

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

S

1

SENATE BILL 441

Short Title: Nonprofit Sales Tax Exemption. (Public)

Sponsors: Senators Davis and Burgin (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 1, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE A SALES TAX EXEMPTION FOR CERTAIN NONPROFIT
3 ENTITIES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 105-164.14(b) is repealed.

6 **SECTION 2.** G.S. 105-164.13 reads as rewritten:

7 "**§ 105-164.13. Retail sales and use tax.**

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

11 ...

12 (52a) Tangible personal property, digital property, and services for use in carrying
13 on the work of the following entities, provided the entity is not owned or
14 controlled by the State:

15 a. Hospitals not operated for profit, including hospitals and medical
16 accommodations operated by an authority or other public hospital
17 described in Article 2 of Chapter 131E of the General Statutes.

18 b. An organization that is exempt from income tax under section
19 501(c)(3) of the Code and not classified in the National Taxonomy of
20 Exempt Entities major group areas of (i) Community Improvement
21 and Capacity Building, (ii) Public and Societal Benefit, or (iii) Mutual
22 and Membership Benefit.

23 c. Volunteer fire departments and volunteer emergency medical services
24 squads that are (i) exempt from income tax under the Code, (ii)
25 financially accountable to a city as defined in G.S. 160A-1, a county,
26 or a group of cities and counties, or (iii) both.

27 d. An organization that is a single member LLC that is disregarded for
28 income tax purposes and satisfies all of the following conditions:

29 1. The owner of the LLC is an organization that is exempt from
30 income tax under section 501(c)(3) of the Code.

31 2. The LLC is a nonprofit entity that would be eligible for an
32 exemption under 501(c)(3) of the Code if it were not
33 disregarded for income tax purposes.

34 3. The LLC is not an organization that would be properly
35 classified in any of the major group areas of the National



1 Taxonomy of Exempt Entities listed in sub-subdivision b. of
2 this subdivision.

3 e. Qualified retirement facilities whose property is excluded from
4 property tax under G.S. 105-278.6A.

5 f. A university-affiliated nonprofit organization that procures, designs,
6 constructs, or provides facilities to, or for use by, a constituent
7 institution of The University of North Carolina. For purposes of this
8 sub-subdivision, a nonprofit organization includes an entity exempt
9 from taxation as a disregarded entity of the nonprofit organization.

10 g. Over-the-counter drugs purchased for use in carrying out the work of
11 a hospital not listed in one of the sub-subdivisions of this subdivision.

12 This exemption provided in this subdivision includes indirect sales to a
13 nonprofit entity of digital property and tangible personal property purchased
14 by a real property contractor that becomes a part of or permanently installed
15 or applied to any building or structure that is owned or leased by the nonprofit
16 entity and is being erected, altered, or repaired for use by the nonprofit entity
17 for carrying on its nonprofit activities. A sale to fulfill a real property contract
18 with an entity that holds an exemption certificate is exempt to the same extent
19 as if purchased directly by the entity that holds the exemption certificate. A
20 real property contractor that purchases an item allowed an exemption under
21 this subdivision must provide (i) an exemption certificate to the retailer that
22 includes the name of the nonprofit entity holding the exemption certificate,
23 (ii) the exemption certificate number issued to that holder, and (iii) the
24 information required pursuant to G.S. 105-164.28.

25 The exemption provided in this subdivision does not apply to (i) purchases
26 of electricity, telecommunications service, ancillary service, piped natural gas,
27 video programming, a prepaid meal plan, aviation gasoline and jet fuel, and
28 spirituous liquor or (ii) sales and use tax liability indirectly paid by a nonprofit
29 entity through reimbursement to an authorized person of the entity for tax
30 incurred by the person on an item or transaction subject to tax under Article 5
31 of this Chapter.

32 The aggregate annual exemption amount allowed to an entity under this
33 subsection for a fiscal year may not exceed thirty-one million seven hundred
34 thousand dollars (\$31,700,000) in tax. A real property contractor who pays
35 local sales and use taxes on property qualifying for an exemption under this
36 subdivision on behalf of an entity shall give the entity for whose project the
37 property was purchased a signed statement containing (i) the date the property
38 was purchased, (ii) the type of property purchased, (iii) the project for which
39 the property was used, (iv) if the property was purchased in this State, the
40 county in which it was purchased, and (v) if the property was not purchased
41 in this State, the county in which the property was used. If the property was
42 purchased in this State, the real property contractor shall attach a copy of the
43 sales or purchase receipt to the statement.

44"

45 **SECTION 3.** Article 5 of Chapter 105 of the General Statutes is amended by adding
46 a new section to read:

47 **"§ 105-164.29C. Nonprofit entity exemption process.**

48 (a) Application. – To be eligible for the exemption provided in G.S. 105-164.13(52a), a
49 nonprofit entity must obtain from the Department a sales tax exemption number. The application
50 for exemption must be in the form required by the Secretary, be signed by a person with authority

1 to bind the entity, and contain any information required by the Secretary. The Secretary must
2 assign a sales tax exemption number to a nonprofit entity that submits a proper application.

3 (b) Liability. – A nonprofit entity that does not use the items purchased with its exemption
4 number must pay the tax that should have been paid on the items purchased, plus interest
5 calculated from the date the tax would otherwise have been paid."

6 **SECTION 4.** G.S. 105-467(b) reads as rewritten:

7 "(b) Exemptions and Refunds. – The State exemptions and exclusions contained in Article
8 5 of Subchapter I of this Chapter, except for the exemption for food in G.S. 105-164.13B, apply
9 to the local sales and use tax authorized to be levied and imposed under this Article. The State
10 refund provisions contained in G.S. 105-164.14 and G.S. 105-164.14A apply to the local sales
11 and use tax authorized to be levied and imposed under this Article. A refund of an excessive or
12 erroneous State sales tax collection allowed under G.S. 105-164.11 and a refund of State sales
13 tax paid on a rescinded sale or cancelled service contract under G.S. 105-164.11A apply to the
14 local sales and use tax authorized to be levied and imposed under this Article. The aggregate
15 annual local ~~refund~~ exemption amount allowed an entity under ~~G.S. 105-164.14(b)~~
16 G.S. 105-164.13(52a) for the State's fiscal year may not exceed thirteen million three hundred
17 thousand dollars (\$13,300,000).

18 Except as provided in this subsection, a taxing county may not allow an exemption, exclusion,
19 or refund that is not allowed under the State sales and use tax. A local school administrative unit
20 and a joint agency created by interlocal agreement among local school administrative units
21 pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and
22 equipment on their behalf is allowed an annual refund of sales and use taxes paid by it under this
23 Article on direct purchases of tangible personal property and services. Sales and use tax liability
24 indirectly incurred by the entity as part of a real property contract for real property that is owned
25 or leased by the entity and is a capital improvement for use by the entity is considered a sales or
26 use tax liability incurred on direct purchases by the entity for the purpose of this subsection. The
27 refund allowed under this subsection does not apply to purchases of electricity,
28 telecommunications service, ancillary service, piped natural gas, video programming, or a
29 prepaid meal plan. A request for a refund is due in the same time and manner as provided in
30 G.S. 105-164.14(c). Refunds applied for more than three years after the due date are barred."

31 **SECTION 5.** G.S. 105-236(a)(5a) reads as rewritten:

32 "(5a) Misuse of Exemption Certificate. – For misuse of an exemption certificate by
33 a purchaser, the Secretary shall assess a penalty equal to two hundred fifty
34 dollars (\$250.00). An exemption certificate is a certificate issued by the
35 Secretary that authorizes a retailer to sell tangible personal property to the
36 holder of the certificate and either collect tax at a preferential rate or not collect
37 tax on the sale. Examples of an exemption certificate include a certificate of
38 exemption, a direct pay certificate, and a conditional exemption certificate.
39 Misuse under this subdivision includes improper use of a certificate of
40 exemption issued to a nonprofit entity pursuant to G.S. 105-164.29C for direct
41 and indirect purchases by the entity or another person."

42 **SECTION 6.** This act becomes effective October 1, 2021, and applies to sales and
43 purchases made on or after that date. This act does not affect the rights or liabilities of the State,
44 a taxpayer, or another person arising under a statute amended or repealed by this act before the
45 effective date of its amendment or repeal, nor does it affect the right to any refund or credit of a
46 tax that accrued under the amended or repealed statute before the effective date of its amendment
47 or repeal.