

## SECTION 39 - FUEL

## 39-1 ELECTRICITY, BOTTLED GAS, COAL, COKE, FUEL OIL, OXYGEN, ACETYLENE, HYDROGEN, LIQUEFIED PETROLEUM GAS AND OTHER COMBUSTIBLES

## A. Electricity

## 1. Rates

The gross receipts derived from sales of electricity are subject to the 3% State sales tax unless the sales are exempt by statute or subject to a reduced rate. Pursuant to G.S. 105-164.4(a)(1f), a State rate of 2.83% is levied on sales:

- a. **to a farmer** for use by him for any farm purpose other than preparing food, heating a dwelling, or other household purposes; or
- b. **to a manufacturing industry or plant** for use in connection with the operation of such industry or plant, provided the fuel is not to be used for residential heating purposes; or
- c. **to a commercial laundry or pressing and dry cleaning establishment** for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

**Effective October 1, 2004**, the 0.17% State rate of tax applies only to sales of electricity to an aluminum smelting facility for use in the operation of that facility that is measured by a separate meter or measuring device; the quantity of electricity received is no longer a determinative factor. The 0.17% State rate of tax is repealed effective October 1, 2007. All other sales of electricity to manufacturers are subject to the 2.83% State rate when used in the operation of the facilities and measured by separate meters or devices.

**Effective July 1, 2007**, the sale of electricity to manufacturers is reduced from 2.83% to 2.6%.

The gross receipts derived from sales of electricity are not subject to the local sales or use tax.

Pursuant to G.S. 105-164.13(46), the gross receipts derived from sales of electricity by a municipality whose only wholesale supplier of electric power is a federal agency and who is required by contract with that federal agency to make payments in lieu of taxes are not subject to tax.

For additional information concerning sales tax on sales of electricity to a manufacturing industry or plant, refer to Sales and Use Tax Technical Bulletins 58-3 and 59-4.

## 2. Eligibility and Certification

Vendors of electricity must maintain as a part of their customer accounting records specific information to identify customers which qualify for a reduced tax rate. A **Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E**, or other similar written documentation, must be completed by customers and provided to vendors in connection with the customer's purchases of electricity which qualify for the reduced rate of tax. Vendors may use internal data, such as North American Industry Classification System (NAICS) codes, to identify customers that might be subject to the new rate; however, the vendor must obtain the certificate or similar written documentation from the customer.

**3. Determination of Usage**

The statute provides that in order to qualify for a reduced tax rate, the electricity must be measured by a separate meter or other device.

**4. Computation, Reporting and Payment of the Tax**

The gross receipts derived from sales of electricity are subject to tax at the applicable rate. The tax is to be added as a separate item to the charges for electricity. Gross receipts upon which the tax is due is the total amount for which the electricity is sold, including any charges for services that go into the production or delivery of the electricity and that are a part of the sale valued in money, whether paid in money or otherwise, and including any amount for which credit is given to the purchaser by the seller without any deduction on account of the cost of electricity sold, the cost of materials used, labor or service costs, interest charged, losses, or any other expense whatsoever.

**Note:** For additional information on taxation of specific charges relating to sales of electricity, refer to Sales and Use Tax Technical Bulletin 59-4.

Receipts from sales of electricity must be reported on an accrual basis. The applicable tax must be separately stated on the bill to each customer. A sale of electricity is considered to accrue when the customer is billed for the sale. The applicable tax is due on gross receipts derived from the sale of electricity without any deduction for any franchise tax that is due. The receipts must be reflected on the **Utility and Liquor Sales and Use Tax Return, Form E-500E**; payments and returns are due on or before the dates set in G.S. 105-164.16(b), (b1), or (b2).

**B. Other Fuels**

1. Sales of bottled gas, coal, coke, fuel oil, oxygen, acetylene, hydrogen, liquefied petroleum gas, or other combustibles to users or consumers are subject to the general rate of State tax and any applicable local sales or use tax except those sales exempt from tax under G.S. 105-164.13.
2. Sales to a small power production facility of fuel for use by the facility to generate electricity are exempt from sales or use tax. A “**small power production facility**” means a facility which:
  - a. produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, geothermal resources or any combination thereof; and
  - b. has a power production capacity which, together with any other facilities located at the same site (as determined by the North Carolina Utilities Commission), is not greater than 80 megawatts.
3. Sales of any of the fuels or combustibles named in Paragraph B.1. are subject to tax as follows (**effective January 1, 2006**).
  - a. **Sales to a farmer** for use by him for any farm purpose other than preparing food, heating a dwelling, or other household purposes are exempt from tax.
  - b. **Sales to a manufacturing industry or plant** for use in connection with the operation of such industry or plant, provided the fuel is not to be used for residential heating purposes are exempt from sales and use tax. The purchaser

is liable for a 1% privilege tax on the purchase of the fuel as described in Section 56 of the Sales and Use Tax Technical Bulletins.

- c. Sales to a commercial laundry or pressing and dry cleaning establishment** for use in machinery used in the direct performance of the laundering or the pressing and cleaning service are exempt from tax.

The quantity of fuel purchased for use at any one time in no way affects or determines the tax rate to be applied.

4. Sales of fuel, other than electricity to farmers for preparing food, heating a dwelling or other household purposes are subject to the general rate of State tax and any applicable local sales or use tax.
5. Sales of liquefied petroleum gas to a poultry farmer for use in chicken brooders are exempt from tax.
6. Sales of fuel, other than electricity for residential heating purposes are subject to the general rate of State tax and any applicable local sales or use tax.
7. Sales of sawdust to manufacturing plants for use as a fuel in connection with the manufacturing operation are exempt from sales and use tax. However, the purchaser is liable for a 1% privilege tax on such purchases.
8. Sales of coal in its original state are exempt from tax when the sales are made by the producer, or the producer's agent, in the capacity of a producer and the coal is delivered to the purchaser directly from the mine.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-187.50; 105-187.51; 105-187.51A; 105-187.51B; 105-187.52; 105-264;  
Issued: June 1, 1996;  
Revised: April 1, 2007; July 1, 2005; February 1, 2004;  
June 1, 2002; October 1, 1999; October 15, 1998;  
March 1, 1997.

### **39-2 PROPANE SOLD TO SCHOOLS**

Sales of propane gas to public and private schools for use or consumption are subject to the general rate of State tax and any applicable local sales or use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;  
Issued: June 1, 1996;  
Revised: June 1, 2002.

### **39-3 AVIATION FUEL**

Sales of aviation gasoline and other aviation fuel to users or consumers in this State are subject to the general rate of State tax and any applicable local sales or use tax. The federal tax on aviation gasoline or other aviation fuels which is levied by Chapter 32, Section 4081, of the Internal Revenue Code and the federal super fund tax are imposed on gasoline sold by any producer, terminal operator or importer of gasoline and shall be included in the sales price of aviation gasoline on which North Carolina sales tax is due. The federal tax on noncommercial aviation gasoline and the federal tax on certain other liquids sold for use or used for fuel in noncommercial aviation as levied by the provisions of Chapter 31, Section 4041, of the Internal

Revenue Code, are taxes imposed at the retail level and these taxes are not includable in the sales price upon which North Carolina sales tax is due.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-264;  
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Revised: June 1, 2002.