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SENATE BILL DRS15119-MCf-116

Short Title: Repeal Service Tax. (Public)

Sponsors: Senators Smith, Grafstein, and Bradley (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO REPEAL THE SERVICE TAX AND TO MAKE VARIOUS CONFORMING  
3 CHANGES NECESSARY TO EFFECTUATE THE REPEAL.  
4 The General Assembly of North Carolina enacts:

6 PART I. REPEAL OF SERVICE TAX AND ATTENDANT CONFORMING CHANGES

7 SECTION 1.(a) G.S. 105-164.4 reads as rewritten:

8 "§ 105-164.4. Tax imposed on retailers and certain facilitators.

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

12 (1) The general rate of tax applies to the following items sold at retail:

13 ...

14 e. ~~The sales price of or gross receipts derived from repair, maintenance,~~  
15 ~~and installation services to tangible personal property or certain digital~~  
16 ~~property, regardless of whether the tangible personal property or~~  
17 ~~certain digital property is taxed under another subdivision in this~~  
18 ~~section or is subject to a maximum tax under another subdivision in~~  
19 ~~this section. Repair, maintenance, and installation services generally~~  
20 ~~include any tangible personal property or certain digital property that~~  
21 ~~becomes a part of or is applied to a purchaser's property. The use tax~~  
22 ~~exemption in G.S. 105-164.27A(a3) may apply to these services.~~  
23 ~~Repair, maintenance, and installation services for real property are~~  
24 ~~taxable under subdivision (16) of this subsection.~~

25 ...

26 (11) ~~The general rate of tax applies to the sales price of or the gross receipts derived~~  
27 ~~from a service contract. A service contract is taxed in accordance with~~  
28 ~~G.S. 105-164.4I.~~

29 ...

30 (16) ~~The general rate applies to the sales price of or the gross receipts derived from~~  
31 ~~repair, maintenance, and installation services for real property and generally~~  
32 ~~includes any tangible personal property or certain digital property that~~  
33 ~~becomes a part of or is applied to a purchaser's property. A mixed transaction~~  
34 ~~contract and a real property contract are taxed in accordance with~~  
35 ~~G.S. 105-164.4H. A property management contract is taxable in accordance~~  
36 ~~with G.S. 105-164.4K.~~



\* D R S 1 5 1 9 - M C F - 1 1 6 \*

...."

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

**"§ 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:

...

(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, where the purchaser can potentially first make use of the prewritten software.~~ 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."

**SECTION 1.(c)** G.S. 105-164.4D reads as rewritten:

**"§ 105-164.4D. Bundled transactions.**

(a) Tax Application. – Tax applies to the sales price of a bundled transaction unless one of the following applies:

...

(2) ~~Allocation. – The bundle includes a service, and the retailer determines an allocated price for each item in the bundle based on a reasonable allocation of revenue that is supported by the retailer's business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of each taxable item in the bundle.~~

...

(b) Determining Threshold. – A retailer of a bundled transaction subject to this section may use either the retailer's purchase price or the retailer's sales price to determine if the transaction meets the fifty percent (50%) test or the ten percent (10%) test set out in subdivisions (a)(1) and (a)(3) of this section. A retailer may not use a combination of purchase price and sales price to make this determination. ~~If a bundled transaction subject to subdivision (a)(3) of this section includes a service contract, the retailer of the contract in determining whether the transaction meets the threshold set in the subdivision."~~

**SECTION 1.(d)** G.S. 105-164.4H reads as rewritten:

**"§ 105-164.4H. Real property contract.**

(a) Applicability. – A real property contractor is the consumer of the tangible personal property or certain digital property that the real property contractor purchases, installs, or applies for others to fulfill a real property contract and that becomes part of real property or used to fulfill the contract. A retailer engaged in business in the State shall collect tax on the sales price of an item sold at retail to a real property contractor unless a statutory exemption in G.S. 105-164.13 or G.S. 105-164.13E applies. Where a real property contractor purchases tangible personal property or certain digital property for storage, use, or consumption in this State, ~~or a service sourced to this State,~~ and the tax due is not paid at the time of purchase, the provisions of G.S. 105-164.6 apply except as provided in subsection (b) of this section.

(a1) Substantiation. – ~~Generally, services to real property are retail sales of or the gross receipts derived from repair, maintenance, and installation services and subject to tax in accordance with G.S. 105-164.4(a)(16), unless a person substantiates that a transaction is subject to tax as a real property contract in accordance with subsection (a) of this section, subject to tax as a mixed transaction in accordance with subsection (d) of this section, or the transaction is not subject to tax. A person may substantiate that a transaction is subject to tax as a real property contract or a mixed transaction in accordance with subsection (a) of this section by records that~~

1 establish the transaction is a real property contract or by receipt of an affidavit of capital  
2 improvement. The receipt of an affidavit of capital improvement, absent fraud or other egregious  
3 activities, establishes that the subcontractor or other person receiving the affidavit should treat  
4 the transaction as a capital improvement, and the transaction is subject to tax in accordance with  
5 subsection (a) of this section. A person that issues an affidavit of capital improvement is liable  
6 for any additional tax due on the transaction, in excess of tax paid on related purchases under  
7 subsection (a) of this section, if it is determined that the transaction is not a capital improvement  
8 but rather the transaction is subject to tax as a retail sale. A person who receives an affidavit of  
9 capital improvement from another person, absent fraud or other egregious activities, is not liable  
10 for any additional tax on the gross receipts from the transaction if it is determined that the  
11 transaction is not a capital improvement.

12 ...

13 ~~(d) Mixed Transaction Contract. — A mixed transaction contract is taxable as follows:~~

14 ~~(1) If the allocated sales price of the taxable repair, maintenance, and installation~~  
15 ~~services included in the contract is less than or equal to twenty five percent~~  
16 ~~(25%) of the contract price, then the repair, maintenance, and installation~~  
17 ~~services portion of the contract, and the items used to perform those services,~~  
18 ~~are taxable as a real property contract in accordance with this section.~~

19 ~~(2) If the allocated sales price of the taxable repair, maintenance, and installation~~  
20 ~~services included in the contract is greater than twenty five percent (25%) of~~  
21 ~~the contract price, then sales and use tax applies to the sales price of or the~~  
22 ~~gross receipts derived from the taxable repair, maintenance, and installation~~  
23 ~~services portion of the contract. The person must determine an allocated price~~  
24 ~~for the taxable repair, maintenance, and installation services in the contract~~  
25 ~~based on a reasonable allocation of revenue that is supported by the person's~~  
26 ~~business records kept in the ordinary course of business. Any purchase of~~  
27 ~~tangible personal property or certain digital property to fulfill the real property~~  
28 ~~contract is taxed in accordance with this section.~~

29 ...."

30 **SECTION 1.(e)** G.S. 105-164.4I is repealed.

31 **SECTION 1.(f)** G.S. 105-164.4J reads as rewritten:

32 **"§ 105-164.4J. Marketplace-facilitated sales.**

33 ...

34 ~~(i) Limitation. — This section does not apply to an accommodation facilitator, an~~  
35 ~~admission facilitator, or a service contract facilitator whose collection and remittance~~  
36 ~~requirements are set out in G.S. 105-164.4F, 105-164.4G, and 105-164.4I, respectively. facilitator~~  
37 ~~or an admission facilitator whose collection and remittance requirements are set out in~~  
38 G.S. 105-164.4F and G.S. 105-164.4G, respectively.

39 ...."

40 **SECTION 1.(g)** G.S. 105-164.4K reads as rewritten:

41 **"§ 105-164.4K. Property management contracts.**

42 ~~(a) Taxability of Services under a Property Management Contract. — Repair,~~  
43 ~~maintenance, and installation services taxable under this Article and provided by a real property~~  
44 ~~manager under a property management contract are subject to sales and use tax in the following~~  
45 ~~circumstances:~~

46 ~~(1) Repair, maintenance, installation services provided by the real property~~  
47 ~~manager for an additional charge.~~

48 ~~(2) The real property manager arranges for a third party to provide the repair,~~  
49 ~~maintenance, and installation services and the real property manager imposes~~  
50 ~~an additional contract amount or charge for the arranging of these services.~~

(3) ~~More than twenty five percent (25%) of the time spent managing the real property for a billing or invoice period is attributable to repair, maintenance, and installation services taxable under this Article and not excluded by subsection (b) of this section. The tax applies to the sales price of or the gross receipts derived from the taxable repair, maintenance, and installation services portion of the property management contract. The real property manager must determine an allocated sales price for the repair, maintenance, and installation services portion of the property management contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. The charges for the taxable repair, maintenance, and installation services must be separately stated on the invoice or similar billing document given to the customer at the time of the sale.~~

(b) ~~Exclusions.—The tax imposed by this Article does not apply to the following repair, maintenance, and installation services if the services are provided by the real property manager pursuant to a property management contract:~~

(1) ~~To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore the real property to working order or good condition.~~

(2) ~~To inspect or monitor the real property, including the normal operation of all systems that are part of the real property.~~

(c) ~~Substantiation.—Generally, repair, maintenance, and installation services are subject to tax in accordance with G.S. 105-164.4(a)(16), unless a person substantiates that the services are not taxable as real property management services provided under a property management contract in accordance with subsection (a)(3) of this section, excluded from tax in accordance with subsection (b) of this section, or not subject to tax. A real property manager may substantiate that no more than twenty five percent (25%) of the time spent managing the real property for a billing or invoice period is attributable to repair, maintenance, and installation services taxable under this Article and not excluded by subsection (b) of this section. The substantiation must be based on a reasonable approximation of the real property management services provided and supported by the person's business records kept in the ordinary course of business. The substantiation must be contemporaneously provided for each billing or invoice period and maintained in the business records.~~

(d) ~~Real Property Management Services. — This subsection applies when repair, maintenance, and installation services otherwise taxable under this Article are not subject to sales and use tax. A real property manager is the consumer of the items that the real property manager purchases, installs, applies, or otherwise uses to fulfill a property management contract. A retailer engaged in business in the State shall collect tax on the sales price of an item sold at retail to a real property manager unless a statutory exemption in G.S. 105-164.13 applies.~~

(e) ~~Real Property Manager Acting as Retailer.—This subsection applies when repair, maintenance, and installation services provided by a real property manager are subject to sales and use tax under this section. A real property manager acts as a retailer and makes a sale at retail when it provides repair, maintenance, and installation services taxable under this section unless a statutory exemption in G.S. 105-164.13 applies.~~

...."

**SECTION 1.(h)** G.S. 105-164.6 reads as rewritten:

**"§ 105-164.6. Complementary use tax.**

(a) **Tax.** — An excise tax at the applicable rate and maximum tax, if any, set in G.S. 105-164.4 is imposed on the following items if the item is subject to tax under G.S. 105-164.4:

...

(3) ~~Services sourced to this State.~~

...."

**SECTION 1.(i)** G.S. 105-164.11A reads as rewritten:

**"§ 105-164.11A. Refund of tax paid on rescinded sale or cancellation of service.**

(a) Refund. – A retailer is allowed a refund of sales tax remitted on a rescinded ~~sale or cancelled service.~~ sale. A sale is rescinded when the purchaser returns an item to the retailer and receives a refund, in whole or in part, of the sales price paid, including a refund of the pro rata amount of the sales tax based on the taxable amount of the sales price refunded. ~~A service is cancelled when the service is terminated and the purchaser receives a refund, in whole or in part, of the sales price paid, including a refund of the pro rata amount of the sales tax paid based on the taxable amount of the sales price refunded.~~ A retailer entitled to a refund under this section may reduce taxable receipts by the taxable amount of the refund for the period in which the refund occurs or may request a refund of an overpayment as provided in G.S. 105-241.7, provided the tax has been refunded to the purchaser. The records of the retailer must clearly reflect and support the claim for refund for an overpayment of tax or adjustment to taxable receipts for the period in which the refund occurs.

(b) ~~Service Contract. — When a service contract is cancelled and a purchaser receives a refund, in whole or in part, of the sales price paid for the service contract, the purchaser may receive a refund of the pro rata amount of the sales tax paid based on the taxable amount of the sales price refunded as provided in this subsection:~~

(1) ~~Refund from retailer. — If the purchaser receives a refund on any portion of the sales price for a service contract purchased from the retailer required to remit the tax on the retail sale of the service contract, then the provisions of subsection (a) of this section apply.~~

(2) ~~Refund application. — If the purchaser receives a refund on any portion of the sales price for a service contract from a person other than the retailer required to remit the tax on the retail sale of the service contract, then the amount refunded to the purchaser by the person does not have to include the sales tax on the taxable amount of the refund. If the amount refunded to the purchaser by the person does not include the sales tax paid, then the purchaser may apply to the Department for a refund of the pro rata amount of the tax paid based on the taxable amount of the service contract refunded to the purchaser. The application for a refund by a purchaser must be made on a form prescribed by the Secretary, supported by documentation on the taxable amount of the service contract refunded to the purchaser from the person who refunded that amount, and filed within 30 days after the purchaser receives a refund. An application for a refund filed by the purchaser after the due date is barred. Taxes for which a refund is allowed directly to the purchaser for sales tax paid on a service contract are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21."~~

**SECTION 1.(j)** G.S. 105-164.12B reads as rewritten:

**"§ 105-164.12B. Tangible personal property sold below cost with conditional contract.**

...

(b) Tax. – If a seller transfers an item of tangible personal property as part of a conditional contract, a sale has occurred. The sales price of the item is presumed to be the retail price at which the item would sell in the absence of the conditional contract. ~~Sales tax at the general rate under G.S. 105-164.4(a) is due at the time of the transfer on the following:~~

(1) ~~Any part of the presumed sales price the consumer pays at that time, if the service in the contract is taxable at the combined general rate.~~

(2) ~~The presumed sales price, if the service in the contract is not taxable at the combined general rate.~~

(3) ~~The percentage of the presumed sales price that is equal to the percentage of the service in the contract that is not taxable at the combined general rate, if any part of the service in the contract is not taxable at the combined general rate.~~

...."

**SECTION 1.(k)** G.S. 105-164.13A is repealed.

**SECTION 1.(l)** G.S. 105-164.14 reads as rewritten:

**"§ 105-164.14. Certain refunds authorized.**

(a) Interstate Carriers. – An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives, and fuel, lubricants, repair parts, ~~accessories, service contracts, and repair, maintenance, and installation services~~ and accessories for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An "interstate carrier" is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the railway cars, locomotives, fuel, lubricants, repair parts, ~~accessories, service contracts, and repair, maintenance, and installation services~~ and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the taxable tangible personal property ~~and services~~ listed in subdivision (1) of this subsection. For purposes of this subdivision, the term "taxable" is based on the imposition of tax on the tangible personal property ~~and services~~ in the State.

...

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the mileage ratio. The numerator of the mileage ratio is the number of miles the applicant operated all motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period. The denominator of the mileage ratio is the number of miles the applicant operated all motor vehicles, railroad cars, locomotives, and airplanes both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the tangible personal property ~~and services~~ identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period.

...

(b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity is allowed a semiannual refund of sales and use taxes paid by it under this Article on direct purchases of items for use in carrying on the work of the nonprofit entity. Sales and use tax liability indirectly incurred by a nonprofit entity through reimbursement to an authorized person of the entity for the purchase of tangible personal property ~~and services~~ for use in carrying on the work of the nonprofit entity is considered a direct purchase by the entity. Sales and use tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the nonprofit entity. The

refund allowed under this subsection does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15. The aggregate annual refund amount allowed an entity under this subsection for the State's fiscal year may not exceed thirty-one million seven hundred thousand dollars (\$31,700,000).

...  
(c) Certain Governmental Entities. – A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of items. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. The refund allowed under this subsection does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

...  
(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property ~~or services~~ that are eligible for refund under this subsection acquired by it through the expenditure of contract and grant funds.

...."

**SECTION 1.(m)** G.S. 105-164.20 reads as rewritten:

**"§ 105-164.20. Cash or accrual basis of reporting.**

...  
(b) Accrual Basis. – For purposes of reporting and remitting sales tax under this Article, a retailer listed in this subsection must report the gross receipts it derives from the taxable transaction listed in this subsection on an accrual basis of accounting. The following retailers must report gross receipts as provided in this subsection:

...  
(3) ~~A retailer who sells or derives gross receipts from a service contract, as provided in G.S. 105-164.4I(d)."~~

**SECTION 1.(n)** G.S. 105-164.26 reads as rewritten:

**"§ 105-164.26. Presumption that sales are taxable.**

For the purpose of the proper administration of this Article and to prevent evasion of the retail sales tax, the following presumptions apply:

...  
(5) ~~That a service purchased for receipt in this State is purchased for storage, use, or consumption in this State."~~

**SECTION 1.(o)** G.S. 105-164.27A reads as rewritten:

**"§ 105-164.27A. Direct pay permit.**

(a) General. – A general direct pay permit authorizes its holder to purchase certain items without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A general direct pay permit may not be used for purposes identified in subsections (a1), (a2), (a3), or (b) of this section. A person who purchases an item under a direct pay permit

issued under this subsection is liable for use tax due on the purchase. The tax is payable when the property is placed in use or the service is received. use. A direct pay permit issued under this subsection does not apply to taxes imposed under G.S. 105-164.4 on sales of electricity, piped natural gas, video programming, spirituous liquor, or the gross receipts derived from rentals of accommodations.

...

(a3) Boat and Aircraft. – A direct pay permit issued under this subsection authorizes its holder to purchase tangible personal ~~property, certain digital property, or repair, maintenance, and installation services~~ property or certain digital property for a boat, an aircraft, or a qualified jet engine without paying tax to the seller and authorizes the seller to not collect any tax on the purchased items from the permit holder. A person who purchases the tangible personal ~~property, certain digital property, or repair, maintenance, and installation services~~ property or certain digital property under a direct pay permit must file a return and pay the tax due to the Secretary in accordance with G.S. 105-164.16. A permit holder is allowed a use tax exemption on ~~one or more of the following:~~ (i) the installation charges that are a part of the sales price of tangible personal property or certain digital property purchased by the permit holder for a boat, an aircraft, or a qualified jet engine, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the permit holder at the time of the sale and (ii) ~~the sales price of or gross receipts derived from repair, maintenance, and installation services provided for a boat or an aircraft.~~ sale.

In lieu of purchasing under a direct pay permit pursuant to this subsection, a purchaser may elect to have the seller collect and remit the tax due on behalf of the purchaser. Where the purchaser elects for the seller to collect and remit the tax, an invoice given to the purchaser bearing the proper amount of tax on a retail transaction extinguishes the purchaser's liability for the tax on the transaction. Where a seller cannot or does not separately state installation charges that are a part of the sales price of tangible personal property or certain digital property for a boat, an aircraft, or a qualified jet engine on the invoice or other documentation given to the purchaser at the time of the sale, tax is due on the total purchase price.

~~The amount of the use tax exemption is the amount of the installation charges and the sales price of or gross receipts derived from the repair, maintenance, and installation services that exceed twenty five thousand dollars (\$25,000).~~

...."

**SECTION 1.(p)** G.S. 105-187.5 reads as rewritten:

**"§ 105-187.5. Alternate tax for a limited possession commitment.**

(a) Election. – A retailer may elect not to pay the tax imposed by this Article at the rate set in G.S. 105-187.3 when applying for a certificate of title for a motor vehicle purchased by the retailer for a limited possession commitment. A retailer who makes this election shall pay a tax on the gross receipts of the limited possession commitment of the vehicle. ~~The portion of a limited possession commitment billing or payment that represents any amount applicable to the sales price of a service contract as defined in G.S. 105-164.3 should not be included in the gross receipts subject to the tax imposed by this Article. The charge must be separately stated on documentation given to the purchaser at the time the limited possession commitment goes into effect, or on the monthly billing statement or other documentation given to the purchaser. When a limited possession commitment is sold to another retailer, the seller of the limited possession commitment should provide to the purchaser of the limited possession commitment the documentation showing that the service contract and applicable sales taxes were separately stated at the time the limited possession commitment went into effect and the new retailer must retain the information to support an allocation for tax computed on the gross receipts subject to highway use tax.~~ Like the tax imposed by G.S. 105-187.3, this alternate tax is a tax on the privilege of using the highways of this State. The tax is imposed on a retailer, but is to be added to the limited



possession commitment of a motor vehicle and thereby be paid by the person who enters into a limited possession commitment with a retailer.

...."

**SECTION 1.(q)** G.S. 105-237.1 reads as rewritten:

**"§ 105-237.1. Compromise of liability.**

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

...

(7) The assessment is for sales tax the taxpayer failed to collect or use tax the taxpayer failed to pay as a result of the change in the definition of retailer or the sales tax base expansion to ~~(i) service contracts, (ii) repair, maintenance, and installation services, or (iii) sales transactions~~ for a person in retail trade. The Secretary must determine that the taxpayer made a good-faith effort to comply with the sales and use tax laws. This subdivision applies to assessments for any reporting period beginning March 1, 2016, and ending December 31, 2022.

(8) ~~The assessment is for sales tax the taxpayer failed to collect or use tax the taxpayer failed to pay on repair, maintenance, and installation services provided by a real property manager under a property management contract. The Secretary must determine that the taxpayer made a good faith effort to comply with the sales and use tax laws. Absent fraud or other egregious activities, a taxpayer that substantiated the time spent managing real property for a billing or invoice period as provided under G.S. 105-164.4K(c) will be determined to have made a good faith effort to comply with the sales and use tax laws.~~

...."

**SECTION 1.(r)** G.S. 105-467(b) reads as rewritten:

"(b) Exemptions and Refunds. – The State exemptions and exclusions contained in Article 5 of Subchapter I of this Chapter, except for the exemption for food in G.S. 105-164.13B, apply to the local sales and use tax authorized to be levied and imposed under this Article. The State refund provisions contained in G.S. 105-164.14 and G.S. 105-164.14A apply to the local sales and use tax authorized to be levied and imposed under this Article. A refund of an excessive or erroneous State sales tax collection allowed under G.S. 105-164.11 ~~and a refund of State sales tax paid on a rescinded sale or cancelled service contract under G.S. 105-164.11A apply~~ applies to the local sales and use tax authorized to be levied and imposed under this Article. The aggregate annual local refund amount allowed an entity under G.S. 105-164.14(b) for the State's fiscal year may not exceed thirteen million three hundred thousand dollars (\$13,300,000).

...."

## **PART II. REPEAL OF SERVICE TAX EXEMPTIONS**

**SECTION 2.(a)** 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:

...

(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.~~ sale.

...

- ~~(59) Interior design services provided in conjunction with the sale of tangible personal property.~~
- ~~...~~
- ~~(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 eustodial 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.~~

- ...
- (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.~~ property. 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 ~~item or repair part used~~ 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).~~
- ...
- (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.~~
- ...
- (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 2.(b)** G.S. 105-164.13E reads as rewritten:

**"§ 105-164.13E. Exemption for farmers.**

(a) Exemption. – A qualifying farmer is a person who has an annual income from farming operations for the preceding taxable year of ten thousand dollars (\$10,000) or more or who has an average annual income from farming operations for the three preceding taxable years of ten thousand dollars (\$10,000) or more. For purposes of this section, the term "income from farming operations" means sales plus any other amounts treated as gross income under the Code from farming operations. A qualifying farmer includes a dairy operator, a poultry farmer, an egg producer, and a livestock farmer, a farmer of crops, a farmer of an aquatic species, as defined in G.S. 106-758, and a person who boards horses. A qualifying farmer may apply to the Secretary for an exemption certificate number under G.S. 105-164.28A. The exemption certificate expires when a person fails to meet the income threshold for three consecutive taxable years or ceases to engage in farming operations, whichever comes first.

Except as otherwise provided in this section, the items exempt under this section must be purchased by a qualifying farmer or conditional farmer and used by the qualifying or conditional farmer primarily in farming operations. For purposes of this section, an item is used by a farmer for farming operations if it is used for the planting, cultivating, harvesting, or curing of farm crops, in the production of dairy products, eggs, or animals, or by a person who boards horses. The items that may be exempt from sales and use tax under this section are:

...

~~(10) Repair, maintenance, and installation services.~~

...

~~(e1) Services for Farmer. — A qualifying item listed in subdivision (6) of subsection (a) of this section purchased to fulfill a service for a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate issued under G.S. 105-164.28A is exempt from sales and use tax to the same extent as if purchased directly by the person who holds the exemption certificate. A person that purchases one of the items allowed an exemption under this subsection must provide an exemption certificate to the retailer that includes the name of the qualifying farmer or conditional farmer and the exemption number issued to the qualifying farmer or conditional farmer by the Department pursuant to G.S. 105-164.28A. A person that purchases an item exempt from tax pursuant to this subsection must maintain records to substantiate that an item is used to provide a service for a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate.~~

...."

**SECTION 2.(c)** G.S. 105-164.13F reads as rewritten:

**"§ 105-164.13F. Exemption for wildlife managers.**

...

(b) Exemption. – Certain items purchased by a wildlife manager and used primarily for wildlife management activities may be exempt from sales and use tax under this section. The items that may be exempt under this section are:

...

~~(8) Repair, maintenance, and installation services for items exempt under this subsection.~~

...

~~(e) Services for Wildlife Manager. — An item exempt under subsection (b) of this section purchased to perform a service for a person who holds a wildlife manager exemption certificate issued under G.S. 105-164.28A is exempt from sales and use tax to the same extent as if purchased directly by the person who holds the exemption certificate. A person that purchases one of the items allowed an exemption under this subsection must provide an exemption certificate to the retailer that includes the name of the wildlife manager certificate holder and the~~

1 ~~exemption number issued to the wildlife manager by the Department pursuant to~~  
2 ~~G.S. 105-164.28A. A person that purchases an item exempt from tax under this subsection must~~  
3 ~~maintain records to substantiate that it is used to provide a service for a person who holds a~~  
4 ~~wildlife manager exemption certificate. The records must be maintained for at least three years."~~

### 6 PART III. SALES TAX DEFINITION UPDATES

#### 7 SECTION 3. G.S. 105-164.3 reads as rewritten:

#### 8 "§ 105-164.3. Definitions.

9 The following definitions apply in this Article:

10 ...

11 (25) Bundled transaction. – A retail sale of two or more distinct and identifiable  
12 items, at least one of which is taxable and one of which is nontaxable, for one  
13 nonitemized price. The term does not apply to real ~~property or services to real~~  
14 ~~property.~~ property. Items are not sold for one nonitemized price if an invoice  
15 or another sales document made available to the purchaser separately  
16 identifies the price of each item. A bundled transaction does not include the  
17 retail sale of any of the following:

- 18 a. An item and any packaging that accompanies the item and is exempt  
19 under G.S. 105-164.13(23).
- 20 b. A sale of two or more items whose combined price varies, or is  
21 negotiable, depending on the items the purchaser selects.
- 22 c. A sale of an item accompanied by a transfer of another item with no  
23 additional consideration.
- 24 d. An item and the delivery or installation of the item.
- 25 e. An item and any service necessary to complete the sale.

26 ...

27 (31) Capital improvement. – One or more of the following:

28 ...

- 29 c. Installation of a transmission, distribution, or other network asset on  
30 land owned by a service provider or on a right-of-way or easement in  
31 favor of a service provider, notwithstanding that any separately stated  
32 charges billed to a customer for ~~repair, maintenance, and installation~~  
33 ~~services or a contribution in aid of construction are included in the~~  
34 gross receipts derived from services subject to the combined general  
35 rate under G.S. 105-164.4. For purposes of this sub-subdivision, the  
36 term "service provider" means a person, including a governmental  
37 entity, who provides any of the services listed in this sub-subdivision,  
38 and the term "governmental entity" means a State agency, the federal  
39 government, or a governmental entity listed in G.S. 105-164.14(c).  
40 The services are:

- 41 1. Telecommunications service or ancillary service.
- 42 2. Video programming.
- 43 3. Electricity or piped natural gas.
- 44 4. Water or sewer service.

45 ...

- 46 e. Painting or wallpapering of real ~~property, except where painting or~~  
47 ~~wallpapering is incidental to the repair, maintenance, and installation~~  
48 ~~services.~~ property.
- 49 f. Replacement or installation of a septic tank system, siding, roof,  
50 plumbing, electrical, commercial refrigeration, irrigation, sprinkler, or  
51 other similar system. ~~The term does not include the repair,~~

- replacement, or installation of electrical or plumbing components, water heaters, gutters, and similar individual items that are not part of new construction, reconstruction, or remodeling.
- g. Replacement or installation of a heating or air conditioning unit or a heating, ventilation, or air conditioning system. ~~The term does not include the repair, replacement, or installation of gas logs, water heaters, pool heaters, and similar individual items that are not part of new construction, reconstruction, or remodeling.~~
- ...
- k. An addition or alteration to real property that is permanently affixed or installed to real property and is not an activity listed in subdivision (225) of this section as repair, maintenance, and installation services.property.
- ...
- (87) Facilitator. – An accommodation ~~facilitator, an admission facilitator, or a service contract facilitator.~~facilitator or an admission facilitator.
- ...
- (95) Gross sales. – The sum total of the sales price of all sales of tangible personal property, digital property, and ~~services.~~property and digital property.
- ...
- (113) Item. – Tangible personal ~~property, digital property, or a service,~~property or digital property unless the context requires otherwise.
- ...
- (137) ~~Mixed transaction contract. — A contract that includes both a real property contract for a capital improvement and repair, maintenance, and installation services for real property that are not related to the capital improvement.~~
- ...
- (159) Nonresident retail or wholesale merchant. – A person who does not have a place of business in this State, is registered for sales and use tax purposes in a taxing jurisdiction outside the State, and is engaged in the business of acquiring, by purchase, consignment, or otherwise, tangible personal property or certain digital property and selling the property outside the ~~State or in the business of providing a service.~~State.
- ...
- (211) Real property management services. – Any of the following activities:
- a. Hiring and supervising employees for the real property.
  - b. Providing a person to manage the real property.
  - c. Receiving and applying revenues received from property owners or tenants of the real property.
  - d. ~~Providing repair, maintenance, and installation services to comply with obligations of a homeowners' association or a landlord under a lease, rental, or management agreement.~~
  - e. ~~Arranging for a third party to provide repair, maintenance, and installation services.~~
  - f. ~~Incurring and paying expenses for the management, repair, and maintenance of the real property.~~
  - g. Handling administrative affairs for the real property.
- ...
- (219) Remodeling. – A transaction comprised of multiple services performed by one or more persons to restore, improve, alter, or update real ~~property that may otherwise be subject to tax as repair, maintenance, and installation services if~~

~~separately performed. property.~~ The term includes a transaction where the internal structure or design of one or more rooms or areas within a room or building are substantially changed. ~~The term does not include a single service that is included in repair, maintenance, and installation services. The term does not include a transaction where the true purpose is repair, maintenance, and installation services no matter that another service included in repair, maintenance, and installation services is performed that is incidental to the true purpose of the transaction; examples~~ Examples include repair of sheetrock that includes applying paint, replacement of cabinets that includes installation of caulk or molding, and the installation of hardwood floors that includes installation of shoe molding.

(221) Remote sale. – A sale of an item ordered by mail, telephone, Internet, mobile phone application, or another method by a retailer who receives the order in another state and delivers the item or makes it accessible to a person in this State or causes the item to be delivered or made accessible to a person in this State ~~or performs a service sourced to this State.~~ It is presumed that a resident of this State who makes an order was in this State at the time the order was made.

...

~~(225) Repair, maintenance, and installation services. The term includes the activities listed in this subdivision and applies to tangible personal property, motor vehicles, certain digital property, and real property. The term does not include a service used to fulfill a real property contract taxed in accordance with G.S. 105-164.4H. The included activities are:~~

- ~~a. To keep or attempt to keep property or a motor vehicle in working order to avoid breakdown and prevent deterioration or repairs. Examples include to clean, wash, or polish property.~~
- ~~b. To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property or a motor vehicle to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.~~
- ~~c. To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore property or a motor vehicle to proper working order or good condition. The term includes activities that may lead to the issuance of an inspection report.~~
- ~~d. To install, apply, connect, adjust, or set into position tangible personal property or certain digital property. The term includes floor refinishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like kind item, such as replacing one or more windows, is repair, maintenance, and installation services. The term does not include an installation defined as a capital improvement under subdivision (31)d. of this section and substantiated as a capital improvement under G.S. 105-164.4H(a1).~~
- ~~e. To inspect or monitor property or install, apply, or connect tangible personal property or certain digital property on a motor vehicle or adjust a motor vehicle.~~

...



(235) Sale or selling. — The transfer for consideration of title, license to use or consume, or possession of tangible personal property or certain digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. The term applies to the following:

...

~~g. A service contract.~~

...

(245) ~~Service contract. — A contract where the obligor under the contract agrees to maintain, monitor, inspect, repair, or provide another service included in the definition of repair, maintenance, and installation services to certain digital property, tangible personal property, or real property for a period of time or some other defined measure. The term does not include a single service included in repair, maintenance, or installation services, but does include a contract where the obligor may provide a service included in the definition of repair, maintenance, and installation services as a condition of the contract. The term includes a service contract for a pool, fish tank, or similar aquatic feature and a home warranty. Examples include a warranty agreement other than a manufacturer's warranty or dealer's warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair agreement, or a similar agreement or contract.~~

(247) ~~Service contract facilitator. — A person who contracts with the obligor of a service contract to market the service contract and accepts payment from the purchaser for the service contract.~~

...."

#### **PART IV. EFFECTIVE DATE**

**SECTION 4.** This act becomes effective July 1, 2025, and applies to services provided on or after that date.