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SENATE BILL DRS45320-MC-123 (03/14)

Short Title: Nonprofit Sales Tax Exemption. (Public)

Sponsors: Senators D. Davis and Pate (Primary Sponsors).

Referred to:

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 G.S. 105-164.14(b) is repealed.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)
22 Mutual and Membership Benefit.

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



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

- e. Qualified retirement facilities whose property is excluded from property tax under G.S. 105-278.6A.
- f. A university-affiliated nonprofit organization that procures, designs, constructs, or provides facilities to, or for use by, a constituent institution of The University of North Carolina. For purposes of this sub-subdivision, a nonprofit organization includes an entity exempt from taxation as a disregarded entity of the nonprofit organization.
- g. Over-the-counter drugs purchased for use in carrying out the work of a hospital not listed in one of the sub-subdivisions of this subdivision.

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

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

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

...."

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

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

(a) Application. – To be eligible for the exemption provided in G.S. 105-164.13(52a), a nonprofit entity must obtain from the Department a sales tax exemption number. The

1 application for exemption must be in the form required by the Secretary, be signed by a person
2 with authority to bind the entity, and contain any information required by the Secretary. The
3 Secretary must assign a sales tax exemption number to a nonprofit entity that submits a proper
4 application.

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

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

9 "(b) Exemptions and Refunds. – The State exemptions and exclusions contained in
10 ~~G.S. 105-164.13 and G.S. 105-164.27A~~ Article 5 of this Chapter apply to the local sales and
11 use tax authorized to be levied and imposed under this Article. The State refund provisions
12 contained in G.S. 105-164.14 ~~through G.S. 105-164.14B~~ and G.S. 105-164.14A apply to the
13 local sales and use tax authorized to be levied and imposed under this Article. A refund of an
14 excessive or erroneous State sales tax collection allowed under G.S. 105-164.11 and a refund of
15 State sales tax paid on a rescinded sale or cancelled service contract under G.S. 105-164.11A
16 apply to the local sales and use tax authorized to be levied and imposed under this Article. The
17 aggregate annual local ~~refund-exemption~~ amount allowed an entity under ~~G.S. 105-164.14(b)~~
18 G.S. 105-164.13(52a) for a fiscal year may not exceed thirteen million three hundred thousand
19 dollars ~~(\$13,300,000).~~ (\$13,300,000) in tax.

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

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

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

47 **SECTION 6.** This act becomes effective October 1, 2017, and applies to sales and
48 purchases made on or after that date. This act does not affect the rights or liabilities of the State,
49 a taxpayer, or another person arising under a statute amended or repealed by this act before the
50 effective date of its amendment or repeal, nor does it affect the right to any refund or credit of a

1 tax that accrued under the amended or repealed statute before the effective date of its
2 amendment or repeal.