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BILL DRAFT 2013-RBxz-36A [v.5] (10/10)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: Sales Tax Law Changes.

(Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS CHANGES TO THE SALES TAX LAWS.

The General Assembly of North Carolina enacts:

**CHANGES RE: REPEAL OF SALES TAX EXEMPTION FOR MEALS SOLD IN THE
DINING HALL OF AN EDUCATIONAL INSTITUTION TO STUDENTS**

SECTION 1.(a). G.S. 105-164.3 reads as rewritten:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

...

~~(26b)~~(27) Prepaid calling service. – A right that meets all of the following requirements:

- a. Authorizes the exclusive purchase of telecommunications service.
- b. Must be paid for in advance.
- c. Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.
- d. Is sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis.

~~(27a)~~ Prepaid meal plan. – A right that meets all of the following requirements:

- a. Entitles a person to food or prepared food.
- b. Must be paid for in advance.
- c. Provides for predetermined units of prepared food but does not include a dollar value that declines with use.

~~(27)~~(27b) Prepaid telephone calling service. – Prepaid calling service or prepaid wireless calling service.

~~(27a)~~(27c) Prepaid wireless calling service. – A right that meets all of the following requirements:

- a. Authorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services.
- b. Must be paid for in advance.
- c. Is sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis.



1 ..."

2 **SECTION 1.(b)** G.S. 105-164.4(a) is amended by adding the following new
3 subdivision to read:

4 **"§ 105-164.4. Tax imposed on retailers.**

5 (a) A privilege tax is imposed on a retailer at the following percentage rates of the
6 retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and
7 three-quarters percent (4.75%).

8 ...

9 (12) The gross receipts derived from a prepaid meal plan. For purposes of this
10 subdivision, a person that offers a prepaid meal plan is considered a retailer
11 under this Article."

12 **SECTION 1.(c)** G.S. 105-164.4B is amended by adding a new subsection to read:
13 **"§ 105-164.4B. Sourcing principles.**

14 "(g) Prepaid Meal Plan. – The gross receipts derived from a prepaid meal plan are
15 sourced to the location where the meals are available to be consumed."

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

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

19 (1) Fifty percent (50%) test. – All of the products in the bundle are tangible
20 personal property, the bundle includes one or more of the exempt products
21 listed in this subdivision, and the price of the taxable products in the bundle
22 does not exceed fifty percent (50%) of the price of the bundle:

23 a. Food exempt under G.S. 105-164.13B.

24 b. A drug exempt under G.S. 105-164.13(13).

25 c. Medical devices, equipment, or supplies exempt under
26 G.S. 105-164.13(12).

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

32 (3) Ten percent (10%) test. – The price of the taxable products in the bundle
33 does not exceed ten percent (10%) of the price of the bundle, and no other
34 subdivision in this subsection applies.

35 (4) Prepaid meal plan. – The bundle includes a prepaid meal plan and a dollar
36 value that declines with use. In this circumstance, tax applies to the allocated
37 price of the prepaid meal plan."

38 **SECTION 1.(e)** G.S. 105-164.13(26) reads as rewritten:

39 **"§ 105-164.13. Retail sales and use tax.**

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

43 ...

44 (26) Food and prepared food sold not for profit by a ~~nonpublic or public school,~~
45 ~~including a charter school and a regional school,~~ school within the school
46 building during the regular school day. For purposes of this exemption, the
47 term "school" is an entity regulated under Chapter 115C of the General
48 Statutes."

49 **SECTION 1.(f)** G.S. 105-164.13 is amended by adding the following new
50 subdivision to read:

1 **"§ 105-164.13. Retail sales and use tax.**

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

5 ...
6 (63) Sales of food and prepared food to a person who offers a prepaid meal plan
7 to another person when the food and prepared food is for a person entitled to
8 the food and prepared food under a prepaid meal plan."

9 **SECTION 1.(g)** G.S. 105-164.14(b) and (c) read as rewritten:

10 "(b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity is allowed a semiannual
11 refund of sales and use taxes paid by it under this Article on direct purchases of tangible
12 personal property and ~~services, other than electricity, telecommunications service, and ancillary~~
13 ~~service, services~~ for use in carrying on the work of the nonprofit entity. Sales and use tax
14 liability indirectly incurred by a nonprofit entity through reimbursement to an authorized
15 person of the entity for the purchase of tangible personal property and ~~services, other than~~
16 ~~electricity, telecommunications service, and ancillary service, services~~ for use in carrying on
17 the work of the nonprofit entity is considered a direct purchase by the entity. Sales and use tax
18 liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and
19 equipment that become a part of or annexed to any building or structure that is owned or leased
20 by the nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity
21 for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct
22 purchases by the nonprofit entity. The refund allowed under this subsection does not apply to
23 purchases of electricity, telecommunications service, ancillary service, and a prepaid meal plan.
24 A request for a refund must be in writing and must include any information and documentation
25 required by the Secretary. A request for a refund for the first six months of a calendar year is
26 due the following October 15; a request for a refund for the second six months of a calendar
27 year is due the following April 15.

28 The refunds allowed under this subsection do not apply to an entity that is owned and
29 controlled by the United States or to an entity that is owned or controlled by the State and is not
30 listed in this subsection. A hospital that is not listed in this subsection is allowed a semiannual
31 refund of sales and use taxes paid by it on over-the-counter drugs purchased for use in carrying
32 out its work. The following nonprofit entities are allowed a refund under this subsection:

33 ...

34 (c) Certain Governmental Entities. – A governmental entity listed in this subsection is
35 allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases
36 of tangible personal property and ~~services, other than electricity, telecommunications service,~~
37 ~~and ancillary service, services.~~ Sales and use tax liability indirectly incurred by a governmental
38 entity on building materials, supplies, fixtures, and equipment that become a part of or annexed
39 to any building or structure that is owned or leased by the governmental entity and is being
40 erected, altered, or repaired for use by the governmental entity is considered a sales or use tax
41 liability incurred on direct purchases by the governmental entity for the purpose of this
42 subsection. The refund allowed under this subsection does not apply to purchases of electricity,
43 telecommunications service, and ancillary service. A request for a refund must be in writing
44 and must include any information and documentation required by the Secretary. A request for a
45 refund is due within six months after the end of the governmental entity's fiscal year.

46 This subsection applies only to the following governmental entities:

47 ..."

48 **SECTION 1.(h)** Subsections (g) and (h) of this section are effective when they
49 become law. The remainder of this section becomes effective July 1, 2013, and applies to gross
50 receipts derived on or after that date.

CHANGES RE: NEWSPAPERS SOLD IN VENDING MACHINES AND PENNY VENDING MACHINES

SECTION 2.(a) G.S. 105-164.13(30) is repealed.

SECTION 2.(b) G.S. 105-164.13(50) 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 tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(50) Fifty percent (50%) of the sales price of tangible personal property sold through a coin-operated vending machine, other than ~~tobacco~~ tobacco and newspapers."

SECTION 2.(c) This section becomes effective October 1, 2014, and applies to sales made on or after that date.

CHANGES RE: SALES TAX ON SERVICE CONTRACTS

SECTION 3.(a) G.S. 105-105-164.3(38b) reads as rewritten:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

...

(38b) Service contract. – A warranty agreement, a maintenance agreement, a repair contract, or a similar agreement or contract by which the ~~seller~~ provider agrees to maintain or repair tangible personal property.

...."

SECTION 3.(b) G.S. 105-164.13(62) 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 tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(62) An item used to maintain or repair tangible personal property pursuant to a service contract if the purchaser of the contract is not charged for the item. For purposes of this exemption, "item" does not include tools, equipment, supplies, or similar tangible personal property used to complete the maintenance or repair and are not deemed to be a component or repair part of the tangible personal property subject to the service contract."

SECTION 3.(c) Subsection (a) of this section becomes effective October 1, 2014, and applies to sales made on or after that date. The remainder of this section is effective when it becomes law.

CHANGES RE: EXEMPTION FOR SALES TAX APPLICABLE TO ADMISSION CHARGES

SECTION 4.(a) Section 5(f) of S.L. 2013-316 reads as rewritten:

"SECTION 5.(f) This section becomes effective January 1, 2014, and applies to admissions purchased on or after that date. For admissions to a live event, the tax applies to the initial sale or resale of tickets occurring on or after that date; gross receipts received on or after January 1, 2014, for admission to a live event, for which the initial sale of tickets occurred before that date, other than gross receipts received by a ticket reseller, are taxable under

G.S. 105-37.1. Admissions to a live event that occurs on or after January 1, 2015, are taxable under G.S. 105-164.4, regardless of when the initial sale of the tickets occurred."

SECTION 4.(b) G.S. 105-164.4B is amended by adding a new subsection to read:
"§ 105-164.4B. Sourcing principles.

(h) Admission charges. – An admission to an event is sourced to the location where admission to the entertainment activity is gained by a person."

SECTION 4.(c) G.S. 105-164.13(60) 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 tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

(60) Admission charges to any of the following entertainment activities:

a. An event that is held at an elementary or secondary school and is sponsored by the school. For purposes of this exemption, the term "school" is an entity regulated under Chapter 115C of the General Statutes.

f. An event sponsored by a nonprofit entity that is exempt from tax under Article 4 of this Chapter if all of the following conditions are met:

1. The entire proceeds of the activity are used exclusively for the entity's nonprofit purposes.
2. The entity does not declare dividends, receive profits, or pay salary or other compensation to any members or employees.
3. The entity does not compensate any person for participating in the event, performing in the event, placing in the event, or producing the event. For purposes of this subdivision, the term "compensate" means any remuneration included in a person's gross income as defined in section 61 of the Code.

...".

SECTION 4.(d) G.S. 105-164.13(60)b, c, d, and e are repealed.

SECTION 4.(e) Subsection (c) of this section becomes effective October 1, 2014. Subsection (d) of this section becomes effective January 1, 2015. The remainder of this section is effective when it becomes law.

CHANGE RE: SALES TAX ON MANUFACTURED AND MODULAR HOMES

SECTION 5.(a) G.S. 105-164.13 is amended by adding a new subdivision to read:
"§ 105-164.13. Retail sales and use tax.

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

(63) Fifty percent (50%) of the sales prices of a modular home or a manufactured home."

SECTION 5.(b) This section becomes effective October 1, 2014.

EFFECTIVE DATE

1 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes
2 law.