

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 .4203

RECOMMENDATION DATE: November 11, 2023

RECOMMENDED ACTION:

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

COMMENT:

I.

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

LINES 5-7 APPEAR TO BE AN INTERPRETATION OF G.S. 105-164.4 WHICH IMPOSES A TAX GENERALLY UPON ALL SALES. ARGUABLY THIS IS UNNECESSARY UNLESS IT IS PREFATORY TO ESTABLISHING AN EXEMPTION WHICH THE BALANCE OF THE RULE APPEARS TO DO.

LINES 8-10 APPEAR TO GRANT AN EXEMPTION; HOWEVER, THE AUTHORITY TO DO SO IS UNCLEAR. IT IS UNCLEAR WHICH STATUTE, IF ANY, GRANTS SUCH AN EXEMPTION. NOR DOES THE RULE IDENTIFY ANY LANGUAGE BEING INTERPRETED.

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

II.

LINES 8-10 OF THE RULE STATE THAT CERTAIN SALES ARE NOT SUBJECT TO TAX.

IF THE RRC FINDS THAT THE LANGUAGE WAS AN ATTEMPT TO REGULATE IN THE ABSENCE OF STATUTORY AUTHORITY, THE SECRETARY DOES NOT HAVE THE AUTHORITY TO EXEMPT ANYONE

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FROM A TAX IN THE ABSENCE OF STATUTORY AUTHORITY, AND NO STATUTORY AUTHORITY IS EVIDENT AS WRITTEN. ACCORDINGLY, STAFF RECOMMENDS OBJECTION PURSUANT TO G.S. 150B-21.9(A)(1).

III.

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

BASED UPON THE AGENCY'S RESPONSE TO AN EMAIL ABOUT THE STATUTORY AUTHORITY FOR THIS RULE, STAFF BELIEVES THE SECRETARY IS INTENDING TO MAKE AN INTERPRETATION PURSUANT TO G.S. 105-164.13(17) ; HOWEVER, AS PREVIOUSLY STATED, BASED UPON THE LANGUAGE OF THE RULE, IT IS UNCLEAR WHETHER AND TO WHAT EXTENT THE SECRETARY IS MAKING AN INTERPRETATION, AND IF SO OF WHAT, OR WHETHER THE INTERPRETATION MEETS THE STANDARDS OF G.S. 150B-21.9.

ADDITIONALLY, G.S. 105-164.13 IS NOT CITED IN THE HISTORY NOTE.

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

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§ 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. 105-105-164.4(a)(1) and 164.4G(e)(1)

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

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

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

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

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

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

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

.4614 Recreational vehicles exemption

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

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

.4700 Commercial printers and publishers' exemptions Statutes

- G.S. 105-164(a)(1), 105-164.13(5e) & (39)

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

.4707 Printing Chemicals exemption

Statute- 105-164.13(8)

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

.4708 Postage Charges by printers exemption

Statute - 105-164.13(17) and 18 USC 8

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

.5002 Eyeglass frames and repair parts exemption Statutes

- 105-164.13(12)(a) and 164.4D(a)(1)c

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

.5001 Eyeglass and contact lens exemption

Statutes - 105-164.13(12) and 105-164.3(192)

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

.5004 Optical supply exemption.

Statutes - G.S. 105-164.4(a)(1) and 105-164.13(12)a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.1303 Gifts to donees

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

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

.1404 Medical supplies, instruments, and equipment

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

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

.1601 Sales to or purchases by nonprofit entities

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

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

.1605 Sales by nonprofit entities

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

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

.1705 Housing authorities

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

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

.1801 Sales to hospitals

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

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

.1905 Tire retreaders

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

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

.2001 Sales to employees Statutes -

G.S. 105-164.4

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

.2002 Gifts to employees Statutes
– GS 105-164.4

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

Thank You,

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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.

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 .4210

RECOMMENDATION DATE: November 11, 2023

RECOMMENDED ACTION:

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

COMMENT:

I.

PURSUANT TO G.S. 164.13(25), "SALES 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" ARE EXEMPT FROM SALES AND USE TAX. BY THE PLAIN LANGUAGE, THE MERCHANTS MUST BE ON THE RESERVATION.

IN SUBPARAGRAPH (A)(1) OF THE RULE, SALES OF ITEMS "BY MERCHANTS SOURCED TO THE [EASTERN BAND OF CHEROKEE INDIANS]" ARE EXEMPT FROM SALES TAX.

THE LANGUAGE EMPLOYED IS AMBIGUOUS. THIS SUBPARAGRAPH COULD BE READ THAT SALES OF ITEMS TO MERCHANTS ON THE RESERVATION ARE EXEMPT. OR IT COULD BE READ THAT SALES BY MERCHANTS LOCATED ON THE RESERVATION TO CUSTOMERS OFF THE RESERVATION ARE TAX EXEMPT. THE FORMER WOULD NOT BE IN ACCORDANCE WITH G.S. 164.13(25).

ACCORDINGLY, STAFF RECOMMENDS OBJECTION PURSUANT TO G.S. 150B-21.9(A)(2) FOR LACK OF CLARITY.

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§ 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.)

§ 105-164.4B. Sourcing principles.

(a) **General Principles.** - The following principles apply in determining where to source the sale of an item for the seller's purpose and do not alter the application of the tax imposed under G.S. 105-164.6. Except as otherwise provided in this section, a service is sourced where the purchaser can potentially first make use of the service. These principles apply regardless of the nature of the item, except as otherwise noted in this section:

- (1) When a purchaser receives an item at a business location of the seller, the sale is sourced to that business location.
- (2) When a purchaser or purchaser's donee receives an item at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser or the purchaser's donee receives the item.
- (3) When subdivisions (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.
- (4) When subdivisions (1), (2), and (3) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
- (5) When subdivisions (1), (2), (3), and (4) of this subsection do not apply, including the circumstance in which the seller is without sufficient information to apply the rules, the location will be determined based on the following:
 - a. Address from which tangible personal property was shipped,
 - b. Address from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or
 - c. Address from which the service was provided.

(b) **Periodic Rental Payments.** - When a lease or rental agreement requires recurring periodic payments, the payments are sourced as follows:

- (1) For leased or rented property, the first payment is sourced in accordance with the principles set out in subsection (a) of this section and each subsequent payment is sourced to the primary location of the leased or rented property for the period covered by the payment. This subdivision applies to all property except a motor vehicle, an aircraft, transportation equipment, and a utility company railway car.
- (2) For leased or rented property that is a motor vehicle or an aircraft but is not transportation equipment, all payments are sourced to the primary location of the leased or rented property for the period covered by the payment.

- (3) For leased or rented property that is transportation equipment, all payments are sourced in accordance with the principles set out in subsection (a) of this section.
- (4) For a railway car that is leased or rented by a utility company and would be transportation equipment if it were used in interstate commerce, all payments are sourced in accordance with the principles set out in subsection (a) of this section.
- (c) **Transportation Equipment Defined.** - As used in the section, the term "transportation equipment" means any of the following used to carry persons or property in interstate commerce: a locomotive, a railway car, a commercial motor vehicle as defined in G.S. 20-4.01, or an aircraft. The term includes a container designed for use on the equipment and a component part of the equipment.
- (d) **Exceptions.** - This section does not apply to the following:
 - (1) **Telecommunications services.** - Telecommunications services are sourced in accordance with G.S. 105-164.4C.
 - (2) **Direct mail.** - Direct mail is sourced in accordance with G.S. 105-164.4E.
 - (3) **Florist wire sale.** - A florist wire sale is sourced to the business location of the florist that takes an order for the sale. A "florist wire sale" is a sale in which a retail florist takes a customer's order and transmits the order to another retail florist to be filled and delivered.
- (e) **Accommodations.** - The rental of an accommodation, as defined in G.S. 105-164.4F, is sourced to the location of the accommodation.
- (f) **Certain Digital Property.** - A purchaser receives certain digital property when the purchaser takes possession of the property or makes first use of the property, whichever comes first.
- (g) **Prepaid Meal Plan.** - The gross receipts derived from a prepaid meal plan are sourced to the location where the food or prepared food is available to be consumed by the person.
- (h) **Admissions.** - The gross receipts derived from an admission charge, as defined in G.S. 105-164.4G, are sourced in accordance with G.S. 105-164.4G.
- (i) **Computer Software Renewal.** - The gross receipts derived from the renewal of a service contract for prewritten software is generally sourced pursuant to subdivision (a) of this section. However, sourcing the renewal to an address where the purchaser received the underlying prewritten software does not constitute bad faith provided the seller has not received information from the purchaser that indicates a change in the location of the underlying software. (2001-347, s. 2.9; 2002-16, s. 5; 2003-284, s. 45.3; 2004-170, s. 20; 2006-33, s. 3; 2006-66, s. 24.13(a); 2008-187, s. 42; 2009-445, s. 12; 2010-31, s. 31.6(b); 2010-123, s. 10.2; 2011-330, s. 29; 2012-79, s. 2.8; 2013-414, s. 23(b); 2014-3, ss. 4.1(c), 5.1(b); 2016-5, s. 3.3; 2017-204, s. 2.3; 2018-5, s. 38.5(d); 2019-169, s. 3.3(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:

Agricultural Group.

- (1) Repealed by Session Laws 2013-316, s. 3.3(b), effective July 1, 2014, and applicable to sales made on or after that date.
- (1a), (1b) Repealed by Session Laws 2013-316, s. 3.3(b), effective July 1, 2014, and applicable to sales made on or after that date.
- (2) Repealed by Session Laws 2001, c. 514, s. 1, effective February 1, 2002.
- (2a) Repealed by Session Laws 2013-316, s. 3.3(b), effective July 1, 2014, and applicable to sales made on or after that date.
- (2b) Items for a farmer may be exempt as provided in G.S. 105-164.13E.
- (3) Products of forests and mines in their original or unmanufactured state when such sales are made by the producer in the capacity of producer.
- (4) Cotton, tobacco, peanuts or other farm products sold to manufacturers for further manufacturing or processing.
- (4a) Repealed by Session Laws 2013-316, s. 3.3(b), effective July 1, 2014, and applicable to sales made on or after that date.
- (4b) Products of a farm sold in their original state by the producer of the products if the producer is not primarily a retail merchant and ice used to preserve agriculture, aquaculture and commercial fishery products until the products are sold at retail.
- (4c), (4d) Repealed by Session Laws 2013-316, s. 3.3(b), effective July 1, 2014, and applicable to sales made on or after that date.
- (4e) Repealed by Session Laws 2006-162, s. 8(b), effective July 24, 2006.
- (4f) Sales of the following to a person who is engaged in the commercial logging business:
 - a. Logging machinery. - Logging machinery is machinery used to harvest raw forest products for transport to first market.
 - b. Attachments and repair parts for logging machinery.
 - c. Lubricants applied to logging machinery.
 - d. Fuel used to operate logging machinery.
- (4g) A wood chipper that meets all of the following requirements:
 - a. It is designed to be towed by a motor vehicle.
 - b. It is assigned a 17-digit vehicle identification number by the National Highway Transportation Safety Association.
 - c. It is sold to a person who purchases a motor vehicle in this State that is to be registered in another state and who uses the purchased motor vehicle to tow the wood chipper to the state in which the purchased motor vehicle is to be registered.

- (5) Manufactured products produced and sold by manufacturers or producers to other manufacturers, producers, or registered retailers or wholesale merchants, for the purpose of resale except as modified by G.S. 105-164.3(279). This exemption does not extend to or include retail sales to users or consumers not for resale.
- (5a) Repealed by Session Laws 2017-57, s. 38.8(c), as amended by Session Laws 2017-212, s. 7.2(a), effective July 1, 2018, and applicable to sales made on or after that date.
- (5b) Sales to a telephone company regularly engaged in providing telecommunications service to subscribers on a commercial basis of central office equipment, switchboard equipment, private branch exchange equipment, terminal equipment other than public pay telephone terminal equipment, and parts and accessories attached to the equipment.
- (5c) Sales of towers, broadcasting equipment, and parts and accessories attached to the equipment to a radio or television company licensed by the Federal Communications Commission.
- (5d) Sales of broadcasting equipment and parts and accessories attached to the equipment to a cable service provider. For the purposes of this subdivision, "broadcasting equipment" does not include cable.
- (5e) Sales of mill machinery or mill machinery parts or accessories to any of the persons listed in this subdivision. For purposes of this subdivision, the term "accessories" does not include electricity. The persons are:
 - a. A manufacturing industry or plant. A manufacturing industry or plant does not include (i) a delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of food prepared by it for consumption on or off its premises or (ii) a production company.
 - b. A contractor or subcontractor if the purchase is for use in the performance of a contract with a manufacturing industry or plant.
 - c. A subcontractor if the purchase is for use in the performance of a contract with a general contractor that has a contract with a manufacturing industry or plant.
- (5f) Sales to a major recycling facility of any of the following tangible personal property for use in connection with the facility:
 - a. Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.
 - b. Port and dock facilities.
 - c. Rail equipment.
 - d. Material handling equipment.
- (5g) Sales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:

- a. Is sold to a company primarily engaged at the establishment in research and development activities in the physical, engineering, and life sciences included in industry group 54171 of NAICS.
 - b. Is capitalized by the company for tax purposes under the Code.
 - c. Is used by the company at the establishment in the research and development of tangible personal property.
- (5h) Sales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:
 - a. Is sold to a company primarily engaged at the establishment in software publishing activities included in industry group 5112 of NAICS.
 - b. Is capitalized by the company for tax purposes under the Code.
 - c. Is used by the company at the establishment in the research and development of tangible personal property.
- (5i) Sales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:
 - a. Is sold to a company primarily engaged at the establishment in industrial machinery refurbishing activities included in industry group 811310 of NAICS.
 - b. Is capitalized by the company for tax purposes under the Code.
 - c. Is used by the company at the establishment in repairing or refurbishing tangible personal property.
- (5j) Sales of the following to a company located at a ports facility for waterborne commerce:
 - a. Machinery and equipment that is used at the facility to unload or to facilitate the unloading or processing of bulk cargo to make it suitable for delivery to and use by manufacturing facilities.
 - b. Parts, accessories, or attachments used to maintain, repair, replace, upgrade, improve, or otherwise modify such machinery and equipment.
- (5k) Sales of the following to a secondary metals recycler:
 - a. Equipment, or an attachment or repair part for equipment, that (i) is capitalized by the person for tax purposes under the Code, (ii) is used by the person in the secondary metals recycling process, and (iii) is not a motor vehicle or an attachment or repair part for a motor vehicle.
 - b. Fuel, piped natural gas, or electricity for use at the person's facility at which the primary activity is secondary metals recycling.
- (5l) Sales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:
 - a. Is sold to a company primarily engaged at the establishment in processing tangible personal property for the purpose of

- extracting precious metals, as defined in G.S. 66-406, to determine the value for potential purchase.
 - b. Is capitalized by the company for tax purposes under the Code.
 - c. Is used by the company in the process described in this subdivision.
- (5m) Sales of equipment, or an attachment or repair part for equipment, that meets all of the following requirements:
- a. Is sold to a company that is engaged in the fabrication of metal work and that has annual gross receipts, including the gross receipts of all related persons, as defined in G.S. 105-163.010, from the fabrication of metal work of at least eight million dollars (\$8,000,000).
 - b. Is capitalized by the company for tax purposes under the Code.
 - c. Is used by the company at the establishment in the fabrication or manufacture of metal products or used by the company to create equipment for the fabrication or manufacture of metal products.
- (5n) Sales of repair or replacement parts for a ready-mix concrete mill, regardless of whether the mill is freestanding or affixed to a motor vehicle, to a company that primarily sells ready-mix concrete.
- (5o) Sales of equipment, or an accessory, an attachment, or a repair part for equipment, that meets all of the following requirements:
- a. Is sold to a large fulfillment facility or to a contractor or subcontractor if the purchase is for use in the performance of a contract with the large fulfillment facility.
 - b. Is used at the facility for any of the following purposes:
 - 1. In the distribution process, which includes receiving, inventorying, sorting, repackaging, or distributing finished retail products.
 - 2. Baling previously used packaging for resale, sanitizing required by federal law, or material handling.
 - c. Is not electricity.

If the level of investment or employment required by G.S. 105-164.3(119)b. is not timely made, achieved, or maintained, then the exemption provided under this subdivision is forfeited. If the exemption is forfeited due to a failure to timely make the required investment or to timely achieve the minimum required employment level, then the exemption provided under this subdivision is forfeited on all purchases. If the exemption is forfeited due to a failure to maintain the minimum required employment level once that level has been achieved, then the exemption provided under this subdivision is forfeited for those purchases occurring on or after the date the taxpayer fails to maintain the minimum required employment level. A taxpayer that forfeits an exemption under this subdivision is liable for all past sales and use taxes

avoided as a result of the forfeiture, computed at the applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. Interest is computed from the date the sales or use tax would otherwise have been due. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

- (5p) Sales of equipment, or an attachment or repair part for equipment, which is used in cutting, shaping, polishing, and finishing rough cut slabs and blocks of natural and engineered stone and stone-like products and sold to a company primarily engaged in the business of providing made-to-order countertops, walls, or tubs.
- (5q) Sales of machinery, equipment, parts, and accessories to the following permittees for use in the manufacture of the following items and supplies and ingredients used or consumed by the permittee in the manufacturing process:
 - a. The holder of an unfortified winery permit for the manufacture of unfortified wine, as authorized in G.S. 18B-1101.
 - b. The holder of a fortified winery permit for the manufacture of fortified wine, as authorized in G.S. 18B-1102.
 - c. The holder of a brewer permit for the manufacture of malt beverages, as authorized in G.S. 18B-1104.
 - d. The holder of a distillery permit for the manufacture of spirituous liquor, as authorized in G.S. 18B-1105.
- (6) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1068, s. 1.
- (7) Sales of products of waters in their original or unmanufactured state when such sales are made by the producer in the capacity of producer. Fish and seafoods are likewise exempt when sold by the fisherman in that capacity.
- (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.
- (8a) Sales to a small power production facility, as defined in 16 U.S.C. § 796(17)(A), of fuel and piped natural gas used by the facility to generate electricity.
- (9) Boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories, and supplies sold to any of the following:
 - a. The holder of a standard commercial fishing license issued under G.S. 113-168.2 for principal use in commercial fishing operations.
 - b. The holder of a shellfish license issued under G.S. 113-169.2 for principal use in commercial shellfishing operations.

- c. The operator of a for-hire vessel, as defined in G.S. 113-174, for principal use in the commercial use of the boat.
- (10) Sales of the following to commercial laundries or to pressing and dry cleaning establishments:
 - a. Articles or materials used for the identification of garments being laundered or dry cleaned, wrapping paper, bags, hangers, starch, soaps, detergents, cleaning fluids and other compounds or chemicals applied directly to the garments in the direct performance of the laundering or the pressing and cleaning service.
 - b. Laundry and dry-cleaning machinery, parts and accessories attached to the machinery, and lubricants applied to the machinery.
 - c. Fuel and piped natural gas used in the direct performance of the laundering or the pressing and cleaning service. The exemption does not apply to electricity.

Motor Fuels Group.

- (10a) Sales of the following to a major recycling facility:
 - a. Lubricants and other additives for motor vehicles or machinery and equipment used at the facility.
 - b. Materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.
 - c. Electricity used at the facility.
- (10b) Recodified as G.S. 105-164.13(10a)c. by Session Laws 2005-276, s. 33.9, effective January 1, 2006.
- (11) Any of the following fuel:
 - a. Motor fuel, as taxed in Article 36C of this Chapter, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105A, G.S. 105-449.106(c), G.S. 105-449.106(d), or G.S. 105-449.107.
 - b. Alternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under G.S. 105-449.107.
- (11a) Sales of diesel fuel to railroad companies for use in rolling stock other than motor vehicles. The definitions in G.S. 105-333 apply in this subdivision.
- (11b) **(Expires January 1, 2024)** Sales of aviation gasoline and jet fuel to an interstate air business for use in a commercial aircraft. For purposes of this subdivision, the term "commercial aircraft" has the same meaning as defined in subdivision (45a) of this section. This exemption also applies to aviation gasoline and jet fuel purchased for use in a commercial aircraft in interstate or foreign commerce by a person whose primary

business is scheduled passenger air transportation. This subdivision expires January 1, 2024.

Medical Group.

- (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.
- (13) All of the drugs listed in this subdivision, including their packaging materials and any instructions or information about the drugs included in the package with them. This subdivision does not apply to pet food or feed for animals. The drugs exempt under this subdivision are as follows:
 - a. Drugs required by federal law to be dispensed only on prescription.
 - b. Over-the-counter drugs sold on prescription. This subdivision does not apply to purchases of over-the-counter drugs by hospitals and other medical facilities for use and treatment of patients.
 - c. Insulin.
- (13a) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 16.
- (13b) Repealed by Session Laws 1999, c. 438, s. 7, effective October 1, 1999.
- (13c) Repealed by Session Laws 2013-316, s. 3.2(a), effective January 1, 2014, and applicable to sales made on or after that date.
- (13d) **(Effective until contingency met - see note)** Sales of diapers or incontinence underpads on prescription by an enrolled State Medicaid provider for use by beneficiaries of the State Medicaid program when the provider is reimbursed by the State Medicaid program or a Medicaid managed care organization, as defined in 42 U.S.C. § 1396b(m).
- (13d) **(Effective once contingency met - see note)** Sales of diapers or incontinence underpads on prescription by an enrolled State Medicaid/Health Choice provider for use by beneficiaries of the State Medicaid program when the provider is reimbursed by the State Medicaid program or a Medicaid managed care organization, as defined in 42 U.S.C. § 1396b(m).
- (14) Public school books on the adopted list, the selling price of which is fixed by State contract.
- (14a) Recodified as subdivision (33a) by Session Laws 2000-120, s. 5, effective July 14, 2000.

Transactions Group.

- (15) Accounts of purchasers, representing taxable sales, on which the tax imposed by this Article has been paid, that are found to be worthless and actually charged off for income tax purposes may, at corresponding periods, be deducted from gross sales. In the case of a municipality that sells electricity, the account may be deducted if it meets all the conditions for charge-off that would apply if the municipality were subject to income tax. Any accounts deducted pursuant to this subdivision must be added to gross sales if afterwards collected. For purposes of this exemption, a worthless account of a purchaser is a "bad debt" as allowed under section 166 of the Code. The amount calculated pursuant to section 166 of the Code must be adjusted to exclude financing charges or interest, sales or use taxes charged on the sales price, uncollectible amounts on property that remains in the possession of the seller until the full purchase price is paid, expenses incurred in attempting to collect any debt, and repossessed property.
- (16) Sales of an article repossessed by the vendor if tax was paid on the sales price of the article.

Exempt Status Group.

- (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.

Unclassified Group.

- (18) Repealed by Session Laws 2005-276, s. 33.9, effective January 1, 2006.
- (19) Repealed by Session Laws 1991, c. 618, s. 1.
- (20) Sales by blind merchants operating under supervision of the Department of Health and Human Services.
- (21) The lease or rental of motion picture films used for exhibition purposes where the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to said business of the lessee.
- (22) The lease or rental of films, motion picture films, transcriptions and recordings to radio stations and television stations operating under a certificate from the Federal Communications Commission.
- (22a) Sales of audiovisual masters made or used by a production company in making visual and audio images for first generation reproduction. For the purpose of this subdivision, an "audiovisual master" is an audio or video film, tape, or disk or another audio or video storage device from which all other copies are made.
- (23) Sales of the following packaging:
- a. Wrapping paper, labels, wrapping twine, paper, cloth, plastic bags, cartons, packages and containers, cores, cones or spools, wooden boxes, baskets, coops and barrels, including paper cups,

napkins and drinking straws and like articles sold to manufacturers, producers and retailers, when such materials are used for packaging, shipment or delivery of tangible personal property which is sold either at wholesale or retail and when such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer.

- b. A container that is used as packaging by the owner of the container or another person to enclose tangible personal property for delivery to a purchaser of the property and is required to be returned to its owner for reuse.
- (24) Sales of fuel and other tangible personal property for use or consumption by or on ocean-going vessels which ply the high seas in interstate or foreign commerce in the transport of freight and/or passengers for hire exclusively, when delivered to an officer or agent of such vessel for the use of such vessel; provided, however, that sales of fuel and other tangible personal property made to officers, agents, members of the crew or passengers of such vessels for their personal use shall not be exempted from payment of the sales tax.
 - (25) Sales 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.
 - (26) Food and prepared food sold within the school building during the regular school day. For purposes of this exemption, the term "school" is an entity regulated under Chapter 115C of the General Statutes.
 - (26a) Food and prepared food sold not for profit by a public school cafeteria to a child care center that participates in the Child and Adult Care Food Program of the Department of Health and Human Services.
 - (26b) Food, prepared food, soft drinks, candy, and other tangible personal property sold not for profit for or at an event that is sponsored by an elementary or secondary school when the net proceeds of the sales will be given or contributed to the school or to a nonprofit charitable organization, one of whose purposes is to serve as a conduit through which the net proceeds will flow to the school. For purposes of this exemption, the term "school" is an entity regulated under Chapter 115C of the General Statutes.
 - (27) Repealed by Session Laws 2013-316, s. 3.2(a), effective January 1, 2014, and applicable to sales made on or after that date.
 - (27a) Repealed by Session Laws 2013-316, s. 3.4(a), effective July 1, 2014, and applicable to purchases made on or after that date.
 - (28) Repealed by Session Laws 2013-316, s. 3.2(a), effective January 1, 2014, and applicable to sales made on or after that date.
 - (29) Repealed by Session Laws 2005-435, s. 30, effective September 27, 2005.

- (29a) Repealed by Session Laws 1995 (Regular Session, 1996), c. 646, s. 5.
- (30) Repealed by Session Laws 2014-3, s. 8.3(a), effective October 1, 2014, and applicable to sales made on or after that date.
- (31) Sales of meals not for profit to elderly and incapacitated persons by charitable or religious organizations not operated for profit which are entitled to the refunds provided by G.S. 105-164.14(b), when such meals are delivered to the purchasers at their places of abode.
- (31a) Food and prepared food sold by a church or religious organization not operated for profit when the proceeds of the sales are actually used for religious activities.
- (31b) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 16.
- (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.
- (33) Tangible personal property purchased solely for the purpose of export to a foreign country for exclusive use or consumption in that or some other foreign country, either in the direct performance or rendition of professional or commercial services, or in the direct conduct or operation of a trade or business, all of which purposes are actually consummated, or purchased by the government of a foreign country for export which purpose is actually consummated. "Export" shall include the acts of possessing and marshalling such property, by either the seller or the purchaser, for transportation to a foreign country, but shall not include devoting such property to any other use in North Carolina or the United States. "Foreign country" shall not include any territory or possession of the United States.

In order to qualify for this exemption, an affidavit of export indicating compliance with the terms and conditions of this exemption, as prescribed by the Secretary of Revenue, must be submitted by the purchaser to the seller, and retained by the seller to evidence qualification for the exemption.

If the purposes qualifying the property for exemption are not consummated, the purchaser shall be liable for the tax which was avoided by the execution of the aforesaid affidavit as well as for applicable penalties and interest and the affidavit shall contain express provision that the purchaser has recognized and assumed such liability.

The principal purpose of this exemption is to encourage the flow of commerce through North Carolina ports that is now moving through out-of-state ports. However, it is not intended that property acquired for

personal use or consumption by the purchaser, including gifts, shall be exempt hereunder.

- (33a) Tangible personal property sold by a retailer to a purchaser inside or outside this State, when the property 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 purchaser's designees outside this State and the purchaser does not subsequently use the property in this State. This exemption includes printed material sold by a retailer to a purchaser inside or outside this State when the printed material is delivered directly to a mailing house, to a common carrier, or to the United States Postal Service for delivery to a mailing house in this State that will preaddress and presort the material and deliver it to a common carrier or to the United States Postal Service for delivery to recipients outside this State designated by the purchaser.
- (34) Repealed by Session Laws 2016-5, s. 3.9(a), effective January 1, 2017, and applicable to sales made on or after that date.
- (35) Sales by a nonprofit civic, charitable, educational, scientific, literary, or fraternal organization when all of the conditions listed in this subdivision are met. This exemption does not apply to gross receipts derived from an admission charge to an entertainment activity.
 - a. The sales are conducted only upon an annual basis for the purpose of raising funds for the organization's activities.
 - b. The proceeds of the sale are actually used for the organization's activities.
 - c. The products sold are delivered to the purchaser within 60 days after the first solicitation of any sale made during the organization's annual sales period.
- (36) Advertising supplements and any other printed matter ultimately to be distributed with or as part of a newspaper.
- (37) Repealed by Session Laws 2001-424, s. 34.23(a), effective December 1, 2001, and applicable to sales made on or after that date.
- (38) Food and other products lawfully purchased under the Supplemental Nutrition Assistance Program, 7 U.S.C. § 2011, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental Nutrition Program, 42 U.S.C. § 1786, and supplemental foods purchased for direct distribution by the Special Supplemental Nutrition Program.
- (39) 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. As used in this subdivision, the term "free distribution periodical" means a publication that is continuously published on a periodic basis monthly or

more frequently, is provided without charge to the recipient, and is distributed in any manner other than by mail.

- (40) Sales to the Department of Transportation.
- (41) Sales of mobile classrooms to local boards of education or to local boards of trustees of community colleges.
- (42) Tangible personal property that is purchased by a retailer for resale or is manufactured or purchased by a wholesale merchant for resale and then withdrawn from inventory and donated by the retailer or wholesale merchant to either a governmental entity or a nonprofit organization, contributions to which are deductible as charitable contributions for federal income tax purposes.
- (43) Custom computer software. Custom computer software and the portion of prewritten computer software that is modified or enhanced if the modification or enhancement is designed and developed to the specifications of a specific purchaser and the charges for the modification or enhancement are separately stated on the invoice or similar billing document given to the purchaser at the time of the sale.
- (43a) Computer software that meets any of the following descriptions:
 - a. It is purchased to run on an enterprise server operating system. The exemption includes a purchase or license of computer software for high-volume, simultaneous use on multiple computers that is housed or maintained on an enterprise server or end users' computers. The exemption includes software designed to run a computer system, an operating program, or application software.
 - b. It is sold to a person who operates a datacenter and is used within the datacenter.
 - c. It is sold to a person who provides cable service, telecommunications service, or video programming and is used to provide ancillary service, cable service, Internet access service, telecommunications service, or video programming.
- (43b) Computer software or certain digital property that becomes a component part of other computer software or certain digital property that is offered for sale or of a service that is offered for sale.
- (44) Repealed by Session Laws 2013-316, s. 4.1(d), effective July 1, 2014, and applicable to gross receipts billed on or after that date.
- (45) Sales of aircraft lubricants, aircraft repair parts, and aircraft accessories to an interstate passenger air carrier for use at its hub.
- (45a) Sales to an interstate air business of tangible personal property that becomes a component part of or is dispensed as a lubricant into commercial aircraft during its maintenance, repair, or overhaul. For the purpose of this subdivision, commercial aircraft includes only aircraft that has a certified maximum take-off weight of more than 12,500

pounds and is regularly used to carry for compensation passengers, commercial freight, or individually addressed letters and packages.

- (45b) Sales of the following items to an interstate air courier for use at its hub:
 - a. Aircraft lubricants, aircraft repair parts, and aircraft accessories.
 - b. Materials handling equipment, racking systems, and related parts and accessories for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility.
- (45c) Sales of aircraft simulators to a company for flight crew training and maintenance training.
- (45d) Parts and accessories for use in the repair or maintenance of a qualified aircraft or a qualified jet engine.
- (45e) Sales to an interstate air and ground courier of materials handling equipment, automated conveyor systems, racking systems, and related parts and accessories for the storage or handling and movement of tangible personal property at its package sorting facility. A qualifying item listed in this subdivision purchased to fulfill a contract with an interstate air and ground courier is exempt to the same extent as if purchased directly by the interstate air and ground courier.

If the level of investment or employment required by G.S. 105-164.3(166)b. is not timely made, achieved, or maintained, then the exemption provided under this subdivision is forfeited. If the exemption is forfeited due to a failure to timely make the required investment or to timely achieve the minimum required employment level, then the exemption provided under this subdivision is forfeited on all purchases. If the exemption is forfeited due to a failure to maintain the minimum required employment level once that level has been achieved, then the exemption provided under this subdivision is forfeited for those purchases occurring on or after the date the taxpayer fails to maintain the minimum required employment level. A taxpayer that forfeits an exemption under this subdivision is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. Interest is computed from the date the sales or use tax would otherwise have been due. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

- (46) Sales of electricity by a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes.

- (47) An amount charged as a deposit on a beverage container that is returnable to the vendor for reuse when the amount is refundable or creditable to the vendee, whether or not the deposit is separately charged.
- (48) An amount charged as a deposit on an aeronautic, automotive, industrial, marine, or farm replacement part that is returnable to the vendor for rebuilding or remanufacturing when the amount is refundable or creditable to the vendee, whether or not the deposit is separately charged. This exemption does not include tires or batteries.
- (49) Repealed by Session Laws 2015-241, s. 32.18(d), effective March 1, 2016, and applicable to sales occurring on or after March 1, 2016, and to gross receipts derived from repair, maintenance, and installation services provided on or after March 1, 2016.
- (49a) Delivery charges for delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser at the time of sale.
- (50) Fifty percent (50%) of the sales price of tangible personal property sold through a coin-operated vending machine, other than tobacco and newspapers.
- (51) Water delivered by or through main lines or pipes for either commercial or domestic use or consumption.
- (52) Items subject to sales and use tax under G.S. 105-164.4, other than electricity, telecommunications service, and ancillary service as defined in G.S. 105-164.3, if all of the following conditions are met:
 - a. The items are purchased by a State agency for its own use and in accordance with G.S. 105-164.29A.
 - b. The items are purchased pursuant to a valid purchase order issued by the State agency that contains the exemption number of the agency and a description of the property purchased, or the items purchased are paid for with a State-issued check, electronic deposit, credit card, procurement card, or credit account of the State agency.
 - c. For all purchases other than by an agency-issued purchase order, the agency must provide to or have on file with the retailer the agency's exemption number.
- (53) Sales to a professional land surveyor of tangible personal property on which custom aerial survey data is stored in digital form or is depicted in graphic form. Data is custom if it was created to the specifications of the professional land surveyor purchasing the property. A professional land surveyor is a person licensed as a surveyor under Chapter 89C of the General Statutes.
- (54) The following telecommunications services and charges:

- a. Telecommunications service that is a component part of or is integrated into a telecommunications service that is resold. This exemption does not apply to service purchased by a pay telephone provider who uses the service to provide pay telephone service. Examples of services that are resold include carrier charges for access to an intrastate or interstate interexchange network, interconnection charges paid by a provider of mobile telecommunications service, and charges for the sale of unbundled network elements. An unbundled network element is a network element, as defined in 47 U.S.C. § 153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3).
 - b. Pay telephone service.
 - c. 911 charges imposed under G.S. 143B-1403 and remitted to the 911 Fund under that section.
 - d. Charges for telecommunications service made by a hotel, motel, or another entity whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the charges are incidental to the occupancy of the entity's accommodations.
 - e. Telecommunications service purchased or provided by a State agency or a unit of local government for the State Network or another data network owned or leased by the State or unit of local government.
- (55) Sales of electricity for use at an eligible Internet datacenter and eligible business property to be located and used at an eligible Internet datacenter. As used in this subdivision, "eligible business property" is property that is capitalized for tax purposes under the Code and is used either:
- a. For the provision of a service included in the business of the primary user of the datacenter, including equipment cooling systems for managing the performance of the property.
 - b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.
 - c. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(79)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(79)d. is timely made but any specific eligible business property is not located and used at an eligible Internet datacenter, then the exemption provided for such eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(79)d. is timely made

but any portion of the electricity is not used at an eligible Internet datacenter, then the exemption provided for such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(79)d., then interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the eligible business property or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

(55a) Sales of electricity for use at a qualifying datacenter and datacenter support equipment to be located and used at the qualifying datacenter. As used in this subdivision, "datacenter support equipment" is property that is capitalized for tax purposes under the Code and is used for one of the following purposes:

- a. The provision of a service or function included in the business of an owner, user, or tenant of the datacenter.
- b. The generation, transformation, transmission, distribution, or management of electricity, including exterior substations, generators, transformers, unit substations, uninterruptible power supply systems, batteries, power distribution units, remote power panels, and other capital equipment used for these purposes.
- c. HVAC and mechanical systems, including chillers, cooling towers, air handlers, pumps, and other capital equipment used for these purposes.
- d. Hardware and software for distributed and mainframe computers and servers, data storage devices, network connectivity equipment, and peripheral components and equipment.
- e. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(201) is not timely made, the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(201) is timely made but any specific datacenter support equipment is not located and used at the qualifying datacenter, the exemption provided for such datacenter support equipment under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(201) is timely made but any portion of electricity is not used at the qualifying datacenter, the

exemption provided for such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(201), interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the datacenter support equipment or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

- (56) Sales to the owner or lessee of an eligible railroad intermodal facility of intermodal cranes, intermodal hostler trucks, and railroad locomotives that reside on the premises of the facility and are used at the facility.
- (57) Fuel, electricity, and piped natural gas sold to a manufacturer for use in connection with the operation of a manufacturing facility. The exemption does not apply to the following:
 - a. Electricity used at a facility at which the primary activity is not manufacturing.
 - b. Fuel or piped natural gas that is used solely for comfort heating at a manufacturing facility where there is no use of fuel or piped natural gas in a manufacturing process.
- (57a) Repealed by Session Laws 2017-57, s. 38.8(c), as amended by Session Laws 2017-212, s. 7.2(a), effective July 1, 2018, and applicable to sales made on or after that date.
- (58) Tangible personal property purchased with a client assistance debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality.
- (59) Interior design services provided in conjunction with the sale of tangible personal property.
- (60) Gross receipts derived from an admission charge to an entertainment activity are exempt as provided in G.S. 105-164.4G.
- (61) A motor vehicle service contract.
- (61a) The sales price of or the gross receipts derived from the repair, maintenance, and installation services and service contracts listed in this subdivision are exempt from tax. Except as otherwise provided in this subdivision, an item used to fulfill either repair, maintenance, and installation services or service contracts exempt from tax under this subdivision is taxable. The list of repair, maintenance, and installation services and service contracts exempt from tax under this subdivision is as follows:

- a. A service and a service contract for an item exempt from tax under this Article, except as otherwise provided in this subdivision. Items used to fulfill a service or service contract exempt under this sub-subdivision are exempt from tax under this Article. This exemption does not apply to water for a pool, fish tank, or similar aquatic feature or to a motor vehicle, except as provided under subdivision (62a) of this section and fees under sub-subdivision b. of this subdivision.
- b. A motor vehicle emissions and safety inspection fee imposed pursuant to G.S. 20-183.7, provided the fee is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale.
- c. A service performed for a person by a related member.
- d. Cleaning of real property, except where the service constitutes a part of the gross receipts derived from the rental of an accommodation subject to tax under G.S. 105-164.4 or for a pool, fish tank, or other similar aquatic feature. Examples of cleaning of real property include custodial services, window washing, mold remediation services, carpet cleaning, removal of debris from gutters, removal of dust and other pollutants from ductwork, and power washing other than for a pool.
- e. A service on roads, driveways, parking lots, and sidewalks.
- f. Removal of waste, trash, debris, grease, snow, and other similar tangible personal property from property, other than a motor vehicle. The exemption applies to a household or a commercial trash collection and removal service. The exemption applies to the removal of septage from property, including motor vehicles, but does not include removal of septage from portable toilets.
- g. The following inspections:
 - 1. An inspection performed where the results are included in a report for the sale or financing of real property.
 - 2. An inspection of the structural integrity of real property, provided the charge for the inspection is separately stated on the invoice or other documentation given to the purchaser at the time of the sale.
 - 3. An inspection to a system that is a capital improvement under G.S. 105-164.3(31)f., provided the inspection is to fulfill a safety requirement and provided the charge for the inspection is separately stated on the invoice or other documentation given to the purchaser at the time of the sale.
- h. Alteration and repair of clothing, except where the service constitutes a part of the gross receipts derived from the rental of

clothing subject to tax under G.S. 105-164.4 or for alteration and repair of belts and shoes.

- i. Pest control service. For purposes of this exemption, the term "pest control service" means the application of pesticides to real property.
- j. Moving service. For purposes of this exemption, the term "moving service" means a service for hire to transport or relocate a person's existing belongings to or from any destination.
- k. Self-service vehicle wash or vacuum and limited-service vehicle wash. For purposes of this sub-subdivision, the following definitions apply:
 - 1. Limited-service vehicle wash. - The cleaning of a vehicle by mechanical means where the only activities performed by an employee include one or more of the following: (i) receiving payment for the transaction, (ii) guiding the vehicle into the entrance or exit of a conveyor, (iii) applying low-pressure spray of chemicals to the vehicle prior to the cleaning of the vehicle, or (iv) placing protective tape or covers on the vehicle prior to cleaning. The term does not include any activity whereby an employee physically touches the vehicle for the purpose of cleaning or restoring the vehicle, enters or cleans any part of the interior of the vehicle, or performs an activity on the vehicle other than one of those listed in this sub-sub-subdivision.
 - 2. Self-service vehicle wash or vacuum. - The cleaning of a vehicle by a customer without any cleaning or restoring activity performed by an employee.
- l. Services performed on a transmission, distribution, or other network asset on land owned by a service provider or on a right-of-way or an easement in favor of a service provider. This exemption does not apply to charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction and are included in the gross receipts derived from items subject to the combined general rate under G.S. 105-164.4. The terms "service provider" and "governmental entity" have the same meaning as defined in G.S. 105-164.3(31)c.
- m. Any of the following:
 - 1. A qualified aircraft.
 - 2. A qualified jet engine.
 - 3. An aircraft with a gross take-off weight of more than 2,000 pounds.

- n. Funeral-related service, including a service for the burial of remains. This exemption does not apply to the sale of tangible personal property, such as caskets, headstones, and monuments.
 - o. A service performed on an animal, such as hoof shoeing and microchipping a pet.
 - p. A security or similar monitoring contract for real property. The exemption provided in this subdivision does not apply to charges for repair, maintenance, and installation services to repair security, alarm, and other similar monitoring systems for real property.
 - q. A contract to provide a certified operator for a wastewater system.
- (61b) Items 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.
- (61c) Installation charges that are a part of the sales price of tangible personal property purchased by a real property contractor to fulfill a real property contract for an item that is installed or applied to real property, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the real property contractor at the time of the sale. The exemption also applies to installation charges by a retailer-contractor when performing installation services for a real property contract. The exemption includes any labor costs provided by the real property contractor, including employees' wages, or labor purchased from a third party that would otherwise be included in the definition of "purchase price."
- (61d) Installation charges that are a part of the sales price of or gross receipts derived from repair, maintenance, and installation services or installation charges only purchased by a real property contractor to fulfill a real property contract, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the real property contractor at the time of the sale. The exemption also applies to installation charges by a retailer-contractor when performing a real property contract. The exemption includes any labor costs provided by the real property contractor, including employees' wages, or labor purchased from a third party that would otherwise be included in the definition of "purchase price."
- (62) An item, including repair, maintenance, and installation services, purchased or used to fulfill a service contract taxable under this Article if the purchaser of the contract is not charged for the item. This exemption does not apply to the purchase of tangible personal property or certain digital property used to fulfill a service contract for real property where the charge being covered would otherwise be subject to

tax as a real property contract. For purposes of this exemption, the term "item" does not include a tool, equipment, supply, or similar tangible personal property that is not deemed to be a component or repair part of the tangible personal property, real property, or certain digital property for which a service contract is sold to a purchaser.

- (62a) A replacement item, a repair part, or repair, maintenance, and installation services to maintain or repair tangible personal property or a motor vehicle pursuant to a manufacturer's warranty or a dealer's warranty. For purposes of this subdivision, the following definitions apply:
 - a. Dealer's warranty. - An explicit warranty the seller of an item extends to the purchaser of the item as part of the purchase price of the item.
 - b. Manufacturer's warranty. - An explicit warranty the manufacturer of an item extends to the purchaser of the item as part of the purchase price of the item.
- (62b) The amount of repair, maintenance, and installation services for a boat, an aircraft, or a qualified jet engine for which the purchaser elects for the seller to collect and remit the tax due under G.S. 105-164.27A(a3).
- (63) Food and prepared food to be provided to a person entitled to the food and prepared food under a prepaid meal plan subject to tax under G.S. 105-164.4(a)(12). This exemption applies to packaging including wrapping paper, labels, plastic bags, cartons, packages and containers, paper cups, napkins and drinking straws, and like articles that meet all of the following requirements:
 - a. Used for packaging, shipment, or delivery of the food and prepared food.
 - b. Constitute a part of the sale of the food and prepared food.
 - c. Delivered with the food and prepared food.
- (64) Fifty percent (50%) of the sales price of a modular home or a manufactured home, including all accessories attached when delivered to the purchaser.
- (65) **(Expires January 1, 2024)** This subdivision expires January 1, 2024. Sales of the following to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series:
 - a. The sale, lease, or rental of an engine.
 - b. The sales price of or gross receipts derived from a service contract on, or repair, maintenance, and installation services for, a transmission, an engine, rear-end gears, and any tangible personal property that is purchased, leased, or rented and that is exempt from tax under this subdivision or that is allowed a sales tax refund under G.S. 105-164.14A(a)(5).

- c. The gross receipts derived from an agreement to provide an engine to a professional motorsports racing team or related member of a team for use in competition in a sanctioned race series, where such agreement does not meet the definition of a "service contract" as defined in G.S. 105-164.3 but may meet the definition of the term "lease or rental" as defined in G.S. 105-164.3.
- (65a) **(Expires January 1, 2024)** An engine or a part to build or rebuild an engine for the purpose of providing an engine under an agreement to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series. This subdivision expires January 1, 2024.
- (66) Storage of a motor vehicle, provided the charge is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale.
- (67) Towing services, provided the charge is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale.
- (68) Sales of wastewater dispersal products approved by the Department of Health and Human Services under Article 11 of Chapter 130A of the General Statutes.
- (69) Sales of non-coin currency, investment metal bullion, and investment coins. For purposes of this subdivision, the following definitions apply:
 - a. Investment coins. - Numismatic coins or other forms of money and legal tender manufactured of metal under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value of such coins.
 - b. Investment metal bullion. - Any elementary precious metal that has been put through a process of smelting or refining and that is in such state or condition that its value depends upon its content and not upon its form. The term does not include fabricated precious metal that has been processed or manufactured for one or more specific and customary industrial, professional, or artistic uses.
 - c. Non-coin currency. - Forms of money and legal tender manufactured of a material other than metal under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value of such currency.
- (70) Gross receipts derived from a rental of an accommodation are exempt as provided in G.S. 105-164.4F.
- (71) Sales of items to the North Carolina Life and Health Insurance Guaranty Association.

- (72) Sales of a digital audio work or a digital audiovisual work that is a qualifying education expense under G.S. 115C-595(a)(3) to the operator of a home school as defined in G.S. 115C-563.
- (73) Sales of a digital audio work or digital audiovisual work that consists of nontaxable service content when the electronic transfer of the digital audio work or digital audiovisual work occurs contemporaneously with the provision of the nontaxable service in real time. (1957, c. 1340, s. 5; 1959, c. 670; c. 1259, s. 5; 1961, c. 826, s. 2; cc. 1103, 1163; 1963, c. 1169, ss. 7-9; 1965, c. 1041; 1967, c. 756; 1969, c. 907; 1971, c. 990; 1973, c. 476, s. 143; c. 708, s. 1; cc. 1064, 1076; c. 1287, s. 8; 1975, 2nd Sess., c. 982; 1977, c. 771, s. 4; 1977, 2nd Sess., c. 1219, s. 43.6; 1979, c. 46, ss. 1, 2; c. 156, s. 1; c. 201; c. 625, ss. 1, 2; c. 801, ss. 74, 75; 1979, 2nd Sess., c. 1099, s. 1; 1981, cc. 14, 207, 982; 1983, c. 156; c. 570, s. 21; c. 713, ss. 91, 92; c. 873; c. 887; 1983 (Reg. Sess., 1984), c. 1071, s. 1; 1985, c. 114, s. 4; c. 555; c. 656, ss. 24, 25; 1985 (Reg. Sess., 1986), c. 953; c. 973; c. 982, s. 2; 1987, c. 800, s. 1; 1987 (Reg. Sess., 1988), c. 937; 1989, c. 692, ss. 3.5, 3.6; c. 748, s. 1; 1989 (Reg. Sess., 1990), c. 989; c. 1060; c. 1068, ss. 1, 2; 1991, c. 45, s. 17; c. 79, s. 2; c. 618, s. 1; c. 689, s. 314; 1991 (Reg. Sess., 1992), c. 931, ss. 1, 2; c. 935, s. 1; c. 940, s. 1; c. 949, s. 1; c. 1007, s. 44; 1993, c. 484, s. 3; c. 513, s. 11; 1993 (Reg. Sess., 1994), c. 739, s. 1; 1995, c. 390, s. 14; c. 451, s. 1; c. 477, ss. 2, 3; 1995 (Reg. Sess., 1996), c. 646, ss. 4, 5; c. 649, s. 1; 1996, 2nd Ex. Sess., c. 14, ss. 15, 16; 1997-369, s. 2; 1997-370, s. 2; 1997-397, s. 1; 1997-423, s. 3; 1997-443, s. 11A.118(a); 1997-456, s. 27; 1997-506, s. 36; 1997-521, s. 1; 1998-22, s. 6; 1998-55, ss. 9, 15; 1998-98, ss. 14, 14.1, 49, 107; 1998-146, s. 9; 1998-171, s. 10(a), (b); 1998-225, s. 4.3; 1999-337, s. 31; 1999-360, s. 7(a)-(c); 1999-438, ss. 5-12; 2000-120, s. 5; 2000-153, s. 5; 2001-347, s. 2.12; 2001-424, s. 34.23(a); 2001-476, s. 17(e); 2001-509, s. 1; 2001-514, s. 1; 2002-184, s. 9; 2003-284, ss. 45.5, 45.5A; 2003-349, s. 11; 2003-416, ss. 18(a), 21; 2003-431, s. 1; 2004-124, ss. 32B.2, 32B.4; 2005-276, s. 33.9; 2005-435, ss. 30, 31; 2006-19, s. 1; 2006-33, s. 5; 2006-66, s. 24.17(b); 2006-162, ss. 8(a), 8(b); 2006-168, s. 4.2; 2006-252, s. 2.25(b); 2007-244, s. 4; 2007-323, s. 31.23(c); 2007-368, s. 1; 2007-383, s. 6; 2007-397, ss. 10(g), 10(h); 2007-491, s. 44(1)a; 2007-500, s. 1; 2007-527, ss. 10, 27; 2008-107, ss. 28.6(a), 28.20(a); 2009-451, s. 27A.3(f), (k); 2009-511, s. 1; 2010-91, s. 3; 2010-147, s. 6.1; 2011-330, s. 18; 2012-79, s. 1.4; 2013-316, ss. 3.2(a), (b), 3.3(b), 3.4(a), 4.1(d), 5(c), 6(c); 2013-360, s. 7.4(e); 2013-414, ss. 11(a), 58(e); 2014-3, ss. 4.1(e), 5.1(d)-(f), 6.1(c), (f), 8.3(a), (b); 2014-100, s. 37.3(a); 2015-6, ss. 2.12, 2.23(a); 2015-241, ss. 7A.3, 32.18(d), (e); 2015-259, ss. 3(b), 4.1(c), 4.2(d), 5(b), (c), 6(b); 2015-261, s. 5(a), (b); 2016-5, ss. 3.9(a), (b), 3.11(a), 3.19(b), 3.23(a); 2016-92, ss. 2.1(a), 2.5; 2016-94, ss. 38.2(c), 38.5(i), (p); 2016-123, s.

11.1; 2017-57, s. 38.8(a), (c), 38.9(b); 2017-102, s. 15.1; 2017-139, s. 1; 2017-181, s. 1; 2017-204, ss. 2.6, 2.9(a), 2.11(b), 2.12(a); 2017-212, s. 7.2(a); 2018-5, s. 38.5(j), (y); 2019-6, ss. 4.9, 5.1, 5.3; 2019-169, ss. 3.3(k), 3.4(c), 3.9(a), (b), 3.10, 3.11(a), 3.12, 3.13(b); 2019-237, ss. 4(a), 5(a), 8.1(a); 2019-246, ss. 6, 7(a); 2020-6, ss. 2(a), 3(b); 2021-150, s. 25.1; 2022-74, ss. 42.2(b); 42.4(e); 2022-74, ss. 9D.15(e), 42.2(b); 42.4(e).)

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

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 .4301

RECOMMENDATION DATE: November 11, 2023

RECOMMENDED ACTION:

X Approve, but note staff's comment

Object, based on:

Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

STAFF RECOMMENDS APPROVAL PROVIDED THAT THE SECRETARY REMOVE THE SENTENCE FRAGMENT ON PAGE 2, LINES 28-29.

*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.)

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;~~ pipel 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.*

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 .4404

RECOMMENDATION DATE: November 13, 2023

RECOMMENDED ACTION:

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

COMMENT:

I.

LINE 5-8 OF PARAGRAPH (A) OF THE RULE IS AN INARTFUL AND CONFUSING PARAPHRASE OF G.S. 105-164.3(121); HOWEVER, IT IS ESSENTIALLY CORRECT. IT IS ALSO ARGUABLY UNNECESSARY.

*IN LINES 7-8, THE SECRETARY USES THE PHRASE "IF THE OPERATOR IS NECESSARY FOR THE EQUIPMENT TO PERFORM AS DESIGNED **AND FOR THE PURPOSES OF G.S.105-164.4**, ..." (EMPHASIS ADDED). AS WRITTEN, THE EMPHASIZED CLAUSE MODIFIES "OPERATOR". G.S. 105-164.4 IS THE STATUTE ESTABLISHING SALES AND USE TAX. IT DOES NOT APPEAR TO HAVE A LOGICAL CONNECTION AS A MODIFIER TO AN OPERATOR.*

*STAFF BELIEVES THE SECRETARY "**FOR THE PURPOSES OF G.S.105-164.4**" IS TO IDENTIFY THE AUTHORITY FOR THE IMPOSITION OF THE SALES AND USE TAX.¹*

ACCORDINGLY, STAFF RECOMMENDS OBJECTION PURSUANT TO G.S. 150B-21.9(A)(2) FOR LACK OF CLARITY.

II.

PARAGRAPH (B) OF THE RULE IS UNNECESSARY AS SALES OF ITEMS ARE TAXED PURSUANT TO G.S. 105-164.4 UNLESS EXEMPT BY ANOTHER STATUTE. IT IS UNCLEAR WHAT, IF ANY, STATUTE OR LANGUAGE WITHIN A STATUTE THE SECRETARY IS INTERPRETING FOR LACK OF CLARITY. WHILE

¹ IN WHICH CASE A COMMA WOULD NEED TO BE PLACED AFTER "DESIGNED" AND "AND" IN LINE 8. IT WOULD BE PREFERABLE TO BREAK THIS INTO TWO SENTENCES.

*WILLIAM W. PEASLEE
COMMISSION COUNSEL*

THE PARAGRAPH CITES G.S. 105-164.4, G.S. 105-164.4 IS THE STATUTE WHICH IMPOSES A TAX ON THE LEASE OR RENTAL OF TANGIBLE PERSONAL PROPERTY. THIS STATUTE HAS NO IDENTIFIED AMBIGUITY.

FURTHER, "LEASE OR RENTAL" IS DEFINED IN G.S. 105-164.3. IN SHORT, WHY WOULD A PURCHASER THINK THAT THEIR PURCHASE OF ITEMS TO PROVIDE A SERVICE WERE TAX EXEMPT? ACCORDINGLY, STAFF RECOMMENDS OBJECTION TO THE RULE PURSUANT TO G.S. 150B-21.9(A)(2) FOR LACK OF CLARITY.

III.

AS WRITTEN, PARAGRAPH (C) IS UNCLEAR AND AMBIGUOUS. THE PARAGRAPH REFERS TO "A PERSON THAT PROVIDES TANGIBLE PERSONAL PROPERTY WITH AN OPERATOR IDENTIFIED IN PARAGRAPH (A)." IT IS UNCLEAR WHETHER THE SECRETARY IS REFERRING TO ALL OPERATORS, ONLY THOSE NECESSARY OPERATORS, OR UNNECESSARY OPERATORS.

IT IS ALSO UNCLEAR WHETHER THE SECRETARY IS REQUIRING THE ITEMS BE KEPT SEPARATELY IN INVENTORY OR WHETHER AN ACCOUNTING OF THE REVENUES THEREFROM IS DESIRED.

ACCORDINGLY, STAFF RECOMMENDS OBJECTION TO THE RULE PURSUANT TO G.S. 150B-21.9(A)(2) FOR LACK OF CLARITY.

§ 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.)

§ 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.)

§ 105-164.4. Tax imposed on retailers and certain facilitators.

(a) A privilege tax is imposed on a retailer engaged in business in the State at the percentage rates of the retailer's net taxable sales or gross receipts, listed in this subsection. The general rate of tax is four and three-quarters percent (4.75%). The percentage rates are as follows:

- (1) The general rate of tax applies to the following items sold at retail:
 - a. The sales price of each article of tangible personal property that is not subject to tax under another subdivision in this section. A sale of a freestanding appliance is a retail sale of tangible personal property.
 - b. The sales price of certain digital property. The tax applies regardless of whether the purchaser of the property has a right to use it permanently or to use it without making continued payments. The sale at retail or the use, storage, or consumption in this State of a digital code is treated the same as the sale at retail or the use, storage, or consumption in this State of certain digital property for which the digital code relates.
 - c. The sales price of or gross receipts derived from repair, maintenance, and installation services to tangible personal property or certain digital property, regardless of whether the tangible personal property or certain digital property is taxed under another subdivision in this section or is subject to a maximum tax under another subdivision in this section. Repair, maintenance, and installation services generally include any tangible personal property or certain digital property that becomes a part of or is applied to a purchaser's property. The use tax exemption in G.S. 105-164.27A(a3) may apply to these services. Repair, maintenance, and installation services for real property are taxable under subdivision (16) of this subsection.
- (1a) The general rate applies to the sales price of each of the following items sold at retail, including all accessories attached to the item when it is delivered to the purchaser:
 - a. A manufactured home.
 - b. A modular home. The sale of a modular home to a modular homebuilder is considered a retail sale, no matter that the modular home may be used to fulfill a real property contract. A person who sells a modular home at retail is allowed a credit against the tax imposed by this subdivision for sales or use tax paid to another state on tangible personal property incorporated in the modular home. The retail sale of a modular home occurs when a modular home manufacturer sells a modular home to a modular homebuilder or directly to the end user of the modular home.

- c. An aircraft. The maximum tax is two thousand five hundred dollars (\$2,500) per article.
- d. A qualified jet engine.
- (1b) The rate of three percent (3%) applies to the sales price of each boat sold at retail, including all accessories attached to the boat when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars (\$1,500) per article.
- (1c), (1d) and (1e) Repealed by Session Laws 2005-276, s. 33.4(b), effective January 1, 2006.
- (1f) Repealed by Session Laws 2013-316, s. 4.1(c), effective July 1, 2014, and applicable to gross receipts billed on or after July 1, 2014.
 - a. Repealed by Session Laws 2007-397, s. 10(b), effective October 1, 2007, and applicable to sales occurring on or after that date.
 - b. Repealed by Session Laws 2006-66, s. 24.19(a), effective July 1, 2007, and applicable to sales made on or after that date.
 - c. Repealed by Session Laws 2007-397, s. 10(b), effective October 1, 2007, and applicable to sales occurring on or after that date.
- (1g) Repealed by Session Laws 2004-110, s. 6.1, effective October 1, 2004, and applicable to sales of electricity made on or after that date.
- (1h) Expired pursuant to Session Laws 2004-110, s. 6.4, effective for sales made on or after October 1, 2007.
- (1i) Repealed by Session Laws 2007-397, s. 10(a), effective October 1, 2007, and applicable to sales occurring on or after that date.
- (1j) Repealed by Session Laws 2007-397, s. 10(f), effective July 1, 2010, and applicable to sales occurring on or after that date.
- (2) The applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents property shall also collect the tax imposed by this section on the separate retail sale of the property.
- (3) The general rate applies to the gross receipts derived from the rental of an accommodation. These rentals are taxed in accordance with G.S. 105-164.4F.
- (4) Every person engaged in the business of operating a dry cleaning, pressing, or hat-blocking establishment, a laundry, or any similar business, engaged in the business of renting clean linen or towels or wearing apparel, or any similar business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or linen rental business for any of these businesses, is considered a retailer under this Article. A tax at the general rate of tax is levied on the gross receipts

derived by these retailers from services rendered in engaging in any of the occupations or businesses named in this subdivision. The tax imposed by this subdivision does not apply to receipts derived from coin, token, or card-operated washing machines, extractors, and dryers. The tax imposed by this subdivision does not apply to gross receipts derived from services performed for resale by a retailer that pays the tax on the total gross receipts derived from the services.

- (4a) Repealed by Session Laws 2013-316, s. 4.1(c), effective July 1, 2014, and applicable to gross receipts billed on or after July 1, 2014.
- (4b) A person who sells tangible personal property at a specialty market or other event, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the specialty market or other event. The term "specialty market" has the same meaning as defined in G.S. 66-250.
- (4c) The combined general rate applies to the gross receipts derived from providing telecommunications service and ancillary service, including any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction. A person who provides telecommunications service or ancillary service is considered a retailer under this Article. These services are taxed in accordance with G.S. 105-164.4C.
- (4d) The general rate applies to the gross receipts derived from the sale or recharge of prepaid telephone calling service. The tax applies regardless of whether tangible personal property, such as a card or a telephone, is transferred. The tax applies to a service that is sold in conjunction with prepaid wireless calling service. Prepaid telephone calling service is taxable at the point of sale instead of at the point of use and is sourced in accordance with G.S. 105-164.4B. Prepaid telephone calling service taxed under this subdivision is not subject to tax as a telecommunications service.
- (5) Repealed by Session Laws 1998-212, s. 29A.1(a), effective May 1, 1999.
- (6) The combined general rate applies to the gross receipts derived from providing video programming to a subscriber in this State, including any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction. A cable service provider, a direct-to-home satellite service provider, and any other person engaged in the business of providing video programming is considered a retailer under this Article.
- (6a) The general rate applies to the gross receipts derived from providing satellite digital audio radio service. For services received by a mobile or portable station, the service is sourced to the subscriber's business or

home address. A person engaged in the business of providing satellite digital audio radio service is a retailer under this Article.

- (6b) Repealed by Session Laws 2019-169, s. 3.2, effective July 26, 2019.
- (7) The combined general rate applies to the sales price of antique spirituous liquor and spirituous liquor other than mixed beverages. As used in this subdivision, the terms "antique spirituous liquor", "spirituous liquor", and "mixed beverage" have the meanings provided in G.S. 18B-101.
- (8) Repealed by Session Laws 2015-259, s. 4.2(b), effective October 1, 2015, and applicable to sales made on or after that date.
- (9) The combined general rate applies to the gross receipts derived from sales of electricity and piped natural gas, including any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction.
- (10) The general rate of tax applies to the gross receipts derived from an admission charge to an entertainment activity. Gross receipts derived from an admission charge to an entertainment activity are taxable in accordance with G.S. 105-164.4G.
- (11) The general rate of tax applies to the sales price of or the gross receipts derived from a service contract. A service contract is taxed in accordance with G.S. 105-164.4I.
- (12) The general rate of tax applies to the sales price of or gross receipts derived from a prepaid meal plan. A bundle that includes a prepaid meal plan is taxable in accordance with G.S. 105-164.4D.
- (13) Repealed by Session Laws 2017-204, s. 2.2. For effective date and applicability, see Editor's note.
- (14), (14a) Expired pursuant to Session Laws 2014-39, s. 1(e), effective July 1, 2015.
- (15) The combined general rate applies to the gross receipts derived from the sale of aviation gasoline and jet fuel.
- (16) The general rate applies to the sales price of or the gross receipts derived from repair, maintenance, and installation services for real property and generally includes any tangible personal property or certain digital property that becomes a part of or is applied to a purchaser's property. A mixed transaction contract and a real property contract are taxed in accordance with G.S. 105-164.4H. A property management contract is taxable in accordance with G.S. 105-164.4K.

(b) The tax levied in this section shall be collected from the retailer and paid by him at the time and in the manner as hereinafter provided. A person engaging in business as a retailer shall pay the tax required on the net taxable sales of the business at the rates specified when proper books are kept showing separately the gross proceeds of taxable and nontaxable sales of items subject to tax under subsection (a) of this section in a form that may be accurately and conveniently checked by the Secretary or the Secretary's duly

authorized agent. If the records are not kept separately, the tax shall be paid on the gross sales of the business and the exemptions and exclusions provided by this Article are not allowed. The tax levied in this section is in addition to all other taxes whether levied in the form of excise, license, privilege, or other taxes. The requirements of this subsection apply to facilitators liable for tax under this Article.

(c) Certificate of Registration. - Before a person may engage in business as a retailer or a wholesale merchant in this State, the person must obtain a certificate of registration from the Department in accordance with G.S. 105-164.29. A facilitator that is liable for tax under this Article must obtain a certificate of registration from the Department in accordance with G.S. 105-164.29. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 826, s. 2; 1963, c. 1169, ss. 3, 11; 1967, c. 1110, s. 6; c. 1116; 1969, c. 1075, s. 5; 1971, c. 887, s. 1; 1973, c. 476, s. 193; c. 1287, s. 8; 1975, c. 752; 1977, c. 903; 1977, 2nd Sess., c. 1218; 1979, c. 17, s. 1; c. 22; c. 48, s. 1; c. 527, s. 1; c. 801, s. 73; 1981, c. 984, ss. 1, 2; 1981 (Reg. Sess., 1982), cc. 1207, 1273; 1983, c. 510; c. 713, ss. 89, 93; c. 805, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1065, ss. 1, 2, 4; c. 1097, ss. 6, 13; 1985, c. 704; 1985 (Reg. Sess., 1986), c. 925; c. 1005; 1987, c. 557, ss. 4, 5; c. 800, ss. 2, 3; c. 854, s. 1; 1987 (Reg. Sess., 1988), c. 1044, s. 4; 1989, c. 692, ss. 3.1, 3.3, 8.4(8); c. 770, s. 74.4; 1989 (Reg. Sess., 1990), c. 813, ss. 14, 15; 1991, c. 598, s. 5; c. 689, s. 311; c. 690, s. 1; 1993, c. 372, s. 1; c. 484, s. 2; 1995, c. 17, s. 6; c. 477, s. 1; 1996, 2nd Ex. Sess., c. 13, ss. 1.1, 9.1, 9.2; 1997-475, s. 1.1; 1998-22, s. 5; 1998-55, ss. 8, 14; 1998-98, ss. 13.2, 48(a), (b); 1998-121, ss. 3, 5; 1998-197, s. 1; 1998-212, s. 29A.1(a); 1999-337, ss. 29, 30; 1999-360, s. 3(a), (b); 1999-438, s. 1; 2000-140, s. 67(a); 2001-424, ss. 34.13(a), 34.17(a), 34.23(b), 34.25(a); 2001-430, ss. 3, 4, 5; 2001-476, ss. 17(b)-(d), (f); 2001-487, ss. 67(b), 122(a)-(c); 2002-16, s. 4; 2003-284, s. 38.1; 2003-400, s. 15; 2004-110, ss. 6.1, 6.2, 6.3; 2005-144, s. 9.1; 2005-276, ss. 33.1, 33.4(a), (b); 2006-33, ss. 2, 11; 2006-66, ss. 24.1(a), (b), (c), 24.19(a), (b); 2006-151, s. 3; 2007-145, s. 9(a); 2007-323, ss. 31.2(a), (b), 31.16.3(h), 31.16.4(g); 2007-397, s. 10(a)-(f); 2009-451, s. 27A.2(b), (e); 2010-31, s. 31.6(a); 2010-123, s. 10.2; 2011-330, s. 16; 2013-316, ss. 3.1(a), 4.1(c), (e), 5(b), 6(b); 2013-414, ss. 9, 40; 2014-3, ss. 4.1(b), 5.1(a), (f), 6.1(b), 7.1(b), 8.1(a), 14.8; 2014-39, s. 1(a); 2015-6, s. 2.1(b); 2015-98, s. 1(h); 2015-241, s. 32.18(b); 2015-259, ss. 4.1(b), 4.2(b); 2016-92, s. 2.3; 2016-94, s. 38.5(e); 2017-204, s. 2.2; 2018-5, s. 38.5(c); 2019-169, ss. 3.2, 3.4(a), 3.9(d); 2019-246, s. 7(a); 2020-58, s. 3.4.)

§ 105-164.3. Definitions.

The following definitions apply in this Article:

...

(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.

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.

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 .4503

RECOMMENDATION DATE: November 11, 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:

I.

SUBPARAGRAPH (A)(1) OF THE RULE EXEMPTS THE SALE OF "WASHING MACHINES" "PRESSING MACHINES" AND SIMILAR CLEANING MACHINES" FROM THE SALES AND USE TAX. THE SALE OF THESE ITEMS ARE ALREADY EXEMPT PURSUANT TO G.S. 105-164.13(10).

SIMILARLY, SUBPARAGRAPHS(A)(12) THROUGH (16) EXEMPT THE SALE OF ITEMS THAT ARE ALREADY EXEMPT PURSUANT TO G.S. 105-164.13(10).

ACCORDINGLY, STAFF RECOMMENDS OBJECTION TO THIS LANGUAGE PURSUANT TO G.S. 150B-21.9(A)(3) FOR LACK OF NECESSITY.

*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.)

§ 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.)

§ 105-164.13. 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:

...

- (10) Sales of the following to commercial laundries or to pressing and dry cleaning establishments:
 - a. Articles or materials used for the identification of garments being laundered or dry cleaned, wrapping paper, bags, hangers, starch, soaps, detergents, cleaning fluids and other compounds or chemicals applied directly to the garments in the direct performance of the laundering or the pressing and cleaning service.
 - b. Laundry and dry-cleaning machinery, parts and accessories attached to the machinery, and lubricants applied to the machinery.
 - c. Fuel and piped natural gas used in the direct performance of the laundering or the pressing and cleaning service. The exemption does not apply to electricity.

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.

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 .4609

RECOMMENDATION DATE: November 9, 2023

RECOMMENDED ACTION:

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

COMMENT:

I.

G.S. 105-164.13(32) EXEMPTS THE SALE OF "MOTOR VEHICLES" FROM SALES AND USE TAX.

PARAGRAPH (A) OF THE RULE EXEMPTS THE SALE OF FIRE TRUCKS TO LISTED ENTITIES. STAFF COUNSEL OPINES THAT A FIRE TRUCK IS A MOTOR VEHICLE, NOTWITHSTANDING THE PURCHASER, AND NO REASONABLE PERSON COULD AVER OTHERWISE. ACCORDINGLY, STAFF RECOMMENDS OBJECTION TO THIS LANGUAGE PURSUANT TO G.S. 150B-21.9(A)(3) FOR LACK OF NECESSITY.

II.

PARAGRAPH (A) OF THE RULE STATES, INTER ALIA, THAT THE FIRE TRUCKS SOLD TO LISTED ENTITIES ARE SUBJECT TO THE HIGHWAY USE TAX PURSUANT TO G.S. 105-187.3 UNLESS EXEMPT.

THE TAX IMPOSED BY G.S. 105-187.3 IS APPLIABLE TO MOTOR VEHICLES. STAFF COUNSEL OPINES THAT A FIRE TRUCK IS A MOTOR VEHICLE, NOTWITHSTANDING THE PURCHASER, AND NO REASONABLE PERSON COULD AVER OTHERWISE. ACCORDINGLY, STAFF RECOMMENDS OBJECTION TO THIS LANGUAGE PURSUANT TO G.S. 150B-21.9(A)(3) FOR LACK OF NECESSITY.

*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.)

§ 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.)

§ 105-164.13. 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).)

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.

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 .4701

RECOMMENDATION DATE: November 11, 2023

RECOMMENDED ACTION:

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

COMMENT:

I.

PARAGRAPH (A) OF THE RULE, STATES THAT RETAIL SALES OF ITEMS "BY COMMERCIAL PRINTERS OR PUBLISHERS ARE SUBJECT TO SALES AND USE TAX EXEMPT INCLUDING SUBSCRIPTIONS, PLATES AND DIES SOLD TO CUSTOMERS, BOOK BINDING, AND OTHER REPAIR, MAINTENANCE, AND INSTALLATION SERVICES."

IT IS UNCLEAR WHETHER THE SECRETARY INTENDS THE SALE OF THE ITEMS TO BE SUBJECT TO OR EXEMPT FROM THE SALES AND USE TAX. WITH THIS LACK OF CLARITY, THE COMMISSION IS UNABLE TO DETERMINE WHETHER PARAGRAPH (A) MEETS THE STANDARDS PRESCRIBED IN G.S. 150B-21.9(A).

ACCORDINGLY, STAFF RECOMMENDS OBJECTION TO G.S. 150B-21.9(A)(2).

*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.)

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.

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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.