

(d) **Dual Remittance.** - The tax due on the gross receipts derived from an admission charge may be partially reported and remitted to the operator of the venue for remittance to the Department and partially reported and remitted by the admission facilitator directly to the Department. The portion of the tax not reported and remitted to the operator of the venue must be reported and remitted directly by the admission facilitator to the Department. An admission facilitator that elects to remit tax under the dual remittance option is required to obtain a certificate of registration in accordance with G.S. 105-164.29. An admission facilitator is subject to the provisions of Article 9 of this Chapter.

(e) **Exceptions.** - The tax imposed by this section does not apply to the following:

- (1) 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.
 - (2) Tuition, registration fees, or charges to attend instructional seminars, conferences, or workshops for educational purposes, notwithstanding that entertainment activity may be offered as an ancillary purpose of an event listed in this subdivision.
 - (3) A political contribution.
 - (4) A charge for lifetime seat rights, lease, or rental of a suite or box for an entertainment activity, provided the charge is separately stated on an invoice or similar billing document given to the purchaser at the time of sale.
 - (5) An amount paid solely for transportation.
 - (6) An amount paid for the right to participate, other than to be a spectator, in the following activities:
 - a. Rock climbing, skating, skiing, snowboarding, sledding, zip lining, or other similar activities.
 - b. Instruction classes related to the activities included in subdivision a. of this subdivision.
 - c. Riding on a carriage, boat, train, plane, horse, chairlift, or other similar rides.
 - d. Amusement rides, including a waterslide.
- (f) Exemptions. - The sale at retail and the use, storage, or consumption in this State of the following gross receipts derived from an admission charge to an entertainment activity are specifically exempt from the tax imposed by this Article:
- (1) The portion of a membership charge that is deductible as a charitable contribution under section 170 of the Code or that is described in section 170(l)(2) of the Code.
 - (2) A donation that is deductible as a charitable contribution under section 170 of the Code or that is described in section 170(l)(2) of the Code.
 - (3) Charges for an amenity. If charges for amenities are separately stated on a billing document given to the purchaser at the time of the sale, then the tax does not apply to the separately stated charges for amenities. If charges for amenities are not separately stated on the billing document given to the purchaser at the time of the sale, then the transaction is a bundled transaction and taxed in accordance with G.S. 105-164.4D except that G.S. 105-164.4D(a)(3) does not apply.
 - (4) An event that is sponsored by an elementary or secondary school. For purposes of this exemption, the term "school" is an entity regulated under Chapter 115C of the General Statutes.

- (5) An event sponsored solely by a nonprofit entity that is exempt from tax under Article 4 of this Chapter if all of the following conditions are met:
- a. The entire proceeds of the activity are used exclusively for the entity's nonprofit purposes.
 - b. The entity does not declare dividends, receive profits, or pay salary or other compensation to any members or individuals.
 - c. The entity does not compensate any person for participating in the event, performing in the event, placing in the event, or producing the event. For purposes of this subdivision, the term "compensate" means any remuneration included in a person's gross income as defined in section 61 of the Code.
- (6) An event sponsored by a farmer that takes place on farmland and is related to farming activities, such as a corn maze or a tutorial on raising crops or animals. For purposes of this exemption, a farmer is a person who holds a qualifying farmer sales tax exemption certificate and farmland is land that is enrolled in the present-use value program under G.S. 105-277.3.
- (g) Sourcing. - An admission charge to an entertainment activity is sourced to the location where admission to the entertainment activity may be gained by a person. When the location where admission may be gained is not known at the time of the receipt of the gross receipts for an admission charge, the sourcing principles in G.S. 105-164.4B(a) apply. (2014-3, s. 5.1(c); 2015-6, s. 2.11; 2016-5, s. 3.4; 2017-204, s. 2.10(a); 2018-5, s. 38.5(e), (u); 2019-169, s. 3.3(c); 2019-246, s. 4(i).)

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, pursuant to G.S. 105-164.4, and are not part of the admission
9 charge. Sales ~~[Retail sales]~~ of tangible personal property ~~[items]~~ by such businesses are subject to the applicable
10 statutory state and local ~~rates of]~~ sales or use tax.

11
12 *History Note:* Authority G.S. ~~105-164.3; 105-164.4;~~ 105-164.4G; 105-262; 105-264; ~~[Chapter 105, Articles 39,~~
13 ~~40, 42, 43, and 46;]~~ Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; 105-467;
14 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-
15 538;

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

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Department of Revenue

RULE CITATION: 17 NCAC 07B .4614

RECOMMENDATION DATE: October 16, 2023

RECOMMENDED ACTION:

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

COMMENT:

Pursuant to G.S. 105- 262, "The Secretary of Revenue may adopt rules needed to administer tax collected by the Secretary or to fulfil any other duty delegated to the Secretary."

*Pursuant to G.S. 105-264, the Secretary has the duty to interpret all laws administered by the Secretary. This statute also provides that, "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."*¹

Pursuant to G.S. 150B(8a), a "rule" is defined as "Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency..."

Chapter 105, Article 5., Part 2. imposes a sales and use tax generally which is collected by the Secretary. In short, sales which are not exempt are taxed.

¹ AT THE SEPTEMBER RRC MEETING, THE REPRESENTATIVE OF THE SECRETARY AGREED THAT G.S. 105-264 DOES NOT GRANT THE SECRETARY ADDITIONAL RULEMAKING AUTHORITY.

William W. Peaslee
Commission Counsel

G.S. 105-164.13 sets forth exemptions to sales and use taxation. The Secretary may interpret this statute.

G.S. 105-164.13(32) exempts, “Sales of motor vehicles, the sale of a motor vehicle body to be mounted on a motor vehicle chassis when a certificate of title has not been issued for the chassis, and the sale of a motor vehicle body mounted on a motor vehicle chassis that temporarily enters the State so the manufacturer of the body can mount the body on the chassis. For purposes of this subdivision, a park model RV, as defined in G.S. 105-187.1, is a motor vehicle”.

G.S. 105-164.3(149) defines “motor vehicles” as:

“Motor vehicle. - A vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:

- a. A moped.
- b. Special mobile equipment.
- c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11).
- d. A farm tractor or other implement of husbandry.
- e. A manufactured home, a mobile office, or a mobile classroom.
- f. Road construction or road maintenance machinery or equipment.”

The rule states that “retail sales of camper trailers, fifth-wheel trailers, motor homes, and travel trailers that are designed to run on streets and highways and are pulled by a motor vehicle, or are self-propelled, are classified as sales of motor vehicles.” (emphasis added)

I.

The rule conflicts with the statute in three respects. The Secretary added that the items must be designed “to run” or “pulled” “on streets”. The statute requires the items be designed “primarily for use upon the highways”. Each departure from the statutory language changes the statutory analysis of exemption.

For example, street design is not mentioned in the statute, so this language is clearly an expansion of the requirements as the rule states “streets and highways.” (emphasis added)

While the Secretary has authority to interpret sale and use tax statutes, the Secretary does not have the authority to supplant or alter unambiguous language provided by the General Assembly. Accordingly, staff recommends objection pursuant to G.S. 150B-21.9(a)(1) for lack of authority.

See proposed Rule change removing language “to run on streets” and “pulled” and inserting citation to the definition of motor vehicles for the listed vehicle types and interpreting that the listed vehicles, are motor vehicles, and are therefore exempt from sales and use tax pursuant to G.S. 105-164.13(32).

II.

The difference between an item being designed to run on streets and designed to run on highways is lost as neither of these concepts are further elucidated by the rule. The rule adds ambiguity rather than provide clarity to the law by the addition of designed to run on streets”.

It should be noted that the rule does not declare that the items are designed to either run on or for use upon either streets or highways. The rule merely alters an ambiguous statutory analysis for a more ambiguous codified analysis.

Accordingly, staff recommends objection to the rule pursuant to G.S. 150B-21.9(a)(2) for lack of clarity and ambiguousness.

See proposed Rule change removing language “to run on streets” and “pulled” and inserting citation to the definition of motor vehicles for the listed vehicle types and interpreting that the listed vehicles, are motor vehicles, and are therefore exempt from sales and use tax pursuant to G.S. 105-164.13(32).

III.

As written, it is difficult to determine what, if any, statutory language the Secretary is attempting to interpret by the first sentence of the rule. It cannot be an interpretation of “motor vehicle” as the Secretary uses the term “motor vehicle” in the would-be interpretation. If that is the interpretation, the language is patently unclear and ambiguous as one cannot define a term using the term to be defined. Further, the term “motor vehicle” is already defined by G.S. 105-164.3(149).

Perhaps the Secretary is interpreting the word “vehicle” in the definition of motor vehicle provided by G.S. 105-164.3(149). “Vehicle” is an undefined term. Perhaps the Secretary is answering the question, are these items “vehicles”? If that is the interpretation, Secretary is answering in the affirmative,² but it nevertheless remains unclear what, if anything, is being interpreted.

Accordingly, staff recommends objection to the rule pursuant to G.S. 150B-21.9(a)(2) for lack of clarity and ambiguousness.

See proposed Rule change removing language “to run on streets” and “pulled” and inserting citation to the definition of motor vehicles for the listed vehicle types and interpreting that the listed vehicles, are motor vehicles, and are therefore exempt from sales and use tax pursuant to G.S. 105-164.13(32).

IV.

“Camper trailers, fifth-wheel trailers, motor homes, and travel trailers” are undefined terms in Article 5 of Chapter 105 and Title 17 of the North Carolina Administrative Code. Nor is “truck campers” as used in the last sentence of the rule.

2 If this is the interpretation, it could have been much more succinctly stated; however, the quality of a rule is not a ground for objection.

Accordingly, staff recommends objection to the rule pursuant to G.S. 150B-21.9(a)(2) for lack of clarity and ambiguousness.

This can easily be fixed by referencing G.S. 105-187.1(a)(4) in Article 5A, the Highway Use Tax Article, or G.S. 20-4.01 if those definitions meet the Secretary's intention.

See proposed Rule change removing language "to run on streets" and "pulled" and inserting citation to the definition of motor vehicles for the listed vehicle types and interpreting that the listed vehicles, are motor vehicles, and are therefore exempt from sales and use tax pursuant to G.S. 105-164.13(32).

Additionally, a citation to G.S. 20-4.01 was made to the term "truck campers" and citation to G.S. 105-187.3 was made for imposition of the highway use tax.

§ 150B-2. Definitions.

As used in this Chapter, the following definitions apply:

- (8a) Rule. - Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
 - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
 - c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
 - d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
 - e. Statements of agency policy made in the context of another proceeding, including:
 - 1. Declaratory rulings under G.S. 150B-4.
 - 2. Orders establishing or fixing rates or tariffs.
 - f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
 - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
 - h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.
 - i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
 - j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
 - k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by

the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.

- l.* Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.

§ 105-262. Rules.

(a) Authority. - The Secretary of Revenue may adopt rules needed to administer a tax collected by the Secretary or to fulfill another duty delegated to the Secretary. G.S. 150B-1 and Article 2A of Chapter 150B of the General Statutes set out the procedure for the adoption of rules by the Secretary.

(b) Repealed by Session Laws 2012-43, s. 1, effective June 20, 2012, and Session Laws 2012-79, s. 1.14(d), effective June 26, 2012.

(c) Fiscal Note. - The Secretary must ask the Office of State Budget and Management to prepare a fiscal note for a proposed new rule or a proposed change to a rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The Secretary shall not take final action on a proposed rule change that has a substantial economic impact until at least 60 days after the fiscal note has been prepared. (1939, c. 158, s. 931; 1955, c. 1350, s. 2; 1973, c. 476, s. 193; 1981, c. 859, s. 80; c. 1127, s. 53; 1991, c. 45, s. 28; c. 477, s. 7; 1995, c. 507, s. 27.8(p); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2007-491, s. 39; 2010-31, s. 31.10(f); 2012-43, s. 1; 2012-79, s. 1.14(d).)

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

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

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

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

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

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

(d) Fee. - The Secretary may charge a fee for providing a written determination at the request of a taxpayer. The fee is a receipt of the Department and must be applied to the costs of providing the written determination. The proceeds of the fee must be credited to a special account within the Department and do not revert but remain in the special account until spent by the Department for the costs of providing the written determination. The Secretary may adopt a tiered fee structure based on the taxpayer's income or gross receipts, the relative complexity of the advice requested, or the tax schedule for which advice is requested. The fee shall not be less than one hundred dollars (\$100.00) or more than five thousand dollars (\$5,000). The fee may be waived by the Secretary. The term "written determination" has the same meaning as defined in G.S. 105-264.2. (1939, c. 158, s. 933; 1955, c. 1350, s. 4; 1957, c. 1340, s. 14; 1973, c. 476, s. 193; 1991, c. 45, s. 29; 1993, c. 532, s. 9; 1998-98, s. 21; 2008-107, s. 28.16(e); 2010-31, s. 31.7A(a); 2011-390, s. 6; 2016-103, s. 6.)

§ 105-164.3. Definitions.

The following definitions apply in this Article:

...

- (149) Motor vehicle. – A vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:
- a. A moped.
 - b. Special mobile equipment.
 - c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11).
 - d. A farm tractor or other implement of husbandry.
 - e. A manufactured home, a mobile office, or a mobile classroom.
 - f. Road construction or road maintenance machinery or equipment.

§ 105-164.13. Retail sales and use tax.

The sale at retail and the use, storage, or consumption in this State of the following items are specifically exempted from the tax imposed by this Article:

...

(32) Sales of motor vehicles, the sale of a motor vehicle body to be mounted on a motor vehicle chassis when a certificate of title has not been issued for the chassis, and the sale of a motor vehicle body mounted on a motor vehicle chassis that temporarily enters the State so the manufacturer of the body can mount the body on the chassis. For purposes of this subdivision, a park model RV, as defined in G.S. 105-187.1, is a motor vehicle.

1 17 NCAC 07B .4614 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 .4614 ~~PICKUP CAMPERS; TRAILERS~~RECREATIONAL VEHICLES**

5 Retail sales of camper ~~trailers~~ trailers, fifth-wheel trailers, motor homes, and travel trailers ~~which that~~ are designed to
6 run on the streets and highways and which are pulled by a self-propelled vehicle meet the definition of a motor vehicle,
7 as defined in G.S. 105-164.3(149) ~~[or are self-propelled,]~~ are classified as sales of motor vehicles and exempt from
8 sales and use ~~tax-tax,~~ pursuant to G.S. 105-164.13(32), but ~~Retail sales of such camper trailers~~ items are subject to
9 the highway use ~~tax-tax,~~ pursuant to G.S. 105-187.3. Retail sales of ~~slide-in pickup camper units~~ truck
10 ~~campers~~ campers, as defined in G.S. 20-4.01, are not motor vehicles pursuant to G.S. 105-164.3(149) and are subject
11 to the ~~[general State, and]~~ applicable ~~statutory state and local~~ [and transit rates of] not exempt from sales ~~or and~~ use
12 ~~tax-tax~~ under G.S. 105-164.13(32).

13
14 *History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264; ~~Article 39; Article 40; Article 42; Article~~*
15 *~~43; Article 44;~~*
16 *Eff. February 1, 1976;*
17 *Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991; October 1, 1990; July 1,*
18 *1990-1990;*
19 *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: North Carolina Department of Revenue

RULE CITATION: 17 NCAC 07B .5002

RECOMMENDATION DATE: October 31, 2023

RECOMMENDED ACTION:

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

COMMENT:

The Secretary has revised the rule to address some of the objections made by the Rules Review Commission at its September 2023 meeting.

I.

The revised rule references G.S. 105-164.13. G.S. 105-164.13 provides seventy-three exemptions to the sales and use tax. While the Secretary does not cite the specific exemption being interpreted, to wit G.S. 105-164.13(12), the Rule indicates that the term "prosthetic devices," which is used in the statute, is the subject of the interpretation. While it would have been clearer to cite the specific exemption and the term being interpreted, the subject of the statutory interpretation can be gleaned.

As it now appears that the Secretary is interpreting a statute rather than establishing law of the Secretary's own accord, and the language being interpreted can be deduced, Staff recommends that the Commission find that the revision satisfies objection I of the September Commission objection concerning ambiguity and alternatively lack of authority.

II.

As the Secretary has deleted Paragraph(c) which was the subject of objection III, staff recommends that the Commission find that the revision satisfies objection III of the September Commission objection.

III.

Pursuant to G.S. 105-164.13(12)a., retail sales of "prosthetic devices" for human use are exempt from the tax imposed by Article 5 (Sales and Use Tax) of Chapter 105 of the North Carolina General Statutes.

WILLIAM W. PEASLEE
COMMISSION COUNSEL

G.S. 105-164.3(191) defines “prosthetic device”.

Prosthetic device. - A replacement, corrective, or supporting device worn on or in the body that meets one of the conditions of this subdivision. The term includes repair and replacement parts for the device. The conditions are as follows:

- a. Artificially replaces a missing portion of the body.*
- b. Prevents or corrects a physical deformity or malfunction.*
- c. Supports a weak or deformed portion of the body.*

Paragraph (a) of the rule states, in essence, that the sale of eyeglass frames or other parts of corrective eyeglasses are prosthetic devices within the definition of G.S. 105-164.3(191), and, accordingly, are exempt pursuant to G.S. 105-164.13(12)a.

Paragraph (a) is reasonably necessary first, to interpret that corrective eyeglasses meet the definition of a prosthetic device. As indicated above, the conditions to qualify as a prosthetic device are:

- a. Artificially replaces a missing portion of the body.*
- b. Prevents or corrects a physical deformity or malfunction.*
- c. Supports a weak or deformed portion of the body.*

The statute itself does not specify any particular types of devices that meet this criteria, so it is the responsibility of the Secretary to interpret whether an item is a prosthetic device. It is reasonable to believe that most people would not think of corrective eyeglasses as a prosthetic device. Approximately 60-75% of the adult population use some kind of corrective device for their vision, and thus a reasonable person may say needing glasses is “normal” and not a “physical deformity” or “malfunction.” Additionally, paragraph (a) is reasonably necessary to interpret the scope of the exemption allowed for prosthetic devices as extending to repair and replacement parts and providing examples of the types of replacement parts that are included in as prosthetic devices. Additionally, this paragraph sets out the record-keeping requirement for businesses of this type, requiring them to keep separate records for sales of corrective frames and repair and replacement parts for corrective frames from other sales.

Paragraph (b) of the rule states that the sale of frames or other parts for non-corrective eyeglasses that do not meet the definition of prosthetic device are not exempt.

Paragraph (b) of the rule is unnecessary as sales of items are taxed under Article 5 of Chapter 105 unless exempt. There is no reasonable or responsible reading of the language of either the balance of rule or the statute by which one could conclude that parts for non-corrective eyeglasses are exempt or that non-corrective eyeglasses would meet the definition of prosthetic device. Accordingly, staff recommends objection pursuant to G.S. 150B-21.9(a)(3).

Paragraph (b) 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 non-corrective glasses and repair or replacement parts for non-corrective glasses, and thus the sales are subject to tax (per 105-164.4). If these types of business do not understand that non-corrective frames or repair or replacement parts for non-corrective frames do not meet the definition of a prosthetic device and are taxable they

WILLIAM W. PEASLEE
COMMISSION COUNSEL

can be subject to adverse consequences for over or under collecting tax including assessment of tax. For example, sales of repair or replacement parts for non-corrective sunglasses are subject to sales and use tax, however if the sunglasses have corrective lenses, then the repair or replacement parts are exempt as prosthetic devices.

Paragraph (c) is reasonably necessary to interpret the exemption allowed for sales for resale under G.S. 105-164.13(61b), and that purchasers must comply with the requirement to provide the seller with a certificate of exemption for the sale to be exempt from sales and use tax.

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

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

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

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

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

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

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

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

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

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

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

§ 150B-2. Definitions.

As used in this Chapter, the following definitions apply:

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

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

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

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

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

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

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

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

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

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

(d) **Fee.** - The Secretary may charge a fee for providing a written determination at the request of a taxpayer. The fee is a receipt of the Department and must be applied to the costs of providing the written determination. The proceeds of the fee must be credited to a special account within the Department and do not revert but remain in the special account until spent by the Department for the costs of providing the written determination. The Secretary may adopt a tiered fee structure based on the taxpayer's income or gross receipts, the relative complexity of the advice requested, or the tax schedule for which advice is requested. The fee shall not be less than one hundred dollars (\$100.00) or more than five thousand dollars (\$5,000). The fee may be waived by the Secretary. The term "written determination" has the same meaning as defined in G.S. 105-264.2. (1939, c. 158, s. 933; 1955, c. 1350, s. 4; 1957, c. 1340, s. 14; 1973, c. 476, s. 193; 1991, c. 45, s. 29; 1993, c. 532, s. 9; 1998-98, s. 21; 2008-107, s. 28.16(e); 2010-31, s. 31.7A(a); 2011-390, s. 6; 2016-103, s. 6.)

§ 105-164.3. Definitions.

The following definitions apply in this Article:

- (1) Accommodation. - A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.
- (3) Accommodation facilitator. - A person that contracts, either directly or indirectly, with a provider of an accommodation to perform, either directly or indirectly, one or more of the activities listed in this subdivision. The term includes a real estate broker as defined in G.S. 93A-2. The activities are:
 - a. Market the accommodation and accept payment or collect credit card or other payment information for the rental of the accommodation.
 - b. List the accommodation for rental on a forum, platform, or other application for a fee or other consideration.
- (5) Additional digital goods. - All of the following if transferred electronically:
 - a. A magazine, a newspaper, a newsletter, a report, or another publication.
 - b. A photograph.
 - c. A greeting card.
- (7) Admission charge. - Gross receipts derived for the right to attend an entertainment activity. The term includes a charge for a single ticket, a multi-occasion ticket, a seasonal pass, and an annual pass; a membership fee that provides for admission; a cover charge; a surcharge; a convenience fee, a processing fee, a facility charge, a facilitation fee, or similar charge; or any other charges included in gross receipts derived from admission.
- (9) Admission facilitator. - A person who accepts payment of an admission charge to an entertainment activity and who is not the operator of the venue where the entertainment activity occurs.
- (11) Advertising and promotional direct mail. - Printed material that meets the definition of "direct mail" and the primary purpose of which is to attract public attention to an item, person, business, or organization, or to attempt to sell, popularize, or secure financial support for an item, person, business, or organization.
- (13) Affiliate. - Defined in G.S. 105-130.2.
- (15) Amenity. - A feature that increases the value or attractiveness of an entertainment activity that allows a person access to items that are not subject to tax under this Article and that are not available with the purchase of admission to the same event without the feature. The term includes parking privileges, special entrances, access to areas other than general admission, mascot visits, and merchandise discounts. The term

- does not include any charge for food, prepared food, and alcoholic beverages subject to tax under this Article.
- (17) Analytical services. - Testing laboratories that are included in national industry 541380 of NAICS or medical laboratories that are included in national industry 621511 of NAICS.
 - (19) Ancillary service. - A service associated with or incidental to the provision of a telecommunications service. The term includes detailed communications billing, directory assistance, vertical service, and voice mail service. A vertical service is a service, such as call forwarding, caller ID, three-way calling, and conference bridging, that allows a customer to identify a caller or manage multiple calls and call connections.
 - (21) Aviation gasoline. - Defined in G.S. 105-449.60.
 - (23) Bundled transaction. - A retail sale of two or more distinct and identifiable items, at least one of which is taxable and one of which is nontaxable, for one nonitemized price. The term does not apply to real property or services to real property. Items are not sold for one nonitemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each item. A bundled transaction does not include the retail sale of any of the following:
 - a. An item and any packaging that accompanies the item and is exempt under G.S. 105-164.13(23).
 - b. A sale of two or more items whose combined price varies, or is negotiable, depending on the items the purchaser selects.
 - c. A sale of an item accompanied by a transfer of another item with no additional consideration.
 - d. An item and the delivery or installation of the item.
 - e. An item and any service necessary to complete the sale.
 - (25) Business. - 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 sale or transaction by a person who does not claim to be engaged in business.
 - (27) Cable service. - The one-way transmission to subscribers of video programming or other programming service and any subscriber interaction required to select or use the service.
 - (29) Candy. - A preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces that do not require refrigeration. The term does not include any preparation that contains flour.
 - (31) Capital improvement. - One or more of the following:
 - a. New construction, reconstruction, or remodeling.

- b. Performance of work that requires the issuance of a permit under the State Building Code, other than repair or replacement of electrical components, gas logs, water heater, and similar individual items that are not part of new construction, reconstruction, or remodeling.
- c. Installation of a transmission, distribution, or other network asset on land owned by a service provider or on a right-of-way or easement in favor of a service provider, notwithstanding that any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction are included in the gross receipts derived from services subject to the combined general rate under G.S. 105-164.4. For purposes of this sub-subdivision, the term "service provider" means a person, including a governmental entity, who provides any of the services listed in this sub-subdivision, and the term "governmental entity" means a State agency, the federal government, or a governmental entity listed in G.S. 105-164.14(c). The services are:
 - 1. Telecommunications service or ancillary service.
 - 2. Video programming.
 - 3. Electricity or piped natural gas.
 - 4. Water or sewer service.
- d. Installation of equipment or a fixture that is attached to real property and that meets one or more of the following conditions:
 - 1. Is capitalized and depreciated under Generally Accepted Accounting Principles or International Financial Reporting Standards.
 - 2. Is depreciated under the Code.
 - 3. Is expensed under Section 179 of the Code.
- e. Painting or wallpapering of real property, except where painting or wallpapering is incidental to the repair, maintenance, and installation services.
- f. Replacement or installation of a septic tank system, siding, roof, plumbing, electrical, commercial refrigeration, irrigation, sprinkler, or other similar system. The term does not include the repair, replacement, or installation of electrical or plumbing components, water heaters, gutters, and similar individual items that are not part of new construction, reconstruction, or remodeling.
- g. Replacement or installation of a heating or air conditioning unit or a heating, ventilation, or air conditioning system. The term does not include the repair, replacement, or installation of gas

- logs, water heaters, pool heaters, and similar individual items that are not part of new construction, reconstruction, or remodeling.
- h. Replacement or installation of roads, driveways, parking lots, patios, decks, and sidewalks.
 - i. Services performed to resolve an issue that was part of a real property contract if the services are performed within six months of completion of the real property contract or, for new construction, within 12 months of the new structure being occupied for the first time.
 - j. Landscaping.
 - k. An addition or alteration to real property that is permanently affixed or installed to real property and is not an activity listed in subdivision (225) of this section as repair, maintenance, and installation services.
- (33) Certain digital property. - Specified digital products and additional digital goods. The term does not include an information service or an educational service.
- (35) Clothing. - All human wearing apparel suitable for general use.
- (37) Combined general rate. - The State's general rate of tax set in G.S. 105-164.4(a) plus the sum of the rates of the local sales and use taxes authorized by Subchapter VIII of this Chapter for every county in this State.
- (39) Computer. - An electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
- (41) Computer software. - A set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
- (43) Consumer. - 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.
- (45) Custom computer software. - Computer software that is not prewritten computer software. The term includes a user manual or other documentation that accompanies the sale of the software.
- (47) Datacenter. - A facility that provides infrastructure for hosting or data processing services and that has power and cooling systems that are created and maintained to be concurrently maintainable and to include redundant capacity components and multiple distribution paths serving the computer equipment at the facility. Although the facility must have multiple distribution paths serving the computer equipment, a single distribution path may serve the computer equipment at any one time. The following definitions apply in this subdivision:
- a. Concurrently maintainable. - Capable of having any capacity component or distribution element serviced or repaired on a

- planned basis without interrupting or impeding the performance of the computer equipment.
- b. Multiple distribution paths. - A series of distribution paths configured to ensure that failure on one distribution path does not interrupt or impede other distribution paths.
 - c. Redundant capacity components. - Components beyond those required to support the computer equipment.
- (49) Delivery charges. - Charges imposed by the retailer for preparation and delivery of an item to a location designated by the consumer.
 - (51) Development tier. - The classification assigned to an area pursuant to G.S. 143B-437.08.
 - (53) Diaper. - An absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.
 - (55) Dietary supplement. - A product that is intended to supplement the diet of humans and is required to be labeled as a dietary supplement under federal law, identifiable by the "Supplement Facts" box found on the label.
 - (57) Digital audio work. - A work that results from the fixation of a series of musical, spoken, or other sounds, including a ringtone, that is transferred electronically.
 - (59) Digital audiovisual work. - A series of related images, that when shown in succession, impart an impression of motion, together with accompanying sounds, if any, and that is transferred electronically.
 - (61) Digital book. - A work that is generally recognized in the ordinary and usual sense as a book that is transferred electronically.
 - (63) Digital code. - A code that gives a purchaser of the code a right to receive an item by electronic delivery or electronic access. A digital code may be obtained by an electronic means or by a tangible means. A digital code does not include a gift certificate or a gift card.
 - (65) Direct mail. - Printed material delivered or distributed by the United States Postal Service or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. The term includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. The term does not include multiple items of printed material delivered to a single address.
 - (67) Direct-to-home satellite service. - Programming transmitted or broadcast by satellite directly to the subscribers' premises without the use of ground equipment or distribution equipment, except equipment at the subscribers' premises or the uplink process to the satellite.

- (69) Drug. - A compound, substance, or preparation or a component of one of these that meets any of the following descriptions and is not food, a dietary supplement, or an alcoholic beverage:
- a. Is recognized in the United States Pharmacopoeia, Homeopathic Pharmacopoeia of the United States, or National Formulary.
 - b. Is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.
 - c. Is intended to affect the structure or function of the body.
- (71) Durable medical equipment. - Equipment that meets all of the conditions of this subdivision. The term includes repair and replacement parts for the equipment. The term does not include mobility enhancing equipment.
- a. Can withstand repeated use.
 - b. Primarily and customarily used to serve a medical purpose.
 - c. Generally not useful to a person in the absence of an illness or injury.
 - d. Not worn in or on the body.
- (73) Durable medical supplies. - Supplies related to use with durable medical equipment that are eligible to be covered under the Medicare or Medicaid program.
- (75) Educational service. - The delivery of instruction or training, whether provided in real time, on demand, or at another set time, by or on behalf of a qualifying educational entity where at least one of the following conditions applies:
- a. The instruction or training is part of the curriculum for an enrolled student.
 - b. The instruction or training is encompassed within the institution's accreditation or prepares an enrolled student for gainful employment in a recognized occupation.
 - c. The participant is evaluated by an instructor. "Evaluated by an instructor" does not include being graded by, scored by, or evaluated by a computer program or an interactive, automated method.
 - d. The participant is connected to the presenter or instructor via the Internet or other networks, allowing the participant to provide, receive, or discuss information through live interaction, contemporaneous with the presentation.
- (77) Electronic. - Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (79) Eligible Internet datacenter. - A datacenter that satisfies each of the following conditions:
- a. The facility is used primarily or is to be used primarily by a business engaged in software publishing included in industry

511210 of NAICS or an Internet activity included in industry 519130 of NAICS.

- b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.
- c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three area or a development tier one or two area pursuant to G.S. 105-129.3 or G.S. 143B-437.08, regardless of any subsequent change in county enterprise or development tier status.
- d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars (\$250,000,000) in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within five years after the commencement of construction of the facility.

(81) Eligible railroad intermodal facility. - Defined in G.S. 105-129.95.

(83) Engaged in business. - Any of the following:

- a. 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.
- b. Maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property or certain digital property for the purpose of lease or rental.
- c. Making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met.
- d. Shipping wine directly to a purchaser in this State as authorized by G.S. 18B-1001.1.
- e. Making marketplace-facilitated sales subject to the requirements of G.S. 105-164.4J.

(85) Entertainment activity. - An activity listed in this subdivision:

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- a. A live performance or other live event of any kind, the purpose of which is for entertainment.
 - b. A movie, motion picture, or film.
 - c. A museum, a cultural site, a garden, an exhibit, a show, or a similar attraction.
 - d. A guided tour at any of the activities listed in sub-subdivision c. of this subdivision.
- (87) Facilitator. - An accommodation facilitator, an admission facilitator, or a service contract facilitator.
- (89) Food. - Substances that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. The substances may be in liquid, concentrated, solid, frozen, dried, or dehydrated form. The term does not include an alcoholic beverage, as defined in G.S. 105-113.68, or a tobacco product, as defined in G.S. 105-113.4.
- (91) Food sold through a vending machine. - Food dispensed from a machine or another mechanical device that accepts payment.
- (93) Freestanding appliance. - A machine commonly thought of as an appliance operated by gas or electric current. Examples include a dishwasher, washing machine, clothes dryer, refrigerator, freezer, microwave, and range, regardless of whether the range is slide-in or drop-in.
- (95) Gross sales. - The sum total of the sales price of all sales of tangible personal property, digital property, and services.
- (97) Hub. - Either of the following:
- a. An interstate air courier's hub is the interstate air courier's principal airport within the State for sorting and distributing letters and packages and from which the interstate air courier has, or expects to have upon completion of construction, no less than 150 departures a month under normal operating conditions.
 - b. An interstate passenger air carrier's hub is the airport in this State that meets both of the following conditions:
 - 1. The air carrier has allocated to the airport under G.S. 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.
 - 2. The majority of the air carrier's passengers boarding at the airport are connecting from other airports rather than originating at that airport.
- (99) In this (the) State. - Within the exterior limits of the State of North Carolina, including all territory within these limits owned by or ceded to the United States of America.
- (101) Incontinence underpad. - An absorbent product, not worn on the body, designed to protect furniture or other tangible personal property from soiling or damage due to human incontinence.

- (103) Information service. - A service that generates, acquires, stores, processes, or retrieves data and information and delivers it electronically to or allows electronic access by a consumer whose primary purpose for using the service is to obtain the processed data or information.
- (104) Interstate air and ground courier. - A person whose primary business is the furnishing of air and ground delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service.
- (105) Interstate air business. - An interstate air courier, an interstate freight air carrier, or an interstate passenger air carrier.
- (107) Interstate air courier. - A person whose primary business is the furnishing of air delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service.
- (109) Interstate freight air carrier. - A person whose primary business is scheduled freight air transportation, as defined in the North American Industry Classification System adopted by the United States Office of Management and Budget, in interstate commerce.
- (111) Interstate passenger air carrier. - A person whose primary business is scheduled passenger air transportation, as defined in the North American Industry Classification System adopted by the United States Office of Management and Budget, in interstate commerce.
- (113) Item. - Tangible personal property, digital property, or a service, unless the context requires otherwise.
- (115) Jet fuel. - Defined in G.S. 105-449.60.
- (117) Landscaping. A service that modifies the living elements of an area of land. Examples include the installation of trees, shrubs, or flowers on land; tree trimming; mowing; and the application of seed, mulch, pine straw, or fertilizer to an area of land. The term does not include services to trees, shrubs, flowers, or similar tangible personal property in pots or in buildings.
- (119) Large fulfillment facility. - A facility that satisfies both of the following conditions:
 - a. The facility is used primarily for receiving, inventorying, sorting, repackaging, and distributing finished retail products for the purpose of fulfilling customer orders.
 - b. The Secretary of Commerce has certified that an investment of private funds of at least one hundred million dollars (\$100,000,000) has been or will be made in real and tangible personal property for the facility within five years after the date on which the first property investment is made and that the facility will achieve an employment level of at least 400 within five years after the date the facility is placed into service and

maintain that minimum level of employment throughout its operation.

- (121) Lease or rental. - A transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. The term does not include any of the following:
 - a. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.
 - b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100.00) or one percent (1%) of the total required payments.
 - c. The providing of tangible personal property along with an operator for a fixed or indeterminate period of time if the operator is necessary for the equipment to perform as designed. For the purpose of this sub-subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property.
- (123) Livestock. - Cattle, sheep, goats, swine, horses, or mules.
- (125) Major recycling facility. - Defined in G.S. 105-129.25.
- (127) Manufactured home. - A structure that is designed to be used as a dwelling and is manufactured in accordance with the specifications for manufactured homes issued by the United States Department of Housing and Urban Development.
- (129) Marketplace. - A physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items, the delivery of or first use of which is sourced to this State.
- (131) Marketplace-facilitated sale. - The sale of an item by a marketplace facilitator on behalf of a marketplace seller that occurs through a marketplace.
- (133) Marketplace facilitator. - A person that, directly or indirectly and whether through one or more affiliates, does both of the following:
 - a. Lists or otherwise makes available for sale a marketplace seller's items through a marketplace owned or operated by the marketplace facilitator.
 - b. Does one or more of the following:
 - 1. Collects the sales price or purchase price of a marketplace seller's items or otherwise processes payment.
 - 2. Makes payment processing services available to purchasers for the sale of a marketplace seller's items.
- (135) Marketplace seller. - A person that sells or offers to sell items through a marketplace regardless of any of the following:
 - a. Whether the person has a physical presence in this State.

- b. Whether the person is registered as a retailer in this State.
 - c. Whether the person would have been required to collect and remit sales and use tax had the sales not been made through a marketplace.
 - d. Whether the person would not have been required to collect and remit sales and use tax had the sales not been made through a marketplace.
- (137) Mixed transaction contract. - A contract that includes both a real property contract for a capital improvement and repair, maintenance, and installation services for real property that are not related to the capital improvement.
- (139) Mobile telecommunications service. - A radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves and includes all of the following:
- a. Both one-way and two-way radio communication services.
 - b. A mobile service that provides a regularly interacting group of base, mobile, portable, and associated control and relay stations for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation.
 - c. Any service for which a federal license is required in a personal communications service.
- (141) Mobility enhancing equipment. - Equipment that meets all of the conditions of this subdivision. The term includes repair and replacement parts for the equipment. The term does not include durable medical equipment.
- a. Primarily and customarily used to provide or increase the ability of an individual to move from one place to another.
 - b. Appropriate for use either in a home or motor vehicle.
 - c. Not generally used by a person with normal mobility.
 - d. Not normally provided on a motor vehicle by a motor vehicle manufacturer.
- (143) Modular home. - A factory-built structure that is designed to be used as a dwelling, is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, and bears a seal or label issued by the Department of Insurance pursuant to G.S. 143-139.1.
- (145) Modular homebuilder. - A person who furnishes for consideration a modular home to a purchaser that will occupy the modular home. The purchaser can be a person that will lease or rent the unit as real property.
- (147) Moped. - As defined in G.S. 20-4.01(27)j.

- (149) Motor vehicle. - A vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:
- a. A moped.
 - b. Special mobile equipment.
 - c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11).
 - d. A farm tractor or other implement of husbandry.
 - e. A manufactured home, a mobile office, or a mobile classroom.
 - f. Road construction or road maintenance machinery or equipment.
- (151) Motor vehicle service contract. - A service contract for a motor vehicle or for one or more components, systems, or accessories for a motor vehicle when sold by a motor vehicle dealer, by a motor vehicle service agreement company, or by a motor vehicle dealer on behalf of a motor vehicle service agreement company. For purposes of this subdivision, the term "motor vehicle dealer" has the same meaning as defined in G.S. 20-286 and the term "motor vehicle service agreement company" is a person other than a motor vehicle dealer that is an obligor of a service contract for a motor vehicle or for one or more components, systems, or accessories for a motor vehicle and who is not an insurer.
- (153) NAICS. - Defined in G.S. 105-228.90.
- (155) Net taxable sales. - The gross sales or gross receipts of a retailer or another person taxed under this Article after deducting exempt sales and nontaxable sales.
- (157) New construction. - Construction of or site preparation for a permanent new building, structure, or fixture on land or an increase in the square footage of an existing building, structure, or fixture on land.
- (159) Nonresident retail or wholesale merchant. - A person who does not have a place of business in this State, is registered for sales and use tax purposes in a taxing jurisdiction outside the State, and is engaged in the business of acquiring, by purchase, consignment, or otherwise, tangible personal property or certain digital property and selling the property outside the State or in the business of providing a service.
- (161) Repealed by Session Laws 2022-13, s. 3.1, effective June 29, 2022.
- (163) Other direct mail. - Any direct mail that is not advertising and promotional mail regardless of whether advertising and promotional direct mail is included in the same mailing.
- (165) Over-the-counter drug. - A drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The label includes either of the following:
- a. A "Drug Facts" panel.
 - b. A statement of its active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

- (166) Package sorting facility. - A facility that satisfies both of the following conditions:
- a. The facility is used primarily for sorting and distributing letters and packages for an interstate air and ground courier.
 - b. The Secretary of Commerce has certified that an investment of private funds of at least one hundred million dollars (\$100,000,000) has been or will be made in real and tangible personal property for the facility within five years after the date on which the first property investment is made and that the facility will achieve an employment level of at least 400 within five years after the date the facility is placed into service and maintain that minimum level of employment throughout its operation.
- (167) Person. - Defined in G.S. 105-228.90.
- (169) Place of primary use. - The street address representative of where the use of a customer's telecommunications service primarily occurs. The street address must be the customer's residential street address or primary business street address. For mobile telecommunications service, the street address must be within the licensed service area of the service provider. If the customer who contracted with the telecommunications provider for the telecommunications service is not the end user of the service, the end user is considered the customer for the purpose of determining the place of primary use.
- (171) Prepaid calling service. - A right that meets all of the following requirements:
- a. Authorizes the exclusive purchase of telecommunications service.
 - b. Must be paid for in advance.
 - c. Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.
 - d. Is sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis.
- (173) Prepaid meal plan. - A plan offered by an institution of higher education that meets all of the following requirements:
- a. Entitles a person to food or prepared food.
 - b. Must be billed or paid for in advance.
 - c. Provides for predetermined units or unlimited access to food or prepared food but does not include a dollar value that declines with use.
- (175) Prepaid telephone calling service. - Prepaid calling service or prepaid wireless calling service.

- (177) Prepaid wireless calling service. - A right that meets all of the following requirements:
- a. Authorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services.
 - b. Must be paid for in advance.
 - c. Is sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis.
- (179) Prepared food. - Food that meets at least one of the conditions of this subdivision. Prepared food does not include food the retailer sliced, repackaged, or pasteurized but did not heat, mix, or sell with eating utensils.
- a. It is sold in a heated state or it is heated by the retailer.
 - b. It consists of two or more foods mixed or combined by the retailer for sale as a single item. This sub-subdivision does not include foods containing raw eggs, fish, meat, or poultry that require cooking by the consumer as recommended by the Food and Drug Administration to prevent food borne illnesses.
 - c. It is sold with eating utensils provided by the retailer, such as plates, knives, forks, spoons, glasses, cups, napkins, and straws. A plate does not include a container or packaging used to transport the food.
- (181) Prescription. - An order, formula, or recipe issued orally, in writing, electronically, or by another means of transmission by a physician, dentist, veterinarian, or another person licensed to prescribe drugs.
- (183) Prewritten computer software. - Computer software, including prewritten upgrades, that is not designed and developed by the author or another creator to the specifications of a specific purchaser. The term includes software designed and developed by the author or another creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser.
- (185) Production company. - A person engaged in the business of making original motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes.
- (187) Professional motorsports racing team. - A racing team that satisfies all of the following conditions:
- a. The team is operated for profit.
 - b. The team does not claim a deduction under section 183 of the Code.
 - c. The team competes in at least sixty-six percent (66%) of the races sponsored in a race series in a single season by a motorsports sanctioning body.
- (189) Property management contract. - A written contract obligating a person to provide five or more real property management services.

- (191) Prosthetic device. - A replacement, corrective, or supporting device worn on or in the body that meets one of the conditions of this subdivision. The term includes repair and replacement parts for the device. The conditions are as follows:
- a. Artificially replaces a missing portion of the body.
 - b. Prevents or corrects a physical deformity or malfunction.
 - c. Supports a weak or deformed portion of the body.
- (193) Purchase. - Acquired for consideration or consideration in exchange for a service, regardless of any of the following:
- a. Whether the acquisition was effected by a transfer of title or possession, or both, or a license to use or consume.
 - b. Whether the transfer was absolute or conditional regardless of the means by which it was effected.
 - c. Whether the consideration is a price or rental in money or by way of exchange or barter.
- (195) Purchase price. - The term has the same meaning as the term "sales price" when applied to an item subject to use tax.
- (197) Qualified aircraft. - An aircraft with a maximum take-off weight of more than 9,000 pounds but not in excess of 15,000 pounds.
- (199) Qualified jet engine. - An engine certified pursuant to Part 33 of Title 14 of the Code of Federal Regulations.
- (201) Qualifying datacenter. - A datacenter that satisfies each of the following conditions:
- a. The datacenter certifies that it satisfies or will satisfy the wage standard for the development tier area or zone in which the datacenter is located. There is no wage standard for a development tier one area. If an urban progress zone or an agrarian growth zone is not in a development tier one area, then the wage standard for that zone is an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county in which the datacenter is located. The wage standard for a development tier two area or a development tier three area is an average weekly wage that is at least equal to one hundred ten percent (110%) of the lesser of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county in which the datacenter is located.
 - b. The Secretary of Commerce has made a written determination that at least seventy-five million dollars (\$75,000,000) in private funds has been or will be invested by one or more owners, users, or tenants of the datacenter within five years of the date the

owner, user, or tenant of the datacenter makes its first real or tangible property investment in the datacenter on or after January 1, 2012. Investments in real or tangible property in the datacenter made prior to January 1, 2012, may not be included in the investment required by this subdivision.

- c. The datacenter certifies that it provides or will provide health insurance for all of its full-time employees as long as the datacenter operates. The datacenter provides health insurance if it pays or will pay at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.
- (203) Qualifying educational entity. - An entity listed in this subdivision. For purposes of this definition, references to the United States Code mean the United States Code as enacted as of January 1, 2020. The entities are:
- a. An elementary or secondary school, as defined in 20 U.S.C. § 7801.
 - b. An institution of higher education, as defined in 20 U.S.C. § 1002.
- (205) Real property. - Any one or more of the following:
- a. Land.
 - b. Building or structure on land.
 - c. Permanent fixture on land.
 - d. A manufactured home or a modular home on land.
- (207) Real property contract. - A contract between a real property contractor and another person to perform a capital improvement to real property.
- (209) Real property contractor. - A person that contracts to perform a real property contract in accordance with G.S. 105-164.4H. The term includes a general contractor, a subcontractor, or a builder for purposes of this Article.
- (211) Real property management services. - Any of the following activities:
- a. Hiring and supervising employees for the real property.
 - b. Providing a person to manage the real property.
 - c. Receiving and applying revenues received from property owners or tenants of the real property.
 - d. Providing repair, maintenance, and installation services to comply with obligations of a homeowners' association or a landlord under a lease, rental, or management agreement.
 - e. Arranging for a third party to provide repair, maintenance, and installation services.

- f. Incurring and paying expenses for the management, repair, and maintenance of the real property.
- g. Handling administrative affairs for the real property.
- (213) Real property manager. - A person that provides real property management services pursuant to a property management contract.
- (215) Reconstruction. - Rebuild or construct again a prior existing permanent building, structure, or fixture on land and may include a change in the square footage from the prior existing building, structure, or fixture on land.
- (217) Related member. - Defined in G.S. 105-130.7A.
- (219) Remodeling. - A transaction comprised of multiple services performed by one or more persons to restore, improve, alter, or update real property that may otherwise be subject to tax as repair, maintenance, and installation services if separately performed. The term includes a transaction where the internal structure or design of one or more rooms or areas within a room or building are substantially changed. The term does not include a single service that is included in repair, maintenance, and installation services. The term does not include a transaction where the true purpose is repair, maintenance, and installation services no matter that another service included in repair, maintenance, and installation services is performed that is incidental to the true purpose of the transaction; examples include repair of sheetrock that includes applying paint, replacement of cabinets that includes installation of caulk or molding, and the installation of hardwood floors that includes installation of shoe molding.
- (221) Remote sale. - A sale of an item ordered by mail, telephone, Internet, mobile phone application, or another method by a retailer who receives the order in another state and delivers the item or makes it accessible to a person in this State or causes the item to be delivered or made accessible to a person in this State or performs a service sourced to this State. It is presumed that a resident of this State who makes an order was in this State at the time the order was made.
- (223) Renovation. - Same meaning as the term "remodeling."
- (225) Repair, maintenance, and installation services. - The term includes the activities listed in this subdivision and applies to tangible personal property, motor vehicles, certain digital property, and real property. The term does not include a service used to fulfill a real property contract taxed in accordance with G.S. 105-164.4H. The included activities are:
 - a. To keep or attempt to keep property or a motor vehicle in working order to avoid breakdown and prevent deterioration or repairs. Examples include to clean, wash, or polish property.
 - b. To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property or a motor vehicle to proper working order or

good condition. This activity may include replacing or putting together what is torn or broken.

- c. To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore property or a motor vehicle to proper working order or good condition. The term includes activities that may lead to the issuance of an inspection report.
 - d. To install, apply, connect, adjust, or set into position tangible personal property or certain digital property. The term includes floor refinishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like-kind item, such as replacing one or more windows, is repair, maintenance, and installation services. The term does not include an installation defined as a capital improvement under subdivision (31)d. of this section and substantiated as a capital improvement under G.S. 105-164.4H(a1).
 - e. To inspect or monitor property or install, apply, or connect tangible personal property or certain digital property on a motor vehicle or adjust a motor vehicle.
- (227) Retail sale or sale at retail. - The sale, lease, or rental for any purpose other than for resale, sublease, or subrent.
- (229) Retailer. - Any of the following persons:
- a. A person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of items sourced to this State. When the Secretary finds it necessary for the efficient administration of this Article to regard any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these dealers, distributors, consignors, supervisors, employers, or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers, or persons as "retailers" for the purpose of this Article.
 - b. A person, other than a real property contractor, engaged in business of delivering, erecting, installing, or applying tangible personal property or certain digital property for use in this State.
 - c. A person engaged in business of making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met.

- d. A person required to collect the State tax levied under this Article or the local taxes levied under Subchapter VIII of this Chapter and under Chapter 1096 of the 1967 Session Laws.
 - e. A marketplace facilitator that is subject to the requirements of G.S. 105-164.4J or a facilitator that is required to collect and remit the tax under this Article.
- (231) Retailer-contractor. - A person that acts as a retailer when it makes a sale at retail and as a real property contractor when it performs a real property contract.
- (233) Ringtone. - A digitized sound file that is downloaded onto a device and that may be used to alert the user of the device with respect to a communication.
- (235) Sale or selling. - The transfer for consideration of title, license to use or consume, or possession of tangible personal property or certain digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. The term applies to the following:
- a. Fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work.
 - b. Furnishing or preparing tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared.
 - c. A transaction in which the possession of the tangible personal property or certain digital property is transferred but the seller retains title or security for the payment of the consideration.
 - d. A lease or rental.
 - e. Transfer of a digital code.
 - f. An accommodation.
 - g. A service contract.
 - h. Any other item subject to tax under this Article.
- (237) Sales price. - The total amount or consideration for which an item is sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.
- a. The term includes all of the following:
 - 1. The retailer's cost of the item sold.
 - 2. The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer.

3. Charges by the retailer for any services necessary to complete the sale.
 4. Delivery charges.
 5. Installation charges.
 6. Repealed by Session Laws 2007-244, s. 1, effective October 1, 2007.
 7. Credit for trade-in. The amount of any credit for trade-in is not a reduction of the sales price.
 8. The amount of any discounts that are reimbursable by a third party and can be determined at the time of sale through any of the following:
 - I. Presentation by the consumer of a coupon or other documentation.
 - II. Identification of the consumer as a member of a group eligible for a discount.
 - III. The invoice the retailer gives the consumer.
- b. The term does not include any of the following:
1. Discounts that are not reimbursable by a third party, are allowed by the retailer, and are taken by a consumer on a sale.
 2. Interest, financing, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale, or a similar document given to the consumer.
 3. Any taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer.
- (239) Satellite digital audio radio service. - A radio communication service in which audio programming is digitally transmitted by satellite to an earth-based receiver, whether directly or via a repeater station.
- (241) Secondary metals recycler. - A person that gathers and obtains ferrous metals, nonferrous metals, and products that have served their original economic purpose and that converts them by processes, including sorting, cutting, classifying, cleaning, baling, wrapping, shredding, or shearing into a new or different product for sale consisting of prepared grades.
- (243) Secretary. - The Secretary of the North Carolina Department of Revenue.
- (245) Service contract. - A contract where the obligor under the contract agrees to maintain, monitor, inspect, repair, or provide another service included in the definition of repair, maintenance, and installation services to certain digital property, tangible personal property, or real property for a period of time or some other defined measure. The term

does not include a single service included in repair, maintenance, or installation services, but does include a contract where the obligor may provide a service included in the definition of repair, maintenance, and installation services as a condition of the contract. The term includes a service contract for a pool, fish tank, or similar aquatic feature and a home warranty. Examples include a warranty agreement other than a manufacturer's warranty or dealer's warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair agreement, or a similar agreement or contract.

- (247) Service contract facilitator. - A person who contracts with the obligor of a service contract to market the service contract and accepts payment from the purchaser for the service contract.
- (249) Soft drink. - A nonalcoholic beverage that contains natural or artificial sweeteners. The term does not include beverages that contain one or more of the following:
 - a. Milk or milk products.
 - b. Soy, rice, or similar milk substitutes.
 - c. More than fifty percent (50%) vegetable or fruit juice.
- (251) Special mobile equipment. - Any of the following:
 - a. A vehicle that has a permanently attached crane, mill, well-boring apparatus, ditch-digging apparatus, air compressor, electric welder, feed mixer, grinder, or other similar apparatus is driven on the highway only to get to and from a nonhighway job and is not designed or used primarily for the transportation of persons or property.
 - b. A vehicle that has permanently attached special equipment and is used only for parade purposes.
 - c. A vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.
 - d. A vehicle that has permanently attached playground equipment and is used only for playground purposes.
- (253) Specified digital products. - Digital audio works, digital audiovisual works, and digital books.
- (255) State agency. - A unit of the executive, legislative, or judicial branch of State government, such as a department, a commission, a board, a council, or The University of North Carolina. The term does not include a local board of education.
- (257) Storage. - The keeping or retention in this State for any purpose, except sale in the regular course of business, of tangible personal property or certain digital property for any period of time purchased from a person in business.
- (259) Streamlined Agreement. - The Streamlined Sales and Use Tax Agreement as amended as of December 21, 2021.

- (261) Tangible personal property. - Personal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses. The term includes electricity, water, gas, steam, and prewritten computer software.
- (263) Taxing area. - Any of the following specific geographic areas:
- a. A street address.
 - b. The area within a nine-digit zip code.
 - c. The area within a five-digit zip code.
- (265) Taxing district. - A county or any other district, by or for which ad valorem taxes or sales taxes are levied, excluding the State.
- (267) Taxpayer. - Any person liable for taxes under this Article.
- (269) Telecommunications service. - The electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as voice-over Internet protocol or the Federal Communications Commission classifies it as enhanced or value added. The term does not include the following:
- a. An information service.
 - b. The sale, installation, maintenance, or repair of tangible personal property.
 - c. Directory advertising and other advertising.
 - d. Billing and collection services provided to a third party.
 - e. Internet access service.
 - f. Radio and television audio and video programming service, regardless of the medium of delivery, and the transmission, conveyance, or routing of the service by the programming service provider. The term includes cable service and audio and video programming service provided by a mobile telecommunications service provider.
 - g. Ancillary service.
 - h. Certain digital property.
- (271) Transferred electronically. - Obtained by the purchaser by means other than tangible storage media and includes delivered or accessed electronically.
- (273) Use. - The exercise of any right, power, or dominion whatsoever over an item by the purchaser of the item. The term includes withdrawal from storage, distribution, installation, affixation to real or personal property, and exhaustion or consumption of the item by the owner or purchaser. The term does not include a sale of an item in the regular course of business.

- (275) Use tax. - The tax imposed by Part 2 of this Article.
- (277) Video programming. - Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery.
- (279) Wholesale merchant. - A person engaged in the business of any of the following:
- a. Making wholesale sales.
 - b. Buying or manufacturing items and selling them to a registered person or nonresident retail or wholesale merchant for resale.
 - c. Manufacturing, producing, processing, or blending any articles of commerce and maintaining a store, warehouse, or any other place that is separate and apart from the place of manufacture or production for the sale or distribution of the articles, other than bakery products, to another for the purpose of resale.
- (281) Wholesale sale. - 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. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 1213, s. 1; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; c. 1287, s. 8; 1975, c. 104; c. 275, s. 6; 1979, c. 48, s. 2; c. 71; c. 801, s. 72; 1983, c. 713, ss. 87, 88; 1983 (Reg. Sess., 1984), c. 1097, ss. 4, 5; 1985, c. 23; 1987, c. 27; c. 557, s. 3.1; c. 854, ss. 2, 3; 1987 (Reg. Sess., 1988), c. 1044, s. 3; c. 1096, ss. 1-3; 1989, c. 692, s. 3.2; 1989 (Reg. Sess., 1990), c. 813, s. 13; 1991, c. 45, s. 15; c. 79, ss. 1, 3; c. 689, s. 190.1(a); 1991 (Reg. Sess., 1992), c. 949, s. 3; 1993, c. 354, s. 16; c. 484, s. 1; c. 507, s. 1; 1995 (Reg. Sess., 1996), c. 649, s. 2; 1996, 2nd Ex. Sess., c. 14, ss. 13, 14; 1997-6, s. 7; 1997-370, s. 1; 1997-426, s. 4; 1998-22, s. 4; 1998-55, ss. 7, 13; 1998-98, ss. 13.1(a), 106; 1999-337, s. 28(a), (b); 1999-360, s. 6(a)-(c); 1999-438, s. 4; 2000-153, s. 4; 2000-173, s. 9; 2001-347, ss. 2.1-2.7; 2001-414, s. 14; 2001-424, s. 34.17(b); 2001-430, ss. 1, 2; 2001-476, s. 18(a); 2001-489, s. 3(a); 2002-16, ss. 1, 2, 3; 2002-170, s. 6; 2003-284, s. 45.2; 2003-400, ss. 13, 14; 2003-402, s. 12; 2004-124, s. 32B.3; 2004-170, ss. 18, 19; 2005-276, ss. 33.2, 33.3; 2006-33, s. 1; 2006-66, ss. 24.10(a), 24.17(a); 2006-151, s. 2; 2006-162, s. 5(a); 2006-168, ss. 4.1, 4.3; 2006-252, ss. 2.25(a), (a1), (c), 2.26; 2007-244, s. 1; 2007-323, ss. 31.14(a), 31.20(a), 31.23(b); 2008-107, s. 28.12(a); 2009-445, s. 11; 2009-451, s. 27A.3(d), (g); 2010-91, ss. 1, 2; 2010-166, s. 3.3; 2011-330, ss. 15(a), (b), 31(c); 2012-79, s. 2.7; 2013-316, s. 6(a); 2013-414, ss. 8, 23(a); 2014-3, ss. 4.1(a), 6.1(a), 7.1(a), 14.7; 2015-6, ss. 2.1(b), 2.10; 2015-241, s. 32.18(a); 2015-259, ss. 3(a), 6(a), 4.1(a), 4.2(a); 2015-268, s. 10.1(g); 2016-5, ss. 3.2(a), 3.2(b), 5.5(a); 2016-90,

s. 13(h); 2016-92, s. 2.2; 2016-94, s. 38.5(d); 2017-39, s. 5; 2017-57, ss. 38.8(d), 38.9(a); 2017-102, s. 5.2(b); 2017-204, ss. 2.1, 2.9(i); 2018-5, s. 38.5(a), (b), (x); 2019-169, ss. 3.1(a), 3.1(b), 3.4(b), 3.5(a), 3.9(a)-(c), 3.13(a); 2019-177, s. 9(b); 2019-237, s. 8.1(b); 2019-246, ss. 4(a), (d), (h), (j), (m), (p), 7(a), 8; 2020-6, ss. 1(b), 3(a), (c); 2022-13, ss. 3.1, 3.2; 2022-74, s. 42.2(a).)

§ 105-164.13. Retail sales and use tax.

The sale at retail and the use, storage, or consumption in this State of the following items are specifically exempted from the tax imposed by this Article:

...

- (12) Sales of any of the following:
 - a. Prosthetic devices for human use.
 - b. Mobility enhancing equipment sold on a prescription.
 - c. Durable medical equipment sold on prescription.
 - d. Durable medical supplies sold on prescription.
 - e. Human blood, including whole, plasma, and derivatives.
 - f. Human tissue, eyes, DNA, or an organ.

From: [Andrew O. Furuseth](#)

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

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

Subject: RE: [External] RE: DOR Rules

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

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,

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.

WILLIAM W. PEASLEE
COMMISSION COUNSEL

.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.

WILLIAM W. PEASLEE
COMMISSION COUNSEL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.1303 Gifts to donees

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

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

.1404 Medical supplies, instruments, and equipment

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

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

.1601 Sales to or purchases by nonprofit entities

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

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

.1605 Sales by nonprofit entities

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

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

.1705 Housing authorities

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

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

.1801 Sales to hospitals

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

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

.1905 Tire retreaders

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

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

.2001 Sales to employees Statutes -

G.S. 105-164.4

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

.2002 Gifts to employees Statutes
– GS 105-164.4

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

Thank You,

Andrew O. Furuseth
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WILLIAM W. PEASLEE
COMMISSION COUNSEL

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~~, pursuant to G.S. 105-164.13(12), 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-tax~~, pursuant to G.S. 105-164.4.

~~(b)(c)~~ Sales Pursuant to G.S. 105-164.13(61b), sales of eyeglass frames, repair parts for eyeglasses, cases, optical merchandise ~~merchandise~~, and optical supplies by optical supply houses and opticians to registered merchants, including oculists and optometrists, retailers or wholesale merchants for resale are ~~not subject to the tax-exempt from sales and use [tax,]~~ tax, when the purchaser complies with the requirements of 17 NCAC 07B .0106.

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

Subject: FW: [External] Response to RFC Rules 17 NCAC 07B .4203 through .4701
Attachments: DOR response - RFC Rules .4203 through .4701.docx; DOR response to RFC .4203 through .4701.zip

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Wednesday, November 8, 2023 3:44 PM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Peaslee, William W <bill.peaslee@oah.nc.gov>; Ascher, Seth M <seth.ascher@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 .4203 through .4701

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 twelve (12) Requests for Changes submitted to the Division by Mr. Peaslee on 10/25/2023, for Rules 17 NCAC 07B .4203, .4205, .4210, .4301, .4302, .4401, .4403, .4404, .4406, .4503, .4609, and .4701, and with a response due date of COB 11/8/2023.

Please let me know if additional information is required.

Thank you.

Laura Lansford
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N.C. Department of Revenue
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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.

Questions contained herein suggest that the rule as written is unclear or there is some ambiguity. If this document includes questions and you do not understand the question, please contact the reviewing attorney to discuss. Failure to respond may result in a staff opinion recommending objection.

Staff may suggest the agency "consider" an idea or language in this document. This is in no way a formal request that the agency adopt the idea or language but rather is offered merely for the agency's consideration which the agency may find preferable and clarifying.

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: "aAssociation"
 - 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:
www.ncoah.com/rules/examples.html

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

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2023

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .4203

DEADLINE FOR RECEIPT: November 8, 2023

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

Line 7: Define “applicable local and transit rates of sales and use tax”.

See proposed Rule change removing reference to applicable local and transit rates of sales and use tax.

Line 13: Provide the citations to the specific statutes in the Articles listed.

See proposed Rule change adding citation to specific statutes.

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 .4205

DEADLINE FOR RECEIPT: November 8, 2023

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

Line 23: Provide the citations to the specific statutes in the Articles listed.

See proposed Rule change adding citation to specific statutes.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2023

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .4210

DEADLINE FOR RECEIPT: November 8, 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 with particularity the authority to exempt sales on the EBCI Reservation.

G.S. 105-164.13(25) specifically exempts “[s]ales by merchants on the Cherokee Indian Reservation when such merchants are authorized to do business on the Reservation and are paying the tribal gross receipts levy to the Tribal Council.”

Page 1, Lines 6-7: It is unclear whether the merchant must be on the reservation, or the sale must take place on the reservation or both.

See proposed Rule change adding the sale must be sourced to the EBCI Reservation.

Page 1, Line 8: From whom does the authorization come?

See proposed Rule change adding citation to G.S. 105-164.13(25).

Page 1, Lines 8-9: Who judges whether the merchant is paying the tribal gross receipts levy?

The tribe, as a sovereign entity, audits and verifies its own tribal tax levies. G.S. 105-164.13(25) expressly exempts “[s]ales by merchants on the Cherokee Indian Reservation when such merchants are authorized to do business on the Reservation and are paying the tribal gross receipts levy to the Tribal Council.”

Page 1, Line 12: By what process or procedure is an entertainment activity “sourced”?

G.S. 105-164.4B sets out the sourcing principles. For an entertainment activity sourced to the EBCI Reservation, G.S. 105-164.4B(a)(1) would apply, which

William W. Peaslee
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Date submitted to agency: October 25, 2023

states: “[w]hen a purchaser receives an item at a business location of the seller, the sale is sourced to that business location.”

Page 1, Lines 13-14: From whom does the authorization come?

The tribe, as a sovereign entity, authorizes merchants to conduct business on its Reservation. G.S. 105-164.13(25) expressly exempts “[s]ales by merchants on the Cherokee Indian Reservation when such merchants are authorized to do business on the Reservation and are paying the tribal gross receipts levy to the Tribal Council.”

Page 1, Lines 13-14: Who judges whether the merchant is paying the tribal gross receipts levy?

The tribe, as a sovereign entity, audits and verifies its own tribal tax levies. G.S. 105-164.13(25) expressly exempts “[s]ales by merchants on the Cherokee Indian Reservation when such merchants are authorized to do business on the Reservation and are paying the tribal gross receipts levy to the Tribal Council.”

Page 1, Line 23: What about the member’s nation’s Indian Country?

See proposed Rule change adding reference to an enrolled member of the nation.

Page 1, Line 24: Is “retail sales” defined anywhere?

“Retail sale or sale at retail” is defined in G.S. 105-164.3(227) as: “[t]he sale, lease, or rental for any purpose other than for resale, sublease, or subrent.”

Page 1, Line 28: Identify the “applicable rates of sale and use tax”.

See proposed Rule change removing reference to applicable rates.

Page 1, Lines 33-34: As written, “to fulfill a real property contract” modifies someone who “applies for others”. Was that the Secretary’s intent? If so, if I, who am not a licensed contractor, purchase any item I have become a real property contractor according to the definition. In effect, any person who purchases an item is a real property contractor. The need for the definition is unclear. Further, there is already a definition of real property contractor in G.S. 105-164.3 (209).

See proposed Rule change. The purpose of this sentence is to establish that the real property contractor is the consumer of items purchased.

Page 1, Lines 32-36, and Page 2, Lines 1-16: Consider the following: “(c) The sale of items to a real property contractor are exempt from sale and use tax provided that the items are sourced to a federally recognized Native American nation’s Indian Country, the purchase of item is to fulfill a real property contract, and the item is used or

installed, within the sourced-nation's Indian Country, by the contractor or the contractor's subcontractor."

See proposed Rule change adopting recommended language and eliminating subsections.

Does anything more need to be written to fulfil the Secretary's intent for Paragraph (c)?

See proposed Rule change adopting recommended language and eliminating subsections.

Page 2, Line 19: Specify which statutes.

See proposed Rule change adding citation to specific statutes.

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 .4301

DEADLINE FOR RECEIPT: November 8, 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:

Page 1, Lines 8-9, Paragraph (a): Explain the Secretary's authority to make a statutory refund inapplicable.

See proposed Rule change removing reference to taxes for which the refund is inapplicable.

Page 1, Line 30, Subparagraph (b)(15): Re-write to remove the parentheses.

See proposed Rule change removing parentheses.

Page 1, Line 33, Subparagraph (b)(18): Re-write to remove the parentheses.

Parentheses was removed in original submission.

Page 1, Line 35, Subparagraph (b)(20): Re-write to remove the parentheses.

Parentheses was removed in original submission.

Page 2, Lines 5-26, Paragraph (c): Explain why this Paragraph is necessary pursuant to G.S. 150B -21.9(3).

Paragraph (c) is necessary to provide examples of items outside the scope of the refund provisions, but are often thought to be included in motor carrier refunds.

Page 2, Line 8, Subparagraph (c)(1): Define or delete "certain digital property".

"Certain digital property" is a defined term in G.S. 105-164.3. See proposed Rule change adding reference to the definitions statute.

Page 2, Line 11, Subparagraph (c)(4): "Re-write to remove the parentheses.

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2023

See proposed Rule change removing parentheses.

Page 2, Line 17, Subparagraph (c)(9): Re-write to remove the parentheses.

See proposed Rule change removing parentheses.

Page 2, Line 18, Subparagraph (c)(10): Isn't all natural gas "piped"? Why is piped necessary?

Not all natural gas is piped, some natural gas is liquid. Additionally, all references to "natural gas" throughout Article 5 specify "piped natural gas."

Page 2, Lines 27-29, Paragraph (d): While the Secretary names items which are eligible for the refund and to some extent this is descriptive of the "parts" and "accessories," there is no definition of these terms which would guide either the Division employees or the regulated public in making the refund-eligibility determination. This opens the door to subjectivity and inequity.

See proposed Rule change removing Paragraph (d).

Page 2, Lines 30-31, Paragraph (d): Explain why this Paragraph is necessary pursuant to G.S. 150B -21.9(3).

See proposed Rule change removing Paragraph (d).

Page 2, Lines 33 and 36, Paragraph (f), and Page 3, Lines 22 and 25, Paragraph (h): Numbers 1-9 are spelled out, 10 and above are numerical. "Sixty (60)" should be "60" and "three (3)" should be "three".

See proposed Rule change using 60 and spelling out three.

Page 3, Line 3, Subparagraph (g)(3): What account number?

See proposed Rule change to North Carolina sales and use tax account number.

Page 3, Line 10, Subparagraph (g)(10): Does the Secretary mean "the total pre-tax purchase price for eligible purchases made inside or outside North Carolina"?

The language used on Form E-581 is as follows: "Total Qualifying Purchases Inside and Outside N.C. Excluding any Sales and Use Tax Paid" The language in the Rule was used to track the form language.

Page 3, Line 20, Paragraph (h): Should it not be "carrier's"?

See proposed Rule change adopting recommended language.

Page 3, Lines 22-25, Paragraph (h): There appears to be two different due dates.

See proposed Rule change removing time periods associated with the Statute of Limitations provisions.

Page 3, Line 29, Subparagraph (i)(3): What account number?

See proposed Rule change to North Carolina sales and use tax account number.

Page 4, Lines 3-4: Provide the citations to the specific statutes in the Articles listed.

See proposed Rule change adding citation to specific statutes.

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 .4302

DEADLINE FOR RECEIPT: November 8, 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: Consider re-writing this Rule entirely. It appears that it could be written in a clear and concise manner.

Generally, to the Rule: What, or in what manner, does this Rule regulate that is not already accomplished by G.S. 105-164.14? Rules are not restatements of statutes.

This Rule is necessary to interpret how to calculate the refund allowed in G.S. 105-164.14(a) for railroads. Specifically, this Rule is interpreting how the refunds should be sought for leased railroad cars as this is not made clear in the statute.

Lines 5-6, Paragraph (a): Explain why this Paragraph is necessary pursuant to G.S. 150B -21.9(3).

This paragraph is necessary to require refund applicants to comply with frequency and form requirements set out in 17 NCAC 07B .4301.

Line 7, Paragraph (b): "An applicant" for what?

See proposed Rule change clarifying the "applicant" is a "refund applicant".

Line 7, Paragraph (b): "Total purchases" should be "total eligible item purchases". If that wasn't the Secretary's intention, more context needs to be provided.

See proposed Rule change adopting recommended language.

Line 8, Paragraph (b): Define "foreign line".

See proposed Rule change clarifying that a "foreign line" are railcars not owned by the refund applicant.

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2023

Line 8, Paragraph (b): Define “operates”.

See proposed Rule change removing “operates” and inserting “used by, but not owned by”

Line 10, Paragraph (b): Define “foreign cars”.

See proposed Rule change removing reference to “foreign cars”

Line 10, Paragraph (b): Strike “for refund”. If you clarify line 7, “for refund” will not be necessary.

See proposed Rule change removing “for refund”

Line 10, Paragraph (b): “Shall be taken into consideration” is vague and ambiguous.

See proposed Rule change removing “shall be taken into consideration”.

Line 10, Paragraph (b): “Shall be taken into consideration” by whom? To what end? Using what criteria?

See proposed Rule change removing “shall be taken into consideration”.

Lines 14-15, Paragraph (c): “since such railroad cars are not being operated by the applicant” is unnecessary pursuant to G.S. 150B-21.9(3). It appears that the Secretary may be attempting to define “operates” in G.S. 105-164.14(a) but this could be made clear and much more concisely.

See proposed Rule change removing “since such railroad cars are not being operated by the applicant.”

Lines 17-19, Paragraph (c): Why are these lines necessary? For the tax on the item to be eligible for a refund, the applicant must be operating the locomotive or railroad car notwithstanding its travel over foreign lines. Would the tax be eligible for refund if it was not operated by the applicant but was on the applicant’s line?

See proposed Rule change.

Lines 19-20, Paragraph (c): Everything after “because” is a justification for the rule and is unnecessary pursuant to G.S. 150B-21.9(3).

See proposed Rule change removing everything after “because”

Lines 25-27, Paragraph (d): Everything prior to “the provisions of this Rule...” is unnecessary pursuant to G.S. 150B-21.9(a)(3).

See proposed Rule change removing everything prior to “the provisions of this Rule.”

Line 27, Paragraph (d): Is “applicable to the operation of locomotives” really what the Secretary means?

See proposed Rule change to read “[t]he provisions of this Rule shall also apply to locomotives.”

I have attempted to re-write the Rule to capture what I believe was the Secretary’s intention. Consider: “The sales and use taxes paid by an interstate carrier on the cost of repair of locomotives and railroad cars shall be eligible for refund to an applicant provided that the applicant operated the locomotives or railroad cars at the time of repair and the repairs were made in this State. The taxes are eligible for refund notwithstanding the title ownership of the locomotive or rail cars, or any reimbursement of the repair costs to the applicant.”

“Operates” still needs to be defined. What am I missing?

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

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2023

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .4401

DEADLINE FOR RECEIPT: November 8, 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 7-10, Paragraph (a): Explain the Secretary's authority to impose a tax.

See proposed Rule change adding reference to tax imposition statute.

Line 12, Paragraph (a): Consider adding after "property", "by the taxpayer."

There is no "by the taxpayer" at line 12 or anywhere in paragraph (a).

Line 13, Paragraph (b): Who is "a person" and what is the Secretary's authority to regulate that person?

Person is defined at 105-164.3(167) which adopts the definition in 105-228.90(23) which states: "Person. - An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter, of G.S. 55-16-22, of Article 81 of Chapter 106 of the General Statutes, or of Article 3 of Chapter 119 of the General Statutes."

Line 14, Paragraph (b): Consider ending the sentence after "deduction". Or are there expenses which can be deducted which are not incident to conducting the business?

See proposed Rule change adopting recommended change.

Line 19, Paragraph (d): Define "property". Is it real estate or tangible personal property?

See proposed Rule change identifying "property" as tangible personal property.

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2023

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 .4403

DEADLINE FOR RECEIPT: November 8, 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 5-14, Paragraph (a): Explain the Secretary's authority to classify the purchases described in Paragraph (a) as "wholesale sales"? G.S. 105-164.3 (281) clearly defines "wholesale sale" which does not appear to include the sales described in Paragraph (a).

Line 6, Paragraph (a): "a person that leases tangible personal property" is unclear and ambiguous. Is the lessee of a widget not-for-resale "a person that leases tangible personal property"?

Line 6-8, Paragraph (a): As written, this could be read that the purchase of a tool to repair a widget would only be considered a wholesale-sale purchase if the tool (not the widget) was subsequently for sale or lease. Or it could be read that the widget, which was subject to repair utilizing the purchased tool, was subsequently for sale or lease. Accordingly, it is unclear and ambiguous.

Consider, for clarity and if it meets the Secretary's intention: "Purchases of tangible personal property used to repair or maintain tangible personal property held for lease or rent are wholesale sales pursuant to G.S. 105-164.2(281) provided that the purchased property becomes a part of the property for lease or rent and the purchase is made by a wholesale merchant" (or perhaps) "a person engaged in the business of leasing and renting the tangible personal property held for lease or rent."

See proposed Rule change adopting recommended language.

Line 11, Paragraph (a): "person that leases tangible personal property" is unclear and ambiguous. Does the Secretary mean a lessor or lessee? Both?

Consider, for clarity and if it meets the Secretary's intention: Purchases of repair, maintenance, and installation services used to repair, recondition, or maintain tangible personal property held for lease or rent are wholesale sales pursuant to G.S.

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2023

105-164.2(281) provided the purchase is made by a wholesale merchant, and the purchaser complies with 17 NCAC 07B .0106.”

See proposed Rule change adopting recommended language.

Lines 5-14: Consider making the purchases separate Paragraphs.

See proposed Rule change separating the paragraphs.

Line 15: “a person that leases” is ambiguous. Is it the lessor, the lessee, both?

See proposed Rule change identifying the purchaser as the lessor.

Line 15-19, Paragraph (b): What is the Secretary’s authority to impose a tax?

See proposed Rule change citing the tax imposition statute, G.S. 105-164.4.

Line 15-19, Paragraph (b): Why is Paragraph (b) necessary?

This paragraph is necessary to interpret G.S. 105-164.13(5) that sales of repair, maintenance, and installation services, which are ordinarily subject to sales and use tax, are exempt when purchased by someone who uses the service to repair, recondition, or maintain property for lease or rental, thus making the transaction a sale for resale.

Line 15-19, Paragraph (b): The Paragraph appears to be mixing concepts. It contains language about who is responsible for paying the tax and that which is taxable. It appears lines 17-19 should be a separate paragraph.

See proposed Rule change.

Line 23, Paragraph (c): Consider adding a comma after “services”.

See proposed Rule change adding a comma after “services”.

Line 32: Provide the citations to the specific statutes in the Articles listed.

See proposed Rule change adding specific statute citations.

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 .4404

DEADLINE FOR RECEIPT: November 8, 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:

Line 5, Paragraph (a): By what authority is a person who “provides” tangible personal property with or without an operator subject to tax. What does the Secretary mean by “provides”? Does it not need to be in the context of a sale or lease and then only in a retail context?

See proposed Rule change adding citation to G.S. 105-164.3(121).

Line 7: It appears that the classification of items as a “service” has some importance. Explain the context or cite to a rule, statute, or definition. G.S. 105-164.3(121)?

See proposed Rule change adding citation to G.S. 105-164.3(121).

Lines 9-12, Paragraph (a): The distinction between an “operator necessary for tangible personal property to perform” and an “operator” who “maintains, sets-up, inspects, or monitors” the personal property is unclear. Please provide some examples to illustrate the distinction.

See proposed Rule change adding an example of when an operator is necessary.

This Rule is mostly a restatement of the law as stated in the statutes. Accordingly, most of it is unnecessary. It appears to me that the Secretary is trying to further define “necessary” as it is used in G.S. 105-164.3(121). “...the operator is necessary for the equipment to perform as designed” ; however, the operator must do more than “maintain, inspect, or set up the tangible personal property.”

In Paragraph (a) the Secretary adds the word “monitor” to the list. As the General Assembly has listed its threshold requirements, the Secretary cannot add to the list but may fill in any interstitial language to further interpret the statutory language. The addition of “monitor” does not appear to be an interpretation of “maintain, inspect, or set up” but rather an addition. Or is the Secretary further defining “maintain”?

See proposed Rule change removing the word “monitor”.

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2023

Line 13-14: Why is this necessary? Specifically what statutory ambiguity does this resolve?

This is necessary to interpret that a person who provides property with an operator is the consumer of items purchased and is required to pay sales and use tax on those items. See proposed rule change adding language to explain these purchases are pursuant to G.S. 105-164.4 because the purchaser is the consumer of the property.

Lines 14-17: This appears to be a different concept. Consider making these lines a separate paragraph.

See proposed Rule change making this sentence a separate paragraph.

Lines 14-17: Consider, if it meets the Secretary's intention, "A person claiming an exemption under Paragraph (a) shall maintain inventory records substantiating the basis for exemption for each sale separate from other sales without provision of an operator."

The suggested revision does not meet the Secretary's intention.

This type of transaction is not an exemption. Per the definition of "lease or rental" if providing tangible personal property requires an operator, then the transaction is a non-taxable service. However, if providing tangible personal property that only requires someone to set-up the equipment, then that is a lease or rental and sales and use tax must be collected on the transaction.

Lines 18-22: What is the statutory ambiguity which makes Paragraph (c) necessary?

This is necessary to interpret that a person who provides property with an operator is the consumer of items purchased and is required to pay sales and use tax on those items. See proposed rule change adding language to explain these purchases are pursuant to G.S. 105-164.4 because the purchaser is the consumer of the property.

Lines 23-24: Is there a records rule to which the Secretary can cite?

See proposed Rule change adding G.S. 105-164.22 to the history note.

Lines 26-27: Provide the citations to the specific statutes in the Articles listed.

See proposed Rule change adding specific statute citations.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2023

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .4406

DEADLINE FOR RECEIPT: November 8, 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:

Line 5-10, Paragraph (a): Explain the Secretary's authority to subject anyone to a tax.

See proposed Rule change adding that tax is pursuant to G.S. 105-164.4.

Line 5-10, Paragraph (a): What, if any, statutory ambiguity is clarified by this language?

The first sentence is a brief recitation of the statute to introduce the second sentence, which interprets 105-164.4 to include insurance on leased or rented property.

Line 7, Paragraph (a): By its nature, if a tax is "applicable" someone is subject to pay it. It's like saying the gross receipts are subject to tax unless they are not.

See proposed Rule change removing reference to "applicable".

Lines 11-14, Paragraph (b): What, if any, statutory ambiguity is clarified by this language?

This paragraph is interpreting G.S. 105-164.4, by explaining that insurance purchased by a lessee is not subject to sales and use tax whether the insurance payment is remitted directly to the insurer or to the lessor for payment to the insurer. This is necessary to differentiate insurance obtained by the lessor, which is subject to sales and use tax as part of the gross receipts of the lease or rental of the property. Additionally, this Rule is necessary to interpret the record keeping requirement that if the lessee's insurance is provided to the lessor for payment to the insurer, it must be separately stated, otherwise it will be included in the lessor's total gross receipts upon which sales and use tax is imposed.

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2023

Lines 21-22: Provide the citations to the specific statutes in the Articles listed.

See proposed Rule change adding specific statute citations.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2023

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .4503

DEADLINE FOR RECEIPT: November 8, 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:

Page 1, Line 5: "Similar Businesses" is unclear and ambiguous. Define or delete.

See proposed Rule change deleting "similar businesses".

Page 1, Line 5: Explain the Secretary's authority expand the exemption to "similar businesses" given the language of G.S. 105-164.13(10).

See proposed Rule change deleting "similar businesses".

Page 1, Lines 5-11: Explain why this language is reasonably necessary given the language of G.S. 105-164.13(10).

See proposed Rule revision condensing the brief recitation of the statute to introduce the list of examples which is necessary to interpret the type of items that qualify for the exemption in 105-164.13(10).

Page 1, Lines 7, 10, and 11: As written, it appears that the Secretary is creating exemptions. The Secretary does not have the authority to create an exemption. The Secretary can however make an interpretation of an exemption statute. What is the Secretary's authority to exempt sales from tax? If this is an interpretation, consider "Pursuant to G.S. _____".

See proposed Rule revision condensing the brief recitation of the statute and introducing the exemption with the citation to G.S. 105-164.13(10).

Page 1 Lines 14-36, and Page 1-4: Explain why this language is reasonably necessary given the language of G.S. 105-164.13(10).

The list of examples is necessary to interpret the type of items that qualify for the exemption in 105-164.13(10).

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2023

Page 2, Line 6: Define “applicable local and transit rates of sales and use tax”.

See proposed Rule change removing reference to “applicable....”

Page 2, Lines 5-35: Explain why this language is reasonably necessary given the language of G.S. 105-164.13(10). For example, how could any reasonable person think that “uniforms for employees” fall within the exemption of G.S. G.S. 105-164.13(10)?

This language is reasonably necessary to interpret that items purchased outside the exemption in G.S. 105-164.13(10) are subject to sales and use tax pursuant to G.S. 105-164.4. The list of examples is necessary to interpret the type of items that do not qualify for the exemption in 105-164.13(10), and are therefore subject to sales and use tax upon purchase. Many taxpayers in these industries believe they can purchase any item that is associated with the laundering and dry cleaning of garments exempt from sales tax, particularly due to the language of “in the direct performance of the laundering or the pressing and cleaning service” within G.S. 105-164.13(10)a.

Page 3, Lines 1-2: List the statutes separately.

See proposed Rule change adding specific statute citations.

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 .4609

DEADLINE FOR RECEIPT: November 8, 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 7-8: Why is it necessary to state that firetrucks are subject to the highway use tax which is imposed by Article 5A of Chapter 105 unless they are exempt Article 5A of Chapter 105?

See proposed Rule change.

Line 7: As written, it appears that the Secretary is creating exemptions. The Secretary does not have the authority to create an exemption. The Secretary can however make an interpretation of an exemption statute. What is the Secretary's authority to exempt sales from tax? If this is an interpretation, consider "Pursuant to G.S. _____".

See proposed Rule change adding G.S. 105-164.13(32) as the statutory basis for the exemption from sales and use tax.

Line 7: Explain the statutory basis for the exemption from sales and use tax of firetruck sales.

See proposed Rule change adding G.S. 105-164.13(32) as the statutory basis for the exemption from sales and use tax.

Lines 9-11: The paragraph begins by addressing sales and use tax and ends with to whom the highway tax is to be paid. These appear to be different concepts. Consider re-writing Paragraph (a) into different paragraphs.

See proposed Rule change adding new paragraph for highway use tax administration.

Line 13: "similar items" is unclear and ambiguous.

See proposed Rule change deleting the phrase "similar items"

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2023

Lines 13-16: Why is this language necessary? What statute is the Secretary interpreting and why?

This language is necessary to interpret G.S. 105-164.4 to distinguish firefighting equipment, which is subject to sales and use tax, from accessories included with the sale of a fire truck, which is exempt from sales and use tax as part of the motor vehicle, but included in the retail value of the vehicle for highway use tax purposes.

Lines 15-16: Is this in reference to G.S. 105-187.3(b)?

This language is necessary to interpret G.S. 105-164.4 to distinguish firefighting equipment, which is subject to sales and use tax, from accessories included with the sale of a fire truck, which is exempt from sales and use tax as part of the motor vehicle, but included in the retail value of the vehicle for highway use tax purposes.

Lines 19-21: Given the language of 105-164.3 (251), why is this language necessary?

To interpret the exemption in G.S. 105-164.13(32) exempting motor vehicles from sales and use tax.

Lines 19-22: Why is this necessary? Why would anyone think that special mobile equipment as defined in 105-164.3 (251) is exempt?

G.S. 105-164.3(251) only defines “special mobile equipment” with the relevant part reading: “[a] vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.” Since this is only a definition and includes the word “vehicle” the Rule is necessary to interpret that special mobile equipment is not included in the definition of “motor vehicle” and is therefore not exempt from sales and use tax under G.S. 105-164.13(32).

Lines 22 and 25: “Applicable local and transit rates of sales and use tax” is unclear and ambiguous.

See proposed Rule change removing reference to “applicable....”

Lines 23-26: Explain the ambiguity in the statutes that makes this language reasonably necessary.

See proposed Rule change deleting this paragraph.

Lines 28-29: List all statutes individually.

See proposed Rule change adding specific statute citations.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2023

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .4701

DEADLINE FOR RECEIPT: November 8, 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:

Page 1, Lines 7-12: Why is this language reasonably necessary? Does G.S. 105-164.4 not make this clear?

See proposed Rule change.

Page 1, Line 8: "Applicable rates of sales and use tax" is ambiguous.

See proposed Rule change.

Page 1, Lines 11-15: Correct the formatting.

Page 1, Lines 11-14: Is not the sale of any item subject to tax unless exempt? Why is this reasonably necessary? What statutory ambiguity is being addressed?

See proposed Rule change.

Page 1, Lines 13 and 25, Page 3, Lines 29, 31, 34, and Page 4, Lines 1, 23, and 27: "Applicable local and transit rates of sales and use tax" is ambiguous.

See proposed Rule change.

Page 1, Lines 16-22: Explain the Secretary's authority to grant an exemption. Alternatively, what statute is the Secretary interpreting?

Page 1, Lines 23-26: Why is this language reasonably necessary? Does G.S. 105-164.4 not make this clear?

See proposed Rule change.

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2023

Page 1, Lines 27: What is the Secretary's authority to exempt an item from sales tax?

See proposed Rule change.

Page 1, Lines 29-30: Assuming this is an interpretation of G.S. 105-164.13, "advertising" is only exempt "with or as part of a newspaper." What is the authority to expand the exemption beyond G.S. 105-164.13(36)?

See proposed Rule change.

Page 1, Lines 34-37: Why is this language necessary given the clear language of G.S. 105-164.13(33a)? What is being interpreted?

See proposed Rule change.

Page 2, Lines 1-5: Why is this language necessary given the clear language of G.S. 105-164.13(33a)? What is being interpreted?

See proposed Rule change.

Page 2, Lines 31-33: This is not a sentence.

See proposed Rule change.

Page 2, Lines 30-35: Explain the Secretary's authority to grant an exemption. Is the Secretary interpreting "commercial printers" to be a "manufacturing industry"? If not, what statute is the Secretary interpreting? If an interpretation, consider "Pursuant to G.S. G.S. 105-164.13(5e)..."

Page 2, Line 33: The Secretary cannot incorporate a definition contained in a bulletin into a rule.

See proposed Rule change.

Page 3, Lines 16-17: This is a statement of fact and is unnecessary.

See proposed Rule change.

Page 3, Lines 27-29, 30-31, 33-34: In Paragraph (c), the Secretary is, in essence, defining mill machinery, mill machinery parts, and mill machinery accessories by creating a list of items that fall into the category or definition. Yet, in Subparagraphs (10), (11), and (13), the Secretary departs from a simple list and adds items which are subject to tax and does so unnecessarily. The law is clear that the sale of all items is taxable unless exempt.

See proposed Rule change.

William W. Peaslee
Commission Counsel

Date submitted to agency: October 25, 2023

Page 4, Lines 20-23: Explain why this paragraph is reasonably necessary.

See proposed Rule change.

Page 4, Lines 24-27: Explain why this paragraph is reasonably necessary.

See proposed Rule change.

Page 4, Line 30: List all statutes individually.

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 .4203 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 .4203 CONTRACTORS FOR THE FEDERAL GOVERNMENT

~~Sales~~Pursuant to G.S. 105-164.4, sales of tangible personal property items, as the term item is defined in G.S. 105-164.3, to contractors for use in performing contracts with the United States Government or its agencies and instrumentalities are subject to the applicable statutory state [general State,] and [applicable-] local [and transit rates of] sales or and use tax-tax unless the terms of the contract between the contractor and the United States Government contain title-passage provisions of the Federal Acquisition Regulations where the title to the items purchased by the contractor is transferred to the United States Government on a regular, recurring, and routine basis.

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; 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.

17 NCAC 07B .4205 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 .4205 FEDERAL CREDIT UNIONS AND THE FARM CREDIT SYSTEM

(a) ~~Federal Credit Unions.~~ Unions. -- Sales of tangible personal property to, or purchases by, federal credit unions organized under the Federal Credit Union Act, 12 U.S.C. §§ 1751 et seq., are exempt from North Carolina sales and use tax, pursuant to G.S. 105-164.13(17). See 12 U.S.C. § 1768.

(b) ~~The Farm Credit System.~~ System. -- Sales to, or purchases by, the farm credit system, as composed in U.S.C. § 2002, are exempt from North Carolina sales and use tax, pursuant to G.S. 105-164.13(17). ~~The Farm Credit System, 12 U.S.C. §§ 2001 et seq.,~~ farm credit system includes the Farm Credit Banks, the bank for cooperatives, Agricultural Credit Banks, the Federal land bank associations, Land Bank Associations, the Federal Land Credit Associations, the production credit associations, Production Credit Associations, the agricultural credit associations, the Federal Farm Credit Banks Funding Corporation, the Federal Agricultural Mortgage Corporation, service corporations established pursuant to 12 U.S.C. § 2211, the banks for cooperatives, and such other institutions as may be made part of the System, farm credit system, all of which are shall be chartered by and subject to the regulation of by the Farm Credit Administration.

(1) ~~— Sales of tangible personal property to Farm Credit Banks and Federal land banks are exempt from North Carolina sales and use tax. See 12 U.S.C. §§ 2023 and 2098.~~

(2) ~~— Sales of tangible personal property to production credit associations and banks for cooperatives for use or consumption are subject to the applicable statutory state and local sales or use tax. See 12 U.S.C. §§ 2077 and 2134.~~

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; 12 U.S.C. 1768; 12 U.S.C. 2023; 12 U.S.C. 2077; 12 U.S.C. 2098; 12 U.S.C. 2134; 12 U.S.C. 2214; Eff. February 1, 1976; Amended Eff. September 1, 2006; November 1, 1995; January 1, 1995; January 3, 1984; 1984; Readopted Eff. January 1, 2024.

17 NCAC 07B .4210 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 .4210 ~~CHEROKEE INDIAN RESERVATION~~ NATIVE AMERICAN INDIAN COUNTRY

(a) Sales by Merchants on the Eastern Band of Cherokee Indian (EBCI) Reservation:

- (1) Sales Pursuant to G.S. 105-164.13(25), sales of tangible personal property items, as the term item is defined in G.S. 105-164.3, by merchants ensourced to the Cherokee Indian EBCI Reservation are exempt from sales and use taxes-tax when such merchants are authorized to do business on the EBCI Reservation and are paying the tribal gross receipts levy to the Tribal Council. The above exemption from the tax is applicable to all sales by merchants on the Reservation. This exemption applies without regard to the status of the purchaser, whether a purchaser is an enrolled member of the EBCI.
- (2) Admission charges to an entertainment activity sourced to the EBCI Reservation are exempt from sales and use tax, pursuant to G.S. 105-164.13(25), provided the retailer that offers the entertainment activity is authorized to do business on the EBCI Reservation and pays the tribal gross receipts levy to the Tribal Council. This exemption applies without regard to whether a purchaser is an enrolled member of the EBCI.

(b) Sales to Federally Recognized Native American Nations:

- (1) Items Sourced to a Native American Nation's Indian Country. -- Sales Pursuant to G.S. 105-164.13(17), retail sales of tangible personal property items to a federally recognized Native American nation or an enrolled member of the federally recognized Native American nation residing within that nation's Indian Country, as the term Indian Country is defined in 18 U.S.C. 1151, by in-state vendors or out of state vendors to the Eastern Band of Cherokee Indians or to individual Indians of the band are exempt from sales and use taxes-tax when delivery of the property occurs on the Reservation, such items are sourced to the nation's Indian Country.
- (2) Items Sourced Outside a Native American Nation's Indian Country. -- Sales-Retail sales of tangible personal property by in-state or out of state vendors items to the Eastern Band of Cherokee Indians, a federally recognized Native American nation or to individual Indians of the band, to contractors or anyone else representing Indians an enrolled member of the federally recognized Native American nation are subject to [the applicable rates of] sales or and use taxes-[tax]-tax, pursuant to G.S. 105-164.4, when delivery thereof occurs sourced outside the Reservation nation's Indian Country even though such property-items may be used, or incorporated into improvements on the Reservation within the nation's Indian Country.

(c) Real Property Contracts with Federally Recognized Native American Nations: The sale of items to a real property contractor are exempt from sale and use tax, pursuant to G.S. 105-164.13(17), provided that the items are sourced to a federally recognized Native American nation's Indian Country, the purchase of the item is to fulfill a real property contract with the nation or a member of the nation, and the item is used or installed, within the sourced-nation's Indian Country, by the contractor or the contractor's subcontractor.

1 [(1) — A real property contractor is the consumer of an item that the real property contractor purchases,
2 installs, or applies the item for others to fulfill a real property contract.] Contractors are users or
3 consumers of all tangible personal property which they purchase within or without this State for use
4 in the performance of contracts.

5 [(2) — A real property contractor purchasing items sourced outside the nation's Indian Country.] Contractors
6 are [is] liable for remitting the applicable [rates of] sales or [and] use tax [even if the real property
7 contractor will use an item to fulfill a real property contract within the nation's Indian Country.] on
8 all tangible personal property purchased within or without this State when delivery occurs off the
9 Reservation even though the contractors may use it or incorporate it in improvements on the
10 Reservation.

11 [(3)] Property purchased [Purchases] by [a real property contractor of items sourced] and delivered to a
12 contractor on a Reservation [federally recognized Native American nation's Indian Country] to be
13 incorporated in an improvement [used within the nation's Indian Country] to [fulfill a] real property
14 [contract with that federally recognized Native American nation or an enrolled member of that
15 federally recognized Native American nation] is not subject to [exempt from] sales or [and] use tax.
16 Property purchased by and delivered to contractors on a reservation for use in performing a contract
17 (but where the property is not incorporated in an improvement) is subject to sales or use tax unless
18 sold by merchants on the Cherokee Indian Reservation who are authorized to do business there and
19 who pay the tribal levy on the transaction which property is, therefore, exempt under G.S.
20 105-164.13(25).

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

25 *Eff. February 1, 1976;*

26 *Amended Eff. January 1, 1982-1982;*

27 *Readopted Eff. January 1, 2024.*
28

17 NCAC 07B .4301 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 .4300 – REFUNDS TO INTERSTATE CARRIERS

17 NCAC 07B .4301 REFUNDS TO INTERSTATE CARRIERS

(a) ~~Scope~~ Scope. -- This Rule explains the sales and use tax refund allowed to interstate carriers under ~~G.S. 105-164.14(a)~~ G.S. 105-164.14(a). ~~The refund authorized by that statute does not apply to taxes~~ Taxes listed in 17 NCAC 07B .1602(d). ~~17 NCAC 07B .1602(f).~~ 17 NCAC 07B .1602(f) are not eligible for refund as exceeding the scope of G.S. 105-164.14(a).

(b) ~~Eligible Items~~ Items. -- ~~Sales and use taxes paid on~~ The items eligible for refund are railway cars and locomotives ~~locomotives, are eligible for refund. In addition, the following items are considered to be~~ and fuel, a lubricant, a lubricants, repair part, or an accessory, parts, accessories, service contracts, and repair, maintenance, and installation services for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. Therefore, sales and use taxes paid on purchases of the following items are Other items eligible for refund under G.S. 105-164.14(a) when purchased by an interstate carrier for a motor vehicle, railroad car, locomotive, or airplane it operates include:

- (1) antennas;
- (2) antifreeze;
- (3) bedding for motor vehicle sleeping compartments;
- (4) charts for tachographs;
- (5) decals for motor vehicles;
- (6) emergency flares and reflectors;
- (7) fire extinguishers;
- (8) freon or nitrogen used in refrigerating and cooling motor vehicles;
- (9) furniture pads;
- (10) lifeboats and oxygen masks;
- (11) load jacks and chains;
- (12) mobile CB radios;
- (13) motor vehicle seat cushions;
- (14) paints for decals;
- (15) polyethylene liners ~~(used to waterproof trailers);~~ used to waterproof trailers;
- (16) pouches for registration cards and permits;
- (17) radios;
- (18) ramp equipment ~~(aircraft steps used to embark or disembark aircraft);~~ aircraft;
- (19) ropes and chains to tie down cargo (adapted for use on motor vehicles; otherwise not allowed);
- (20) signs ~~(metal signs attached to trucks);~~ trucks;
- (21) tarpaulins;

- (22) tire chains;
- (23) tire and tubes;
- (24) welding rods for repair of motor vehicles;
- (25) windshield solvents; or
- (26) zipped covers for grills.

(c) Items not ~~Eligible~~ Eligible. -- The following items are not considered to be fuel, a lubricant, a repair part, or an accessory. Therefore, sales and use taxes paid on purchases of the following items are not eligible for refund under G.S. 105-164.14(a): G.S. 105-164.14(a) include:

- (1) certain digital ~~property;~~ property, as defined in G.S. 105-164.3;
- (2) drivers' gloves;
- ~~(2)~~(3) drivers' uniforms;
- ~~(3)~~(4) food trays ~~(airplanes);~~ on airplanes;
- ~~(4)~~(5) fork lift tires and parts;
- ~~(5)~~(6) gauges for testing equipment;
- ~~(6)~~(7) hand trucks;
- ~~(7)~~ license and inspection fees;
- (8) pallets;
- (9) pillows ~~(airplanes);~~ on airplanes;
- (10) ~~repair labor;~~ piped natural gas;
- ~~(11)~~ road service charges;
- ~~(12)~~(11) security seals;
- ~~(13)~~ sixty percent on recapped tires where forty percent of the combined price is taxed (17 NCAC 07B .1901);
- ~~(14)~~(12) tire volume discounts;
- ~~(15)~~(13) tools, shop supplies;
- ~~(16)~~(14) trip logs; or
- ~~(17)~~(15) wax and washing supplies.

~~(d) Other Items [Items.]~~ The lists in this Rule do not include every item that is or is not subject to refund. ~~[An interstate carrier may request.]~~ Upon request, the Sales and Use Tax Division ~~[issue a determination regarding whether]~~ shall determine if an item not included in either list is subject to refund.

~~(e)(d)~~ Amount of Refund Refund. -- G.S. 105-164.14(a) sets out the formula for computing the amount of a refund. Under the formula, an interstate carrier ~~receives~~ may receive a refund for a percentage of the tax paid on eligible items.

~~(f)(e)~~ Due date of Claim for Refund. -- An interstate carrier claim for refund shall be filed quarterly on Form E-581, Interstate Carrier Claim for Refund State, County, and Transit Sales and Use Taxes. A claim is due within ~~[sixty]~~ ~~(60)~~ 60 days from the close of each calendar quarter ending in March, June, September, and December of each year covering the purchases or acquisitions during the preceding quarter. ~~[An interstate carrier claim for refund shall be filed within three years after the due date. A refund claim filed more than three (3) years after the due date is barred.]~~

1 ~~(g)~~ (f) Form E-581, requires the following information:

- 2 (1) name and address of entity requesting the refund;
- 3 (2) Federal Employer Identification Number;
- 4 (3) North Carolina sales and use tax account number;
- 5 (4) refund period beginning and ending dates;
- 6 (5) contact person name and telephone number;
- 7 (6) name(s) of the taxing county;
- 8 (7) total miles of operation;
- 9 (8) total miles operated in North Carolina;
- 10 (9) the ratio of miles operated in North Carolina;
- 11 (10) total eligible purchases inside and outside North Carolina, not including sales tax paid;
- 12 (12) purchases per mile ratio;
- 13 (13) state sales and use tax paid on eligible purchases;
- 14 (14) state sales and use tax on purchases per mile ratio;
- 15 (15) amount of state sales and use tax refund;
- 16 (16) the ratio of county and transit sales and use tax refund;
- 17 (17) county and transit sales and use tax paid on eligible purchases;
- 18 (18) amount of county and transit sales and use tax refund;
- 19 (19) total refund amount requested;
- 20 (20) signature of person authorized to legally bind entity and date form signed.

21 ~~(h)~~ (g) Aviation Gasoline and Jet Fuel. -- An interstate ~~carrier~~ carrier's claim for refund for taxes paid at the
22 combined general rate pursuant to G.S. 105-164.4(a)(15), shall be filed quarterly on Form E-581A, Interstate Carrier
23 Claim for Refund Combined General Rate Sales and Use Taxes. A claim is due within ~~sixty (60)~~ 60 days from the
24 close of each calendar quarter ending in March, June, September, and December of each year covering the purchases
25 or acquisitions during the preceding quarter. ~~[An interstate carrier claim for refund shall be filed within three years~~
26 ~~after the due date. A refund claim filed more than three (3) years after the due date is barred.]~~

27 ~~(i)~~ (h) Form E-581A, requires the following information:

- 28 (1) name and address of entity requesting the refund;
- 29 (2) Federal Employer Identification Number;
- 30 (3) North Carolina sales and use tax account number;
- 31 (4) refund period beginning and ending dates;
- 32 (5) contact person name and telephone number;
- 33 (6) total miles of operation;
- 34 (7) total miles operated in North Carolina;
- 35 (8) ratio of miles operated in North Carolina;
- 36 (9) total North Carolina combined general rate of sales and use tax paid on all purchases of aviation
37 gasoline and jet fuel;

1 (10) total refund amount requested;

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

3
4 *History Note:* Authority G.S. 105-164.4; 105-164.6; 105-164.14; 105-262; 105-264; [Chapter 105, Articles 39,
5 40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-
6 510.1; 105-511.3; 105-537; 105-538;
7 *Eff. February 1, 1976;*
8 *Amended Eff. September 1, 2006; July 1, 2000; August 1, 1998; August 1, 1996; October 1, 1993;*
9 *July 1, 1990; February 1, 1987; March 1, ~~1984.~~1984;*
10 *Readopted Eff. January 1, 2024.*

17 NCAC 07B .4302 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 .4302 REFUNDS TO RAILROAD COMPANIES

(a) In General. -- Railroad companies, when applying for refunds pursuant to G.S. 105-164.14(a), shall comply with application frequency and form requirements set out in 17 NCAC 07B .4301.

(b) Railcars ~~Not Owned by [Foreign Line]~~ Refund Applicant -- ~~The [An]~~ A refund applicant's total eligible purchases shall include the repair of railroad cars ~~of a foreign line operated used by, but not owned by anthe~~ applicant shall be included in total purchases by the applicant for refund regardless of the fact that the ~~operating company~~ applicant may bill the owner ~~of the railcars~~ for repairs performed on such railroad cars. The ~~ear~~ miles that ~~[foreign cars]~~ a railcar not owned by the applicant travel over the rail lines of the applicant ~~[for refund]~~ shall be ~~[taken into consideration]~~ included in establishing the number of miles of operation in this State and the total number of miles of operation inside and outside this State for the calendar quarter.

(c) Railcars Owned by Refund Applicant. -- ~~Repairs to the applicant's cars operating on foreign lines [An]~~ A refund applicant's total eligible purchases shall be ~~excluded~~ exclude repairs to ~~[the applicant's]~~ railroad cars owned by the applicant, but operating on ~~[foreign]~~ rail lines of another railroad company, since such ~~[railroad]~~ cars are not being operated by the applicant for refund, ~~[applicant]~~ regardless of the fact that the ~~foreign~~ other railroad company may bill the applicant for repair parts used to maintain the applicant's railroad cars when in operation over ~~foreign~~ the other railroad's rail lines. Additionally, an applicant's total eligible purchases shall exclude fuel, lubricants, repair parts, accessories, service contracts, and repair, maintenance, and installation services for which the applicant is billed by ~~[the operating]~~ another railroad company when its railroad cars are traveling over ~~[foreign lines]~~ the other railroad's rail lines. ~~Because [because] there is no record kept of the miles that the applicant's railroad cars may travel over foreign lines, [lines.] the applicant for refund shall exclude lubricants, repair parts and accessories for which the applicant is billed by the operating company when its cars are traveling over foreign lines; however, the car miles that foreign cars travel over the lines of the applicant for refund shall be taken into consideration in establishing the number of miles of operation in this state and the total number of miles of operation within and without this state for the calendar quarter.~~

(d) Locomotives. -- ~~Locomotives are not ordinarily interchanged in the same manner as railroad cars; however, if locomotives are operated in the same manner as railroad cars, the~~ The provisions of this Rule ~~will~~ shall also be applicable apply to the operation of locomotives.

History Note: Authority G.S. 105-164.14; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. October 1, 1993-1993;
Readopted Eff. January 1, 2024.

17 NCAC 07B .4401 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 .4400 - LEASE OR RENTAL

17 NCAC 07B .4401 LEASE RECEIPTS

(a) Rate of Tax. -- ~~The~~Pursuant to G.S. 105-164.4, the gross receipts ~~or gross proceeds~~ derived from ~~or the total amount agreed to be paid for the lease or rental,~~rental within North Carolina, of all kinds and types of tangible personal property ~~not specifically exempt by statute~~ are subject to the sales or use tax at the same ~~rate~~ rates, including any maximum tax, which is applicable that apply to the retail sale of such property. The maximum tax, if applicable, shall be determined for each lease or rental of tangible personal property, not on the aggregate tax for all leases or rentals of the leased tangible personal property.

(b) Computation of Tax. -- ~~The tax~~A person shall be computed and paid on such compute and pay tax on the gross receipts, gross proceeds, or rental payable receipts without any [deduction]deduction, whatsoever for any expense incident to the conduct of business.[conducting business, including expenses such as property taxes, interest, insurance charges, maintenance fees, and delivery charges.]

(c) Due Date. -- The tax is due and payable at the time the lessor or retailer bills the lessee for the rent whether such billing is for the lump sum rental or on a monthly or other periodic basis.

(d) Sale of Leased Tangible Personal Property. -- A retailer who leases or rents tangible personal property shall also collect the tax on the separate retail sale of the tangible personal property.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264;

Eff. February 1, 1976-1976;

Readopted Eff. January 1, 2024.

17 NCAC 07B .4403 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 .4403 MAINTENANCE OF LEASED PROPERTY

(a) ~~Sales-Purchases~~ of tangible personal property ~~to registered lessors or retailers for the purpose of lease or rental exclusively~~ by a person that leases tangible personal property ~~are wholesale sales~~ are wholesale sales ~~when such purchased property is used to repair or maintain tangible personal property held for lease or rent~~ are wholesales sales pursuant to G.S. 105-164.3(281) provided that the purchased property ~~and~~ becomes part of the tangible personal property ~~held~~ for lease or ~~rental~~ rent and the purchase is made by a person engaged in the business of leasing and renting the tangible personal property held for lease or rent. ~~These~~ Pursuant to G.S. 105-164.13(5), these ~~wholesale sales and are not subject to tax provided completed and executed certificates of resale are furnished to the vendors of such property when the purchaser complies with 17 NCAC 07B .0106.~~ Sales

(b) ~~Purchases~~ Sales of lubricants, repair parts and accessories to such lessors or retailers ~~repair, maintenance, and installation services~~ by a person that leases tangible personal property ~~who use them~~ uses the services used to repair, ~~recondition or maintain~~ recondition, or maintain any such leased or rented tangible personal property ~~held by the purchaser~~ for lease or rental ~~are also wholesale sales when completed and executed certificates of resale are provided to vendors of this type property.~~ wholesale sales pursuant to G.S. 105-164.3(281) and are ~~not subject to~~ exempt from tax pursuant to G.S. 105-164.13(5) when the purchaser complies with 17 NCAC 07B .0106.

(b)(c) Except as provided in ~~paragraph (a);~~ Paragraphs (a) and (b). Lessors ~~are a~~ person that leases tangible personal property ~~lessor~~ is responsible for payment of ~~any applicable statutory state and local~~ the sales and use tax ~~at the applicable rate unless an exemption applies to the purchase.~~ tax, pursuant to G.S. 105-164.4. ~~Such~~ Examples of tangible personal property ~~subject to tax~~ that a lessor is liable for sales and use tax upon purchase includes, tools, shop supplies, and other tangible personal property that are used to repair tangible personal property held for lease or rental that do not become part of the tangible personal property held for lease or rental. ~~on the cost price of such items if they are used for a purpose other than repairing or maintaining leased or rented property or if they are resold as such. Any tax due thereon is to be paid to the Secretary of Revenue on the lessors' or retailers' sales and use tax returns.~~

(b)(c)(d) When ~~the a~~ lessee purchases lubricants and repair parts to maintain tangible personal property ~~or repair, maintenance, and installation~~ services services to repair or maintain items ~~being leased or rented~~, the lessee is liable for payment of the ~~applicable statutory state~~ general State, ~~and~~ and ~~applicable~~ local ~~and transit rates of~~ sales or and use tax on the cost price of such purchases to the vendors or to the Secretary of Revenue, purchase price. If a separate maintenance agreement for a fixed fee where no separate charge is made for parts and labor is executed by the lessor and lessee whereby the lessor or the lessee agrees, for a consideration separate from the lease payments, to maintain property being leased or rented, purchases of repair parts and lubricants by either party are subject to the tax payable by the purchaser thereof as described in this Rule.

History Note: Authority G.S. 105-164.4; ~~105-164.5~~; 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; June 1, 1992; October 1, 1991; March 1, ~~1984~~.1984; Readopted Eff. January 1, 2024.

17 NCAC 07B .4404 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 .4404 EQUIPMENT FURNISHED WITH OPERATOR

(a) ~~If the owner of~~ A Pursuant to G.S. 105-164.3(121), a person that provides tangible personal property ~~furnishes with an operator for a fixed or indeterminate period of time or crew to operate such property, such owner is not deemed to be renting or leasing the property but is rendering a service~~ if the operator is necessary for the equipment to perform as designed and for purposes of G.S. 105-164.4, the receipts therefrom from such services are not subject to the sales or use tax unless the service is a repair, maintenance, and installation service or other taxable service. An operator is necessary for tangible personal property to perform as designed when the operator's presence, skill, knowledge, and expertise are necessary for the tangible personal property to perform as designed. An operator who only maintains, sets-up, [inspects, or monitors] or inspects the tangible personal property, or any combination of such actions, is not necessary for the tangible personal property to perform as designed. For example, a business provides its customer a crane with an operator for one hour, this is not is a lease or rental of the crane, as the operator is necessary for the crane to perform as designed.

(b) A person that purchases tangible personal property to provide a service identified in paragraph (a) of this Rule shall pay [the applicable rates of] sales and use tax on the purchase price of the tangible personal [property.] property, pursuant to G.S. 105-164.4, as the consumer of the tangible personal property.

(c) A person that provides tangible personal property with an operator identified in paragraph (a) of this Rule and rents similar items of tangible personal property shall pay [the applicable rates of] sales and use tax pursuant to G.S. 105-164.4, on the purchase price of all items of tangible personal property it purchases unless it keeps separate inventory of items purchased to rent.

~~(e)(d) Persons purchasing~~ A person that provides the type of service described in paragraph (a) of this Rule that purchases repair parts, lubricants-lubricants, and other tangible personal property-property, or repair, maintenance, and installation services to maintain or repair tangible personal property for use in rendering such service are liable for payments shall pay [the applicable rates] of sales or and use tax pursuant to G.S. 105-164.4, at the applicable rate on the purchase price-price of such [items.] items, as the consumer of the repair parts, lubricants, other tangible personal property, or repair, maintenance, and installation services.

(d) Failure of a person to keep records that establish the [service is exempt from tax] provision of equipment with an operator is a service, subjects the person to liability for sales and use tax on the receipts derived from the transaction.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 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.

1 17 NCAC 07B .4406 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 .4406 INSURANCE ON LEASED PROPERTY**

5 (a) Insurance Obtained by Lessor. -- The gross ~~proceeds~~ receipts derived from ~~or amounts agreed to be paid for the~~
6 lease or rental of all kinds and types of tangible personal property for storage, ~~use~~ use, or consumption within this
7 state. State are subject to the ~~general State, and~~ applicable statutory state and local ~~and transit rates of~~ sales or and
8 use taxes. ~~tax.~~ tax, pursuant to G.S. 105-164.4. The tax shall be computed on the gross receipts, gross proceeds or
9 rental payable receipts without any deduction whatsoever for any insurance charges paid to insure the property of the
10 lessor or to insure the lessor against liability for damages to the property or person of others.

11 (b) Insurance Obtained by Lessee. -- Insurance premiums paid by the lessee directly to the insurer, or to the lessor as
12 agent for transmittal to the insurer, are not subject to sales and use ~~tax~~ tax as imposed by G.S. 105-164.4. When
13 the when a lessee purchases insurance on his the lessee's own property or to insure himself themselves against liability
14 for damages to the property or person of others, others, insurance premiums paid by such lessee directly to the insurer
15 or to the lessor as agent for transmittal to the insurer are exempt from tax. If the lessee pays such insurance Insurance
16 premiums paid directly by the lessee to the lessor as agent for transmittal to the insurer, such amounts are exempt from
17 tax provided they are insurer shall be separately stated from the lease or rental charges for the lease or rental of tangible
18 personal property in the lessor's records and on the ~~invoice~~ invoice, or similar billing document, given to the lessee;
19 otherwise, pursuant to G.S. 105-164.22, the total amount charged by the lessor is subject to the sales and use tax.

20
21 *History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.22; 105-262; 105-264; Chapter 105, Articles 39,*
22 *40, 42, 43, and 46; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; 105-467;*
23 *105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-*
24 *538;*

25 *Eff. February 1, 1976;*

26 *Amended Eff. May 1, 2009; October 1, 1993; October 1, 1991; July 5, ~~1980~~ 1980;*

27 *Readopted Eff. January 1, 2024.*

17 NCAC 07B .4503 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 .4503 EQUIPMENT AND SUPPLIES FOR LAUNDRIES: ETC.

(a) Pursuant to G.S. 105-164.13(10), sales to commercial laundries, and pressing and dry cleaning plants [establishments,] and similar businesses establishments of laundry and dry cleaning machinery used in the direct performance of the laundering or the pressing and cleaning service, as well as parts and accessories attached to such equipment and lubricants applied to such equipment, and tangible personal property listed in G.S. 105-164.13(10)a and parts and accessories thereto are exempt from sales and use tax. [Parts and accessories attached to such equipment and lubricants applied to such equipment are also exempt from sales and use tax when purchased by commercial laundries and pressing and dry cleaning establishments. In addition, certain tangible personal property listed in G.S. 105-164.13(10)a. is exempt from tax when purchased by commercial laundries and pressing and dry cleaning establishments.] The following items are exempt when sold to the herein named businesses: [Items] Examples of items exempt from sales and use tax when purchased by commercial laundries and pressing and dry cleaning establishments include the following:

- (1) washing machines, water heaters, water softener tanks, central control collection systems, pressing machines, marking machines, packaging machines, folding machines and similar cleaning machines;
- (2) hydraulic fluids used in laundry and dry cleaning machinery;
- (3) boiler compounds used in boilers furnishing water or steam to the laundering, pressing or cleaning machinery;
- (4) steam hose leading directly from the boiler to the laundering and dry cleaning machinery;
- (5) press pads and covers for laundering and dry cleaning machinery;
- (6) baskets, hampers, casters, or other containers used between the laundering and cleaning processes to transport or contain garments being laundered or cleaned;
- (7) carbon and carbon filters used for reprocessing cleaning compounds;
- (8) lint rolls and refills therefore; refills;
- (9) conveyors used to transport garments along the laundering, cleaning, and pressing line during the process but not conveyors used before the laundering, cleaning, and pressing process begins or after it has been completed;
- (10) boiler room machinery, including valves, fittings and water pumps; and
- (11) transformers located on or adjacent to motors which that power machinery used in the direct performance of laundering and cleaning services-services;
- (12) lubricants used in laundering, pressing, or cleaning machines;
- (13) fuel and piped natural gas used in the direct performance of the laundering or pressing and cleaning service, but not electricity;

1 (14) tags or labels used to identify garments being laundered or dry cleaned that are applied directly to
2 garments in the direct performance of laundering or the pressing and cleaning service;

3 (15) bags, paper, and hangers applied directly to garments in the direct performance of laundering or the
4 pressing and cleaning service; and

5 (16) starch, soaps, detergents, cleaning fluids, and other compounds or chemicals applied directly to
6 garments in the direct performance of laundering or the pressing and cleaning service.

7 (b) ~~The following items are~~Items not classified as ~~laundering, pressing or~~laundering and dry cleaning machinery or
8 parts ~~and or accessories thereto and are, therefore, are~~ subject to the [general State, and] applicable statutory state and
9 local [and transit rates of] sales or and use tax [tax.] tax, pursuant to G.S. 105-164.4. [Items] Examples of items not
10 classified as laundering and dry cleaning machinery or parts or accessories include the following: when sold to the
11 ~~herein named businesses:~~

12 (1) coin operated musical devices, amusement devices, coin changers, vending machines~~machines,~~ and
13 repair or replacement parts for such machines;

14 (2) baskets, hampers, casters, or containers used for general purposes such as to pick up soiled garments
15 or deliver clean garments;

16 (3) smoke stacks, including ~~the any attached steel ladders attached thereto;~~ ladders;

17 (4) wiring used in the general wiring system and the transformers used in connection therewith;~~system;~~

18 (5) sewing machines used in repairing or altering the customers' property and the replacement or repair
19 parts to ~~such the~~ machines;

20 (6) tailoring supplies such as buttons, ~~threads threads,~~ and zippers for use in repairing or altering
21 garments for which no charge is made to the customer;

22 (7) letterheads, monthly reports, envelopes and other office supplies;

23 (8) protective clothing for employees such as rubber gloves, aprons, protective shoes, etc. whether paid
24 for by the employer or the employee;

25 (9) steam hose or pipe used in the general heating system;

26 (10) janitorial supplies;

27 (11) office furniture, fixtures and equipment, including cash registers;

28 (12) uniforms for employees;

29 (13) advertising materials;

30 (14) structural or building materials, supplies, fixtures and equipment ~~which that~~ shall become a part of
31 or be annexed to any building or structure being erected, altered or repaired;

32 (15) equipment used in the storage process to revitalize furs;

33 (16) conveyors used before or after the laundering, ~~pressing pressing,~~ and cleaning process to transport
34 ~~garments garments,~~ but not those conveyors used to move the garments along the laundering,
35 ~~pressing pressing,~~ and cleaning line;

36 (17) lubricants used in laundering, pressing, or cleaning machines.

37 (18)(17) transformers used in connection with general wiring and power supply; and

1 ~~(19)~~(18) water softener chemicals.

2
3 *History Note:* Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; [Chapter 105, Articles 39,
4 40, 42, 43, and 46;]~~Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;~~ 105-467;
5 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-
6 538;
7 Eff. February 1, 1976;
8 Amended Eff. August 1, 2009; October 1, 1993; October 1, 1991; January 1, ~~1982-1982;~~
9 Readopted Eff. January 1, 2024.

17 NCAC 07B .4609 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 .4609 FIRE TRUCKS AND EQUIPMENT

(a) Fire Trucks Sold to Municipalities, Counties, Rural Fire Protection Districts, and Volunteer Fire Departments. -- Sales of fire trucks to municipalities, counties, rural fire protection districts, and volunteer fire departments organized under Chapter 69 of the North Carolina General Statutes are exempt from sales and use ~~tax and~~ tax, pursuant to G.S. 105-164.13(32), but are subject to the three percent (3%) highway use tax ~~unless exempt under Article 5A of Chapter 105 of the North Carolina General Statutes.~~ imposed by G.S. 105-187.3, unless exempt pursuant to G.S. 105-187.6(9) or G.S. 105-187.6(10).

(b) Highway Use Tax Administration. -- The highway use tax is administered by the Division of Motor Vehicles. The highway use tax shall be paid to the Commissioner of Motor Vehicles by the dealer, the purchaser, or other applicant for a certificate of title at the time of making application.

~~(b)~~ (c) Firefighting Equipment. -- Retail sales of items such as axes, brooms, buckets, shovels, ropes, general purpose tools, gas masks, first aid kits, blankets, portable pumps, and portable fire extinguishers and like articles ~~similar items~~ 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. Such items are subject to sales and use tax even if they are sold with fire trucks, the items are considered to be other fire fighting firefighting equipment rather than accessories to the fire truck, truck, and sales of such items at retail are subject to the applicable statutory state and local sales or use tax without any maximum tax applicable thereto notwithstanding such sales are made to the above type customers or that the items are sold with fire trucks.

~~(c)~~ (d) Privately Owned Fire Trucks. -- Privately Retail sales of privately owned fire trucks or vehicles on which that have permanently attached fire fighting firefighting equipment has been mounted that and are used only for fire fighting firefighting purposes are classified as special mobile equipment, not a motor vehicle as defined in G.S. 105-164.3, and sales thereof are not exempt under G.S. 105-164.13(32), but 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.

~~(d)~~ Repair Parts and Services for Fire Trucks. -- Sales ~~Retail sales~~ of repair parts ~~and repair, maintenance, and installation services~~ to municipalities, counties, rural fire protection districts, and industrial users for use in repairing fire trucks are subject to the general State and applicable statutory state and local and transit rates of sales or ~~and~~ use tax.

History Note: Authority G.S. 105-164.4; 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; 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; July 1, 1990; January 3, 1984; 1984;

Readopted Eff. January 1, 2024.

17 NCAC 07B .4701 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 .4700 - PRINTERS AND NEWSPAPER OR MAGAZINE PUBLISHERS

17 NCAC 07B .4701 COMMERCIAL PRINTERS AND PUBLISHERS

(a) Pursuant to G.S. 105-164.4, retail sales of tangible personal property items, as the term item is defined in G.S. 105-164.3, by commercial printers or publishers are subject to the applicable statutory state and local rates of sales or and use tax unless the sales are subject to a lesser rate of tax under the provisions of G.S. 105-164.4(a) or are exempt under the provisions of G.S. 105-164.13, [by statute.] including subscriptions, plates and dies sold to customers, book binding, and other repair, maintenance, and installation services.

(1) Subscriptions. Retail sales of advertising circulars, catalogues, booklets, pamphlets, forms, tickets, letterheads, envelopes, and similar items and retail sales of books, magazines, periodicals, newspapers and other publications are subject to the general State, and applicable local and transit rates of sales and use tax unless the sales are exempt from tax under G.S. 105-164.13. When publications are sold by subscription, the tax accrues at the time the subscription is accepted.

(2) Plates and Dies. When, at the request of the customer, commercial printers purchase custom-made printing plates and dies for use in the direct production of the printed matter and title to the custom-made printing plates and dies passes to the printer's customer, such items can be purchased by the commercial printer exempt from sales and use tax in accordance with 17 NCAC 07B .0106. The printer is liable for collecting and remitting the general State, and applicable local and transit rates of sales and use tax on the sales price of the printing plates and dies. The printer's sales invoices and records shall show that the plates and dies are actually sold to the customer.

(3) Book Binding and other Repair, Maintenance, and Installation Services. The gross receipts derived from repair, maintenance, and installation services, including book binding and imprinting, are subject to the general State, and applicable local and transit rates of sales and use tax unless exempt by statute.]

(b) Exempt Sales by Commercial Printers and Publishers. The following transactions are also exempt from sales or use tax:

(1) charges [Charges] for advertising space in newspapers, magazines and other publications; [publications.]

(2) charges [Charges] made by printers for imprinting or binding books or forms or other similar items which are owned by their customers; [when such items are purchased for resale in accordance with 17 NCAC 07B .0106.]

(3) Printed material sold by a retailer when the printed material is delivered by the retailer in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the

1 purchaser's designee outside this State, and the purchaser does not subsequently use the printed
2 material in this State.]

3 (3)(4) Printed material which is sold by a retailer to a purchaser within or without this state when the
4 printed material is delivered by the printer directly to a mailing house [house,] or to a common
5 carrier [carrier,] or to the United States Postal Service for delivery to a mailing house in this state
6 which [State that] will preaddress and presort the material and deliver it to a common carrier or to
7 the United States Postal Service for delivery to recipients outside this state [State] designated by the
8 purchaser.

9 (A) Sales of printed material by a retailer located within or without this state which is delivered
10 directly to the purchaser in this state for the original purpose of preparing and delivering
11 the printed material to the United States Postal Service or a common carrier for delivery to
12 prospective customers or other recipients outside this state are exempt from sales and use
13 tax provided the purpose is consummated. A purchaser of the printed material for
14 preparation and delivery to prospective customers and other recipients outside this state
15 must furnish the vendor a written statement certifying that the printed material is being
16 purchased for use in a mailing program which is in place at the time of purchase; otherwise,
17 the vendor must collect and remit the tax on the sales. Sales of printed materials to a user
18 or consumer in this state to be placed in the purchaser's inventory for use as needed are
19 subject to sales or use taxes notwithstanding that all or a portion of the printed material
20 may be delivered to the United States Postal Service or a common carrier for delivery to
21 prospective customers or other recipients outside this state.

22 (B) A retailer who sells printed material delivered to a common carrier or the United States
23 Postal Service for delivery to the purchaser at a point within this state who prepares the
24 material to be mailed to prospective customers or other recipients without charge and
25 transports the material outside this state to be delivered to the United States Postal Service
26 or a common carrier or to a mailing house outside this state for delivery to designated
27 recipients is liable for sales or use tax except as provided in this Rule.

28 (b) Retail sales of advertising circulars, catalogues, booklets, pamphlets, forms, tickets, letterheads, envelopes and
29 similar items and retail sales of books, magazines, periodicals, newspapers and other publications are subject to the
30 applicable statutory state and local sales or use tax unless the sales are exempt from tax under the provisions of G.S.
31 105-164.13. When publications, other than magazines, are sold by subscription, the tax accrues at the time the
32 subscription is accepted.

33 (e)(b) Exempt Purchases of Mill Machinery or Mill Machinery Parts or Accessories by Commercial Printers or
34 Publishers. -- Sales to [Purchases] Pursuant to G.S. 105-164.13(5e), purchases by commercial printers and publishers
35 of mill machinery and or mill machinery equipment and parts therefor and or accessories thereto for use directly in the
36 production [phase, as the term "production" is defined in Section 57 of the Sales and Use Tax Bulletins,] phase of
37 printing and publishing, are exempt from sales and use tax. For purposes of the Rule, "Production" as a phase of

1 industrial or manufacturing operations shall mean all steps performed in processing and refining rooms, and in other
2 quarters and departments of a plant, where conditioning, treating, or other operations are done on ingredient materials
3 as an actual routine on the assembly or processing line turning out a finished product of manufacture for sale. The
4 “Production” phase also includes the following:

5 (1) The movement of raw materials or ingredients from an inventory or a stockpile located on the
6 premises of the manufacturing facility to the assembly or processing line.

7 (2) The movement of goods in process along the assembly or processing line.

8 (3) The movement of manufactured products from the assembly or processing line into shipping or
9 storage areas and yards located on the premises of the manufacturing facility.

10 (4) The work of experimentation and research performed on the manufactured products.

11 “Production” does not include any activity connected with the movement of raw materials or ingredients into inventory
12 nor does it include “distribution” which is any activity connected with the movement of manufactured products within
13 storage warehouses, shipping rooms, and other such finished product storage areas and the removal of such products
14 therefrom for sale or shipment, or “administration” which is any administrative work of offices, promotion of sales,
15 and collection of accounts. Items that ~~commercial printers and publishers may purchase exempt from sales and use~~
16 ~~tax~~ as mill machinery or mill machinery parts or accessories when purchased by a commercial printer or publisher
17 include the following:

18 (1) Machinery and equipment and parts or accessories thereto for use directly in the production of
19 newspapers, ~~magazines~~ ~~magazines~~, and other printed ~~matter~~ ~~material~~ for sale are exempt from sales
20 tax sale.

21 (2) ~~Included herein are custom~~ Custom made plates and dies for use directly in the production of
22 newspapers, magazines, and other printed material for sale when title ~~thereto~~ to the plates and dies
23 does not pass to the printers' customers.

24 (3) ~~Sales to commercial printers and publishers of tangible~~ Tangible personal property such as wood and
25 metal which is used to fabricate plates and dies for use in the production of printed ~~matter~~ ~~material~~
26 for sale are exempt from sales tax when title to the plates and dies does not pass to the printers'
27 customers.

28 (4) ~~Sales to commercial printers and publishers of machinery,~~ Machinery, equipment, film, and similar
29 ~~items of other~~ tangible personal property for use or consumption directly in that are used or consumed
30 by the printer in the production of the plates and dies are also exempt from sales tax that are directly
31 used in the production of newspapers, magazines, and other printed material for sale.

32 (5) Lithographic and gravure plates and dies retained by the printer or publisher that are directly used
33 in the production of newspapers, magazines and other printed material for sale. It is a printing trade
34 practice that title to lithographic and gravure plates and dies is ~~be~~ retained by the printer or
35 publisher. Unless it is otherwise agreed in writing, the items purchased by the printer or
36 publisher ~~these plates and dies~~ are exempt from sales tax. ~~tax as items purchased by the printer or~~
37 ~~publisher for use.~~

- (6) Photo engravings, electrotypes, and lithographs for direct use in printing tangible personal property for sale.
- (7) Printing presses for direct use in printing tangible personal property for sale.
- (8) Cushion paper, cover paper, and tissue for use in building up the printing surface of the press for direct use in printing tangible personal property for sale.
- (9) Offset or direct relief duplicating machines and repair parts or accessories for such machines, including offset blankets and plates.
- (10) Positives and negatives for use in preparing plates for use in the printing process. [Purchases of such items by non-commercial printers for use or consumption are subject to the general State, and applicable local and transit rates of sales and use tax.]
- (11) Chemicals used to clean printing machinery. [Chemicals used for sanitation purposes are subject to the general State, and applicable local and transit rates of sales and use tax.]
- (12) Metal for making type.
- (13) Computers used in the printing process. [Computers used for administrative purposes are subject to the general State, and applicable local and transit rates of sales and use tax.]
- (14) Mounting tape for use in the preparation of plates.
- (15) Printing machines when the machines are used to produce newspapers or other printed material for sale. [Purchases of printing machines for use in printing customers' addresses and addressograph plates for use in the mailing and shipping process are subject to the general State, and applicable local and transit rates of sales and use tax.]
- (16) Photographs to be reproduced in newspapers. [These are classified as accessories to the manufacturing process.]

~~(d) Sales to commercial printers of custom made plates and dies for resale are exempt from sales or use tax when supported by Streamlined Sales and Use Tax Agreement Certificates of Exemption, Form E-595E. Sales to commercial printers of tangible personal property as wood and metal which becomes a component part of printing plates produced by the printers for sale to customers are likewise exempt from sales or use tax when supported by certificates of exemption. However, sales to commercial printers of machinery, equipment, film, and similar items of tangible personal property which do not enter into or become a component part of the plates and dies but are used or consumed by the printer in the direct production of the plates and dies are exempt from sales tax. When, at the request of the customer, commercial printers purchase custom made printing plates and dies for use in the direct production of the printed matter or when they purchase wood and metal which becomes a component part of printing plates and dies fabricated by the printer for use in the direct production of printed matter and title to the plates and dies passes to the printers' customers, the items may be purchased for resale. The printer is liable for collecting and remitting the applicable statutory state and local sales or use tax on the total retail sales price of the plates and dies including charges for tangible personal property and art work or any other services that go into the manufacture or delivery thereof. In such cases, the printer's sales invoices and records must show that the plates and dies are actually sold to the customer; otherwise, the items are deemed to have been used by the printer, and the cost price of same is exempt from sales tax.~~

1 (e)(d) Sales to commercial printers and publishers of tangible personal property which is not resold as such or
2 which resold, does not become an ingredient or component part of the tangible personal property which they produce
3 for sale sale, or which and is not production mill machinery or mill machinery parts therefor and or accessories
4 thereto are subject to the general State, and applicable statutory state and local and transit rates of sales or and
5 use tax.

6 (f)(e) In-House Printers. -- The provisions of Paragraph (d)(e)(b) of this Rule have no application do not apply to
7 sales of printing equipment and supplies to firms which businesses that operate print shops for the production of printed
8 matter for their own use and not for sale. Purchases of printing equipment and supplies by such firms businesses are
9 subject to the general State, and applicable statutory state and local and transit rates of sales or and use tax.

10
11 History Note: Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-164.13; 105-262; 105-264; Chapter 105,
12 Articles 39, 40, 42, 43, and 46; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
13 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-
14 537; 105-538;

15 Eff. February 1, 1976;

16 Amended Eff. October 1, 2009; April 1, 2001; October 1, 1993; June 1, 1992; October 1, 1991;
17 February 1, 1988; 1988;

18 Readopted Eff. January 1, 2024.

Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, October 31, 2023 11:07 AM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Furuseth, Andrew O; Ascher, Seth M
Subject: 17 NCAC 07B .4206
Attachments: Revenue Dept Staff Opinion 17 NCAC 07B .4206 112023.doc

Good morning.

Attached please find the staff opinion on the above captioned rule which will be considered at the November 2023 RRC meeting.

As always if you have any questions or concerns please feel free to contact me.

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

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, October 31, 2023 9:26 AM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Furuseth, Andrew O; Ascher, Seth M
Subject: 17 NCAC 07B .5002
Attachments: Revenue Dept Staff Opinion 17 NCAC 07B .5002 112023.doc

Good morning,

Attached please find a staff opinion on the above captioned rule which will be considered at the November RRC meeting.

As always if you have any questions please feel free to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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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.

Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, October 25, 2023 4:24 PM
To: Lansford, Laura L
Cc: Furuseth, Andrew O; Jacobs, Tenisha S; Snyder, Ashley B; Burgos, Alexander N
Subject: RFC .4203, .4205, .4210, .4301, .4302, .4401, .4403, .4404, .4406, .4503, .4609, .4614, and .4701
Attachments: 2023.09 - Request for Technical Change for Department of Revenue WWP 3.docx

Good afternoon.

Attached please find the request for changes in the above captioned rules which will be considered at the November RRC meeting.

In several instances I have offered rule language for your consideration which capture, what I believe to be, the Secretary's intention. I have provided this as a way to assist you in your deliberations. The Secretary is by no means required to accept this proposed language.

As always if you have any questions please feel free to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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Bill.Peaslee@oah.nc.gov

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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

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 ~~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 to, or purchases by,~~ state banks and state chartered credit unions ~~for use~~
10 ~~or consumption of items~~ are subject to the applicable statutory state ~~State~~ and local ~~rates of~~ sales or ~~and~~ use
11 tax. ~~tax, unless exempt by statute.~~

12 For purposes of G.S. 105-164.13, states have the power to tax the following sales:

13 (a) Sales to federal savings and loan associations and national banks.

14 (b) Sales to state banks and state chartered credit unions.

15
16 History Note: Authority G.S. ~~[105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-264.26; 105-262; 105-264;~~
17 ~~Article 39; Article 40; Article 42; Article 43; Article 44; Chapter 105, Articles 39, 40, 42, 43, and~~
18 ~~46;]~~ 12 U.S.C. 1464(h); 12 U.S.C. 548;
19 Eff. February 1, 1976;
20 Amended Eff. September 1, 2006; January 1, 1995; October 1, 1993; October 1, ~~1991; 1991;~~
21 Readopted Eff. January 1, 2024.
22

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 (a) Pursuant to the exception in G.S. 105-164.4G, Charges [Admission] admission charges for the use of a skating rink
6 or bowling alley to skate or bowl are not subject to sales or use taxes;tax. however, if such businesses rent

7 (b) The exception in G.S. 105-164.4G does not apply to the following charges by skating rinks or bowling alleys:

8 (1) [Charges for] the rental of tangible personal property, such as skates and shoes, charges for
9 same[shoes] shoes, are subject to [the general State, and applicable local and transit rates of] sales [and use] tax.

10 (2) Sales [Retail] sales of tangible personal property [items] by such businesses are subject to the
11 applicable statutory state and local [rates of] sales or use tax, other items, as defined in G.S. 105-164.3, including food,
12 drinks, and merchandise.

13
14 *History Note: Authority G.S. ~~105-164.3~~; 105-164.3; 105-164.4; 105-164.4G; 105-262; 105-264; [~~Chapter 105,~~*
15 *~~Articles 39, 40, 42, 43, and 46~~; Article 39; Article 40; Article 42; Article 43; 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.*

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) Pursuant to G.S. 105-164.13, Eyeglass~~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 ~~repair or replacement parts for prosthetic devices, such as [temples and similar items that are considered repair or replacement parts for prosthetic devices]~~ temples, nose pads, temple hinges, screws, and ear tips, are also exempt from sales and use ~~[tax.]~~ tax pursuant to G.S. 105-164.13. 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) ~~The exemption for sales of prosthetic devices does not apply to [Eyeglass] 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;] 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 [merchandise,] and optical supplies by optical supply houses and opticians to registered merchants, including oculists and optometrists, [retailers or wholesale merchants] 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;]
Eff. February 1, 1976.1976;
Readopted Eff. January 1, 2024.*

Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, October 24, 2023 3:19 PM
To: Lansford, Laura L
Cc: Furuseth, Andrew O; Burgos, Alexander N; Ascher, Seth M; Burgos, Alexander N
Subject: November RRC meeting DOR rules
Attachments: Revenue Dept Staff Opinion Omnibus 2 102023.doc; Revenue Dept Staff Opinion Omnibus 102023.doc

Good afternoon,

Many of the remaining DOR rules have the same issues as were raised in the two attached staff opinions adopted by the RRC. Rather than addressing these issues in each RFC for the remaining rules under consideration, we are simply advising you now that any revisions filed which do not resolve these issues will, most likely, be subject to a staff opinion recommending objection.

In short, in the current posture of these rules, DOR does not need to wait for an RFC to revise these rules.

As always if you have any questions please feel free to contact Seth or me.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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1711 New Hope Church Road
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Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, October 24, 2023 3:01 PM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Ascher, Seth M
Subject: 17 NCAC 07B .4614
Attachments: Revenue Dept Staff Opinion 17 NCAC 07B .4614 112023.doc

Good afternoon,

Attached please find a staff opinion on the above captioned rule.

As always if you have any questions or concerns please feel free to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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Raleigh NC, 27609
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Burgos, Alexander N

Subject: FW: 17 NCAC 07B .0115, .3101, .3107, .4206., .4415, .5002

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Friday, October 20, 2023 9:54 AM

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

Cc: Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>

Subject: 17 NCAC 07B .0115, .3101, .3107, .4206., .4415, .5002

Good morning

Please be aware of [S.L. 2023-134](#) Section 21.2(h) which has amended G.S. 150B-21.12(d) governing rule returns.

The RRC objected to the above captioned rules at its September 21 meeting. The notice of objection was sent on September 25, 2023 via email.

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: Thursday, October 19, 2023 1:40 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>

Subject: RE: [External] DOR response to RFC Rules 17 NCAC .4801, 4802, and .4803

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.

My apologies with regard to Rule .4801, I did receive the email, but the staff opinion just did not make it into my notebook.

Thank you for bringing this to my attention.

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: Thursday, October 19, 2023 1:31 PM
To: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Cc: Andrew O. Furuseth <andrew.furuseth@ncdor.gov>; Tenisha S. Jacobs <Tenisha.Jacobs@ncdor.gov>
Subject: FW: [External] DOR response to RFC Rules 17 NCAC .4801, 4802, and .4803

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

Did you not receive the attached email sent on 10/13?

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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1711 New Hope Church Road
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Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, October 18, 2023 10:57 AM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Ascher, Seth M
Subject: 17 NCAC 07B .5001
Attachments: Revenue Dept Staff Opinion 17 NCAC 07B .5001 102023.doc

Good morning,

In the attached opinion, which was previously sent to you, I noticed that “authority” was checked as a basis for objection. This is in error. The opinion has been changed accordingly.

As always if you have any questions please feel free to contact me.

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

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, October 17, 2023 4:46 PM
To: Lansford, Laura L
Cc: Furuseth, Andrew O; Jacobs, Tenisha S; Burgos, Alexander N; Ascher, Seth M
Subject: 17 NCAC 07B .4708

Respectfully, I don't think the above caption rule says what you want it to say. If you have any questions, feel free to contact me.

William W. Peaslee
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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.

Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, October 17, 2023 11:31 AM
To: Lansford, Laura L
Cc: Burgos, Alexander N
Subject: 17 NCAC 07B .4708

Importance: High

Laura,

In line 1 of the above captioned rule, shouldn't "stamped" be deleted? Why are post cards and envelopes treated differently?

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

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
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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: Peaslee, William W
Sent: Tuesday, October 17, 2023 9:05 AM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Ascher, Seth M
Subject: RE: [External] Request for oral comment - 10/19/2023 RRC meeting
Attachments: Revenue Dept Staff Opinion Omnibus 102023.doc; Revenue Dept Staff Opinion Omnibus 2 102023.doc; Revenue Dept Staff Opinion 17 NCAC 07B .5001 102023.doc; Revenue Dept Staff Opinion 17 NCAC 07B .5004 102023.doc

Good morning,

It was brought to my attention that the attached opinions cited the chapter as 12 rather than the correct 17. We apologize for this error and any inconvenience it may have caused. Attached are the corrected opinions which change only the chapter.

Thank you.

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

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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: Peaslee, William W
Sent: Monday, October 16, 2023 5:44 PM
To: Lansford, Laura L
Cc: Ascher, Seth M; Burgos, Alexander N
Subject: Omnibus 2
Attachments: Revenue Dept Staff Opinion Omnibus 2 102023.doc

Good afternoon,

Attached please find an opinion addressing one topic which covers multiple rules. This does not preclude other opinions on these rules which address different concerns which will be forthcoming.

As always, if you have any questions or concerns, please do not hesitate to contact either Seth or me.

Thank you.

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

From: Peaslee, William W
Sent: Monday, October 16, 2023 4:35 PM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Ascher, Seth M
Subject: Omnibus objection DOR
Attachments: Revenue Dept Staff Opinion Omnibus 102023.doc

Good afternoon,

Attached please find an opinion addressing one topic which covers multiple rules. This does not preclude other opinions on these rules which address different concerns which will be forthcoming.

As always, if you have any questions or concerns, please do not hesitate to contact either Seth or me.

Thank you.

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.

Burgos, Alexander N

Subject: FW: [External] DOR response to RFC Rules 17 NCAC .4801, 4802, and .4803

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Monday, October 16, 2023 2:26 PM

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

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>

Subject: RE: [External] DOR response to RFC Rules 17 NCAC .4801, 4802, and .4803

Thank you for your email.

At this stage I am not able to accept revisions to rules prior to the RRC meeting. If the RRC objects, there will be time to consider revisions.

That having been said, rather than “accordance” I think “commensurate” would add clarity to the revision.

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.

Burgos, Alexander N

Subject: FW: [External] DOR response to RFC Rules 17 NCAC .4201, .4202, .4204, .4411, .4413, .4510, .4707, .4708, .4716, .5001, and .5002
Attachments: DOR response to RFC .4201, .4202.zip

From: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Sent: Monday, October 16, 2023 8:02 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Ascher, Seth M <seth.ascher@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 .4201, .4202, .4204, .4411, .4413, .4510, .4707, .4708, .4716, .5001, and .5002

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,

I apologize for the technical problems. I've shortened the name on the zip folder. I believe this should resolve the problem, but please let me know if you still have issues opening any of the revised rules, and I will attach them individually.

Thanks for your patience.

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

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.

Questions contained herein suggest that the rule as written is unclear or there is some ambiguity. If this document includes questions and you do not understand the question, please contact the reviewing attorney to discuss. Failure to respond may result in a staff opinion recommending objection.

Staff may suggest the agency "consider" an idea or language in this document. This is in no way a formal request that the agency adopt the idea or language but rather is offered merely for the agency's consideration which the agency may find preferable and clarifying.

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: "aAssociation"
 - 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:
www.ncoah.com/rules/examples.html

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

William W. Peaslee
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 .4201

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:

Generally, to the Rule: Explain with particularity the authority to exempt sales to federal government from the sales and use tax?

G.S. 105-164.13(17) exempts “sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State.” States are prohibited from taxing direct sales to the Federal Government through numerous Supreme Court rulings under the principal of federal sovereignty and the supremacy clause of the U.S. Constitution.

“There is no provision in the Constitution that expressly provides that the federal government is immune from state taxation, just as there is no provision in the Constitution that expressly provides that states are immune from federal taxation. However, the Supreme Court has applied the intergovernmental tax immunity doctrine to invalidate taxes that impair the sovereignty of the Federal Government or state governments. The intergovernmental tax immunity doctrine is a limitation on federal and state taxing powers by implication. The Court has explained that the origins of the intergovernmental tax immunity doctrine lie in the Supremacy Clause, the Tenth Amendment, and the preservation of the Constitution’s system of dual federalism.”

See, e.g., South Carolina v. Baker, 485 U.S. 505, 523, 523 n.14 (1988); United States v. New Mexico, 455 U.S. 720, 735–36 (1982); New York v. United States, 326 U.S. 572, 586–87 (1946); Collector v. Day, 78 U.S. (11 Wall.) at 123–27; McCulloch, v. Maryland, 17 U.S. (4 Wheat.) 316, 427–37 (1819). (Constitution Annotated at <https://constitution.congress.gov>)

William W. Peaslee
Commission Counsel

Date submitted to agency: October 9, 2023

Generally, to the Rule: Explain with particularity the authority to exempt sales to “instrumentalities” of the USG and private organizations such as the American Red Cross and officers’ mess funds.

G.S. 105-164.13(17) exempts “sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State.” States are prohibited from taxing direct sales to the Federal Government under the principal of federal sovereignty and the supremacy clause of the U.S. Constitution.

See Department of Employment et.al. v. United States, 385 US 355 (1966), ruling the American Red Cross (“Red Cross”) is an instrumentality of the United States government.

“An instrumentality of government is a privately owned institution not subject to any of the general management laws and regulations [provided in the United States Code] unless so indicated in its enabling legislation (charter). An instrumentality may be assigned limited prerogatives in its charter (e.g., immunity from state taxation) normally associated with the government’s sovereign authority. In return for this limited assignment of governmental powers, an instrumentality cannot, on its own authority, alter the charter or conduct activities contrary to the intent of the charter.” CRS Report RS21663, Government-Sponsored Enterprises (GSEs): An Institutional Overview, by Kevin R. Kosar.

Line 7: Define “instrumentality” of a USG agency?

A federal instrumentality is a non-governmental agency that acts independently for the public good and whose obligations are backed by the federal government. Federal instrumentalities are subject to overview by the federal government but have no government powers.

See proposed Rule change.

Line 9: Define “necessary”?

“Necessary” is not a defined term in Article 5, therefore it would have its usual and ordinary meaning. Per the Merriam-Webster dictionary, “necessary” means “absolutely needed or required.”

Line 9: Must the agency be “created” to provide a necessary function or must the agency actually provide the function?

The word “created” refers to an agency or instrumentalities enabling legislation or charter.

See proposed Rule change.

William W. Peaslee
Commission Counsel

Date submitted to agency: October 9, 2023

Line 9 and 10: If the “qualifying United States Government agency” is immune from sale tax under federal law, why are these lines necessary?

These lines are necessary to define “qualifying United States Government agency and instrumentalities.”

See proposed Rule change.

Line 11: If it meets the Secretary’s intention, change “entity” to “purchasing government entity”.

Based on the revised definition of “qualifying United States Government agency and instrumentalities, the recommended change would make the sentence unclear.

Lines 17-22: It is unclear whether the Secretary is providing a list of USG agencies which meet the standards set in Paragraph (a) or whether a new standard is being established (directly under federal control and paid from the federal treasury) for “departments”.

See proposed Rule change specifying these are examples of qualifying USG agencies and instrumentalities.

Line 19: The American Red Cross does not appear to be a government agency. Depending upon how you define “instrumentality” it is not a governmental anything.

See Department of Employment et.al. v. United States, 385 US 355 (1966), ruling the American Red Cross (“Red Cross”) is an instrumentality of the United States government.

Line 19: By “United States hospitals” does the Secretary mean all hospitals in the United States, or owned by citizens and corporations of the United States, or owned by the federal government?

See proposed Rule change to “federally operated” hospitals

Line 19: To my understanding “federal land banks” are regulated but not owned by the federal government. Accordingly, they are not “agencies”. Depending upon how you define “instrumentality” it is not a governmental anything.

The federal land bank (FLB) is a network of regional cooperative banks that provide long-term loans to farmers and ranchers. The federal land bank system is now regulated by the Farm Credit Administration (FCA) whose authority was created in the Farm Credit Act of 1971 and subsequent amendments.

Line 23: Add an oxford comma after “Navy”.

William W. Peaslee
Commission Counsel

Date submitted to agency: October 9, 2023

See proposed Rule change changing list of military branches to “United States Armed Forces”.

Lines 25-26: Does the Coast Guard not authorize these as well? What about Space Force?

See proposed Rule change changing list of military branches to “United States Armed Forces”.

Line 23-25: Consider: “Sales made to the following organizations shall not be subject to sales and use tax provided that the organization is authorized by the regulations of the Department of Defense, Army, Navy, or Airforce: Army, Navy, and Airforce Activities Funds...”

See proposed Rule change revising to use recommended language and changing list of military branches to “United States Armed Forces”.

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 .4202

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:

Generally, to the Rule: Explain with particularity the authority to exempt sales to federal government from the sales and use tax?

G.S. 105-164.13(17) exempts “sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State.” States are prohibited from taxing direct sales to the Federal Government under the principal of federal sovereignty and the supremacy clause of the U.S. Constitution.

See Department of Employment et.al. v. United States, 385 US 355 (1966), ruling the American Red Cross (“Red Cross”) is an instrumentality of the United States government.

“An instrumentality of government is a privately owned institution not subject to any of the general management laws and regulations [provided in the United States Code] unless so indicated in its enabling legislation (charter). An instrumentality may be assigned limited prerogatives in its charter (e.g., immunity from state taxation) normally associated with the government’s sovereign authority. In return for this limited assignment of governmental powers, an instrumentality cannot, on its own authority, alter the charter or conduct activities contrary to the intent of the charter.” CRS Report RS21663, Government-Sponsored Enterprises (GSEs): An Institutional Overview, by Kevin R. Kosar.

Generally, to the Rule: Explain with particularity the authority to exempt sales to “instrumentalities” of the USG and private organizations such as the American Red Cross and officers’ mess funds.

William W. Peaslee
Commission Counsel

Date submitted to agency: October 9, 2023

G.S. 105-164.13(17) exempts “sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State.” States are prohibited from taxing direct sales to the Federal Government under the principal of federal sovereignty and the supremacy clause of the U.S. Constitution.

See Department of Employment et.al. v. United States, 385 US 355 (1966), ruling the American Red Cross (“Red Cross”) is an instrumentality of the United States government.

“An instrumentality of government is a privately owned institution not subject to any of the general management laws and regulations [provided in the United States Code] unless so indicated in its enabling legislation (charter). An instrumentality may be assigned limited prerogatives in its charter (e.g., immunity from state taxation) normally associated with the government’s sovereign authority. In return for this limited assignment of governmental powers, an instrumentality cannot, on its own authority, alter the charter or conduct activities contrary to the intent of the charter.” CRS Report RS21663, Government-Sponsored Enterprises (GSEs): An Institutional Overview, by Kevin R. Kosar.

Page 1, Line 6, and Page 2, Lines 3-5: Define “qualifying agency” or make a reference to the definition which exists in another rule?

See proposed Rule change adding a definition for qualifying agency or instrumentalities thereof.

Page 1, Line 6: Define “instrumentality” of a USG agency?

See proposed Rule change adding a definition for qualifying agency or instrumentalities thereof.

Page 1, Line 7: If it meets the Secretary’s intention, add “Form E-595E” after “Certificates of Exemption”. If it does not meet with the Secretary’s intention, to which Certificates of Exemption does the Secretary refer?

See proposed Rule change adding “Form E-595E”.

Page 1, Lines 5-12: For how long must the records be retained?

See proposed Rule change. Referenced the statute of limitations statutes for refunds and assessments.

Page 1, Lines 22-24: Explain the Secretary’s authority to tax a sale? If the Secretary is interpreting a statute, consider “pursuant to...”

See proposed Rule change adding the recommended “pursuant to...” language.

Page 2, Line 3: "Other credit card programs" is unclear and ambiguous.

See proposed Rule change revising to specify "Non-GSA Smartpay credit card programs..."

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 .4204

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:

This page intentionally left blank.

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

William W. Peaslee
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 .4411

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:

Generally, to the Rule: This rule could be written with greater clarity and conciseness.

See proposed Rule change revising first sentence and breaking out extension provisions into separate subsections.

Line 5: Must there be a pending sale of the property? Should "is" be "would be"?

See proposed Rule change revising first sentence.

Line 5: "Maximum tax" is not a defined term. After "maximum tax", add "pursuant to G.S. 105-164.4 [or any other applicable statute]".

See proposed Rule change adding maximum tax imposition statutes.

Lines 5-9: What does this language do that is not addressed in G.S. 105-164.6? Why is it reasonably necessary?

See proposed Rule change revising first sentence. This information is needed to explain that leasing tangible personal property (the sale of which would be subject to a maximum tax) does not relieve the transaction from being subject to the maximum tax and that the provisions in a lease affect how the maximum tax applies to extensions of the lease.

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

William W. Peaslee
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 .4413

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:

Line 6: Does “upon completion of required payments” relate strictly to the “deferred payment plan” or does it include “security agreement”? If the latter, there should be a comma after “plan”.

See proposed Rule change adding a comma after “plan” as recommended.

Line 9: Strike “(1%)”. See the RRC style guide.

See proposed Rule change striking “(1%)” as recommended.

Line 11: It appears that the Secretary is differentiating a conditional sales contract from a lease/rental agreement and that this distinction is relevant to a statute. This would be an appropriate place to name the statute. After “rental” add “pursuant to G.S. 105-164.6 and is...”

See proposed Rule change adding reference to the statutory definition of lease or rental.

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

William W. Peaslee
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 .4510

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:

Line 15: "Sale for resale" is not a defined term in either the statute or in 17 NCAC 07B .0106. Define or delete.

See proposed Rule change deleting "sale for resale" and replacing with "wholesale sale" which is a defined term.

Consider: "Independent cleaning solicitors shall comply with 17 NCAC 07B .0106 when purchasing laundry services, drycleaning services, or hat blocking services, for the purpose of resale."

See proposed Rule change revising sentence as recommended.

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

William W. Peaslee
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 .4707

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:

Staff is including the relevant portion of the statute for convenience.

G.S. 105-134.13(8) Sales to a manufacturer of tangible personal property that enters into or becomes an ingredient or component part of tangible personal property that is manufactured. This exemption does not apply to sales of electricity.

Generally, to the Rule: It appears that a more general rule defining “ingredient” or “component part” would be more efficient than having a rule addressing a specific industry; however the lack of efficacy is not objectionable.

Noted.

Line 5: Is “commercial printer” defined?

Commercial printer is not specifically defined, but is the term used in G.S. 105-164.13(39) which states, “Sales of paper, ink, and other tangible personal property to commercial printers and commercial publishers for use as ingredients or component parts of free distribution periodicals and sales by printers of free distribution periodicals to the publishers of these periodicals.”

Line 6: As written, the language implies that the Secretary is granting the exemption. The Secretary lacks authority to grant an exemption. However, the Secretary has authority to interpret a statute which grants the exemption. Please change the language to clarify the authority. Consider “Pursuant to G.S. 105-134.18(8)...”

See proposed Rule change adding reference to exemption statute.

Line 8: Given the language G.S. 105-134.13(8) concerning “an ingredient or component part” explain the Secretary’s authority to declare cleaning chemicals exempt. How do chemicals which clean machinery become “an ingredient” or a “component part” of that which a commercial printer manufactures?

William W. Peaslee
Commission Counsel

Date submitted to agency: October 9, 2023

The authority to exempt cleaning chemicals is G.S.105-164.13(5e) which is the mill machinery and mill machinery parts and accessories exemption.

Lines 9-11, Paragraph (b): Why is this paragraph reasonably necessary? Assuming the Secretary is interpreting G.S. 105-134.13(8), by what language in the statute could anyone conclude that “sanitation chemicals” would become “an ingredient or component part of” anything that a commercial printer might create or print and thus exempt them from tax?

The Secretary is also interpreting 105-164.13(5e) which is the mill machinery and mill machinery parts and accessories exemption, and therefore sanitation chemicals may be misconstrued as being exempt under that statute.

Line 10: Define “sanitation purposes”?

See proposed Rule change changing “sanitation purposes” to “cleaning, disinfecting, or sanitizing purposes”.

Line 10: Define “applicable local and transit rates of sales and use tax”.

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.

See proposed Rule change adding the following sentence:

Local tax rates by county, including any transit tax can be found on the Department’s website at www.ncdor.gov.

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

William W. Peaslee
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 .4708

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:

Staff is including the relevant portion of the statute for convenience.

G.S. 105-134.13(17) Sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State.

Line 5: In Rule .4707 the Secretary uses the term “commercial printer” whereas here the Secretary uses “printer.” What is the difference?

See proposed Rule change adding the word “commercial” before “printer.”

Line 8: Define “applicable local and transit rates of sales and use tax”.

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.

See proposed Rule change adding the following sentence:

Local tax rates by county, including any transit tax can be found on the Department’s website at www.ncdor.gov.

Line 9: As written, the language implies that the Secretary is granting the exemption. The Secretary lacks authority to grant an exemption. However, the Secretary has

William W. Peaslee
Commission Counsel

Date submitted to agency: October 9, 2023

authority to interpret a statute which grants the exemption. Please change the language to clarify the authority. Consider "Pursuant to G.S. 105-134.18(17) and 18 USC 8...)

Consider: "Pursuant to G.S. 105-134.13(17) and 18 USC 8, the face value of United State Postal Service postage sold by commercial printers is exempt from sale and use tax notwithstanding the postage being printed or affixed to envelopes or postcards prior to sale, provided that the value is stated separately from other charges on the invoice or similar billing document and given to the purchaser at the time of sale."

See proposed Rule change using recommended language.

Lines 12-13: If G.S. 105-134.13(17) is the authority for the rule, why is it not listed in the history note?

See proposed Rule change adding 105-164.13 to the authority note.

Lines 12-13: List all statutes individually.

See proposed Rule change adding individual local tax statutes.

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 .4716

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:

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

William W. Peaslee
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 .5001

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:

Lines 9-11: Explain why it is reasonably necessary to have language interpreting corrective eye glasses as qualifying as a “prosthetic device” given the clear language of G.S. 105-164.3(191).

This Rule is reasonable necessary to provide an interpretation that corrective eyeglasses and corrective contact lenses qualify for the exemption in 105-164.13(12).

Lines 11, 13, 15, 23, and 26: Explain with particularity the authority to issue exemptions. If the Secretary is interpreting a statute, this should be made clear. Consider “Pursuant to...”

See proposed Rule change adding reference to the exemption statute.

Lines 15-26: This is a different concept. Consider making it a different paragraph.

See proposed Rule change.

Lines 18, 30, and 32: Define “applicable local and transit rates of sales and use tax”.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: October 9, 2023

tax” provides the reader a prompt that local and transit rates apply in addition to the general State rate.

*See proposed Rule change adding the following sentence:
Local tax rates by county, including any transit tax can be found on the Department’s website at www.ncdor.gov.*

Line 19-21: Explain why this subparagraph is reasonably necessary given the clear language of G.S. 105-164.4 and the absence of any exemption.

This subparagraph of the Rule is reasonably necessary as non-prescription eyeglasses may be prescribed by a physician and qualify for an exemption, but are not exempt as prosthetic devices.

Lines 23-24: Explain why it is reasonably necessary to have language interpreting contact lens as qualifying as a “prosthetic device” given the clear language of G.S. 105-164.3(191).

This Rule is reasonable necessary to provide an interpretation that corrective eyeglasses and corrective contact lenses qualify for the exemption in 105-164.13(12).

Lines 31-33: Explain why this subparagraph is reasonably necessary given the clear language of G.S. 105-164.4 and the absence of any exemption.

This subparagraph of the Rule is reasonably necessary as non-prescription contact lenses may be prescribed by a physician and qualify for an exemption, but are not exempt as prosthetic devices.

Lines 27-28: This is a different concept. Consider making it a different paragraph.

See proposed Rule change.

Lines 35-37: If G.S. 105-134.13(12) is the authority for the rule as stated in the September 6, 2023 email, why is it not listed in the history note?

G.S. 105-164.13 is listed in the authority note.

Lines 35-37: List all statutes individually.

See proposed Rule change adding individual local tax statutes.

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 .5004

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:

Generally, to the Rule: Explain why this rule is reasonably necessary? Is it not G.S. 105-164.4 clear that the sale of these items are taxed and they are not prosthetic devices pursuant G.S. 105-164.13(12)a and G.S. 105-164.3(191)?

This Rule is reasonably necessary because some optical supplies are considered repair or replacement parts of a prosthetic device and some are not. Additionally, when certain supplies are included in the sales price of corrective eyeglasses or corrective contact lenses, all of the products are exempt, but if the supplies are sold separately some of the supplies may be taxable and some not.

Lines 10, 18, 21, and 23: Explain the Secretary's authority to subject any sales to a tax. If this is an interpretation of a statute, add a reference to the taxation statute. Consider "Pursuant to..."

See proposed Rule change adding the recommended "pursuant to..." language.

Lines 10-11, 18, and 24: Define "applicable local and transit rates of sales and use tax".

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

William W. Peaslee
Commission Counsel

Date submitted to agency: October 9, 2023

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.

*See proposed Rule change adding the following sentence:
Local tax rates by county, including any transit tax can be found on the Department's website at www.ncdor.gov.*

Lines 26-27: Should not G.S. 105-164.13 be listed?

See proposed Rule change adding 105-164.13 to the authority note.

Lines 26-27: List all statutes individually.

See proposed Rule change adding individual local tax statutes.

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

17 NCAC 07B .4201 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 .4200 - SALES TO THE UNITED STATES GOVERNMENT OR AGENCIES THEREOF

17 NCAC 07B .4201 IN GENERAL

(a) Sales made directly to the United States Government, or any qualifying agency or instrumentality thereof, are not subject to the sales ~~or~~ and use tax. Qualifying United States Government agencies, ~~and instrumentalities~~ are divisions of the federal ~~government~~ government. Qualifying United States instrumentalities are non-governmental agencies that act independently and whose obligations are backed by the federal government, whose enabling legislation or charter is ~~created~~ to provide a necessary public service and are immune from sales and use tax under federal law. In order for a transaction to be a sale to the United States Government, ~~the government or qualifying agency or instrumentality thereof, the entity involved must make the~~ shall purchase of the property, obtain title to the property before or at the time it is delivered, and pay the item directly to ~~from the vendor the purchase price of such property or use a government bankcard to pay the vendor the purchase price of such property.~~ retailer and make payment directly to the retailer with its own funds. For example, meals and lodging billed to and paid for by the federal government are not subject to sales and use tax, however meals and lodging billed to and paid for by a federal employee who is subsequently reimbursed by the federal government are subject to sales and use tax.

(b) ~~Nontaxable federal~~ Qualifying Examples of qualifying United States Government agencies and instrumentalities thereof that are not subject to sales and use tax include the ~~United States Postal Service, Departments of Defense, Army, Navy and Air Force,~~ United States Armed Forces, United States federally operated hospitals, American Red Cross, federal reserve Federal Reserve banks, federal land banks, federal housing projects, federal housing authorities, United States Postal Service, or any other department ~~or departments~~ of the federal government whose activities are directly under federal control and whose purchases are paid for from the federal treasury.

(c) Sales made to the following organizations shall not be subject to sales and use tax provided that the organization is authorized by the regulations of the Departments of Defense or a branch of the United States Armed Forces: ~~Army, Navy and Air Force~~ United States Armed Forces Activities Funds, post exchanges, officers' mess funds, noncommissioned officers funds and other voluntary unincorporated organizations of Army, Navy, Marine Corps, Air Force, or Coast Guard personnel United States Armed Forces personnel. authorized by regulations issued by the Departments of Defense, Army, Navy or Air Force are likewise exempt from ~~not subject to sales and use tax.~~

History Note: Authority G.S. 105-164.13; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. August 1, 1988-1988;
Readopted Eff. January 1, 2024.

17 NCAC 07B .4202 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 .4202 EXEMPT SALES TO THE UNITED STATES GOVERNMENT

(a) ~~Purchase Requisitions: Retailer Records. -- A vendor making~~retailer that makes sales directly to the United States Government, or ~~any a~~ qualifying agency or instrumentality thereof, ~~that issues purchase requisitions or affidavits must obtain and keep~~shall retain copies of such ~~any~~ Certificates of Exemption, **Form E-595E**, purchase requisitions or ~~affidavits~~ ~~affidavits~~, signed by the purchasing officer stating that such sales are being made directly to the United States Government or an agency or instrumentality thereof or other information provided to substantiate the exemption from sales and use tax. Copies of such ~~purchase requisitions or affidavits must~~the documentation be retained by the vendor in his files for three years following the date of sale and must be available for inspection by the Secretary of Revenue or ~~her~~the Secretary's agents upon request. **Records shall be kept in accordance with G.S. 105-241.6 and G.S. 105-241.8.**

Qualifying United States Government agencies and instrumentalities are divisions of the federal government and non-governmental agencies that act independently and whose obligations are backed by the federal government, whose enabling legislation or charter is to provide a necessary public service and are immune from sales and use tax under federal law.

(b) United States Government Credit Card Program – ~~GSA Smartpay: Smartpay.~~ -- Under the program, credit cards may be centrally billed or individually billed. ~~Card designs may be viewed on the following Internet website: <http://www.gsa-smartpay.org/gsa-howidentify.html>.~~

(1) ~~Fleet Cards: All Federal Government fleet cards are centrally billed. This means that all charges are billed directly to and paid directly by the Federal Government and are exempt from the general rate of State tax and any applicable local sales and use tax. Centrally billed charges are billed directly to and paid directly by the United States Government and are exempt from sales and use tax.~~

(2) ~~Purchase Cards: All Federal Government purchase cards are centrally billed. This means that all charges are billed directly to and paid directly by the Federal Government and are exempt from the general rate of State tax and any applicable local sales and use tax. Individually billed charges are billed to and paid by the federal employee who is then reimbursed by the United States Government. Individually billed charges are subject to the applicable rates of sales and use~~ **[tax.]tax, pursuant to G.S. 105-164.4.**

(3) ~~Travel Cards: Federal Government travel cards may be centrally billed or individually billed. Individually billed charges are billed to and paid by the Federal employee who is then reimbursed by the Federal Government. These charges are subject to the general rate of State tax and any applicable local sales and use tax. Centrally billed charges are billed directly to and paid directly by the Federal Government and are exempt from to the general rate of State tax and any applicable local sales and use tax.~~

1 (4) ~~Integrated Cards: Federal Government integrated cards include fleet, travel, purchase transactions~~
2 ~~or any combination thereof and offer the Federal Government a single card for all of its purchases.~~
3 ~~This card is in use only at the Department of the Interior. All fleet and purchase type transactions~~
4 ~~on an integrated card are centrally billed, and travel type transactions may be centrally billed or~~
5 ~~individually billed. Centrally billed charges are billed directly to and paid directly by the Federal~~
6 ~~Government and are exempt from the general rate of State tax and any applicable local sales and~~
7 ~~use tax. Individually billed charges are billed to and paid by the Federal employee and then~~
8 ~~reimbursed by the Federal Government. These charges are subject to the general rate of State tax~~
9 ~~and any applicable local sales and use tax.~~

10 (c) [Other]Non-GSA Smartpay credit card programs implemented by qualifying agencies or instrumentalities of the
11 United States Government are exempt from sales and use tax when the charges are centrally billed and directly paid
12 by the qualifying agency or instrumentality.

13
14 History Note: Authority G.S. 105-164.4; 105-164.13; 105-262; 105-264; Article 39; Article 40; Article 42; Article
15 43; Article 44;
16 Eff. February 1, 1976;
17 Amended Eff. September 1, 2006; April 1, 1997; January 1, 1995; October 1, 1993; October 1,
18 1991; August 1, 1988-1988;
19 Readopted Eff. January 1, 2024.

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

3
4 **17 NCAC 07B .4204 GOVERNMENT AGRICULTURAL OFFICES**

5
6 *History Note: Authority G.S. 105-164.13; 105-262;*
7 *Eff. February 1, ~~1976~~ 1976;*
8 *Repealed Eff. January 1, 2024.*
9

17 NCAC 07B .4411 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 .4411 EXTENSION OF LEASES SUBJECT TO A MAXIMUM TAX

When a maximum tax, pursuant to G.S. 105-164.4 105-164.6, or 105-164.27A would apply to the sale of tangible personal ~~property, the sale of which is subject to a maximum tax,~~ property and the tangible person property is leased for a definite stipulated period of time, the lease payments during the lease period are subject to the maximum tax.

(a) Extension Provisions in Lease. -- ~~If the original lease contains provisions for extension-extension, whether by action or inaction, either by notification or by failure to notify the lessor of termination,~~ the extended term of the lease is part of the original lease and the maximum tax ~~would apply~~ applies to the entire lease including any extension under the terms of the original lease.

(b) No Extension Provisions in Lease. -- ~~(If, however,)~~ If the original lease does not contain provisions for extension at the option of the lessee, whether by action or ~~nonaction,inaction,~~ but a new lease agreement is subsequently entered into ~~into, granting an extension or a new lease, there would be a~~ the maximum tax applies separately to the second ~~lease]lease,~~ which would~~and does not have the benefit of any~~ Any sales tax payments made ~~by reason of~~ on the maximum tax for the first lease ~~with respect to the maximum tax, tax,~~ is not applied to ~~for~~ the second lease.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264;
Eff. February 1, 1976.1976;
Readopted Eff. January 1, 2024.*

1 17 NCAC 07B .4413 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 .4413 CONDITIONAL SALES CONTRACT**

5 (a) A conditional sales contract is an agreement that requires the following:

- 6 (1) The transfer of title under a security agreement or deferred payment ~~[plan]~~plan, upon completion of
7 the required payments; or
8 (2) The transfer of title upon completion of required payments and payment of an option price that does
9 not exceed the greater of one hundred dollars (\$100.00) or one percent ~~[(1%)]~~ of the total required
10 payments.

11 (b) An agreement that meets the requirements of paragraph (a) of this Rule does not constitute a lease or ~~[rental]~~rental,
12 as defined in G.S. 105-164.3, and is considered a conditional sales contract. Any applicable statutory state and local
13 sales and use tax for a conditional sales contract is due upon delivery of the ~~tangible personal property~~item, as the
14 term item is defined in G.S. 105-164.3, to the purchaser.
15

16 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; 105-264;*
17 *Eff. February 1, 1976;*
18 *Amended Eff. August 1, 2009; October 1, ~~1993-1993;~~*
19 *Readopted Eff. January 1, 2024.*
20

17 NCAC 07B .4510 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 .4510 INDEPENDENT CLEANING SOLICITORS

(a) Independent Cleaning Solicitors. -- For purposes of this Rule, an independent cleaning solicitor is a person engaged in the business of soliciting laundry, dry cleaning, or hat blocking services to customers but engages another business to perform the laundering, dry cleaning, or hat blocking.

(b) Sales by Independent Cleaning Solicitors. -- An independent ~~operator cleaning solicitor that owns his truck and solicits business but engages a laundry, dry cleaning, or hat blocking firm or similar type business to perform the laundering, cleaning, or other service~~ is liable for collecting and remitting the general State, and applicable statutory state and local and transit rates of sales or and use tax on his-their gross receipts-receipts derived from laundry, dry cleaning, or hat blocking services it solicits.

(c) Purchases by Independent Cleaning Solicitors. -- The purchase of laundry, dry cleaning, or hat blocking services by an independent cleaning solicitor to sell to its customers from a company that performs the laundering, cleaning, or other service is a [sale for resale.]wholesale sale. [The independent]Independent cleaning [solicitor]solicitors shall comply with 17 NCAC 07B .0106 when [making such a purchase.]purchasing laundry, dry cleaning, or hat blocking services, for the purpose of resale. If the solicitor is not registered with the Department of Revenue for remitting the tax on his gross receipts, the firm performing the laundering, cleaning or similar type services shall collect and remit the tax on the total charge for the services performed for the independent operator without any deduction of any allowance to the solicitor. The firm performing the service shall secure from the solicitor a Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E, which shall be accepted as evidence that the solicitor is registered for payment of the tax and as authority for not charging tax on the gross receipts from the service performed for the solicitor.

History Note: Authority G.S. 105-164.4; ~~105-164.5; 105-164.13; 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. August 1, 2009; October 1, ~~1993-1993;~~

Readopted Eff. January 1, 2024.

17 NCAC 07B .4707 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 .4707 PRINTING CHEMICALS

(a) Pursuant to G.S. 105-164.13, sales of the following chemicals to commercial printers or publishers which enter into or become an ingredient or component part of printed matter which such purchasers sell are exempt from sales and use tax:

(1) Chemicals that enter into or become an ingredient or component part of printed material for resale.

(2) Chemicals used to clean printing machinery.

(b) Sales of chemicals not listed in paragraph (a), including chemicals used by commercial printers and publishers for sanitation, cleaning, disinfecting, or sanitizing purposes, are subject to the applicable statutory state general State and applicable local and transit rates of sales or and use tax. Local tax rates by county, including any transit tax can be found on the Department's website at www.ncdor.gov.

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; 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.

17 NCAC 07B .4708 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 .4708 POSTAGE CHARGES BY PRINTERS

~~When The amount a commercial printer purchases charges its customers for postal cards or stamped envelopes and prints and sells them to customers for use, the printer is liable for collecting and remitting the applicable statutory state and local sales or use tax on the charge to the customer; that are printed and sold for use by the customer is subject to the general State and applicable local and transit rates of sales and use [tax,]tax. Local tax rates by county, including any transit tax can be found on the Department's website at www.ncdor.gov. [except the face value of stamps or postage charges on the printed cards or envelopes are is exempt from tax when separately stated on the customer's invoice.invoice or similar billing document given to the customer at the time of the sale.] Pursuant to G.S. 105-134.13(17) and 18 USC 8, the face value of United State Postal Service postage sold by commercial printers is exempt from sale and use tax even if the postage is printed or affixed to envelopes or postcards prior to sale, provided that the value of the postage is stated separately from other charges on the invoice or similar billing document and given to the purchaser at the time of sale.~~

History Note: Authority G.S. 105-164.3; 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. April 1, 2006; October 1, 1993; October 1, 1991; July 5, 1980-1980;
Readopted Eff. January 1, 2024.

1 17 NCAC 07B .4716 is repealed pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-1(D)(4)
2 as follows:

3
4 **17 NCAC 07B .4716 TYPESETTING**

5
6 *History Note:* *Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article*
7 *43; Article 44;*
8 *Eff. February 1, 1976;*
9 *Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991; October 1, ~~1990~~1990;*
10 *Repealed Eff. January 1, 2024.*
11

17 NCAC 07B .5001 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 .5000 - ~~EYEGLASSES~~ EYEGLASSES, CONTACT LENSES, AND OTHER OPHTHALMIC
OPTICAL AIDS AND SUPPLIES: SUPPLIES OCULISTS: OPTOMETRISTS AND OPTICIANS**

17 NCAC 07B .5001 PREScription EYEGLASSES AND CONTACT LENSES

(a) Eyeglasses:

(1) Corrective Eyeglasses. -- Sales of corrective eyeglasses for human use, ground on prescription of physicians, oculists or optometrists, including frames as an integral part thereof, are not subject to the tax, exempt from sales and use tax as prosthetic [devices.] devices pursuant to G.S. 105-164.13(12). When eyeglass cases, lens wipes, and lens solution are given to the purchaser as part of the sale and included in the sales price of corrective eyeglasses for human use, they are also exempt under G.S. 105-164.13(12) from sales and use tax.

Corrective eyeglasses, whether prescription eyeglasses or reading glasses, are not required to be sold on prescription in order [to be exempt] for the exemption from sales and use [tax.] to apply.

A person who sells corrective eyeglasses shall keep sales records that clearly separate it sales of corrective eyeglasses 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.

(2) Non-Corrective Eyeglasses. -- Sales of non-corrective eyeglasses for human use are subject to the general State, and applicable local and transit rates of sales and use tax unless specifically exempt by statute. Local tax rates by county, including any transit tax can be found on the Department's website at www.ncdor.gov.

(b) Contact Lenses:

(1) Corrective Contact Lenses. -- Sales of corrective contact lenses for human use are exempt from sales and use tax as prosthetic [devices.] devices pursuant to G.S. 105-164.13(12). When carrying cases, patient instruction booklets, patient care kits, aseptors, salt tablets, lens solution, and squeeze bottles are given to the purchaser as part of the sale and included in the sales price of corrective contact lenses for human use, they are also exempt under G.S. 105-164.13(12) from sales and use tax.

A person who sells corrective contact lenses shall keep sales records that clearly separate its sales of corrective contact lenses 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.

(2) Non-Corrective Contact Lenses. - Sales of non-corrective contact lenses for human use are subject to the general State, and applicable local and transit rates of sales and use tax unless specifically

1 exempt by statute. Local tax rates by county, including any transit tax can be found on the
2 Department's website at www.ncdor.gov.

3
4 *History Note:* Authority G.S. 105-164.3; 105-164.4; 105-164.4D; 105-164.13; 105-164.22; 105-262; 105-
5 164.264; [Chapter 105, Articles 39, 40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483;
6 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;
7 Eff. February 1, 1976-1976;
8 Readopted Eff. January 1, 2024.
9

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 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 when such sales are made separate and apart from a corrective eyeglass sale or when they are sold with corrective eyeglasses, but 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.]tax, pursuant to G.S. 105-164.4. 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.

(b) Supplies for Corrective Contact Lenses - Sales to consumers of aseptors, salt tablets, squeeze bottles, carrying cases, patient instruction booklets, patient care kits, and similar corrective contact lens supplies when such sales are made separate and apart from a corrective contact lens sale or when they are sold with corrective contact lenses, but 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.]tax, pursuant to G.S. 105-164.4.

(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.]tax, pursuant to G.S. 105-164.4.

(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.]tax, pursuant to G.S. 105-164.4.

(e) Local tax rates by county, including any transit tax can be found on the Department's website at www.ncdor.gov.

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. February 1, 1976; Amended Eff. October 1, 2009; October 1, 1993; October 1, 1991-1991; Readopted Eff. January 1, 2024.

Burgos, Alexander N

Subject: FW: [External] DOR response to RFC Rules 17 NCAC .4201, .4202, .4204, .4411, .4413, .4510, .4707, .4708, .4716, .5001, and .5002

Alexander Burgos

Paralegal
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1940
Alexander.burgos@oah.nc.gov

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Saturday, October 14, 2023 12:44 PM

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

Cc: Ascher, Seth M <seth.ascher@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 .4201, .4202, .4204, .4411, .4413, .4510, .4707, .4708, .4716, .5001, and .5002

It does not appear that I can open the rule revisions in the zip file. Please send again, perhaps in batches. Thank you.

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.

Burgos, Alexander N

From: Peaslee, William W
Sent: Friday, October 13, 2023 6:04 PM
To: Lansford, Laura L; Rules, Oah
Cc: Ascher, Seth M; Burgos, Alexander N; Furuseth, Andrew O; Jacobs, Tenisha S
Subject: RE: [External] DOR response to RFC Rules 17 NCAC .4801, 4802, and .4803
Attachments: Revenue Dept Staff Opinion 17 NCAC 07B .4801 10.2023.doc

Good afternoon,

Attached please find the staff opinion on 17 NCAC 07B .4801 which will be considered at the October 19th RRC meeting.

It is my intention to recommend approval of 17 NCAC 07B .4802 and .4803 as revised.

As always, if you have any questions please do not hesitate to contact me.

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: Friday, October 13, 2023 4:08 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Ascher, Seth M <seth.ascher@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 .4801, 4802, and .4803

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,

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: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, October 13, 2023 4:04 PM
To: Laura L. Lansford <Laura.Lansford@ncdor.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Ascher, Seth M <seth.ascher@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 .4801, 4802, and .4803

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

Thank you for your email.

For some reason the response document will not open. The rules opened fine. Can you send it separately.

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: Friday, October 13, 2023 3:48 PM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Peaslee, William W <bill.peaslee@oah.nc.gov>; Ascher, Seth M <seth.ascher@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 .4801, 4802, and .4803

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 three (3) Requests for Changes submitted to the Division by Mr. Peaslee on 10/7/2023, for Rules 17 NCAC 07B .4801, .4802, and .4803, 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
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, October 13, 2023 3:48 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 Rules 17 NCAC .4801, 4802, and .4803
Attachments: DOR response to RFC .4801, .4802, .4803.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 three (3) Requests for Changes submitted to the Division by Mr. Peaslee on 10/7/2023, for Rules 17 NCAC 07B .4801, .4802, and .4803, 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
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 G.S. 150B-21.10

AGENCY: N.C. Department of Revenue

RULE CITATION: 17 NCAC 07B .4801

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:

Line 7: How long does a person have to keep records?

See proposed Rule change. Referenced the statute of limitations statutes for refunds and assessments.

Line 17: "Item" is defined as "Item. - Tangible personal property, digital property, or a service, unless the context requires otherwise." It is unclear what "items" a person is required to keep.

See proposed Rule change. Items, as the term item is defined in G.S. 105-164.3,

Line 18: "Stock" is an undefined term in Article 5 of Chapter 105. "Stock" as used in the rule is unclear and ambiguous.

See proposed Rule change.

Line 21: "Or other records" is unclear and ambiguous. What records is the person required to keep?

See proposed Rule change.

Lines 32-34: Why is this language necessary considering G.S. 105-165.20(a)?

Some business operators misunderstand that if they make credit sales, they may still report on the cash basis, or if they make cash sales, they may still report on the accrual basis. By indicating businesses that make cash or credit sales may elect either a cash basis or accrual basis of accounting is helpful to some business operators.

William W. Peaslee
Commission Counsel

Date submitted to agency: October 4, 2023

Line 35-36: To what address must the letter be sent? Consider making a reference to 17 NCAC 01A .0101.

See proposed Rule change. Included sending the letter to the attention of the Sales & Use Tax Division to the address listed in 17 NCAC 01A .0101

Lines 36-37: If a taxpayer is making an application to select a basis, does the taxpayer's selected basis on the application/letter continue unless and until denied? The language of the rule suggests so. I believe the Secretary intends this language to apply to taxpayers that already have an approved selected basis and wish to change it; however, that is not clear.

See proposed Rule change. Included reference to Rule 17 NCAC 07B .0104.

Lines 32-37, Paragraph (b): What criteria does the Secretary use in determining whether to grant a basis selection or permit a change in the basis?

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.

William W. Peaslee
Commission Counsel

Date submitted to agency: October 4, 2023

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

AGENCY: N.C. Department of Revenue

RULE CITATION: 17 NCAC 07B .4802

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:

Generally, to the Rule: The paragraph uses “person”. This is an undefined term. Accordingly, the default is the common understanding of the term. As written, paragraph (a) is only applicable to individuals (humans). Is that the Secretary’s intention?

Person is defined at 105-164.3(167) which adopts the definition in 105-228.90(23) which states: “Person. - An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter, of G.S. 55-16-22, of Article 81 of Chapter 106 of the General Statutes, or of Article 3 of Chapter 119 of the General Statutes.”

Per email 10/7/2023 – as “person” is a defined term, issue with use is resolved.

Generally, to Paragraph (a): Each sentence appears to be a different concept. Consider making each sentence a separate paragraph.

See proposed Rule change.

Line 5: Consider adding “pursuant to Rule .4801” after “accrual basis”.

See proposed Rule change.

Line 7: Which “person”? The person that elected to pay tax on an accrual basis?

Person is a defined term. Per email 10/7/2023 – as “person” is a defined term, issue with use is resolved.

William W. Peaslee
Commission Counsel

Date submitted to agency: October 4, 2023

Line 9: What “return”? A reference to a rule or statute requiring the return would resolve this ambiguity.

See proposed Rule change.

Line 15: Which “person”? The person that elected to pay tax on an accrual basis?

Person is a defined term. Per email 10/7/2023 – as “person” is a defined term, issue with use is resolved.

Line 16: Add “Pursuant to G.S. 105-164.13,” prior to “Bad debts”.

See proposed Rule change.

Line 19: “Person” should be “taxpayer” should it not? That would be consistent with the language used in the rest of paragraph (b).

See proposed Rule change. As “person” is a defined term, all references to “taxpayer” are changed to “person” to be consistent.

Lines 35-36: Specify which statutes.

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: N.C. Department of Revenue

RULE CITATION: 17 NCAC 07B .4803

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:

Generally, to the Rule: The paragraph uses “person”. This is an undefined term. Accordingly, the default is the common understanding of the term. As written, paragraph (a) is only applicable to individuals (humans). Is that the Secretary’s intention?

Person is defined at 105-164.3(167) which adopts the definition in 105-228.90 which states: Person. - An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter, of G.S. 55-16-22, of Article 81 of Chapter 106 of the General Statutes, or of Article 3 of Chapter 119 of the General Statutes.

Per email 10/7/2023 – as “person” is a defined term, issue with use is resolved.

Generally, to Paragraph (a): Each sentence appears to be a different concept. Consider making each sentence a separate paragraph.

See proposed Rule change.

Line 6: Consider adding “pursuant to Rule .4801” after “cash basis”.

See proposed Rule change.

Line 8: Which “person”? The person that elected to pay tax on a cash basis?

William W. Peaslee
Commission Counsel

Date submitted to agency: October 4, 2023

Person is a defined term. Per email 10/7/2023 – as “person” is a defined term, issue with use is resolved.

Line 10: What “return”? A reference to a rule or statute requiring the return would resolve this ambiguity.

See proposed Rule change.

Lines 14-25: These lines are not formatted correctly.

See proposed Rule change.

Lines 14-25: Why are subparagraphs (1) and (2) and not paragraphs?

See proposed Rule change.

Line 17: Which “person’s”?

Person is a defined term. Per email 10/7/2023 – as “person” is a defined term, issue with use is resolved.

Lines 33-34: Specify which statutes.

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 .4801 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 .4800 - BASIS OF REPORTING

17 NCAC 07B .4801 ~~VENDOR'S RECORDS~~ REQUIRED TO BE KEPT

(a) ~~Persons making sales or purchases of an item, as the term item is defined in G.S. 105-164.3, shall keep records as required in G.S. 105-164.22 that establish~~ Every vendor must keep adequate and complete records as required by G.S. 105-164.31 to determine the amount of the person's sales and use tax for which he may be liable. Records shall be kept in accordance with G.S. 105-241.6 and G.S. 105-241.8.

Records to establish a person's sales and use tax liability include the following:

- (1) All cash and credit sales, including sales under any type of financing or installation plan.
- (2) The amount of all items purchased and copies of all bills of lading, invoices, and purchase orders.
- (3) Copies of all sales invoices furnished by wholesale merchants that shall show the name and address of the purchaser, the date of purchase, the item or items purchased, and the purchase price of the item.
- (4) All deductions and exemptions claimed in sales and use tax returns for each transaction.
- (5) All items, as the term item is defined in G.S. 105-164.3, used or consumed in the conduct of business.
- (6) A true and complete inventory of the value of the ~~[stock]~~the materials, supplies, goods or merchandise on hand
- (7) All exemption certificates, and records of all sales made to a person furnishing an exemption certificate.
- (8) All affidavits of capital improvement or ~~[other records]~~written contracts that establish a transaction is a real property contract.
- (9) All affidavits certifying tax paid by the purchaser on an item that becomes a part of real property.
- (10) Records of all sales made through a facilitator engaged in business in the State.
- (11) All affidavits of export.
- (12) All shipping records for items that are delivered.
- (13) All agreements with facilitators.
- (14) All bank account records.
- (15) All point-of-sale records and cash register z-tapes.
- (16) Any other document, report, form, or other similar record that establishes a person's sales and use tax liability.

(b) ~~Except for persons listed in G.S. 105-164.20(b), Vendors~~person's having both cash and credit sales may elect to report their tax liability on either the cash or accrual basis of accounting provided their records are kept in such a manner that they can determine their tax liability correctly on the basis used. If a ~~[taxpayer]~~person wishes to change

1 ~~[from one]~~ the basis of reporting selected when applying for a Certificate of Registration in accordance with 17 NCAC
2 07B .0104 to another, ~~he must~~ the ~~[taxpayer]~~person shall apply to the Secretary of Revenue by written letter signed by
3 the ~~[taxpayer]~~person and mailed to the attention of the Sales and Use Tax Division to the Department's mailing address
4 set out in 17 NCAC 01A .0101 for permission to make such change. A ~~[taxpayer's]~~person's selected basis continues
5 in effect until the person receives permission from the Secretary, or the Secretary's designee, to change the basis
6 selected. The Secretary, or the Secretary's designee, shall only grant permission allowing a person to change the basis
7 of reporting upon a showing that the person's accounting system and processes shall establish the amount of the
8 person's sales and use tax liability using the requested basis of accounting.

9
10 *History Note:* Authority G.S. 105-164.20; 105-164.22; 105-262; 105-264;
11 Eff. February 1, 1976;
12 Amended Eff. October 1, ~~1993~~1993;
13 Readopted Eff. January 1, 2024.
14

17 NCAC 07B .4802 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 .4802 ACCRUAL BASIS

(a) ~~When a vendor~~A person that elects to report and pay tax on the accrual basis ~~[basis,]~~basis pursuant to 17 NCAC 07B .4801, or is required to report on the accrual basis pursuant to G.S. 105-164.20, ~~he must~~shall keep records which that disclose a separate accounting of taxable and nontaxable sales.

(b) The ~~vendor must~~person shall pay tax on the total sales price of all taxable ~~tangible personal property~~items, as the term item is defined in G.S. 105-164.3, sold during the ~~month~~period covered by the ~~[return,]~~sales and use tax return as required by G.S. 105-164.16, whether or not such sales are cash, credit, ~~installment~~installment, or conditional sales sales, and whether or not the ~~vendor person~~retains the installment and conditional sales contracts or sells or assigns them to others and without regard to any finance reserve withheld on finance paper sold or assigned to others.

(c) ~~Finance charges, service charges or interest~~Interest, financing, and carrying charges from credit extended under conditional sales contracts providing for deferred payment ~~of the purchase price~~are not subject to tax if ~~such the~~charges are separately stated on the ~~invoices~~invoice or similar billing document given to the ~~customers~~purchaser at the time of sale and ~~maintained~~in the ~~vendor's person's~~records of sales.

~~(b)~~(d) Bad Debts. — Pursuant to G.S. 105-164.13, ~~[Bad]~~bad debts that meet the requirements of G.S. 105-164.13(15) may ~~If, in reporting on the accrual basis, accounts of purchasers representing taxable sales on which the tax has been paid are found to be worthless and actually charged off for income tax purposes, the amount charged off representing taxable sales may at corresponding periods be deducted from gross sales~~taxable sales, during corresponding periods, ~~provided if the vendor person maintains records disclosing separately that portion the amount of bad accounts debts representing taxable sales and that portion the amount representing nontaxable sales. Accounts charged off as bad debts must be added to gross sales if afterwards collected.~~A ~~[taxpayer]~~person shall make the deduction for sales and use tax purposes within three (3) years of charging off an account for income tax purposes. A ~~[taxpayer]~~person who is not required to file income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is charged off in its books and records as uncollectible and would otherwise be eligible for a bad debt deduction for income tax purposes if the ~~[taxpayer]~~person were required to file income tax returns. In this instance, the ~~[taxpayer]~~person shall make the deduction for sales and use tax purposes within three (3) years of the date the account is recognized and finally expensed as a bad debt in its books and records. A ~~[taxpayer]~~person that does not deduct a bad debt within the time allowed shall not make any deduction for the bad debt. If a deduction is taken for a bad debt and the debt is subsequently collected, in whole or in part, the tax on the amount of debt collected must be paid and reported on the sales and use tax return filed for the period in which the collection occurs. For purposes of reporting collection of the bad debt subsequent to having charged off and deducted such bad debt, any payments on the debt shall be applied first proportionally to the taxable price of the item and sales tax thereon, and secondly to interest, services charges, and any other charges.

1 History Note: Authority G.S. 105-164.3; 105-164.13; 105-164.20; 105-164.22; 105.262; 105-264; [Chapter 105,
2 Articles 39, 40, 42, 43, and 46;] 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-
3 509.1; 105-510.1; 105-511.3; 105-537; 105-538;
4 Eff. February 1, 1976.1976;
5 Readopted Eff. January 1, 2024.
6

17 NCAC 07B .4803 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 .4803 CASH BASIS

(a) ~~When a vendor having both taxable and nontaxable sales elects to report and pay tax on the cash basis, the vendor must~~ A person making taxable and nontaxable sales that elects to report and pay tax on the cash basis, and is not required to report on the accrual basis pursuant to G.S. 105-164.20, shall keep records which that disclose a separate accounting of taxable and nontaxable sales and receipts on sales.

~~(b) Such vendor must~~ The person shall pay tax on the total sales price of all taxable tangible personal property items, as the term item is defined in G.S. 105-164.3, sold for cash during the month period covered by the return ~~return.~~ sales and use tax return as required by G.S. 105-164.16.

~~(c) Sales upon which tax is due include cash, credit, installment, or conditional sales, and on that any portion of the sales price collected or constructively received during such month the return period, on taxable tangible personal property sold on credit, installment or other deferred payment sales contracts without any arbitrary allocation for finance charges, service charges or interest charges.~~

~~[(4)](d) Interest, Finance charges, service charges and interest charges for financing, and carrying charges from credit extended under conditional sales contracts providing for deferred payment of the purchase price are not subject to the tax if such charges are separately stated on the invoices invoice or similar billing document given to the customers purchaser at the time of sale and in the vendor's records of sales and collections, maintained in the person's records of sales.~~

~~[(2)](e) A person that sells or assigns the finance paper on If, on conditional, installment installment, or other deferred payment sales, sales the vendor sells or assigns the finance paper, he is deemed to have received the full balance of the consideration for the sale of tangible personal property an item and is liable for remittings shall remit tax on the total sales price of such property the item at the close of the month during which period when the finance paper was assigned or sold including any finance reserve withheld on the finance paper. If such vendor sells his accounts receivable he is liable for payment of tax on the outstanding taxable balance of such accounts at the time they are sold notwithstanding that the accounts may be sold at a discount to the purchaser.~~

~~[(b)](f) When persons A person filing their sales and use tax reports returns on the cash basis of accounting sell that sells their accounts receivable, receivable shall remit they are liable for payment of sales tax on their taxable accounts receivable balance outstanding at the time they sell such accounts. the accounts even though the accounts may be sold at a discount to the purchaser. When a corporation is formed to succeed a proprietorship or partnership and the accounts receivable are sold to the corporation, the proprietorship or partnership is liable for remitting the sales tax due on its outstanding taxable accounts receivable balance at the time the accounts are sold.~~

History Note: Authority G.S. 105-164.3; 105-164.20; 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;

1
2

Readopted Eff. January 1, 2024.

Burgos, Alexander N

From: Peaslee, William W
Sent: Monday, October 9, 2023 4:54 PM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Ascher, Seth M
Subject: DOR Request for Changes
Attachments: 2023.10 - Request for Technical Change for Department of Revenue WWP 1.docx

Good afternoon Laura

Attached please find a partial request for changes. It is my intention to have these rules considered at the October RRC meeting.

As always, if you have any questions or concerns please feel free to contact me.

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.

Burgos, Alexander N

Subject: FW: [External] RE: Request for changes Rules .0401, .04802, .04803

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Saturday, October 7, 2023 10:49 AM

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

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>

Subject: RE: [External] RE: Request for changes Rules .0401, .04802, .04803

Good morning,

Thank you for your email.

Your point is well taken concerning the definition of "person". Thank you. Your answer resolves my request regarding Rule .4802 at lines 7 and 15 and Rule .4803 at line 8 and 17.

Regarding, Rule .4802, Paragraph (b), the change of all "taxpayers" to "persons" would be consistent. Good thought.

Thank you.

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: Request for changes Rules .0401, .04802, .04803

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

Sent: Thursday, October 5, 2023 3:43 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Jacobs, Tenisha S <tenisha.jacobs@ncdor.gov>

Subject: [External] RE: Request for changes Rules .0401, .04802, .04803

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 Bill,

I was working on the request for changes for the above referenced rules and noticed that for Rules .4802 and .4803 you indicate that the term “person” is not defined.

However the term “person” is defined in G.S. 105-164.3(167) which adopts the definition in 105-228.90(23) which states:
“Person. - An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter, of G.S. 55-16-22, of Article 81 of Chapter 106 of the General Statutes, or of Article 3 of Chapter 119 of the General Statutes.”

Throughout our Rules we frequently use the term “person” as it is a defined term. I wanted to make sure you were aware that this is a defined term and how that impacts your request for changes.

Regarding Rule .4802 you had questions at lines 7 and 15 and Rule .4803 at lines 8 and 17 questioning “which person” and asked if the reference was to the “person that elected to pay tax on an accrual basis?” Does knowing that “person” is a defined term change your concern with the word usage?

Also, in Rule .4802, at line 19 you asked about DOR using the term “person” vs “taxpayer” which is used numerous times in that paragraph. I agree that the term that is used should be consistent, but I am now thinking that the references to “taxpayer” should be changed to “person” and wanted to get your input before making that change.

I appreciate any guidance you can provide.

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

Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, October 4, 2023 2:02 PM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Ascher, Seth M
Subject: Request for changes Rules .0401, .04802, .04803
Attachments: 2023.10 - Request for Technical Change for Department of Revenue 17 NCAC 07B .4801 .4802 .4803.docx

Good afternoon,

Attached please find a Request for Changes on the above captioned rules which will be considered at the October RRC regular meeting.

As always if you have any questions or concerns please do not hesitate to contact me.

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.

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.
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 .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.

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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 .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.
- 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 .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~~ 1991;*
19 *Readopted Eff. January 1, 2024.*

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

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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.*

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: Peaslee, William W
Sent: Monday, September 18, 2023 2:46 PM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Ascher, Seth M
Subject: Staff opinion 17 NCAC 07B .4206
Attachments: Revenue Dept Staff Opinion 17 NCAC 07B .4206 092023.pdf

Good afternoon,

Attached please find the staff opinion on the above captioned rule.

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: 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>; Furuseth, Andrew O <andrew.furuseth@ncdor.gov>; Edwards, Anthony <anthony.edwards@ncdor.gov>

Subject: RE: [External] RE: DOR Rules

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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

From: Peaslee, William W
Sent: Monday, September 11, 2023 4:46 PM
To: Lansford, Laura L
Cc: Burgos, Alexander N; Jacobs, Tenisha S; Ascher, Seth M; Furuseth, Andrew O
Subject: RE: [External] RE: DOR Rules
Attachments: 2023.09 - Request for Technical Change for Department of Revenue 17 NCAC 07B .4206.docx

Good afternoon,

Attached please find a Request for Changes on the above captioned rule.

Please respond no later than COB Friday, September 15, 2023.

If you have any questions, please do not hesitate to contact me.

Thank you.

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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From: Peaslee, William W
Sent: Monday, September 11, 2023 2:30 PM
To: Laura L. Lansford <Laura.Lansford@ncdor.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Jacobs, Tenisha S; Ascher, Seth M <seth.ascher@oah.nc.gov>; Furuseth, Andrew O
Subject: RE: [External] RE: DOR Rules

Good afternoon,

Attached please find a Request for Changes on the above captioned rule.

Please respond no later than COB Friday, September 15, 2023.

If you have any questions, please do not hesitate to contact me.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
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: 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

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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
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: 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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1711 New Hope Church Road
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
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(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

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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
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
Attachments: 2023.09 - Request for Technical Change for Department of Revenue 17 NCAC 07B .4415.docx

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, September 11, 2023 2:30 PM
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 afternoon,

Attached please find a Request for Changes on the above captioned rule.

Please respond no later than COB Friday, September 15, 2023.

If you have any questions, please do not hesitate to contact me.

Thank you.

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: 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
Office of Administrative Hearings
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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(984) 236-1939

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
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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
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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 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
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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

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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
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609

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Bill.Peaslee@oah.nc.gov

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