



## Bill Draft 2013-RBxz-36A: Sales Tax Law Changes.

2013-2014 General Assembly

**Committee:** Revenue Laws Study Committee  
**Introduced by:**  
**Analysis of:** 2013-RBx-36A

**Date:** December 9, 2013  
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**SUMMARY:** *This draft makes several clarifying, conforming, administrative, and rate changes to the sales tax laws.*

### CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

Section	Issue	Explanation and Effective Date
1	Meals sold in Higher Educational Dining Halls	<p>S.L. 2013-316 repealed the exemption for meals served to students in dining rooms of regularly operated by educational institutions. In practice, meals are not always sold directly. Today, educational institutions sell a variety of meal plans that offer choices between a specific number of "meal swipes" and "food dollars". The meal swipes are part of a prepaid meal plan that entitles the student to a predetermined number of meals. The cost applies regardless of whether or not the student consumes the meals. The food dollars are part of declining card balance, much like a debit card, that may be used in on-campus facilities for a variety of purchases as well as with participating privately-owned facilities. The meal swipes are problematic to tax on a transactional basis because the gross receipts paid for the meal swipes applies regardless of whether or not the meals are consumed. In practice, few institutions operate their dining halls; instead, they contract with third party vendors to prepare the meals and operate the dining halls. All of the contracts are different. The Department of Revenue has spent a considerable amount of time analyzing all of the contracts made available to it. In some instances, it appears the institution is the retailer; in other instances it appears the third party vendor in the retailer.</p> <p>This section imposes the sales tax on the gross receipts derived from a prepaid meal plan. The tax is imposed on purchases made with the food dollars at the time of purchase. By imposing the tax on the gross receipts derived from a prepaid meal plan, the administrative compliance burden and confusion is simplified.</p> <p>Subsection (a) defines a prepaid meal plan. Subsection (b) imposes sales tax on the gross receipts derived from a prepaid meal plan. Subsection (c) provides that the local sales tax is sourced to the location of institution where the meals are consumed or available to be consumed. Subsection (d) provides that if the prepaid meal plan and declining card balance are sold as a bundle, which they often are, the tax applies to the gross receipts allocated to the prepaid meal plan. Subsection (e) clarifies that the remaining sales tax exemption for meals sold in elementary and secondary schools applies to any school regulated under Chapter 115C. Public K-12 schools, private K-12 schools, regional schools, and home</p>



Section	Issue	Explanation and Effective Date
		<p>schools are regulated under Chapter 115C. Residential schools are regulated elsewhere.<sup>1</sup> Subsection (f) exempts food and prepared food used to prepare a meal for consumption under a prepaid meal plan from sales tax because this transaction is analogous to a sale for resale.</p> <p>Subsection (g) provides that a nonprofit entity is not allowed a sales tax refund for purchases of a prepaid meal plan. This subsection would apply in those instances where the third party vendor is considered the retailer and the institution is considered the purchaser. This provision will not be needed when the taxable transaction becomes the gross receipts derived from a prepaid meal plan as opposed to the purchase of the meal itself.</p> <p>Subsection (g) is effective when it becomes law. The remaining changes become effective July 1, 2014, and apply to gross receipts derived on or after that date.</p>
2	Vending machines and newspaper sold in vending machines	<p>Subsection (a) repeals the sales tax exemption for sales from vending machines of one cent per sale. The provision is obsolete.</p> <p>S.L. 2013-316 removed the sales tax exemption applicable to newspapers sold by street vendors, newspaper carriers, and vending machines. The intent was to tax all newspapers at the State and local sales tax rate. However, G.S. 105-164.13(50) exempts 50% of the sales price of items sold through a coin-operated vending machine from sales tax.</p> <p>To maintain the intent of the 2013 tax law change, subsection (b) provides that the sales tax exemption applicable to 50% of the sales price of items sold through a vending machine does not apply to newspapers. The law currently excludes tobacco products sold through vending machines from this 50% exemption.</p> <p>This section becomes effective October 1, 2014, and applies to sales made on or after that date.</p>
3	Service contracts	<p>S.L. 2013-316 expanded the sales tax base to include the sales price of a service contract by which the seller agrees to maintain or repair the tangible personal property. The intent of the legislation was to treat all service contracts the same, regardless of who provided the service. Subsection (a) changes the definition of a service contract so that tax applies to a contract by which the provider agrees to maintain or repair the tangible personal property. This subsection becomes effective October 1, 2014.</p> <p>S.L. 2013-316 exempted from sales tax an item used to maintain or repair tangible personal property pursuant to a service contract. Subsection (b) provides that the exemption does not apply to tools, equipment, or supplies needed to maintain or repair the property since these items are not component parts of the property repaired or maintained. The Department of Revenue suggested this change.</p> <p>Subsection (a) becomes effective October 1, 2014. The remainder of this section is effective when it becomes law.</p>

<sup>1</sup> The School of Math and Science and the School of the Arts are part of the UNC system.

4	Admission Charges	<p>Effective January 1, 2014, S.L. 2013-316 expanded the sales tax base to include gross receipts derived from admissions to a live event, a movie, and other attractions for which an admission is charged. Under current law, live events are subject to a 3% gross receipts privilege tax. The intent of the act was to tax admissions to live events the same, regardless of when the admission was purchased. The act provided that the gross receipts for a live event where the initial sale of admission occurred on or before January 1, 2014, would be taxed under the old 3% gross receipts privilege tax statutes. To prevent this grandfather provision from being abused, subsection (a) provides that the gross receipts derived from admission to a live event purchased on or after January 1, 2015, will be taxable under the sales tax statutes, regardless of the date of the initial sale of tickets.</p> <p>Subsection (b) provides that the local sales tax derived from admission charges will be sourced to the location where admission to the entertainment activity is gained by the person.</p> <p>The act exempted the following events from the tax: events at elementary and secondary schools, agricultural fairs, youth sporting events, State attractions, and limited nonprofit events. The latter three exemptions caused confusion and resulted in similar entertainments being taxed differently. The chairs of the Revenue Laws Study Committee appointed Sen. Rucho, Rep. Carney, and Rep. Moffitt to a subcommittee to consider the exemptions. The subcommittee stated a desire that similar entertainment events should be taxed similarly. The subcommittee expressed a concern about the administrative burdens of the imposing, collecting, and remitting the tax for very small nonprofit entities. At the suggestion of the subcommittee, subsection (c) would eliminate the current sales tax exemptions for agricultural fairs, youth athletic contests, nonprofit events, and State attractions. It would retain the sales tax exemption for events sponsored and held at elementary and secondary schools and it would create an exemption for an event sponsored by a nonprofit entity exempt from State income tax if all of the following conditions are met:</p> <ul style="list-style-type: none"><li>• The entire proceeds of the activity are used exclusively for the entity's nonprofit purposes.</li><li>• The entity does not declare dividends, receive profits, or pay salary or other compensation to any members or employees.</li><li>• The entity does not compensate any person for participating in the event, performing in the event, placing in the event, or producing the event.</li></ul> <p>Subsection (c) would become effective October 1, 2014.</p> <p>The subcommittee noted that the current law provides that the privilege tax continues to apply to admissions to live events where the initial sale of tickets occurred before January 1, 2013. In talking with various nonprofit entities that offer admission to live events, it appears that the initial sale of admission to most performances scheduled to occur on or before October 1, 2014, will have occurred prior to December 31, 2013. Admission to those performances will continue to be taxed in accordance with the privilege license statutes and this grandfather provision lessens any tax inequities between similar forms of entertainment between January 1, 2014, and the effective date of the exemptions</p>
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		as revised by subsection (c) of this section.
5	Tax Rate on Manufactured and Modular Homes	<p>Effective January 1, 2014, S.L. 2013-316 increased the State sales tax rate on manufactured and modular homes. In response to industry concerns, this section imposes the tax on ½ of the price of the home by exempting 50% of the sales price from sales tax. The industry states that the average material cost in a factory-built home is approximately 50% of the invoice price. The intent of this section is to more closely tax manufactured and modular homes in a similar manner as stick-built homes.</p> <p>This section becomes effective October 1, 2014.</p>