

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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1

HOUSE BILL 1249

Short Title: Close Sales Tax Loopholes.

(Public)

Sponsors: Representatives Colton, Luebke, Stamey, Withrow; and Easterling.

Referred to: Finance.

May 10, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE TAX FAIRNESS BY CLOSING LOOPHOLES AND
3 ELIMINATING SPECIAL EXEMPTIONS IN THE SALES TAX AND
4 BEVERAGE TAX LAWS.

5 The General Assembly of North Carolina enacts:

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10 PART I.

11 SALES TAX PREFERENCES REPEALED

12 Section 1.1. G.S. 105-164.3(20) reads as rewritten:

13 "(20) 'Tangible personal property' means and includes personal property
14 which may be seen, weighed, measured, felt or touched or is in any
15 other manner perceptible to the senses. The term 'tangible personal
16 property' shall not include stocks, bonds, notes, insurance or other
17 obligations or securities, nor shall it include water delivered by or
18 through main lines or pipes either for commercial or domestic use or
19 consumption. The term includes all computer programs. As used in
20 this subdivision, the term 'computer program' "canned" or prewritten
21 computer programs, either in the form of written procedures or in the form
22 of storage media on which or in which the program is recorded, held, or
23 existing for general or repeated sale, lease, or license to use or consume. The
24 term does not include the design, development, writing, translation,

1 fabrication, lease, license to use or consume, or transfer for a consideration
2 of title or possession of a custom computer program, other than a basic
3 operational program, either in the form of written procedures or in the form
4 of storage media on which or in which the program is recorded, or any
5 required documentation or manuals designed to facilitate the use of the
6 custom computer program.

7 As used in this subdivision:

- 8 a. ~~" Basic operational program" or "control program" means a~~
9 ~~computer program that is fundamental and necessary to the~~
10 ~~functioning of a computer. A basic operational program is that~~
11 ~~part of an operating system, including supervisors, monitors,~~
12 ~~executives, and control or master programs, which consists of~~
13 ~~the control program elements of that system. A control or~~
14 ~~master program, as opposed to a processing program, controls~~
15 ~~the operation of a computer by managing the allocation of all~~
16 ~~system resources, including the central processing unit, main~~
17 ~~storage, input/output devices, and processing programs. A~~
18 ~~processing program is used to develop and implement the~~
19 ~~specific applications the computer is to perform.~~
- 20 b. " Computer program" means the complete plan for the solution of
21 a problem, such as the complete sequence of automatic data-
22 processing equipment instructions necessary to solve a problem,
23 and includes both systems and application programs and
24 subdivisions, such as assemblers, compilers, routines,
25 generators, and utility programs.
- 26 e. ~~" Custom computer program" means a computer program~~
27 ~~prepared to the special order of the customer. Custom computer~~
28 ~~programs include one of the following elements:~~
- 29 1. ~~Preparation or selection of the programs for the~~
30 ~~customer's use requires an analysis of the customer's~~
31 ~~requirements by the vendor; or~~
 - 32 2. ~~The program requires adaptation by the vendor to be~~
33 ~~used in a particular make and model of computer~~
34 ~~utilizing a specified output device.~~
- 35 d. ~~" Storage media" means punched cards, tapes, disks, diskettes,~~
36 ~~or drums."~~

37 Sec. 1.2. G.S. 105-164.4(a) reads as rewritten:

38 "(a) A privilege tax is imposed on a retailer at the following percentage rates of
39 the retailer's net taxable sales, ~~or gross receipts from the lease or rental of tangible personal~~
40 ~~property, as appropriate: sales or gross receipts, as appropriate.~~ The general rate of tax is
41 three percent (3%).

- 42 (1) ~~At the rate of three percent (3%) of~~ The general rate of tax applies to the
43 sales price of each item or article of tangible personal property that is
44 sold at retail and is not subject to tax under another subdivision in this
45 section.

- 1 (1a) ~~At the rate of two percent (2%) of~~ The rate of two percent (2%) applies to
2 the sales price of each manufactured home sold at retail, including all
3 accessories attached to the manufactured home when it is delivered to
4 the purchaser, not to exceed three hundred dollars (\$300.00). Each
5 section of a manufactured home that is transported separately to the
6 site where it is to be erected is a separate article.
- 7 (1b) ~~At the rate of two percent (2%) of the sales price of each aircraft, boat,~~
8 ~~railway car, or locomotive sold at retail, including all accessories~~
9 ~~attached to the item when it is delivered to the purchaser, not to exceed~~
10 ~~one thousand five hundred dollars (\$1,500).~~
- 11 (1c) ~~At the rate of one percent (1%) of the sales price on the following~~
12 ~~items:~~
- 13 a. ~~Horses or mules by whomsoever sold.~~
14 b. ~~Semen to be used in the artificial insemination of animals.~~
15 c. ~~Sales of fuel, other than electricity or piped natural gas, to~~
16 ~~farmers to be used by them for any farm purposes other than~~
17 ~~preparing food, heating dwellings and other household~~
18 ~~purposes. The quantity of fuel purchased or used at any one~~
19 ~~time shall not in any manner be a determinative factor as to~~
20 ~~whether any sale or use of fuel is or is not subject to the one~~
21 ~~percent (1%) rate of tax imposed herein.~~
- 22 d. ~~Sales of fuel, other than electricity or piped natural gas, to~~
23 ~~manufacturing industries and manufacturing plants for use in~~
24 ~~connection with the operation of such industries and plants~~
25 ~~other than sales of fuels to be used for residential heating~~
26 ~~purposes. The quantity of fuel purchased or used at any one~~
27 ~~time shall not in any manner be a determinative factor as to~~
28 ~~whether any sale or use of fuel is or is not subject to the one~~
29 ~~percent (1%) rate of tax imposed herein.~~
- 30 e. ~~Sales of fuel, other than electricity or piped natural gas, to~~
31 ~~commercial laundries or to pressing and dry cleaning~~
32 ~~establishments for use in machinery used in the direct~~
33 ~~performance of the laundering or the pressing and cleaning~~
34 ~~service.~~
- 35 f. ~~Sales to freezer locker plants of wrapping paper, cartons and~~
36 ~~supplies consumed directly in the operation of such plant.~~
- 37 (1d) ~~At the rate of one percent (1%) of the sales price, subject to a~~
38 ~~maximum tax of eighty dollars (\$80.00) per article, on the following~~
39 ~~items:~~
- 40 a. ~~Sales of machines and machinery, whether animal or motor~~
41 ~~drawn or operated, and parts and accessories for such machines~~
42 ~~and machinery to farmers for use by them in the planting,~~
43 ~~cultivating, harvesting or curing of farm crops, and sales of~~
44 ~~machines and machinery and parts and accessories for such~~

1 ~~machines and machinery to dairy operators, poultry farmers,~~
2 ~~egg producers, and livestock farmers for use by them in the~~
3 ~~production of dairy products, poultry, eggs or livestock, except~~
4 ~~such machines, machinery, equipment, parts, and accessories~~
5 ~~that come within the provisions of G.S. 105-164.13(4e).~~

6 ~~The term 'machines and machinery' as used in this~~
7 ~~subdivision is defined as follows:~~

8 ~~The term shall include all vehicular implements, designed~~
9 ~~and sold for any use defined in this subdivision, which are~~
10 ~~operated, drawn or propelled by motor or animal power, but~~
11 ~~shall not include vehicular implements which are operated~~
12 ~~wholly by hand, and shall not include any motor vehicles~~
13 ~~required to be registered under Chapter 20 of the General~~
14 ~~Statutes.~~

15 ~~The term shall include all nonvehicular implements and~~
16 ~~mechanical devices designed and sold for any use defined in~~
17 ~~this subdivision, which have moving parts, or which require the~~
18 ~~use of any motor or animal power, fuel, or electricity in their~~
19 ~~operation but shall not include nonvehicular implements which~~
20 ~~have no moving parts and are operated wholly by hand.~~

21 ~~The term shall also include metal flues sold for use in curing~~
22 ~~tobacco, whether such flues are attached to handfired furnaces~~
23 ~~or used in connection with mechanical burners.~~

24 ~~b. Sales of mill machinery or mill machinery parts and accessories~~
25 ~~to manufacturing industries and plants, and sales to contractors~~
26 ~~and subcontractors purchasing mill machinery or mill~~
27 ~~machinery parts and accessories for use by them in the~~
28 ~~performance of contracts with manufacturing industries and~~
29 ~~plants, and sales to subcontractors purchasing mill machinery or~~
30 ~~mill machinery parts and accessories for use by them in the~~
31 ~~performance of contracts with general contractors who have~~
32 ~~contracts with manufacturing industries and plants. As used in~~
33 ~~this paragraph, the term 'manufacturing industries and plants'~~
34 ~~does not include delicatessens, cafes, cafeterias, restaurants, and~~
35 ~~other similar retailers that are principally engaged in the retail~~
36 ~~sale of foods prepared by them for consumption on or off their~~
37 ~~premises.~~

38 ~~e. Sales of central office equipment and switchboard and private~~
39 ~~branch exchange equipment to telephone companies regularly~~
40 ~~engaged in providing telephone service to subscribers on a~~
41 ~~commercial basis, and sales to these companies of prewritten~~
42 ~~computer programs used in providing telephone service to their~~
43 ~~subscribers.~~

- 1 d. ~~Sales to commercial laundries or to pressing and dry cleaning~~
 2 ~~establishments of machinery used in the direct performance of~~
 3 ~~the laundering or the pressing and cleaning service and of parts~~
 4 ~~and accessories thereto.~~
- 5 e. ~~Sales to freezer locker plants of machinery used in the direct~~
 6 ~~operation of said freezer locker plant and of parts and~~
 7 ~~accessories thereto.~~
- 8 f. ~~Sales of broadcasting equipment and parts and accessories~~
 9 ~~thereto and towers to commercial radio and television~~
 10 ~~companies which are under the regulation and supervision of~~
 11 ~~the Federal Communications Commission.~~
- 12 g. ~~Sales to farmers of bulk tobacco barns and racks and all parts~~
 13 ~~and accessories thereto and similar apparatus used for the~~
 14 ~~curing and drying of any farm produce.~~
- 15 h. ~~Sales to farmers of grain, feed or soybean storage facilities and~~
 16 ~~accessories thereto, whether or not dryers are attached, and all~~
 17 ~~similar apparatus and accessories thereto for the storage of~~
 18 ~~grain, feed or soybeans.~~
- 19 i. ~~Sales of containers to farmers or producers for use in the~~
 20 ~~planting, producing, harvesting, curing, marketing, packaging,~~
 21 ~~sale, or transporting or delivery of their products when such~~
 22 ~~containers do not go with and become part of the sale of their~~
 23 ~~products at wholesale or retail.~~

24 (2) ~~At the applicable percentage rate of~~ The applicable percentage rate
 25 ~~applies to the gross receipts derived from the lease or rental of tangible~~
 26 ~~personal property by a person who is engaged in the business of~~
 27 ~~leasing or renting tangible personal property, or is a retailer and leases~~
 28 ~~or rents property of the type sold by the retailer. The applicable~~
 29 ~~percentage rate is the rate and the maximum tax, if any, that applies to~~
 30 ~~a sale of the property that is leased or rented. A person who leases or~~
 31 ~~rents property shall also collect the tax imposed by this section on the~~
 32 ~~separate retail sale of the property.~~

33 (3) ~~Operators of hotels, motels, tourist homes, tourist camps, and similar~~
 34 ~~type businesses and persons who rent private residences and cottages~~
 35 ~~to transients are considered retailers under this Article. There is levied~~
 36 ~~upon every such retailer a tax of three percent (3%) of~~ A tax at the general
 37 ~~rate of tax is levied on the gross receipts derived by the retailer from~~
 38 ~~the rental of any rooms, lodgings, or accommodations furnished to~~
 39 ~~transients for a consideration. This tax does not apply to any private~~
 40 ~~residence or cottage that is rented for less than 15 days in a calendar~~
 41 ~~year or to any room, lodging, or accommodation supplied to the same~~
 42 ~~person for a period of 90 or more continuous days.~~

43 As used in this subdivision, the term 'persons who rent to transients'
 44 means (i) owners of private residences and cottages who rent to

1 transients and (ii) rental agents, including 'real estate brokers' as
2 defined in G.S. 93A-2, who rent private residences and cottages to
3 transients on behalf of the owners. If a rental agent is liable for the tax
4 imposed by this subdivision, the owner is not liable.

5 (4) Every person, firm or corporation engaged in the business of operating
6 a pressing club, cleaning plant, hat-blocking establishment, dry-
7 cleaning plant, laundry (including wet or damp wash laundries and
8 businesses known as launderettes and launderalls), or any similar
9 business, or engaged in the business of renting clean linen or towels or
10 wearing apparel, or any similar business, or engaged in the business of
11 soliciting cleaning, pressing, hat blocking, laundering or rental
12 business for any of the aforementioned businesses, shall be considered
13 'retailers' for the purposes of this Article. ~~There is hereby levied upon~~
14 ~~every such person, firm or corporation a tax of three percent (3%) of~~ A tax
15 at the general rate of tax is levied on the gross receipts derived by
16 these retailers from services rendered in engaging in any of the
17 occupations or businesses named in this subdivision, and every person,
18 firm or corporation subject to the provisions of this subdivision shall
19 register and secure a license in the manner hereinafter provided in this
20 section, and, insofar as practicable, all other provisions of this Article
21 shall be applicable with respect to the tax herein provided for. ~~The tax~~
22 ~~imposed by this subdivision does not apply to receipts derived from coin or~~
23 ~~token-operated washing machines, extractors, and dryers.~~ The taxes levied
24 in this subdivision are additional privilege or license taxes for the
25 privilege of engaging in the occupations or businesses named herein.
26 Any person, firm or corporation engaged in cleaning, pressing, hat
27 blocking, laundering for, or supplying clean linen or towels or wearing
28 apparel to, another person, firm or corporation engaged in soliciting
29 shall not be required to pay the three percent (3%) tax on its gross
30 receipts derived through such solicitor, if the soliciting person, firm or
31 corporation has registered with the Department, secured the license
32 hereinafter required and has paid the tax at the rate of three percent
33 (3%) of the total gross receipts derived from business solicited.

34 (4a) ~~At the rate of three percent (3%) of~~ The rate of three percent (3%) applies
35 to the gross receipts derived by a utility from sales of electricity, piped
36 natural gas, or local telecommunications service as defined by G.S.
37 105-120(e). A person who operates a utility is considered a retailer
38 under this Article.

39 (4b) A person who sells tangible personal property at a flea market, other
40 than his own household personal property, is considered a retailer
41 under this Article. A tax at the general rate of tax is levied on that
42 ~~person at the rate of three percent (3%) of the sales price of each article~~
43 ~~sold by him the retailer at the flea market.~~ A person who leases or
44 rents space to others at a flea market may not lease or rent this space

1 unless the retailer requesting to rent or lease the space ~~furnishes~~
 2 ~~evidence that he has obtained~~ shows the license or a copy of the license
 3 ~~required by this Article.~~ Article or other evidence of compliance. A
 4 person who leases or rents space at a flea market shall keep records of
 5 retailers ~~to whom he has~~ who have leased or rented space at the flea
 6 market. As used in this subdivision, the term 'flea market' means a
 7 place where space is rented to a person for the purpose of selling
 8 tangible personal property.

9 (4c) ~~At the~~ The rate of six and one-half percent (6 1/2%) ~~of~~ applies to the
 10 gross receipts derived from providing toll telecommunications services
 11 or private telecommunications services as defined by G.S. 105-120(e)
 12 that both originate from and terminate in the State and are not subject
 13 to the privilege tax under G.S. 105-120. Any business entity that
 14 provides ~~the service outlined above~~ these services is considered a retailer
 15 under this Article. This subdivision does not apply to telephone
 16 membership corporations as described in Chapter 117 of the General
 17 Statutes.

18 (5) The general rate of tax applies to the sales price of spirituous liquor, as
 19 defined in G.S. 18B-101."

20 Sec. 1.3. G.S. 105-164.10 reads as rewritten:

21 **"§ 105-164.10. Retail bracket system.**

22 For the convenience of the retailer in collecting the tax due ~~at the rate of three~~
 23 ~~percent (3%) and to facilitate the administration of this Article, every retailer engaged in~~
 24 ~~or continuing within this State in a business for which a license, privilege or excise tax~~
 25 ~~is required by this Article shall add to the sale price and collect from the purchaser on~~
 26 ~~all taxable retail sales an amount equal to the following:~~

- 27 (1) ~~No amount on sales of less than 10¢.~~
 28 (2) ~~1¢ on sales of 10¢ and over but not in excess of 35¢.~~
 29 (3) ~~2¢ on sales of 36¢ and over but not in excess of 70¢.~~
 30 (4) ~~3¢ on sales of 71¢ and over but not in excess of \$1.16.~~
 31 (5) ~~Sales over \$1.16 straight 3% with major fractions governing.~~

32 Use of the above bracket does not relieve the retailer from the duty and liability to
 33 remit to the Secretary an amount equal to three percent (3%) of the gross receipts
 34 derived from all taxable retail sales subject to the three percent (3%) rate during the
 35 taxable period.

36 ~~Whenever a sales or use tax is due at a rate of less than three percent (3%), the tax~~
 37 ~~shall be computed by multiplying the sales or purchase price by the applicable rate and~~
 38 ~~by rounding the result off to the nearest whole cent. The use of this method in~~
 39 ~~computing the sales or use tax shall not relieve a taxpayer from the duty and liability of~~
 40 ~~remitting to the Secretary an amount equal to the applicable rates times gross receipts~~
 41 ~~subject to taxation at the lesser rates.~~ under this Article, the Secretary shall prescribe
 42 tables that compute the tax due on sales by rounding off the amount of tax due to the
 43 nearest whole cent. The Secretary shall issue a separate table for each rate of tax that
 44 may apply to a sale, including the general rate established in G.S. 105-164.4, any

1 preferential rates, and combined State and local rates. Use of the tables prescribed by
 2 the Secretary does not relieve a retailer of liability for the applicable rate of tax due on
 3 the gross receipts or net taxable sales of the retailer."

4 Sec. 1.4. G.S. 105-164.13, as amended by Section 17 of Chapter 45 of the
 5 1991 Session Laws, reads as rewritten:

6 "**§ 105-164.13. Retail sales and use ~~tax~~-tax exemptions.**

7 The sale at retail, the use, storage or consumption in this State of the following
 8 tangible personal property is specifically exempted from the tax imposed by this Article:

9
 10 **AGRICULTURAL GROUP.**

- 11
 12 (1) ~~Commercial~~ The following items sold for commercial use: fertilizer on
 13 which the inspection tax is paid and lime and land plaster ~~used for~~
 14 ~~agricultural purposes~~ whether the inspection tax is paid or not.
- 15 (2) ~~Seeds;~~ Seeds sold for commercial use; remedies, vaccines,
 16 medications, litter materials, and feeds for livestock and poultry;
 17 rodenticides, insecticides, herbicides, fungicides, and pesticides for
 18 livestock, poultry, and agriculture; defoliant for use on cotton or other
 19 crops; plant growth inhibitors, regulators, or stimulators for agriculture
 20 including systemic and contact or other sucker control agents for
 21 tobacco and other crops.
- 22 (3) Products of forests and mines in their original or unmanufactured state
 23 when such sales are made by the producer in the capacity of producer.
- 24 (4) Cotton, tobacco, peanuts or other farm products sold to manufacturers
 25 for further manufacturing or processing.
- 26 (4a) Baby chicks and poult sold for commercial poultry or egg production.
- 27 (4b) Products of a farm sold in their original state by the producer of the
 28 products if the producer is not primarily a retail merchant and ice used
 29 to preserve agriculture, aquaculture and commercial fishery products
 30 until the products are sold at retail.
- 31 (4c) Commercially manufactured swine, livestock, and poultry facilities to
 32 be used for commercial purposes for housing, raising, or feeding of
 33 swine, livestock, or poultry or for housing equipment necessary for
 34 these commercial activities; building materials, supplies, fixtures, and
 35 equipment to be used in the construction, repair, or improvement and
 36 that become a part of an enclosure or structure specifically designed,
 37 constructed and used for such above commercial purposes; and
 38 commercially manufactured swine, livestock, and poultry equipment,
 39 parts and accessories therefor placed or installed in or affixed to such
 40 facilities, enclosures, or structures.
- 41 (4d) The lease or rental of burlap tobacco sheets used in handling tobacco
 42 in the warehouse and transporting tobacco to and from the warehouse.

43
 44 **INDUSTRIAL GROUP.**

- 1
2 (5) Manufactured products produced and sold by manufacturers or
3 producers to other manufacturers, producers, or registered wholesale
4 or retail merchants, for the purpose of resale except as modified by
5 Division I, G.S. 105-164.3, subdivision (23). Provided, however, this
6 exemption shall not extend to or include retail sales to users or
7 consumers not for resale.
- 8 (6) Repealed by Session Laws 1989 (Reg. Sess., 1990), c. 1068, s. 1.
- 9 (7) Sales of products of waters in their original or unmanufactured state
10 when such sales are made by the producer in the capacity of producer.
11 Fish and seafoods are likewise exempt when sold by the fisherman in
12 that capacity.
- 13 (8) Sales of tangible personal property to a manufacturer which enters into
14 or becomes an ingredient or component part of tangible personal
15 property which is manufactured.
- 16 (8a) Sales to a small power production facility, as defined in 16 U.S.C. §
17 796(17)(A), of fuel used by the facility to generate electricity.
- 18 (9) Sales of boats, fuel oil, lubricating oils, machinery, equipment, nets,
19 rigging, paints, parts, accessories, and supplies to persons for use by
20 them principally in commercial fishing operations within the meaning
21 of G.S. 113-152, except when the property is for use by persons
22 principally to take fish for recreation or personal use or consumption.
23 As used in this subdivision, "fish" is defined as in G.S. 113-129(7).
- 24 ~~(10) Sales to commercial laundries or to pressing and dry cleaning~~
25 ~~establishments of articles or materials used for the identification of~~
26 ~~garments being laundered or dry cleaned, wrapping paper, bags,~~
27 ~~hangers, starch, soaps, detergents, cleaning fluids and other~~
28 ~~compounds or chemicals applied directly to the garments in the direct~~
29 ~~performance of the laundering or the pressing and cleaning service.~~

MOTOR FUELS GROUP.

- 30
31
32
33 (11) Gasoline or other motor fuel on which the tax levied in G.S. 105-434
34 and/or G.S. 105-435 is due and has been paid, and the fact that a
35 refund of the tax levied by either of said sections is made pursuant to
36 the provisions of Subchapter V of Chapter 105 shall not make the sale
37 or the seller of such fuels subject to the tax levied by this Article.

MEDICAL GROUP.

- 38
39
40
41 (12) Therapeutic, prosthetic, or artificial devices, such as pulmonary
42 respirators or medical beds, that are designed for individual personal
43 use to correct or alleviate physical illness, disease, or incapacity and
44 that are sold on the written prescription of a physician, dentist, or other

1 professional person licensed to prescribe, and crutches, artificial limbs,
2 artificial eyes, hearing aids, false teeth, eyeglasses ground on
3 prescription of a physician or an optometrist, and orthopedic
4 appliances designed to be worn by the purchaser or user. This
5 subdivision does not apply to a motor vehicle.

- 6 (13) Medicines sold on prescription of physicians, dentists, or veterinarians;
7 insulin whether or not sold on prescription.
8

9 **PRINTED MATERIALS GROUP.**

- 10
11 (14) Public school books on the adopted list, the selling price of which is
12 fixed by State contract.
13 (14a) Printed material which is sold by a printer to a purchaser within or
14 without this State, when such printed material is delivered in this State
15 to a common carrier or to the United States Postal Service for delivery
16 to the purchaser or the purchaser's designees outside this State, if the
17 purchaser does not thereafter use the printed material in this State.
18

19 **TRANSACTIONS GROUP.**

- 20
21 (15) Accounts of purchasers, representing taxable sales, on which the tax
22 imposed by this Article has been paid, that are found to be worthless
23 and actually charged off for income tax purposes may, at
24 corresponding periods, be deducted from gross sales, provided,
25 however, they must be added to gross sales if afterwards collected.
26 (16) Sales of used articles taken in trade, or a series of trades, as a credit or
27 part payment on the sale of a new article. "New article" means the
28 original stock in trade of the merchant, and is not limited to newly
29 manufactured articles. The resale of articles repossessed by the vendor
30 shall likewise be exempt from gross sales taxable under this Article.
31

32 **EXEMPT STATUS GROUP.**

- 33
34 (17) Sales which a state would be without power to tax under the
35 limitations of the Constitution or laws of the United States or under the
36 Constitution of this State.
37

38 **UNCLASSIFIED GROUP.**

- 39
40 (18) Funeral expenses, including coffins and caskets, not to exceed one
41 thousand five hundred dollars (\$1,500). All other funeral expenses,
42 including gross receipts for services rendered, ~~shall be~~ are taxable at the
43 ~~rate of three percent (3%).~~ the general rate of tax set in G.S. 105-
44 164.4(a). However, "services rendered" shall not include those services

1 which have been taxed pursuant to G.S. 105-164.4(4), or to those
2 services performed by any beautician, cosmetologist, hairdresser or
3 barber employed by or at the specific direction of the family or
4 personal representative of a deceased; and "funeral expenses" and
5 "services rendered" shall not include death certificates procured by or
6 at the specific direction of the family or personal representative of a
7 deceased. Where coffins, caskets or vaults are purchased direct and a
8 separate charge is paid for services, the provisions of this subdivision
9 shall apply to the total for both.

10 (19) Sales by concession stands operated by the State prison system within
11 the confines of the prisons where such sales are made to prison
12 inmates and guards therein while on duty.

13 (20) Sales by blind merchants operating under supervision of the
14 Department of Human Resources.

15 (21) The lease or rental of motion picture films used for exhibition purposes
16 by the State prison system within the confines of a prison, by a public
17 school, or by a nonprofit religious or charitable organization for
18 religious or charitable purposes. ~~where the lease or rental of such property~~
19 ~~is an established business or part of an established business or the same is~~
20 ~~incidental or germane to said business of the lessee.~~

21 ~~(22) The lease or rental of films, motion picture films, transcriptions and~~
22 ~~recordings to radio stations and television stations operating under a~~
23 ~~certificate from the Federal Communications Commission.~~

24 (23) Sales of wrapping paper, labels, wrapping twine, paper, cloth, plastic
25 bags, cartons, packages and containers, cores, cones or spools, wooden
26 boxes, baskets, coops and barrels, including paper cups, napkins and
27 drinking straws and like articles sold to manufacturers, producers and
28 retailers, when such materials are used for packaging, shipment or
29 delivery of tangible personal property which is sold either at wholesale
30 or retail and when such articles constitute a part of the sale of such
31 tangible personal property and are delivered with it to the customer.

32 ~~(24) Sales of fuel and other items of tangible personal property for use or~~
33 ~~consumption by or on ocean going vessels which ply the high seas in~~
34 ~~interstate or foreign commerce in the transport of freight and/or~~
35 ~~passengers for hire exclusively, when delivered to an officer or agent~~
36 ~~of such vessel for the use of such vessel; provided, however, that sales~~
37 ~~of fuel and other items of tangible personal property made to officers,~~
38 ~~agents, members of the crew or passengers of such vessels for their~~
39 ~~personal use shall not be exempted from payment of the sales tax.~~

40 (25) Sales by merchants on the Cherokee Indian Reservation when such
41 merchants are authorized to do business on the Reservation and are
42 paying the tribal gross receipts levy to the Tribal Council.

43 (26) Lunches to school children when such sales are made within school
44 buildings and are not for profit.

- 1 (27) Meals and food products served to students in dining rooms regularly
2 operated by State or private educational institutions or student
3 organizations thereof.
- 4 (28) ~~Sales of newspapers by newspaper street vendors, vendors and by
5 newspaper carriers making door-to-door deliveries and sales of
6 magazines by magazine vendors making door-to-door sales.~~
- 7 (29) Sales to the North Carolina Museum of Art of paintings and other
8 objects or works of art for public display, the purchases of which are
9 financed in whole or in part by gifts or donations.
- 10 (30) Sales from vending machines when sold by the owner or lessee of said
11 machines at a price of one cent (1¢) per sale.
- 12 (31) Sales of meals not for profit to elderly and incapacitated persons by
13 charitable or religious organizations not operated for profit which are
14 entitled to the refunds provided by G.S. 105-164.14(b), when such
15 meals are delivered to the purchasers at their places of abode.
- 16 (31a) Food sold by a church or religious organization not operated for
17 profit when the proceeds of the sales are actually used for religious
18 activities.
- 19 (32) Sales of motor vehicles, the separate sales of a motor vehicle body and
20 a motor vehicle chassis when the body is to be mounted on the chassis,
21 and the sale of a body mounted on a motor vehicle chassis that
22 temporarily enters the State so the manufacturer of the body can mount
23 the body on the chassis. of the sale.
- 24 (33) ~~Tangible personal property purchased solely for the purpose of export
25 to a foreign country for exclusive use or consumption in that or some
26 other foreign country, either in the direct performance or rendition of
27 professional or commercial services, or in the direct conduct or
28 operation of a trade or business, all of which purposes are actually
29 consummated, or purchased by the government of a foreign country
30 for export which purpose is actually consummated. "Export" shall
31 include the acts of possessing and marshalling such property, by either
32 the seller or the purchaser, for transportation to a foreign country, but
33 shall not include devoting such property to any other use in North
34 Carolina or the United States. "Foreign country" shall not include any
35 territory or possession of the United States.~~

36 ~~In order to qualify for this exemption, an affidavit of export
37 indicating compliance with the terms and conditions of this exemption,
38 as prescribed by the Secretary of Revenue, must be submitted by the
39 purchaser to the seller, and retained by the seller to evidence
40 qualification for the exemption.~~

41 ~~If the purposes qualifying the property for exemption are not
42 consummated, the purchaser shall be liable for the tax which was
43 avoided by the execution of the aforesaid affidavit as well as for~~

1 applicable penalties and interest and the affidavit shall contain express
2 provision that the purchaser has recognized and assumed such liability.

3 The principal purpose of this exemption is to encourage the flow of
4 commerce through North Carolina ports that is now moving through
5 out-of-state ports. However, it is not intended that property acquired
6 for personal use or consumption by the purchaser, including gifts, shall
7 be exempt hereunder.

8 (34) Sales of items by a nonprofit civic, charitable, educational, scientific or
9 literary organization when the net proceeds of the sales will be given
10 or contributed to the State of North Carolina or to one or more of its
11 agencies or instrumentalities, or to one or more nonprofit charitable
12 organizations, one of whose purposes is to serve as a conduit through
13 which such net proceeds will flow to the State or to one or more of its
14 agencies or instrumentalities.

15 (35) Sales by a nonprofit civic, charitable, educational, scientific, literary or
16 fraternal organization continuously chartered or incorporated within
17 North Carolina for at least two years when such sales are conducted
18 only upon an annual basis for the purpose of raising funds for its
19 activities, and when the proceeds thereof are actually used for such
20 purposes; provided, however, that no such sale shall be exempt if not
21 actually consummated within 60 days after the first solicitation of any
22 sale made during said organization's annual sales period.

23 (36) ~~Advertising supplements and any other printed matter ultimately to be~~
24 ~~distributed with or as part of a newspaper.~~

25 (37) ~~Spirituous liquor. This exemption does not prohibit the levy of sales~~
26 ~~and use taxes on mixed beverages. As used in this subdivision, the~~
27 ~~terms "spirituous liquor" and "mixed beverage" have the same~~
28 ~~meanings as in G.S. 18B-101(14) and G.S. 18B-101(10) respectively.~~

29 (38) Food and other items lawfully purchased with coupons issued under
30 the Food Stamp Program, 7 U.S.C. § 51, and supplemental foods
31 lawfully purchased with a food instrument issued under the Special
32 Supplemental Food Program, 42 U.S.C. § 1786.

33 (39) ~~Sales of paper, ink, and other tangible personal property to commercial~~
34 ~~printers and commercial publishers for use as ingredient or component~~
35 ~~parts of free circulation publications, and sales by printers of free~~
36 ~~circulation publications to the publishers of these publications. As used~~
37 ~~in this subdivision, the term "free circulation publications" means~~
38 ~~shoppers' guides that:~~

- 39 (1) ~~Are published on a periodic basis at recurring intervals;~~
40 (2) ~~Are mailed or are distributed house to house, by street~~
41 ~~distributors, in racks, or in any other manner at other locations~~
42 ~~without charge to the recipient;~~
43 (3) ~~Contain advertising of a general nature; and~~

1 (4) ~~Make space available to all advertisers for the purpose of~~
2 ~~inducing readers to purchase the goods and services of the~~
3 ~~advertisers.~~

4 ~~The term does not include house organs or trade, professional, or~~
5 ~~similar types of publications. The ratio of news to advertising in a~~
6 ~~publication is not a factor in determining whether the publication is a~~
7 ~~free circulation publication.~~

8 (40) Sales to the Department of Transportation."

9 Sec. 1.5. G.S. 105-470, 105-485, and 105-500 and Article 41 of Chapter 105
10 of the General Statutes are repealed.

11 Sec. 1.6. G.S. 105-113.80(c) reads as rewritten:

12 "(c) Liquor. – An excise tax of twenty-eight percent (28%) is levied on liquor sold
13 in ABC stores. Pursuant to G.S. 18B-804(b), the price of liquor on which this tax is
14 computed is the distiller's price plus (i) the State ABC warehouse freight and bailment
15 charges, and (ii) a markup for local ABC boards. ~~This tax is in lieu of sales and use taxes;~~
16 ~~accordingly, liquor is exempt from those taxes as provided in G.S. 105-164.13(37)."~~

17 Sec. 1.7. G.S. 105-164.14 reads as rewritten:

18 **"§ 105-164.14. Certain refunds authorized.**

19 (a) Any person engaged in transporting persons or property in interstate
20 commerce for compensation who is subject to regulation by, and to the jurisdiction of,
21 the Interstate Commerce Commission or the United States Department of
22 Transportation and who is required by either such federal agency to keep records
23 according to its standard classification of accounting or, in the case of a small
24 certificated air carrier, is required by the U.S. Department of Transportation to make
25 reports of financial and operating statistics, may secure a refund from the Secretary of
26 Revenue with respect to sales or use tax paid by such person on purchases or
27 acquisitions of lubricants, repair parts and accessories in this State for motor vehicles,
28 railroad cars, locomotives, and airplanes operated by such person, upon the conditions
29 described below. The Secretary of Revenue shall prescribe the periods of time, whether
30 monthly, quarterly, semiannually or otherwise, with respect to which refunds may be
31 claimed, and shall prescribe the time within which, following such periods, an
32 application for refund may be made. An applicant for refund shall furnish such
33 information as the Secretary may require, including detailed information as to
34 lubricants, repair parts and accessories wherever purchased, whether within or without
35 the State, acquired during the period with respect to which a refund is sought, and the
36 purchase price thereof, detailed information as to sales and use tax paid in this State
37 thereon, and detailed information as to the number of miles such motor vehicles,
38 railroad cars, locomotives, and airplanes were operated both within this State, and
39 without this State, during such period, together with satisfactory proof thereof. The
40 Secretary shall thereupon compute the tax which would be due with respect to all
41 lubricants, repair parts and accessories acquired during the refund period as though all
42 such purchases were made in this State, but only on such proportion of the total
43 purchase prices thereof as the total number of miles of operation of such applicants'
44 motor vehicles, railroad cars, locomotives, and airplanes within this State bears to the

1 total number of miles of operation of such applicants' motor vehicles, railroad cars,
2 locomotives and airplanes within and without this State, and such amount of sales and
3 use tax as the applicant has paid in this State during said refund period in excess of the
4 amounts so computed shall be refunded to the applicant.

5 ~~(b) The Secretary of Revenue shall make refunds semiannually to hospitals not~~
6 ~~operated for profit (including hospitals and medical accommodations operated by an~~
7 ~~authority created under the Hospital Authorities Law, Article 2 of Chapter 131E),~~
8 ~~educational institutions not operated for profit, churches, orphanages and other~~
9 ~~charitable or religious institutions and organizations not operated for profit of sales and~~
10 ~~use taxes paid under this Article, except under G.S. 105-164.4(4a) and G.S. 105-~~
11 ~~164.4(4c), by such institutions and organizations on direct purchases of tangible~~
12 ~~personal property for use in carrying on the work of such institutions or organizations.~~
13 ~~Sales and use tax liability indirectly incurred by such institutions and organizations on~~
14 ~~building materials, supplies, fixtures and equipment which shall become a part of or~~
15 ~~annexed to any building or structure being erected, altered or repaired for such~~
16 ~~institutions and organizations for carrying on their nonprofit activities shall be construed~~
17 ~~as sales or use tax liability incurred on direct purchases by such institutions and~~
18 ~~organizations, and such institutions and organizations may obtain refunds of such taxes~~
19 ~~indirectly paid. The Secretary of Revenue shall also make refunds semiannually to all~~
20 ~~other hospitals (not specifically excluded herein) of sales and use tax paid by them on~~
21 ~~medicines and drugs purchased for use in carrying out the work of such hospitals. This~~
22 ~~subsection does not apply to organizations, corporations, and institutions that are owned~~
23 ~~and controlled by the United States, the State, or a unit of local government, except~~
24 ~~hospital facilities created under Article 2 of Chapter 131E of the General Statutes and~~
25 ~~nonprofit hospitals owned and controlled by a unit of local government that elect to~~
26 ~~receive semiannual refunds under this subsection instead of annual refunds under~~
27 ~~subsection (c). In order to receive the refunds herein provided for, such institutions and~~
28 ~~organizations shall file a written request for refund covering the first six months of the~~
29 ~~calendar year on or before the fifteenth day of October next following the close of said~~
30 ~~period, and shall file a written request for refund covering the second six months of the~~
31 ~~calendar year on or before the fifteenth day of April next following the close of that~~
32 ~~period. Such requests for refund shall be substantiated by such proof as the Secretary of~~
33 ~~Revenue may require, and no refund shall be made on applications not filed within the~~
34 ~~time allowed by this section and in such manner as the Secretary may require. Not~~
35 ~~withstanding the foregoing provisions of this subsection, the constituent institutions of~~
36 ~~The University of North Carolina may obtain in the manner prescribed by this Article~~
37 ~~the refund of sales and use tax paid by them on or after January 1, 1992, for tangible~~
38 ~~personal property acquired by them through the expenditure of contract and grant funds.~~

39 (c) Upon receipt of timely applications for refund, the Secretary of Revenue shall
40 make refunds annually to all governmental entities, as hereinafter defined, of sales and
41 use tax paid under this Article, except under G.S. 105-164.4(4a) and G.S. 105-164.4(4c), by
42 said G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c) governmental entities on direct
43 purchases of tangible personal property. Sales and use tax liability indirectly incurred by
44 such governmental entities on building materials, supplies, fixtures and equipment

1 which shall become a part of or annexed to any building or structure being erected,
2 altered or repaired which is owned or leased by such governmental entities shall be
3 construed as sales or use tax liability incurred on direct purchases by such governmental
4 entities, and such entities may obtain refunds of such taxes indirectly paid. The refund
5 provisions contained in this subsection shall not apply to any governmental entities not
6 specifically named herein. In order to receive the refund herein provided for,
7 governmental entities shall file a written request for said refund within six months of the
8 close of the fiscal year of the governmental entities seeking said refund, and such
9 request for refund shall be substantiated by such records, receipts and information as the
10 Secretary may require. No refunds shall be made on applications not filed within the
11 time allowed by this section and in such manner as the Secretary may otherwise require.
12 The term "governmental entities," for the purposes of this subsection, shall mean all
13 counties, incorporated cities and towns, water and sewer authorities created and existing
14 under the provisions of Chapter 162A of the General Statutes, lake authorities created
15 by a board of county commissioners pursuant to an act of the General Assembly,
16 sanitary districts, regional councils of governments created pursuant to G.S. 160A-470,
17 area mental health, mental retardation, and substance abuse authorities (other than
18 single-county area authorities) established pursuant to Article 4 of Chapter 122C of the
19 General Statutes, district health departments, regional planning and economic
20 development commissions created pursuant to G.S. 158-14, regional sports authorities
21 created pursuant to G.S. 160A-479, regional economic development commissions
22 created pursuant to G.S. 158-8, regional planning commissions created pursuant to G.S.
23 153A-391, metropolitan sewerage districts and metropolitan water districts in this State,
24 the North Carolina Low-Level Radioactive Waste Management Authority created
25 pursuant to Chapter 104G of the General Statutes, the North Carolina Hazardous Waste
26 Management Commission created pursuant to Chapter 130B of the General Statutes,
27 and the Rockingham County Airport Authority.

28 (d) Refunds made pursuant to applications filed after the ~~dates specified in~~
29 ~~subsections (b) and (c) above shall be~~ date provided in subsection (c) are subject to the
30 following penalties for late filing: applications filed within 30 days after ~~said dates, the~~
31 due date, twenty-five percent (25%); applications filed after 30 days but within six
32 months after ~~said dates, the due date~~, fifty percent (50%). However, refunds which are
33 applied for after six months following ~~said dates shall be the due date~~ are barred."

34 PART II.

35 BEVERAGE TAX DISCOUNTS REPEALED

36 Sec. 2.1. G.S. 105-113.56A reads as rewritten:

37 "§ 105-113.56A. Alternate method of payment of tax.

38 Instead of paying the tax levied in this Article in the manner otherwise provided, any
39 distributor or wholesale dealer may pay the tax in the following manner, with respect to
40 bottled soft drinks:

41 Beginning with sales made on and after October 1, 1969, of bottled soft drinks
42 subject to the tax, sales reports shall be made to the Secretary on or before the fifteenth
43 day of each succeeding month, accompanied by payment of the tax due, determined as
44 follows: For the first fifteen thousand gross of bottled soft drinks sold annually, seventy-

1 two cents (72¢) per gross; for all in excess of fifteen thousand gross, one cent (1¢) per
2 bottle. ~~In addition, there shall be allowed a discount of eight percent (8%) of the said tax to be~~
3 ~~remitted.~~

4 All persons paying the tax in this manner shall be subject to such rules and
5 regulations as the Secretary may prescribe, including the requirement that such persons
6 furnish such bond as the Secretary may deem advisable, in such amount and upon such
7 conditions as in the opinion of the Secretary will adequately protect the State in the
8 collection of the taxes levied by this Article. The alternate method set forth in this
9 section shall be available only to those distributors and wholesale dealers liable for
10 payment of the soft drink tax under the provisions of this Article."

11 Sec. 2.2. G.S. 105-113.85 is repealed.

12 PART III.

13 EFFECTIVE DATES

14 Sec. 3.1. This act does not affect the rights or liabilities of the State, a
15 taxpayer, or another person arising under a statute amended or repealed by this act
16 before its amendment or repeal; nor does it affect the right to any refund or credit of a
17 tax that would otherwise have been available under the amended or repealed statute
18 before its amendment or repeal.

19 Sec. 3.2. Part I of this act becomes effective July 1, 1992, and applies to sales
20 made on or after that date. Part II of this act becomes effective October 1, 1991. The
21 remainder of this act is effective upon ratification.