

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

**SESSION LAW 2020-6
HOUSE BILL 1079**

AN ACT TO MAKE VARIOUS SALES AND USE TAX CHANGES, AS RECOMMENDED
BY THE REVENUE LAWS STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

PART I. RELIEF FOR AUCTIONEERS AND ESTATE SALE COMPANIES

SECTION 1.(a) G.S. 105-164.13E(a)(7) reads as rewritten:

"(7) Any of the following animals:

- a. Baby chicks and ~~poults sold for commercial poultry or egg production~~poults.
- b. Livestock."

SECTION 1.(b) G.S. 105-164.3 is amended by adding a new subdivision to read:

"(#) Livestock. – Cattle, sheep, goats, swine, horses, or mules."

SECTION 1.(c) G.S. 105-237.1(a) reads as rewritten:

"(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:

- ...
- (9) The taxpayer is an auctioneer licensed under Chapter 85B of the General Statutes, and the assessment is for sales tax that the taxpayer failed to collect for the sale of livestock at auction. The Secretary must determine that the taxpayer has made a good-faith effort to comply with the tax laws, including being registered as a retailer on or before July 1, 2020. This subdivision applies to assessments for any tax due for a reporting period ending prior to July 1, 2020. This subdivision does not apply if the person received specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable period or for tax collected and not remitted to the Department."

SECTION 1.(d) G.S. 105-164.4J is amended by adding a new subsection to read:

"(j) Grace Period. – The Department shall take no action to assess a person for any tax due for a filing period beginning on or after February 1, 2020, and ending prior to October 1, 2020, with respect to any of the circumstances listed in this subsection. This subsection does not apply to (i) a person that received specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable period, (ii) a person that collected tax and failed to remit it to the Department, or (iii) the retail sale of inventory that was held for resale. The applicable circumstances are:

- (1) The person sells tangible personal property on behalf of the owner of the tangible personal property, or the owner's estate, whether by auction or through the pricing of items, and the sale was conducted at the owner's home or farm.



- (2) The person sells fixtures and equipment held for use in operating a retail or wholesale business on behalf of a business, whether by auction or through the pricing of items, and the sale is conducted at the business location."

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

PART II. EXPANSION OF LARGE FULFILLMENT FACILITY EXEMPTION

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

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

- a. Is sold to a large fulfillment ~~facility~~facility or to a contractor or subcontractor if the purchase is for use in the performance of a contract with the large fulfillment facility.
- b. Is used at the facility ~~in~~for any of the following purposes:
 1. In the distribution process, which includes receiving, inventorying, sorting, repackaging, or distributing finished retail products.
 2. Baling previously used packaging for resale, sanitizing required by federal law, or material handling.
- c. Is not electricity.

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

SECTION 2.(b) Refund. – A large fulfillment facility is allowed a refund of all North Carolina State and local sales and use taxes paid by the large fulfillment facility, or paid by a contractor or subcontractor on the large fulfillment facility's behalf, for purchases of items eligible for exemption under G.S. 105-164.13(5o), as amended by this section, if the purchase was made on or after April 1, 2020, but before July 1, 2020. A request for a refund under this section must be in writing and must include any information and documentation required by the Secretary. A request for a refund under this section must be made on or after July 1, 2020, and is due before October 1, 2020. A refund allowed under this section is not an overpayment of tax and does not accrue interest as provided in G.S. 105-241.21.

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

PART III. CLARIFY DIGITAL PROPERTY/ONLINE LEARNING

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

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

- ...
(#) Additional digital goods. – All of the following if transferred electronically:
 - a. A magazine, a newspaper, a newsletter, a report, or another publication.
 - b. A photograph.
 - c. A greeting card.
- ...
(7) ~~Audio~~ Digital audio work. – A work that results from the fixation of a series of musical, spoken, or other sounds, including a ~~ringtone~~.ringtone, that is transferred electronically.
- (9) ~~Audiovisual~~ Digital audiovisual work. – A series of related ~~images and any sounds accompanying the images that~~ images, that when shown in succession, impart an impression of ~~motion when shown in succession~~.motion, together with accompanying sounds, if any, and that is transferred electronically.
- (#) Digital book. – A work that is generally recognized in the ordinary and usual sense as a book that is transferred electronically.
- ...
(23) ~~Certain digital property. – An item listed in this subdivision that is delivered or accessed electronically and that is not considered tangible personal property. Specified digital products and additional digital goods. The term does not include an information service. The items are:~~service or an educational service.
 - a. ~~An audio work.~~
 - b. ~~An audiovisual work.~~
 - c. ~~A book, magazine, a newspaper, a newsletter, a report, or another publication.~~
 - d. ~~A photograph or a greeting card.~~
- ...
(58) Educational service. – The delivery of instruction or training, whether provided in real time, on demand, or at another set time, by or on behalf of a qualifying educational entity where at least one of the following conditions applies:
 - a. The instruction or training is part of the curriculum for an enrolled student.
 - b. The instruction or training is encompassed within the institution's accreditation or prepares an enrolled student for gainful employment in a recognized occupation.
 - c. The participant is evaluated by an instructor. "Evaluated by an instructor" does not include being graded by, scored by, or evaluated by a computer program or an interactive, automated method.
 - d. The participant is connected to the presenter or instructor via the Internet or other networks, allowing the participant to provide, receive, or discuss information through live interaction, contemporaneous with the presentation.
- ...

- (170) Qualifying educational entity. – An entity listed in this subdivision. For purposes of this definition, references to the United States Code mean the United States Code as enacted as of January 1, 2020. The entities are:
- a. An elementary or secondary school, as defined in 20 U.S.C. § 7801.
 - b. An institution of higher education, as defined in 20 U.S.C. § 1002.

...

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

...

- (#) Transferred electronically. – Obtained by the purchaser by means other than tangible storage media and includes delivered or accessed electronically.

...."

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

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

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

...

- (72) Sales of a digital audio work or a digital audiovisual work that is a qualifying education expense under G.S. 115C-595(a)(3) to the operator of a home school as defined in G.S. 115C-563.

- (73) Sales of a digital audio work or digital audiovisual work that consists of nontaxable service content when the electronic transfer of the digital audio work or digital audiovisual work occurs contemporaneously with the provision of the nontaxable service in real time."

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

SECTION 3.(d) Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-244.4A. Grace period from sales and use tax enforcement actions with respect to the sale of certain digital property by certain continuing education and professional development providers.

The Department shall take no action to assess a person for any sales and use tax due for a filing period beginning on or after October 1, 2019, and ending prior to August 1, 2020, with respect to the retail sale of digital audio works or digital audiovisual that meet either of the conditions listed in this section. This section does not apply to a person that received specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable period or to a person that collected tax and failed to remit it to the Department. The conditions are:

- (1) The digital audio works or digital audiovisual works consist of continuing education instruction approved by an occupational licensing board.
- (2) The digital audio works or digital audiovisual works consist of professional development instruction for school board members, administrators, or staff."

SECTION 3.(e) Subsection (d) of this section is effective when it becomes law. The remainder of this section is effective retroactively to October 1, 2019, and applies to sales occurring on or after that date."

PART IV. EFFECTIVE DATE

law. **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
In the General Assembly read three times and ratified this the 1st day of June, 2020.

s/ Carl Ford
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 12:27 p.m. this 5th day of June, 2020