

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0104

DEADLINE FOR RECEIPT: October 13, 2023

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

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

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

Consider rephrasing the first sentence of item 2 (on lines 10 through 12) to be more direct. For example “A person engaged in business that does not pay a required North Carolina sales or use tax on an item, as the term item is defined in G.S. 105-164.3, to a seller or facilitator at the time of purchase shall pay the use tax in accordance with G.S. 105-164.6 on the purchase price of the item.”

On line 27, “any trade name” suggests that if an entity had more than one trade name, they could provide only one. I think you mean “all trade names”.

On line 34, item H, what is meant by “knowledge”? Do you just mean “The types of items and services . . .”?

On p. 2 line 19, “that” is potentially vague since it could refer to the person or the tax return. Consider “who” assuming the liability attaches to the person.

On p. 2 line 21, add a comma at the end of the form name: “. . . and Use Taxes, to the . . .”

On p. 2 line 35, add that: “. . . or that makes purchases. . .”

On p. 2 line 35, delete comma: “. . . use tax, tax is not”

Regarding the history note, do not include entire articles in the authority section (on lines 11 and 12, “Chapter 105, Articles 39, 40, 42, 43, and 46”). I am not sure that the subject matter of those articles (imposition of local taxes) is necessary for this history note at all, since it does not appear to provide “the authority for the rule,” per 26 NCAC 02C .0406(a), or “cite the law under which the rule is adopted,” per G.S. 150B-21.19.

Seth Ascher
Commission Counsel

Date submitted to agency: October 9, 2023

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

Seth Ascher
Commission Counsel
Date submitted to agency: October 9, 2023

1 17 NCAC 07B .0104 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .0104 REGISTRATION AND RETURNS**

5 **(a) Certificate of Registration:**

6 (1) Before a person engages in business as a retailer, wholesale merchant, or facilitator liable for sales
7 or use tax, the person shall obtain a Certificate of Registration from the Department. A Certificate
8 of Registration contains the sales and use tax account identification number (Account ID). There is
9 no fee to obtain a Certificate of Registration.

10 (2) A person engaged in business that does not pay the applicable North Carolina sales or use tax on an
11 item, as the term item is defined in G.S. 105-164.3, to a seller or facilitator at the time of purchase
12 is liable for use tax in accordance with G.S. 105-164.6 on the purchase price of the item. A person
13 required to pay use tax on its purchases shall register with the Department to obtain a Certificate of
14 Registration.

15 (3) A person may apply for a Certificate of Registration by:

16 (A) Registering through the Department's website at www.ncdor.gov;

17 (B) Register online through the Streamlined Sales Tax Registration System (SSTRS) at
18 <https://www.streamlinedsalestax.org>; or

19 (C) Calling the Department at telephone number 1-877-252-3052 to request a registration form,
20 and submitting the completed registration by mail to the Department's mailing address set
21 out in 17 NCAC 01A .0101.

22 (4) Information needed to obtain a Certificate of Registration includes the following:

23 (A) Ownership information, including North Carolina Secretary of State's business
24 identification number, if applicable.

25 (B) Federal Employer Identification Number (FEIN) or Social Security Number for
26 proprietorships.

27 (C) Legal business name, owner's name, physical and mailing address of the business, any
28 trade name, and daytime telephone number.

29 (D) Responsible person demographics, if applicable, including name, title, Social Security
30 Number, and home address.

31 (E) Date when sales or purchases will begin.

32 (F) Whether sales will be retail, wholesale, or both.

33 (G) Description of business.

34 (H) Knowledge of the types of items and services that will be sold by the business.

35 (I) Estimate of monthly sales tax.

36 (J) Type of accounting method that will be used whether cash or accrual.

37 (K) Months sales will be made, if seasonal.

1 (b) Returns:

2 ~~(a)(1) General Returns General. -- G.S. 105-164.16 establishes the filing frequency and the content of sales~~
3 ~~and use tax returns-returns. All sales and use tax returns may be obtained from the Department's~~
4 ~~website at www.ncdor.gov or by calling the Department at telephone number 1-877-252-3052, and~~
5 ~~shall contain the information required by 17 NCAC 01C .0622, and the content of the returns. G.S.~~
6 ~~105-164.4(e) requires a retailer and a wholesale merchant to register with the Department and obtain~~
7 ~~a certificate of registration. G.S. 105-164.6 requires a retailer who delivers property for storage,~~
8 ~~use, or consumption but does not have a place of business in this State to register with the~~
9 ~~Department and obtain a certificate of registration. A person who is engaged in business, is not~~
10 ~~otherwise required to file a sales and use tax return, and, on two or more occasions within a twelve-~~
11 ~~month period, purchases property subject to use tax must register with the Department and begin~~
12 ~~filing sales and use tax returns. A person who is engaged in business, is not otherwise required to~~
13 ~~file a sales and use tax return, and purchases property subject to use tax only once in a twelve month~~
14 ~~period must file a return and pay the tax due within 20 days after the end of the month in which the~~
15 ~~purchase was made.~~

16 ~~(b)(2) Schedules. -- A retailer who files a return that reports tax payable by more than one location in the~~
17 ~~State must attach two schedules to the return. One schedule must list the amount of State tax due~~
18 ~~for each location in the State and the other must list the amount of local tax due for each county. A~~
19 ~~person that files a paper sales and use tax return, that is liable for local county tax source to a taxing~~
20 ~~jurisdiction in this State other than the county where the business is located or in more than one~~
21 ~~county, shall attach Form E-536, Schedule of County Sales and Use Taxes to the return listing the~~
22 ~~amount of tax due for each taxing jurisdiction.~~

23 ~~(c) No Sales or Purchases By Business Business. -- A retailer who does not make any person required to file a sales~~
24 ~~and use tax return that has no sales or purchases during a reporting period must shall file a return for that period and~~
25 ~~enter 0.00 (zero) zero (0.00) as the total tax due on the Total Due line on the return. Similarly, a person who is not a~~
26 ~~retailer but is engaged in business, purchases tangible personal property for the business that is subject to use tax, and~~
27 ~~does not make any taxable purchases during a reporting period must file a return for that period and enter 0.00 (zero)~~
28 ~~on the Total Due line on the return.~~

29 ~~(d) Seasonal Business. -- A retailer who person that engages in business for six or fewer consecutive months in each~~
30 ~~year may register with the Department as a seasonal filer and indicate the months in which the retailer person engages~~
31 ~~in business. A retailer who person that is registered as a seasonal filer is not required to file a return for an off-season~~
32 ~~reporting period in which the retailer did not engage in business.~~

33 ~~(e) Wholesale Merchant Merchant. -- A person who engages exclusively in the business of making wholesale sales~~
34 ~~shall register with the Department, but is not required to file a return. A wholesale merchant that makes taxable sales~~
35 ~~or makes purchases on which it owes use tax, is not engaged exclusively in the business of making wholesale sales~~
36 ~~and shall file sales and use tax returns and pay the tax due. A person who, on two or more occasions within a twelve-~~
37 ~~month period, either makes taxable sales to users, consumers, or nonregistered merchants or makes purchases subject~~

1 ~~to use tax is not engaged exclusively in the business of making wholesale sales and must begin filing sales and use tax~~
2 ~~returns. A wholesale merchant who is not required to file a sales and use tax return and who, on only one occasion~~
3 ~~within a twelve month period, either makes taxable sales to users, consumers, or nonregistered merchants or makes~~
4 ~~purchases subject to use tax must file a return and pay the tax due within 20 days after the end of the month in which~~
5 ~~the sale or purchase was made.~~

6 (f) ~~Non Business Use Tax—An individual who is not engaged in the business of selling tangible personal property~~
7 ~~at retail and who purchases for a non business purpose tangible personal property that is subject to use tax must report~~
8 ~~the tax due on an annual basis. An individual who is required to file an individual income tax return must pay the use~~
9 ~~tax with the individual income tax return for that year. An individual who is not required to file an individual income~~
10 ~~tax return must report the tax due on Form E-554. Form E-554 is due annually by the date set under G.S. 105-164.16.~~

11 (f) Use Tax:

12 (1) General. -- A business or individual that purchases an item sourced to this State, other than a boat
13 or aircraft, shall accrue and remit the use tax due on the purchase price of the item in accordance
14 with G.S. 105-164.6 when retailers, remote sellers, or facilitators do not collect the applicable tax
15 on taxable transactions.

16 (2) Business Use Tax. -- A business shall report and remit use tax on a sales and use tax return.

17 (3) Individual Use Tax. An individual required to file a North Carolina individual income tax return,
18 shall report the use tax liability of taxable items, other than a boat, an aircraft, and food subject to
19 the two percent (2%) rate of tax, on the individual's income tax return. An individual not required
20 to file a North Carolina individual income tax return shall report the use tax liability on taxable
21 items, other than a boat or aircraft, on Form E-554, Consumer Use Tax Return. Form E-554 is due
22 annually by the date set in G.S. 105-164.16.

23 (A) Form E-554 shall include the following information:

24 (i) name of filer, spouse's name, if applicable, address, and phone number;

25 (ii) Social Security Number of filer, and Social Security Number of filer's spouse, if
26 applicable;

27 (iii) beginning and ending dates for the period the return is filed;

28 (iv) total amount of purchases subject to use tax at each applicable tax rate, including
29 purchases of food subject to the two percent (2%) food rate;

30 (v) total tax at each applicable tax rate;

31 (vi) any credit for sales and use tax paid to another state;

32 (vii) tax due before any penalty and interest;

33 (viii) any penalty or interest due;

34 (ix) total tax due; and

35 (x) signature, title, contact telephone number of filer, and date return is signed.

36 (B) Any individual who purchases food subject to the two percent (2%) food rate of sales and
37 use tax shall report the tax on Form E-554, Consumer Use Tax Return.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0106

DEADLINE FOR RECEIPT: October 13, 2023

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

As written, it is unclear if the "certificate of exemption" discussed in the rule is something that is issued by DOR or is the information the purchaser is providing to the seller. The rule seems to suggest it is information provided to the seller, but 105-236(5a) defines "exemption certificate" as "a certificate issued by the Secretary". This needs to be clarified.

On lines 8 and 9, I do not think the verb "furnish" and "authority" makes sense in the phrase "shall furnish to each seller the authority". Do you mean something like "shall notify each seller of the authority for not collecting the tax" or "provide each seller with a copy of the certificate of exemption"?

On page 2 line 5, what "other" information do you mean? Consider deleting "other" for clarity.

Regarding paragraph (c), 105-236(5a) provides authority to assess a penalty of \$250.00 for misuse of a certificate of exemption. What is the authority to include a penalty for "other information provided electronically for purposes of obtaining an exemption?"

Similarly, what is the authority that allows revocation of a "certificate of registration for sales and use taxes" under this rule?

Regarding the history note, do not include entire articles in the authority section (on lines 11 and 12, "Chapter 105, Articles 39, 40, 42, 43, and 46"). I am not sure that the subject matter of those articles (imposition of local taxes) is necessary for this history note at all, since it does not appear to provide "the authority for the rule," per 26 NCAC 02C .0406(a), or "cite the law under which the rule is adopted," per G.S. 150B-21.19.

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

Seth Ascher
Commission Counsel

Date submitted to agency: October 9, 2023

1 17 NCAC 07B .0106 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .0106 CERTIFICATES OF EXEMPTION: SALES FOR RESALE**

5 (a) A purchaser of tangible personal property who is properly registered with the Sales and Use Tax Division of the
6 North Carolina Department of Revenue or in a taxing jurisdiction outside this State and is engaged in the business of
7 selling tangible personal property at retail or wholesale and makes purchases of tangible personal property for the
8 purpose of resale person purchasing an item, as the term item is defined in G.S. 105-164.3, for resale shall furnish to
9 his vendors as their each seller the authority for not collecting the tax, either sales or use tax by submitting the
10 information required by G.S. 105-164.28(a) on a paper certificate or electronically. The information required includes:

- 11 _____ (1) the purchaser's name;
- 12 _____ (2) the purchaser's address;
- 13 _____ (3) the purchaser's certificate of registration number which shall be a North Carolina certificate of
14 registration number, another state's sales and use tax registration number, or a Streamlined Sales
15 Tax ID;
- 16 _____ (4) the reason for the exemption;
- 17 _____ (5) the type of business; and
- 18 _____ (6) if submitted by paper, including fax, the purchaser's signature and date signed.

- 19 (1) Streamlined Sales Tax Agreement Certificate of Exemption, Form E-595E, or
- 20 (2) other evidence in writing adequate to support the conclusion that he is registered with the
21 Department of Revenue or in a taxing jurisdiction outside this State for sales and use tax purposes
22 and that the property is being purchased for the purpose of resale.

23 Such certificates or other written evidence shall be completed in duplicate and a copy retained by both the vendor and
24 the vendee in their files. In the absence of such certificates or other adequate written evidence, vendors selling taxable
25 tangible personal property to wholesale and retail merchants shall be deemed to be making retail sales and shall be
26 liable for collecting and paying the tax thereon at the applicable rate.

27 A purchaser shall retain in their records the certificates or electronic information submitted to sellers and an invoice
28 or other statement of the purchase price of any items purchased.

29 (b) A seller's failure to keep records that establish a sale is exempt from sales and use tax subjects the seller to liability
30 for the tax at the rates applicable to the retail sale of the item. To establish a sale is exempt from tax, sellers shall retain
31 in their records the certificates or electronic information submitted by the purchaser, and records that identify the item
32 purchased, the sales price of the item, and the purchaser of the item.

33 (b) Certificates of exemption being issued for the purpose of resale shall not be used to purchase tangible personal
34 property which is to be used or consumed by the purchaser. The Secretary may revoke the license of any licensed
35 merchant who makes such use of the certificate of exemption. Vendors shall charge the applicable rate of tax on sales
36 to registered merchants when the property sold is for use by the purchaser and not for resale. Merchants purchasing
37 tangible personal property for resale on a regular basis from a vendor shall only be required to furnish one certificate

1 of exemption or other written evidence to the vendor for such purchases. Whenever a person makes purchases of
2 tangible personal property for resale and the property is not generally and ordinarily the type of property the purchaser
3 will resell, the vendor shall require certificates of exemption or other written evidence in connection with individual
4 purchases supporting that the property is being purchased for resale.

5 (c) A person that misuses a certificate of exemption, including other information provided electronically for purposes
6 of obtaining an exemption, is subject to penalties set out in G.S. 105-236. The penalty for misuse of an exemption
7 certificate applies to each seller identified by the Department from which the person made a taxable purchase. The
8 misuse of an exemption certificate is grounds for the Secretary to revoke a person's certificate of registration for sales
9 and use taxes. ~~Persons who issue certificates of exemption to vendors to obtain property without payment of tax when~~
10 ~~due are subject to assessment of the penalties set out in G.S. 105-236(5) and (5a) and may be guilty of a Class H~~
11 ~~felony. The penalty for misuse of a certificate of exemption is applicable only to a purchaser. The act of executing a~~
12 ~~certificate of exemption by a vendee and furnishing the document to a vendor does not constitute a use or misuse of~~
13 ~~the certificate. The actual use or misuse~~ Misuse ~~occurs when a person makes a taxable purchase and furnishes the~~
14 ~~information described in section (a) of this Rule to a seller and the seller purchase is made and the vendor, relying on~~
15 ~~the certificate furnished by the vendee, does not charge sales or use tax thereon on the basis that the sale is a "wholesale~~
16 ~~sale" as defined in G.S. 105-164.3(24).~~ 105-164.3. A single purchase is considered to be the tangible personal property
17 purchased at one time as reflected on the bill of sale. The penalty shall be applied only once to each invoice or bill of
18 sale for which a misuse of the certificate has occurred. This penalty is subject to the discretionary authority of the
19 Secretary of Revenue pursuant to G.S. 105-237.

20 (d) ~~The Secretary may extend to a registered merchant written permission to make purchases for his own use pursuant~~
21 ~~to the certificate of exemption and assume liability for payment of the applicable tax to the Department when the~~
22 ~~character of the business of the purchaser is such that it would impose undue hardship upon the vendor and vendee to~~
23 ~~determine the transactions upon which the vendor would ordinarily be required to impose the tax. The purchaser shall~~
24 ~~furnish written evidence of such assumption of liability to the purchaser's vendors; the vendors must retain the~~
25 ~~documentation in their files.~~

26 (e) ~~This rule applies to sales to resident and nonresident retail or wholesale merchants. Reference is made to 17~~
27 ~~NCAC 7B .2301 for the treatment of sales to nonresident retail or wholesale merchants.~~

28
29 *History Note:* Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.22; 105-164.28; 105-236; 105-262; 105-
30 264; Chapter 105, Articles 39, 40, 42, 43, and 46;
31 Eff. February 1, 1976;
32 Amended Eff. April 1, 2006; October 1, 1993; February 1, 1988; May 11, 1979-1979;
33 Readopted Eff. January 1, 2024.

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0108

DEADLINE FOR RECEIPT: October 13, 2023

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

In paragraph (c), what is an "over-allowance"? Is that term defined somewhere?

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

1 17 NCAC 07B .0108 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .0108 TRADE DISCOUNTS AND CASH DISCOUNTS**

5 (a) ~~Trade.~~Trade and Bargaining Discounts. --~~Trade discounts and bargaining discounts are not a part of the sales~~
6 ~~price on which sales tax is computed when the sales price is reduced by the discounts before the computation of tax.~~
7 A trade discount is a price reduction afforded in the price a seller charges that is extended to a particular customer or
8 ~~customers in a particular trade or group purchaser or group of purchasers~~ without reservation at the time the sale is
9 being negotiated. ~~A bargaining discount is a price reduction in the price a seller charges that is extended to a customer~~
10 purchaser at the time the sale is being negotiated as a result of bargaining between the ~~customer purchaser~~ and the
11 seller. The sales price of an item, as the term item is defined in G.S. 105-164.3, does not include a trade discount or
12 bargaining discount that is not reimbursed by a third party.

13 (b) ~~Cash.~~Cash and Terms Discounts. -- A cash or terms discount is a reduction in the ~~sales price,~~price a seller charges
14 that is extended to the purchaser for prompt payment of an invoice. The sales price of an item does not include a cash
15 or terms discount that is not reimbursed by a third party. and the tax must be computed and paid on the sales price
16 after allowance for the cash discount. Generally, a cash discount is a deduction from the sales price allowed for prompt
17 payment of the bill. Likewise, cash discounts are not a part of the purchase price on which tax is due. A person who
18 purchases tangible personal property for use or consumption in this State is liable for remitting the tax due on the
19 purchase price after allowance for the cash discount.

20 (c) ~~Trade-ins and~~Over-allowance. -- The amount of ~~an over-allowance to a trade-in, including an over-allowance,~~
21 ~~taken by a purchaser for an item taken in trade as a credit or part partial payment on the sale of a new article~~an item
22 is not a reduction in the sales price of the new article.item. The trade-in is consideration given towards the purchase
23 of the item. The tax mustAny applicable sales or use tax shall be computed and paid on the ~~full gross sales price of~~
24 the new articleitem without any deduction ~~on account of the trade in credit or allowance for a trade-in.~~

25
26 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; 105-264;*
27 *Eff. February 1, 1976.*
28 *Amended Eff. August 1, 2002-2002;*
29 *Readopted Eff. January 1, 2024.*

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0112

DEADLINE FOR RECEIPT: October 13, 2023

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

On line 6, what are the “type[s] of item[s]”? How would one know if an item was similar to a type? For example, consider a “bicycle” store, could they make “an occasional and isolated sale” of a car? A skateboard? An exercise bike? A motorcycle?

As I read the relevant statutes, the concept of occasional and isolated sales comes from the definition of business in 105-164.3(25): “The term does not include an occasional and isolated sale or transaction by a person who does not claim to be engaged in business.” Under 105-164.4(a), a privilege tax is “imposed on retailers engaged in business”. Is this correct?

Given that I assume that the businesses in paragraph (c) would “claim to be engaged in business”, where do you get the authority to create an exception for their occasional and isolated sales?

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

Seth Ascher
Commission Counsel

Date submitted to agency: October 9, 2023

1 17 NCAC 07B .0112 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .0112 OCCASIONAL AND ISOLATED SALES OF HOUSEHOLD GOODS**

5 (a) An occasional and isolated sale occurs when the seller sells an item, as the term item is defined in G.S. 105-164.3,
6 that is not of, or similar to, the type of item that the seller is engaged in the business of selling. Occasional and isolated
7 sales do not include sales of items by a facilitator liable for collecting and remitting tax on the sale.

8 (b) Household items. -- Owners making Occasional-occasional and isolated sales of household goods-items, on which
9 the sales or use tax has been due was paid at the time of the initial purchase by the owner, are not required to collect
10 and remit sales or use tax on the sale. For example, an individual making an occasional and isolated sale of a personally
11 owned boat, is not required to collect and remit sales or use tax on the sale of the boat. are exempt from the tax when
12 sold by the owner in his capacity as owner and not in the capacity of a retail merchant. Such sales are deemed to be
13 casual or isolated sales by persons not holding themselves out as engaged in business.

14 (c) Business items. -- Businesses making occasional and isolated sales of items owned by the business, upon which
15 the sales or use tax due was paid at the time of the initial purchase by the business, are not required to collect and
16 remit sales or use tax on the sale. For example, a manufacturer's occasional and isolated sale of its worn out, obsolete,
17 or surplus machinery, accessories, and similar items is not subject to sales tax, as long as the manufacturer is not
18 engaged in the business of making retail or wholesale sales of similar property.

19
20 *History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; 105-264*
21 *Eff. February 1, 1976-1976;*
22 *Readopted Eff. January 1, 2024.*
23

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0117

DEADLINE FOR RECEIPT: October 13, 2023

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

On lines 6 and 9, wouldn't this be an "excise tax" under 105-164.6 and not a "sales and use tax" under 105-164.4?

On line 6, delete "applicable".

On line 12, how long is "a substantial period of time"? The rule either needs to explain how this will be determined or use a more concrete term.

Regarding the history note, do not include entire articles in the authority section (on lines 11 and 12, "Chapter 105, Articles 39, 40, 42, 43, and 46"). I am not sure that the subject matter of those articles (imposition of local taxes) is necessary for this history note at all, since it does not appear to provide "the authority for the rule," per 26 NCAC 02C .0406(a), or "cite the law under which the rule is adopted," per G.S. 150B-21.19.

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Seth Ascher
Commission Counsel

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2 pursuant to G.S. 150B-1(D)(4) as follows:

3
4 **17 NCAC 07B .0117 PROPERTY TRANSFERS BETWEEN DIVISIONS**

5 ~~Firms~~ A business entity having divisions, both ~~within~~ inside and ~~without~~ outside of North Carolina, ~~are~~ is liable for
6 remitting the applicable ~~rate~~ rates of sales and use tax on any purchases of ~~tangible personal property~~ items, as the term
7 item is defined in G.S. 105-164.3, for use in North Carolina, including any property purchased outside North Carolina
8 and imported into North Carolina for use in this ~~state~~ State. An item received by the purchaser or on behalf of the
9 purchaser in this State is subject to sales and use tax no matter that the item is designated for ultimate use outside this
10 State. No tax will be ~~is~~ due ~~with respect to those~~ on transfers of property by an out-of-state firm to its North Carolina
11 divisions for their use ~~when~~ if the property was originally purchased for use outside this ~~state~~ State by the out-of-state
12 firm and ~~was~~ was, in ~~fact~~ fact, used by that firm outside this ~~state~~ State for a substantial period of time.

13
14 *History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264; Chapter 105, Articles 39, 40, 42, 43, and*
15 *46;*
16 *Eff. February 1, 1976;*
17 *Amended Eff. December 1, 1997; October 1, ~~1993-1993;~~*
18 *Readopted Eff. January 1, 2024.*

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0121

DEADLINE FOR RECEIPT: October 13, 2023

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

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

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

The introductory language of the repeal references 17 NCAC 07B .4204. Please correct.

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

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

3

4 **17 NCAC 07B .0121 BANKRUPT'S LIABILITY**

5

6 *History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264; 11 U.S.C. 532;*

7 *Eff. February 1, 1976;*

8 *Amended Eff. October 1, ~~1993-1993~~;*

9 *Repealed Eff. January 1, 2024.*

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

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 07B .0801

DEADLINE FOR RECEIPT: October 13, 2023

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

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

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

On line 9, consider adding “G.S. ~~105-164.13~~ 105-164.13(62a)” to improve readability.

Regarding line 10, how is a manufacturer meant to comply with 17 NCAC 07B .106? .106 deals with sales for resale, while this rule deals with purchases to satisfy a warranty.

On line 26, consider adding “G.S. ~~105-164.12~~ 105-164.12(62a)” to improve readability.

Regarding line 27, how is a dealer meant to comply with 17 NCAC 07B .106? .106 deals with sales for resale, while this rule deals with purchases to satisfy a warranty.

Regarding the history note, do not include entire articles in the authority section (on lines 11 and 12, “Chapter 105, Articles 39, 40, 42, 43, and 46”). I am not sure that the subject matter of those articles (imposition of local taxes) is necessary for this history note at all, since it does not appear to provide “the authority for the rule,” per 26 NCAC 02C .0406(a), or “cite the law under which the rule is adopted,” per G.S. 150B-21.19.

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

Seth Ascher
Commission Counsel

Date submitted to agency: October 9, 2023

1 17 NCAC 07B .0801 is readopted with substantive changes pursuant to G.S. 150B-21.3A(c)(2)g without notice
2 pursuant to G.S. 150B-1(D)(4) as follows:

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4 **17 NCAC 07B .0801 MANUFACTURER’S WARRANTY AND DEALER’S WARRANTY;**
5 **ADJUSTMENTS AND REPLACEMENTS**

6 (a) Manufacturer’s Warranty:

7 (1) Exempt Purchases. -- Purchases by a manufacturer of a replacement item, a repair part, or repair,
8 maintenance, and installation services to maintain or repair tangible personal property or a motor
9 vehicle pursuant to a manufacturer’s warranty, as the term is defined in G.S. 105-164.13, are exempt
10 from sales and use tax if the manufacturer complies with 17 NCAC 07B .0106. This exemption also
11 applies when the manufacturer contracts with a dealer or another person to make the repairs on
12 behalf of the manufacturer pursuant to a manufacturer’s warranty and that dealer or person
13 purchases the replacement item, repair part, or repair, maintenance, and installation services.

14 (2) Tax Due On Repair Charges. -- If the manufacturer does not charge the purchaser of the property
15 being repaired for the replacement item, repair parts, or any repair, maintenance, and installation
16 services, no sales or use tax is due on the cost of the replacement item, parts, or services. If the
17 manufacturer charges the purchaser of the property being repaired for the replacement item, repair
18 parts, or any repair, maintenance, and installation services, sales and use tax is due on the sales price
19 of the item, parts, or services. ~~Whenever any taxable article is returned to the manufacturer for~~
20 ~~adjustment, replacement, or exchange under a guaranty as to its quality or service and pursuant~~
21 ~~thereto a new article is given free, or at a reduced price, the sales or use tax shall be computed on~~
22 ~~the actual amount, if any, paid to the manufacturer for the new article.~~

23 (b) Dealer’s Warranty:

24 (1) Exempt Purchases. -- Purchases by a dealer of a replacement item, a repair part, or repair,
25 maintenance, and installation services to maintain or repair tangible personal property or a motor
26 vehicle pursuant to a dealer’s warranty, as the term is defined in G.S. 105-164.13, are exempt from
27 sales and use tax if the dealer complies with 17 NCAC 07B .0106. This exemption also applies when
28 the dealer contracts with another person to make the repairs on behalf of the dealer pursuant to a
29 dealer’s warranty and that person purchases the replacement item, repair part, or repair,
30 maintenance, and installation services.

31 (2) Tax Due On Repair Charges. -- If the dealer does not charge the purchaser of the property being
32 repaired for the replacement item, repair parts, or any repair, maintenance, and installation services,
33 no sales or use tax is due on the cost of the replacement item, parts, or services. If the dealer charges
34 the purchaser of the property being repaired for the replacement item, repair parts, or any repair,
35 maintenance, and installation services, sales and use tax is due on the sales price of the item, parts,
36 or services. ~~Dealers using tangible personal property to fulfill sales warranties or guaranty~~

1 obligations to a customer without cost to the customer are not liable for the applicable statutory state
2 and local sales or use tax on the dealer's cost price of all tangible personal property so used.

3
4 History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264;
5 Article 39; Article 40; Article 42; Article 43; Article 44; Chapter 105, Articles 39, 40, 42, 43, and
6 46;
7 *Eff. February 1, 1976*;
8 *Amended Eff. April 1, 2006; October 1, 1993; October 1, ~~1991~~1991*;
9 *Readopted Eff. January 1, 2024.*