

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 1079*

Short Title: Various Sales Tax Changes. (Public)

Sponsors: Representatives Howard, Ross, Setzer, and Szoka (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Finance, if favorable, Rules, Calendar, and Operations of the House

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 poults 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 any tax due for a filing
31 period beginning on or after February 1, 2020, and ending prior to October 1, 2020, if a person
32 conducted a sale of tangible personal property on behalf of the owner of the tangible personal
33 property for which the person was compensated, the sale was conducted at the owner's home or
34 farm, and regardless of whether the sale was conducted by auction or through the pricing of items.
35 This subsection does not apply in any of the following circumstances:



- 1 (1) The person received specific written advice from the Secretary for the
2 transactions at issue for the laws in effect for the applicable period.
3 (2) The person collected tax and failed to remit it to the Department."

4 **SECTION 1.(e)** Subsections (a) and (b) of this section become effective July 1, 2020,
5 and apply to sales occurring on or after that date. The remainder of this section is effective when
6 it becomes law.
7

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

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

10 "(5o) Sales of equipment, or an accessory, an attachment, or a repair part for
11 equipment, that meets all of the following requirements:

- 12 a. Is sold to a large fulfillment ~~facility~~facility or to a contractor or
13 subcontractor if the purchase is for use in the performance of a contract
14 with the large fulfillment facility.
15 b. Is used at the facility for any of the following purposes:
16 1. ~~in~~In the distribution process, which includes receiving,
17 inventorying, sorting, repackaging, or distributing finished
18 retail products.
19 2. Baling previously used packaging for resale, sanitizing
20 required by federal law, or material handling.

21 c. Is not electricity.

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

39 **SECTION 2.(b)** Refund. – An eligible taxpayer is allowed a refund of all State and
40 local sales and use taxes paid on eligible purchases in accordance with this subsection. The
41 following definitions apply in this subsection:

- 42 (1) Eligible taxpayer. – A large fulfillment facility with respect to eligible
43 purchases made by the large fulfillment facility, or a contractor or
44 subcontractor with respect to eligible purchases made by the contractor or
45 subcontractor on behalf of a large fulfillment facility.
46 (2) Eligible purchase. – The purchase of an item eligible for exemption under
47 G.S. 105-164.13(5o), as amended by this section, if the purchase was made
48 on or after April 1, 2020, but before July 1, 2020.

49 A request for a refund under this section must be in writing and must include any
50 information and documentation required by the Secretary. A request for a refund under this
51 subsection must be made on or after July 1, 2020, and is due before October 1, 2020. Refunds

1 applied for after the due date are barred taxes for which a refund is allowed under this section are
2 not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21.

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

6 **PART III. CLARIFY DIGITAL PROPERTY/ONLINE LEARNING**

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

9 **"§ 105-164.3. Definitions.**

10 The following definitions apply in this Article:

11 ...

12 (#) Additional digital goods. – All of the following if transferred electronically:

13 a. A magazine, a newspaper, a newsletter, a report, or another
14 publication.

15 b. A photograph.

16 c. A greeting card.

17 ...

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

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

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

25 ...

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

31 a. ~~An audio work.~~

32 b. ~~An audiovisual work.~~

33 c. ~~A book, magazine, a newspaper, a newsletter, a report, or another~~
34 ~~publication.~~

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

36 ...

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

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

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

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

d. The participant is connected to the presenter or instructor via the Internet or other networks, allowing the participant to provide, receive, or discuss information through live interaction, contemporaneous with the presentation.

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

a. An elementary or secondary school, as defined in 20 U.S.C. § 7801.

b. An institution of higher education, as defined in 20 U.S.C. § 1002.

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

...."

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

"§ 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:

...
(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."

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

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

PART IV. EFFECTIVE DATE

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