

17 NCAC 07B .4404 EQUIPMENT FURNISHED WITH OPERATOR

(a) A transaction that provides equipment or other tangible personal property with an operator for a fixed or indeterminate period of time, is not a lease or rental, as defined in G.S. 105-164.3(121), but is rendering a service if the operator is necessary for the equipment or other tangible personal property to "perform as designed." The receipts from such services are not subject to the sales or use tax imposed by G.S. 105-164.4 unless the service is a repair, maintenance, and installation service or other taxable service. An operator is necessary for equipment or other tangible personal property to "perform as designed" when the operator's presence, skill, knowledge, and expertise are necessary to bring about the desired effect of the equipment or other tangible personal property. An operator who only maintains, sets-up, or inspects the equipment or other tangible personal property, or any combination of such actions, is not necessary for the equipment or other tangible personal property to "perform as designed."

(b) For purposes of G.S. 105-164.13, a person that purchases equipment or other tangible personal property to provide a service identified in Paragraph (a) of this Rule is not purchasing the equipment or other tangible personal property for resale and shall pay sales and use tax on the purchase price of the equipment or other tangible personal property, pursuant to G.S. 105-164.4, as the consumer thereof.

(c) A person that leases or rents items of equipment or tangible personal property similar to those items provided by that person in rendering a service pursuant to Paragraph (a) of this Rule shall maintain records that establish the purchase of items used in the provision of a service pursuant to Paragraph (a) from those held for lease or rent. A person who fails to maintain the records as required by this Paragraph shall pay sales and use tax on the purchase of all equipment pursuant to G.S. 105-164.4 notwithstanding that some equipment may be held for lease or rental equipment, and the exemptions provided by G.S. 105-164.13 for items held for resale shall not be applicable. The records shall be maintained until the statute of limitations to request a refund and to be issued a proposed assessment have expired, as set out in G.S. 105-241.6 and G.S. 105-241.8.

(d) A person that provides the type of service described in Paragraph (a) of this Rule that purchases repair parts, lubricants, and other tangible personal property, or repair, maintenance, and installation services to maintain or repair equipment or other tangible personal property shall pay sales and use tax pursuant to G.S. 105-164.4, on the purchase price of such items, as the consumer of the repair parts, lubricants, other tangible personal property, or repair, maintenance, and installation services.

*History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 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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