

17 NCAC 07B .2213 SERVICE CHARGES IMPOSED ON FOOD, BEVERAGES, OR PREPARED FOOD

(a) Service Charges Up To 20 Percent. -- A service charge imposed by a retailer for the service of food, beverages, or prepared food, is considered a tip and not subject to sales and use tax pursuant to G.S. 105-164.4, if it meets all of the following requirements:

- (1) The service charge does not exceed 20 percent of the sales price.
- (2) The service charges is separately stated in the price list, menu, or written proposal and also in the invoice or similar billing document.
- (3) The service charge is turned over to the personnel directly involved in the service of the food, beverages, or prepared food, in accordance with G.S. 95-25.6.

(b) Service Charges Over 20 Percent. -- If a service charge imposed by a retailer for the service of food, beverages, or prepared food, exceeds 20 percent of the sales price, the portion of the service charge that equals 20 percent of the sales price is considered a tip and not subject to sales and use tax pursuant to G.S. 105-164.4, if it meets all of the following requirements:

- (1) The service charge is separately stated in the price list, menu, or written proposal and also in the invoice or similar billing document.
- (2) A portion of the service charge that is at least 20 percent of the sales price is turned over to personnel directly involved in the service of the food, beverages, or prepared food in accordance with G.S. 95-25.6.

(c) Service charges imposed on food, beverages, or prepared food include:

- (1) Automatic gratuity charged to large dining parties.
- (2) Service charges for delivery of room service.
- (3) Service charges for bottle service in nightclubs.
- (4) Service charges for banquet room catering.

(d) Personnel not directly involved in the service of food, beverages, or prepared food include:

- (1) Hosts.
- (2) Maître d's.
- (3) Valets.
- (4) Manager and supervisors.
- (5) Chefs.
- (6) Bartenders that prepare, but do not regularly serve food or drinks.
- (7) Dishwashers.
- (8) Bussers.

(e) Service charges subject to sales and use tax pursuant to G.S. 105-164.4, include:

- (1) For service charges of 20 percent or less of the sales price, the full amount of a service charge if any portion of the service charge is paid to personnel not directly involved in service of food, beverages, or prepared food.
- (2) For service charges that exceed 20 percent of the sales price, the full amount of a service charge if any portion of the service charge that is less than 20 percent of the sales price is paid to personnel not directly involved in service of food, beverages, or prepared food.
- (3) The full amount of a service charge that is not separately stated as set out in G.S. 105-164.13A.
- (4) The portion of any service charge that exceeds 20 percent.

(f) Record Keeping. -- Failure of a retailer to keep records that establish that a service charge meets the requirements in Paragraph (a) or (b) of this Rule subjects the retailer to liability for sales and use tax on the full amount of the service charge.

History Note: *Authority* G.S. 105-164.4; 105-164.6; 105-164.13A; 105-164.22; 105-262; 105-264; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;
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