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HOUSE BILL DRH30347-SV-14 (02/21)

Short Title: Exempt Manufacturing Equip. From Tax & Study. (Public)

Sponsors: Representative S. Martin.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT MANUFACTURING EQUIPMENT FROM TAX AND TO DIRECT
3 THE REVENUE LAWS STUDY COMMITTEE TO STUDY WAYS IN WHICH TO
4 CLARIFY THE SCOPE OF THE EXEMPTION BY MODERNIZING AND FURTHER
5 DEFINING THE STATUTORY LANGUAGE AND BY INCORPORATING THE
6 ADMINISTRATIVE INTERPRETATIONS OF THE DEPARTMENT OF REVENUE.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.(a)** Article 5F of Chapter 105 of the General Statutes and
9 G.S. 105-164.13(5a) are repealed.

10 **SECTION 1.(b)** G.S. 105-164.4I(b) reads as rewritten:

11 "(b) Exemptions. – The tax imposed by this section does not apply to the sales price of
12 or the gross receipts derived from a service contract applicable to any of the following items:

- 13 (1) An item exempt from tax under this Article.
14 (2) A transmission, distribution, or other network asset contained on
15 utility-owned land, right-of-way, or easement.
16 (3) A transmission, an engine, rear-end gears, and any other item purchased by a
17 professional motorsports racing team or a related member of a team for
18 which the team may receive a sales tax refund under
19 G.S. 105-164.14A(a)(5). This subdivision expires January 1, 2020.
20 (4) ~~An item subject to tax under Article 5F of Chapter 105 of the General~~
21 ~~Statutes.~~
22 (5) A qualified aircraft or a qualified jet engine."

23 **SECTION 2.(a)** G.S. 105-164.13 is amended by adding the following new
24 subdivisions to read:

25 "**§ 105-164.13. Retail sales and use tax.**

26 The sale at retail and the use, storage, or consumption in this State of the following tangible
27 personal property, digital property, and services are specifically exempted from the tax imposed
28 by this Article:

- 29 ...
30 (5e) Sales of mill machinery or mill machinery parts or accessories to any of the
31 following:
32 a. A manufacturing industry or plant. A manufacturing industry or plant
33 does not include (i) a delicatessen, cafe, cafeteria, restaurant, or
34 another similar retailer that is principally engaged in the retail sale of
35 foods prepared by it for consumption on or off its premises or (ii) a
36 production company.



- 1 b. A contractor or subcontractor if the purchase is for use in the
2 performance of a contract with a manufacturing industry or plant.
- 3 c. A subcontractor if the purchase is for use in the performance of a
4 contract with a general contractor that has a contract with a
5 manufacturing industry or plant.
- 6 (5f) Sales to a major recycling facility of any of the following tangible personal
7 property for use in connection with the facility:
- 8 a. Cranes, structural steel crane support systems, and foundations
9 related to the cranes and support systems.
- 10 b. Port and dock facilities.
- 11 c. Rail equipment.
- 12 d. Material handling equipment.
- 13 (5g) Sales of equipment, or an attachment or repair part for equipment, that meets
14 all of the following requirements:
- 15 a. Is sold to a company primarily engaged at the establishment in
16 research and development activities in the physical, engineering, and
17 life sciences included in industry group 54171 of NAICS.
- 18 b. Is capitalized by the company for tax purposes under the Code.
- 19 c. Is used by the company at the establishment in the research and
20 development of tangible personal property.
- 21 (5h) Sales of equipment, or an attachment or repair part for equipment, that meets
22 all of the following requirements:
- 23 a. Is sold to a company primarily engaged at the establishment in
24 software publishing activities included in industry group 5112 of
25 NAICS.
- 26 b. Is capitalized by the company for tax purposes under the Code.
- 27 c. Is used by the company at the establishment in the research and
28 development of tangible personal property.
- 29 (5i) Sales of equipment, or an attachment or repair part for equipment, that meets
30 all of the following requirements:
- 31 a. Is sold to a company primarily engaged at the establishment in
32 industrial machinery refurbishing activities included in industry
33 group 811310 of NAICS.
- 34 b. Is capitalized by the company for tax purposes under the Code.
- 35 c. Is used by the company at the establishment in repairing or
36 refurbishing tangible personal property.
- 37 (5j) Sales of the following to a company located at a ports facility for waterborne
38 commerce:
- 39 a. Machinery and equipment that is used at the facility to unload or to
40 facilitate the unloading or processing of bulk cargo to make it
41 suitable for delivery to and use by manufacturing facilities.
- 42 b. Parts, accessories, or attachments used to maintain, repair, replace,
43 upgrade, improve, or otherwise modify such machinery and
44 equipment.
- 45 (5k) Sales of equipment, or an attachment or repair part for equipment, that meets
46 all of the following requirements:
- 47 a. Is sold to a person that gathers and obtains ferrous metals, nonferrous
48 metals, and items that have served their original economic purpose
49 and that converts them by processes, including sorting, cutting,
50 classifying, cleaning, baling, wrapping, shredding, or shearing into a
51 new or different product for sale consisting of prepared grades.

- 1 b. Is capitalized by the person for tax purposes under the Code.
2 c. Is used by the person in a conversion process described in this
3 subdivision.
4 d. Is not a motor vehicle or an attachment or repair part for a motor
5 vehicle.
- 6 (5l) Sales of equipment, or an attachment or repair part for equipment, that meets
7 all of the following requirements:
8 a. Is sold to a company primarily engaged at the establishment in
9 processing tangible personal property for the purpose of extracting
10 precious metals, as defined in G.S. 66-406, to determine the value for
11 potential purchase.
12 b. Is capitalized by the company for tax purposes under the Code.
13 c. Is used by the company in the process described in this subdivision.
- 14 (5m) Sales of equipment, or an attachment or repair part for equipment, that meets
15 all of the following requirements:
16 a. Is sold to a company that is engaged in the fabrication of metal work
17 and that has annual gross receipts, including the gross receipts of all
18 related persons, as defined in G.S. 105-163.010, from the fabrication
19 of metal work of at least eight million dollars (\$8,000,000).
20 b. Is capitalized by the company for tax purposes under the Code.
21 c. Is used by the company at the establishment in the fabrication or
22 manufacture of metal products or used by the company to create
23 equipment for the fabrication or manufacture of metal products.
- 24 (5n) Sales of equipment, or an accessory, an attachment, or a repair part for
25 equipment, that meets all of the following requirements:
26 a. Is sold to a large manufacturing and distribution facility.
27 b. Is used in the manufacturing process, the assembly process, or the
28 distribution process.
29 c. Is not electricity.
- 30 If the level of investment or employment required by G.S. 105-164.3(16f)b.
31 is not timely made, achieved, or maintained, then the exemption provided
32 under this subdivision is forfeited. If the exemption is forfeited due to a
33 failure to timely make the required investment or to timely achieve the
34 minimum required employment level, then the exemption provided under
35 this subdivision is forfeited on all purchases. If the exemption is forfeited
36 due to a failure to maintain the minimum required employment level once
37 that level has been achieved, then the exemption provided under this
38 subdivision is forfeited for those purchases occurring on or after the date the
39 taxpayer fails to maintain the minimum required employment level. A
40 taxpayer that forfeits an exemption under this subdivision is liable for all
41 past sales and use taxes avoided as a result of the forfeiture, computed at the
42 applicable State and local rates from the date the taxes would otherwise have
43 been due, plus interest at the rate established under G.S. 105-241.21. Interest
44 is computed from the date the sales or use tax would otherwise have been
45 due. The past taxes and interest are due 30 days after the date of forfeiture. A
46 taxpayer that fails to pay the past taxes and interest by the due date is subject
47 to the provisions of G.S. 105-236. This subdivision expires for sales
48 occurring on or after July 1, 2018.
- 49 (5o) Sales of repair or replacement parts for a ready-mix concrete mill, regardless
50 of whether the mill is freestanding or affixed to a motor vehicle, to a
51 company that primarily sells ready-mix concrete.

...."

SECTION 2.(b) G.S. 105-164.3 is amended by adding a new subdivision to read:

"(16f) Large manufacturing and distribution facility. – A facility that satisfies both of the following conditions:

a. The facility is used primarily for manufacturing or assembling products and distributing finished products.

b. The Secretary of Commerce has certified that an investment of private funds of at least eighty million dollars (\$80,000,000) has been or will be made in real and tangible personal property for the facility within five years after the date on which the first property investment is made and that the facility will achieve an employment level of at least 550 within five years after the date the facility is placed into service and maintain that minimum level of employment throughout its operation."

SECTION 3. Sales of mill machinery to manufacturers and certain industrial processors have historically enjoyed preferential tax treatment, whether in the form of a reduced wholesale tax, a preferential rate of sales and use tax, or a one-percent (1%) privilege tax with an eighty-dollar (\$80.00) cap per article. Despite the nature of the tax, the operational language has remained virtually unchanged for over 60 years and lacks clear guidance with regard to its application. Specifically, Article 5F of Chapter 105 of the General Statutes, and its predecessors, did not define "manufacturing industry or plant" or "mill machinery." This lack of guidance has resulted in a substantial body of administrative interpretation being developed over the years by the Department of Revenue. These interpretations are not included in the statutes and may not necessarily comport with the traditional definition of manufacturing, but they may be consistent with the General Assembly's intent to provide preferential tax treatment to certain industrial equipment.

This act repeals the one-percent (1%) privilege tax on mill machinery and mill machinery parts and accessories and substitutes a sales and use tax exemption for same said items. However, the General Assembly recognizes that, once this transition has occurred, efforts need to be made to provide more guidance and specificity to taxpayers and the Department of Revenue with respect to the treatment of manufacturing and industrial processing equipment. Therefore, the Revenue Laws Study Committee is directed to study ways in which to clarify the scope of the sales and use tax exemption for mill machinery, as enacted by this act, by modernizing and further defining the statutory language and by incorporating existing administrative interpretations of the Department of Revenue, to the extent the General Assembly desires to maintain those interpretations.

The Committee may report its findings, together with any recommended legislation, to the 2018 Regular Session of the 2017 General Assembly upon its convening. The study may include an examination of the following:

(1) The criteria that had to be met under prior law to qualify for the preferential rate under Article 5F of Chapter 105 of the General Statutes and whether that criteria should be incorporated into or otherwise clarified in the corresponding sales and use tax exemption, as enacted by this act, including the following:

a. What constitutes an eligible manufacturer or industrial processor.

b. The extent to which a business's activities must consist of manufacturing or processing items for sale in order for the sales and use tax exemption, as enacted by this act, to apply.

c. The types of activities that qualify as manufacturing or industrial processing.

- 1 d. The types of machinery, parts, accessories, and other supplies that
2 are eligible for the exemption and the degree to which they must be
3 used in that process to qualify.
4 (2) A review of the Department's administrative interpretations of the mill
5 machinery statute, in all its forms, and whether and how to incorporate those
6 interpretations into the statutes.
7 (3) Terminology used by surrounding states in their statutory provisions that
8 provide a sales and use tax exemption for manufacturing equipment.
9 (4) Any other issues the Committee deems relevant.
10 **SECTION 4.** Sections 1 and 2 of this act become effective July 1, 2017, and apply
11 to sales made on or after that date. The remainder of this act is effective when it becomes law.