

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 1079*
Committee Substitute Favorable 5/19/20

Short Title: Various Sales Tax Changes.

(Public)

Sponsors:

Referred to:

May 14, 2020

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS SALES AND USE TAX CHANGES, AS RECOMMENDED
3 BY THE REVENUE LAWS STUDY COMMITTEE.
4 The General Assembly of North Carolina enacts:

5
6 **PART I. RELIEF FOR AUCTIONEERS AND ESTATE SALE COMPANIES**

7 **SECTION 1.(a)** G.S. 105-164.13E(a)(7) reads as rewritten:

8 "(7) Any of the following animals:

9 a. Baby chicks and poult~~s sold for commercial poultry or egg~~
10 production-poults.

11 b. Livestock."

12 **SECTION 1.(b)** G.S. 105-164.3 is amended by adding a new subdivision to read:

13 "(#) Livestock. – Cattle, sheep, goats, swine, horses, or mules."

14 **SECTION 1.(c)** G.S. 105-237.1(a) reads as rewritten:

15 "(a) Authority. – The Secretary may compromise a taxpayer's liability for a tax that is
16 collectible under G.S. 105-241.22 when the Secretary determines that the compromise is in the
17 best interest of the State and makes one or more of the following findings:

18 ...

19 (9) The taxpayer is an auctioneer licensed under Chapter 85B of the General
20 Statutes, and the assessment is for sales tax that the taxpayer failed to collect
21 for the sale of livestock at auction. The Secretary must determine that the
22 taxpayer has made a good-faith effort to comply with the tax laws, including
23 being registered as a retailer on or before July 1, 2020. This subdivision
24 applies to assessments for any tax due for a reporting period ending prior to
25 July 1, 2020. This subdivision does not apply if the person received specific
26 written advice from the Secretary for the transactions at issue for the laws in
27 effect for the applicable period or for tax collected and not remitted to the
28 Department."

29 **SECTION 1.(d)** G.S. 105-164.4J is amended by adding a new subsection to read:

30 "(j) Grace Period. – The Department shall take no action to assess a person for any tax
31 due for a filing period beginning on or after February 1, 2020, and ending prior to October 1,
32 2020, with respect to any of the circumstances listed in this subsection. This subsection does not
33 apply to (i) a person that received specific written advice from the Secretary for the transactions
34 at issue for the laws in effect for the applicable period, (ii) a person that collected tax and failed
35 to remit it to the Department, or (iii) the retail sale of inventory that was held for resale. The
36 applicable circumstances are:



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1 (1) The person sells tangible personal property on behalf of the owner of the
2 tangible personal property, or the owner's estate, whether by auction or
3 through the pricing of items, and the sale was conducted at the owner's home
4 or farm.

5 (2) The person sells fixtures and equipment held for use in operating a retail or
6 wholesale business on behalf of a business, whether by auction or through the
7 pricing of items, and the sale is conducted at the business location."

8 **SECTION 1.(e)** Subsections (a) and (b) of this section become effective July 1, 2020,
9 and apply to sales occurring on or after that date. The remainder of this section is effective when
10 it becomes law.

11

12 **PART II. EXPANSION OF LARGE FULFILLMENT FACILITY EXEMPTION**

13 **SECTION 2.(a)** G.S. 105-164.13(5o) reads as rewritten:

14 "(5o) Sales of equipment, or an accessory, an attachment, or a repair part for
15 equipment, that meets all of the following requirements:

16 a. Is sold to a large fulfillment ~~facility~~ facility or to a contractor or
17 subcontractor if the purchase is for use in the performance of a contract
18 with the large fulfillment facility.

19 b. Is used at the facility ~~in~~ for any of the following purposes:

20 1. In the distribution process, which includes receiving,
21 inventorying, sorting, repackaging, or distributing finished
22 retail products.

23 2. Baling previously used packaging for resale, sanitizing
24 required by federal law, or material handling.

25 c. Is not electricity.

26 If the level of investment or employment required by G.S. 105-164.3(97)b. is
27 not timely made, achieved, or maintained, then the exemption provided under
28 this subdivision is forfeited. If the exemption is forfeited due to a failure to
29 timely make the required investment or to timely achieve the minimum
30 required employment level, then the exemption provided under this
31 subdivision is forfeited on all purchases. If the exemption is forfeited due to a
32 failure to maintain the minimum required employment level once that level
33 has been achieved, then the exemption provided under this subdivision is
34 forfeited for those purchases occurring on or after the date the taxpayer fails
35 to maintain the minimum required employment level. A taxpayer that forfeits
36 an exemption under this subdivision is liable for all past sales and use taxes
37 avoided as a result of the forfeiture, computed at the applicable State and local
38 rates from the date the taxes would otherwise have been due, plus interest at
39 the rate established under G.S. 105-241.21. Interest is computed from the date
40 the sales or use tax would otherwise have been due. The past taxes and interest
41 are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past
42 taxes and interest by the due date is subject to the provisions of G.S. 105-236."

43 **SECTION 2.(b)** Refund. – A large fulfillment facility is allowed a refund of all North
44 Carolina State and local sales and use taxes paid by the large fulfillment facility, or paid by a
45 contractor or subcontractor on the large fulfillment facility's behalf, for purchases of items
46 eligible for exemption under G.S. 105-164.13(5o), as amended by this section, if the purchase
47 was made on or after April 1, 2020, but before July 1, 2020. A request for a refund under this
48 section must be in writing and must include any information and documentation required by the
49 Secretary. A request for a refund under this section must be made on or after July 1, 2020, and is
50 due before October 1, 2020. A refund allowed under this section is not an overpayment of tax
51 and does not accrue interest as provided in G.S. 105-241.21.

1 **SECTION 2.(c)** Subsection (a) of this section becomes effective July 1, 2020, and
 2 applies to sales occurring on or after that date. The remainder of this section is effective when it
 3 becomes law.

4
 5 **PART III. CLARIFY DIGITAL PROPERTY/ONLINE LEARNING**

6 **SECTION 3.(a)** G.S. 105-164.3, as amended by Section 1 of this act, reads as
 7 rewritten:

8 **"§ 105-164.3. Definitions.**

9 The following definitions apply in this Article:

10 ...

- 11 (##) Additional digital goods. – All of the following if transferred electronically:
 12 a. A magazine, a newspaper, a newsletter, a report, or another
 13 publication.
 14 b. A photograph.
 15 c. A greeting card.

16 ...

- 17 (7) ~~Audio~~ Digital audio work. – A work that results from the fixation of a series
 18 of musical, spoken, or other sounds, including a ~~ringtone~~ ringtone, that is
 19 transferred electronically.

- 20 (9) ~~Audiovisual~~ Digital audiovisual work. – A series of related ~~images and any~~
 21 ~~sounds accompanying the images that~~ images, that when shown in succession,
 22 impart an impression of motion when shown in succession, together
 23 with accompanying sounds, if any, and that is transferred electronically.

- 24 (##) Digital book. – A work that is generally recognized in the ordinary and usual
 25 sense as a book that is transferred electronically.

26 ...

- 27 (23) ~~Certain digital property.~~ – ~~An item listed in this subdivision that is delivered~~
 28 ~~or accessed electronically and that is not considered tangible personal~~
 29 ~~property.~~ Specified digital products and additional digital goods. The term
 30 does not include an information service. ~~The items are:~~ service or an
 31 educational service.

32 a. ~~An audio work.~~

33 b. ~~An audiovisual work.~~

34 e. ~~A book, magazine, a newspaper, a newsletter, a report, or another~~
 35 ~~publication.~~

36 d. ~~A photograph or a greeting card.~~

37 ...

- 38 (58) Educational service. – The delivery of instruction or training, whether
 39 provided in real time, on demand, or at another set time, by or on behalf of a
 40 qualifying educational entity where at least one of the following conditions
 41 applies:

42 a. The instruction or training is part of the curriculum for an enrolled
 43 student.

44 b. The instruction or training is encompassed within the institution's
 45 accreditation or prepares an enrolled student for gainful employment
 46 in a recognized occupation.

47 c. The participant is evaluated by an instructor. "Evaluated by an
 48 instructor" does not include being graded by, scored by, or evaluated
 49 by a computer program or an interactive, automated method.

50 d. The participant is connected to the presenter or instructor via the
 51 Internet or other networks, allowing the participant to provide, receive,

1 or discuss information through live interaction, contemporaneous with
 2 the presentation.

3 ...
 4 (170) Qualifying educational entity. – An entity listed in this subdivision. For
 5 purposes of this definition, references to the United States Code mean the
 6 United States Code as enacted as of January 1, 2020. The entities are:

- 7 a. An elementary or secondary school, as defined in 20 U.S.C. § 7801.
- 8 b. An institution of higher education, as defined in 20 U.S.C. § 1002.

9 ...
 10 (#) Specified digital products. – Digital audio works, digital audiovisual works,
 11 and digital books.

12 ...
 13 (#) Transferred electronically. – Obtained by the purchaser by means other than
 14 tangible storage media and includes delivered or accessed electronically.

15"

16 **SECTION 3.(b)** G.S. 105-164.13 reads as rewritten:

17 **"§ 105-164.13. Retail sales and use tax.**

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

20 ...
 21 (72) Sales of a digital audio work or a digital audiovisual work that is a qualifying
 22 education expense under G.S. 115C-595(a)(3) to the operator of a home
 23 school as defined in G.S. 115C-563.

24 (73) Sales of a digital audio work or digital audiovisual work that consists of
 25 nontaxable service content when the electronic transfer of the digital audio
 26 work or digital audiovisual work occurs contemporaneously with the
 27 provision of the nontaxable service in real time."

28 **SECTION 3.(c)** The Revisor of Statutes is authorized to renumber the subdivisions
 29 of G.S. 105-164.3 to ensure that the subdivisions are listed in alphabetical order and in a manner
 30 that reduces the current use of alphanumeric designations, to make conforming changes, and to
 31 reserve sufficient space to accommodate future additions to the statutory section.

32 **SECTION 3.(d)** This section is effective retroactively to October 1, 2019, and
 33 applies to sales occurring on or after that date.

34 **PART IV. EFFECTIVE DATE**

35 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
 36 law.
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