SALES AND USE TAX BULLETINS

Reflecting Changes Made in the 2025 Regular Session of the North Carolina General Assembly

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PREFACE

The Sales and Use Tax Bulletins ("SUTB") present the Secretary of Revenue's interpretation of the North Carolina sales and use tax law. These bulletins do not cover all interpretations and applications of the sales and use tax law.

The Sales and Use Tax Bulletins herein are based on the law in effect as of January 1, 2026, and supersede any Sales and Use Tax Bulletins published prior to January 1, 2026.

You must consider all facts and circumstances when applying the information contained in these bulletins to particular transactions or situations. Additional changes may result from legislative action, court decisions, and rules amended or adopted under Chapter 150B of the North Carolina General Statutes after these bulletins are published. To the extent there is any change to a statute, administrative rule, or new case law subsequent to the date of this publication, the provisions in these bulletins may be superseded or voided.

To obtain specific binding tax advice refer to the Department's Written Determination Policy.

Date Published: January 1, 2026

SUTB 1 LICENSES REQUIRED AND IMPOSITION OF SALES AND USE TAX

1-1 SALES AND USE TAX BULLETIN TERMS AND DEFINITIONS

A. Terms and Definitions

Terms and definitions provided in G.S. § 105-164.3, apply to the Sales and Use Tax Bulletins (SUTBs), when used herein.

B. Commonly Used Terms and Definitions

Some of the terms and definitions provided in G.S. § 105-164.3 are shown below. Additional terms and definitions are provided in specific sections where they are most applicable.

1. **"Affiliate"** – Defined in G.S § 105-130.2.

2. **"Business"** – An activity a person engages in or causes another to engage in with the object of gain, profit, benefit, or advantage, either direct or indirect. The term does not include an occasional and isolated sale or transaction by a person who does not claim to be engaged in business.

3. **"Certain digital property"** – Specified digital products and additional digital goods. The term does not include an information service or an educational service.

4. **"Combined general rate"** – The State's general rate of tax set in G.S. § 105-164.4(a) plus the sum of the rates of the local sales and use taxes authorized by Subchapter VIII of Chapter 105 of the North Carolina General Statutes for every county in this State.

5. **"Consumer"** – A person who stores, uses, or otherwise consumes in this State an item purchased or received from a retailer or supplier either within or without this State.

6. **"Engaged in business"** – Any of the following:

- **a.** Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room, warehouse or storage place, or other place of business in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, sales representative, marketplace facilitator subject to the requirements of G.S. § 105-164.4J, or solicitor operating or transacting business by mobile phone application or other applications in this State. The fact that any corporate retailer, agent, or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State is immaterial.
- **b.** Maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property or certain digital property for the purpose of lease or rental.
- **c.** Making a remote sale, if one of the conditions listed in G.S. § 105-164.8(b) is met.
- **d.** Shipping wine directly to a purchaser in this State as authorized by G.S. § 18B-1001.1.
- **e.** Making marketplace-facilitated sales subject to the requirements of G.S. § 105-164.4J

7. **"Facilitator"** – An accommodation facilitator, an admission facilitator, or a service contract facilitator.

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8. **"Gross sales"** – The sum total of the sales price of all sales of tangible personal property, digital property, and services.

9. **"In this (the) State"** – Within the exterior limits of the State of North Carolina, including all territory within these limits owned by or ceded to the United States of America.

10. **"Item"** – Tangible personal property, digital property, or a service, unless the context requires otherwise.

11. **"Lease or rental"** – A transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. The term does not include any of the following:

    a. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.
    b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars ($100) or 1% of the total required payments.
    c. The providing of tangible personal property along with an operator for a fixed or indeterminate period of time if the operator is necessary for the equipment to perform as designed. For the purpose of this sub-subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property.

12. **"Net taxable sales"** – The gross sales or gross receipts of a retailer or another person taxed under Article 5 of Chapter 105 of the North Carolina General Statutes after deducting exempt sales and nontaxable sales.

13. **"Person"** – Defined in G.S. § 105-228.90.

14. **"Purchase"** – Acquired for consideration or consideration in exchange for a service, regardless of any of the following:

    a. Whether the acquisition was effected by a transfer of title or possession, or both, or a license to use or consume.
    b. Whether the transfer was absolute or conditional regardless of the means by which it was effected.
    c. Whether the consideration is a price or rental in money or by way of exchange or barter.

15. **"Purchase price"** – The term has the same meaning as the term sales price when applied to an item subject to use tax.

16. **"Remote sale"** – A sale of an item ordered by mail, telephone, Internet, mobile phone application, or another method by a retailer who receives the order in another state and delivers the item or makes it accessible to a person in this State or causes the item to be delivered or made accessible to a person in this State or performs a service sourced to this State. It is presumed that a resident of this State who makes an order was in this State at the time the order was made.

17. **"Retail sale or sale at retail"** – The sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

18. **"Retailer"** – Any of the following persons:

a. A person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of items sourced to this State. When the Secretary finds it necessary for the efficient administration of Article 5 of Chapter 105 of the North Carolina General Statutes to regard any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these dealers, distributors, consignors, supervisors, employers, or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers, or persons as retailers for the purpose of Article 5 of Chapter 105 of the North Carolina General Statutes.

b. A person, other than a real property contractor, engaged in business of delivering, erecting, installing, or applying tangible personal property or certain digital property for use in this State.

c. A person engaged in business of making a remote sale, if one of the conditions listed in G.S. § 105-164.8(b) is met.

d. A person required to collect the State tax levied under Article 5 of Chapter 105 of the North Carolina General Statutes or the local taxes levied under Subchapter VIII of Chapter 105 of the North Carolina General Statutes and under Chapter 1096 of the 1967 Session Laws.

e. A marketplace facilitator that is subject to the requirements of G.S. § 105-164.4J or a facilitator that is required to collect and remit the tax under Article 5 of Chapter 105 of the North Carolina General Statutes.

19. **"Sale or selling"** – The transfer for consideration of title, license to use or consume, or possession of tangible personal property or certain digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. The term applies to the following:

a. Fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work.

b. Furnishing or preparing tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared.

c. A transaction in which the possession of the tangible personal property or certain digital property is transferred but the seller retains title or security for the payment of the consideration.

d. A lease or rental.

e. Transfer of a digital code.

f. An accommodation.

g. A service contract.

h. Any other item subject to tax under Article 5 of Chapter 105 of the North Carolina General Statutes.

20. **"Sales price"** – The total amount or consideration for which an item is sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.

a. The term includes all of the following:

(1) The retailer's cost of the item sold.

(2) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer.

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(3) Charges by the retailer for any services necessary to complete the sale.
(4) Delivery charges.
(5) Installation charges.
(6) Credit for trade-in. The amount of any credit for trade-in is not a reduction of the sales price.
(7) The amount of any discounts that are reimbursable by a third party and can be determined at the time of sale through any of the following:

(i) Presentation by the consumer of a coupon or other documentation.
(ii) Identification of the consumer as a member of a group eligible for a discount.
(iii) The invoice the retailer gives the consumer.

b. The term does not include any of the following:

(1) Discounts that are not reimbursable by a third party, are allowed by the retailer, and are taken by a consumer on a sale.
(2) Interest, financing, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale, or a similar document given to the consumer.
(3) Any taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer.

21. **"Secretary"** – The Secretary of the North Carolina Department of Revenue.

22. **"Storage"** – The keeping or retention in this State for any purpose, except sale in the regular course of business, of tangible personal property or certain digital property for any period of time purchased from a person in business.

23. **"Streamlined Agreement"** – The Streamlined Sales and Use Tax Agreement as amended as of November 7, 2023.

24. **"Tangible personal property"** – Personal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses. The term includes electricity, water, gas, steam, and prewritten computer software.

25. **"Taxpayer"** – Any person liable for sales and use tax under Article 5 of Chapter 105 of the North Carolina General Statutes.

26. **"Use"** – The exercise of any right, power, or dominion whatsoever over an item by the purchaser of the item. The term includes withdrawal from storage, distribution, installation, affixation to real or personal property, and exhaustion or consumption of the item by the owner or purchaser. The term does not include a sale of an item the regular course of business.

27. **"Use tax"** – The tax imposed by Part 2 of Article 5 of Chapter 105 of the North Carolina General Statutes.

28. **"Wholesale merchant"** – A person engaged in the business of any of the following:

a. Making wholesale sales.
b. Buying or manufacturing items and selling them to a registered person or nonresident retail or wholesale merchant for resale.
c. Manufacturing, producing, processing, or blending any articles of commerce and maintaining a store, warehouse, or any other place that is separate and apart from

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the place of manufacture or production for the sale or distribution of the articles, other than bakery products, to another for the purpose of resale.

29. **"Wholesale sale"** – A sale of an item for the purpose of resale. The term includes a sale of certain digital property for reproduction into certain digital property or tangible personal property offered for sale. The term does not include a sale to a user or consumer not for resale or, in the case of certain digital property, not for reproduction and sale of the reproduced property.

1-2 LICENSES REQUIRED

A. Certificate of Registration

Every person engaged in business in North Carolina as a retailer, wholesale merchant, or facilitator liable for sales or use tax must obtain a Certificate of Registration from the Department including a person engaged in business that attends a single event or function in this State to solicit sales in this State. The person must obtain the certificate before they engage in business in North Carolina. A remote seller, as provided in SUTB 2-2, is also required to register to obtain a Certificate of Registration. There is no fee required to apply for a Certificate of Registration. Each legal entity engaged in business in this State is required to obtain a Certificate of Registration. A Certificate of Registration is not assignable and is only valid for the person in whose name it is issued. A copy of the Certificate of Registration must be displayed at each place of business.

B. User or Consumer Use Tax Registration

Every person that purchases taxable items for business use for storage, use, or consumption in North Carolina is required to obtain a User or Consumer Use Tax Registration except:

1. A person registered as a retailer, wholesale merchant, or facilitator.

2. A person who has paid all sales and use tax due on their purchases of items for storage, use, or consumption in the State.

There is no fee required to apply for a User or Consumer Use Tax Registration.

C. Registration

A Certificate of Registration or User or Consumer Use Tax Registration may be obtained through the online business registration or by mailing the appropriate registration application to the Department.

North Carolina is a member of the Streamlined Sales Tax® Governing Board. A seller can register with all 24 Streamlined member states (AR, GA, IN, IA, KS, KY, MI, MN, NE, NV, NJ, NC, ND, OH, OK, RI, SD, TN, UT, VT, WA, WV, WI, and WY) through the Streamlined Sales Tax® Registration System by completing one online application. There is no fee required to complete and submit the online application.

1-3 IMPOSITION OF SALES AND USE TAX

A. General State Rate of Sales and Use Tax

The general State rate of sales and use tax is 4.75% and is levied on the sales price of or the gross receipts derived from the following items sold at retail unless a statutory exemption or exception applies:

1. Articles of tangible personal property, other than a boat, including tangible personal property sold at a specialty market or other event.
2. Leases or rentals of tangible personal property other than a boat.
3. Free standing appliances.
4. Manufactured homes.
5. Modular homes.
6. Qualified jet engines.
7. Admission charges to an entertainment activity.
8. Aircraft: maximum tax is two thousand five hundred dollars ($2,500) per aircraft.
9. Certain digital property.
10. Dry cleaning or laundry services.
11. Prepaid meal plans.
12. Prepaid telephone calling services.
13. Rentals of accommodations.
14. Repair, maintenance, and installation services.
15. Satellite digital audio radio services.
16. Service contracts.

B. Local Rates of Sales and Use Tax

The local rates of sales and use tax apply to the sales price of taxable items unless exempt as provided in this subsection. The taxes are administered, collected, and distributed by the Department. A chart reflecting the total general State, applicable local, and applicable transit rates of sales and use tax by county and zip code is available on the Department's website. Except as provided within the specific Articles, the adoption, levy, collection, administration, and repeal of the taxes shall be in accordance with Article 39 of Chapter 105 of the North Carolina General Statutes and Chapter 1096 of the 1967 Session Laws.

1. Local Sales and Use Tax Applicable to All Counties (2.00%)

The following local sales and use taxes are levied in all one hundred (100) counties, the total of which equals 2.00%.

a. Article 39

Article 39, First One-Cent (1¢) Local Government Sales and Use Tax Act, of Subchapter VIII of Chapter 105 of the North Carolina General Statutes or the Mecklenburg County Sales and Use Tax Act, Chapter 1096 of the 1967 Session Laws, authorizes the counties of this State to levy a 1% local sales and use tax.

b. Article 40

Article 40, First One-Half Cent (1/2¢) Local Government Sales and Use Tax Act, of Subchapter VIII of Chapter 105 of the North Carolina General Statutes authorizes the counties of this State to levy a 0.50% local sales and use tax.

c. Article 42

Article 42, Second One-Half Cent (1/2¢) Local Government Sales and Use Tax Act, of Subchapter VIII of Chapter 105 of the North Carolina General Statutes authorizes the counties of this State to levy a 0.50% local sales and use tax.

2. Additional Local Sales and Use Tax Applicable to Certain Counties (0.25%)

A county may levy a 0.25% local sales and use tax pursuant to Article 46, One-Quarter Cent (¼¢) County Sales and Use Tax Act, of Subchapter VIII of Chapter 105 of the North Carolina General Statutes.

Forty-eight (48) counties have levied the 0.25% local sales and use tax in addition to the local taxes listed in SUTB 1-3B.1. The total local sales and use tax rate for these forty-eight (48) counties, notwithstanding any additional transit tax, is 2.25%. The counties that have adopted the additional 0.25% local sales and use tax are:

Alexander	Alleghany	Anson	Ashe
Bertie	Buncombe	Cabarrus	Catawba
Chatham	Cherokee	Clay	Cumberland
Davidson	Duplin	Durham	Edgecombe
Forsyth	Gaston	Graham	Greene
Halifax	Harnett	Haywood	Hertford
Jackson	Jones	Lee	Lincoln
Madison	Martin	Montgomery	Moore
New Hanover	Onslow	Orange	Pasquotank
Pitt	Randolph	Robeson	Rockingham
Rowan	Rutherford	Sampson	Stanly
Surry	Swain	Washington	Wilkes

3. Exemptions and Exclusions from Local Sales and Use Tax

The local rates of sales and use tax do not apply to the following:

a. Items not subject to sales and use tax.

b. Items specifically exempt by statute from the general State rate of sales and use tax.

c. Items subject to the combined general rate of sales and use tax as provided in SUTB 1-3F.

d. Manufactured homes.

e. Modular homes.

f. Aircraft.

g. Qualified jet engines.

h. Boats.

i. Qualifying food, subject to the 2% food rate of sales and use tax as provided in SUTB 32.

C. Public Transportation (Transit) Rates of Sales and Use Tax

The transit rates of sales and use tax levied by certain counties apply to the sales price of taxable items unless exempt as provided in this subsection. The taxes are administered, collected, and distributed by the Department of Revenue. A chart reflecting the total general State, applicable local, and applicable transit rates of sales and use tax by county and zip code is available on the Department's website. Except as provided in Article 43, the adoption, levy, collection, administration, and repeal of the taxes shall be in accordance with Article 39 of Chapter 105 of the North Carolina General Statutes.

1. Transit Rates of Sales and Use Tax Applicable to Certain Counties (0.50%)

Mecklenburg County, the Triangle Regional Public Transportation Authority, and the Triad Regional Transportation Authority may levy an additional 0.50% local sales and use tax to be used only for local public transportation systems pursuant to Article 43, Local Government Sales and Use Taxes for Public Transportation, of Subchapter VIII of Chapter 105 of the North Carolina General Statutes. The 0.50% local transit sales and use tax is in addition to the general State rate of sales and use tax and any local rates of sales and use tax currently in effect in a taxing district (e.g., any of those listed in SUTBs 1-3A or 1-3B).

The following four (4) counties have levied the additional 0.50% local transit sales and use tax:

a. Durham.
b. Mecklenburg.
c. Orange.
d. Wake.

Forsyth and Guilford Counties have not levied the 0.50% local transit sales and use tax.

2. All Other Counties (0.25%)

A county other than Durham, Forsyth, Guilford, Mecklenburg, Orange, or Wake may a levy an additional 0.25% local transit sales and use tax if the county or at least one unit of local government in the county operates a public transportation system pursuant to G.S. §§ 105-511 and 105-511.1 under Article 43, Local Government Sales and Use Taxes for Public Transportation, of Subchapter VIII of Chapter 105 of the North Carolina General Statutes.

Operation of a public transportation system includes a contract or interlocal agreement for the operation of the public transportation system by another county, municipality, or by a transportation authority created under a municipal charter or Article 25, 26, or 27 of Chapter 160A of the North Carolina General Statutes. Operation of a public transportation system also includes a contract with a private entity for operation of the public transportation system.

No county has levied the 0.25% local transit sales and use tax provided by this subsection.

3. Exemptions and Exclusions from Transit Sales and Use Tax

The transit rates of sales and use tax do not apply to the following:

a. Items not subject to sales and use tax.

b. Items specifically exempt by statute from the general State rate of sales and use tax.

c. Items subject to the combined general rate of sales and use tax as provided in SUTB 1-3F.

d. Manufactured homes.

e. Modular homes.

f. Aircraft.

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g. Qualified jet engines.

h. Boats.

i. Qualifying food, subject to the 2% food rate of sales and use tax as provided in SUTB 32.

D. Food Rate of Sales and Use Tax

The sales price of qualifying food, as provided in SUTB 32, is only subject to the 2% food rate of sales and use tax. Sales and purchases of qualifying food are exempt from the general State rate and any other additional local or transit rates of sales and use tax.

The general State, applicable local, and applicable transit rates of sales and use tax apply to the sales price of non-qualifying food sold at retail (e.g., prepared food, soft drinks, and candy).

Note: For more detailed information on the application of tax to qualifying and non-qualifying food, refer to SUTB 32.

E. 3% State Rate of Sales and Use Tax

The sales price of a boat sold at retail, including any charges for parts or accessories attached to the boat when it is delivered to the purchaser, is subject to the 3% State rate of sales and use tax with a maximum tax of one thousand five hundred dollars ($1,500).

F. Combined General Rate of Sales and Use Tax

The combined general rate of sales and use tax is 7% and is levied on the sales price of or the gross receipts derived from retail sales of the following:

1. Electricity.
2. Piped natural gas.
3. Telecommunications service and ancillary service.
4. Spirituous liquor and antique spirituous liquor, other than mixed beverages.
5. Video programming service.
6. Aviation gasoline and jet fuel.

SUTB 2 RESPONSIBILITY FOR COLLECTING AND REMITTING SALES AND USE TAX

2-1 RETAILER OR FACILITATOR AS TRUSTEE FOR STATE

The sales tax is intended to be passed on to the purchaser of a taxable item and borne by the purchaser instead of by the retailer. A retailer must collect the tax due on an item when sold at retail. These requirements also apply to facilitators liable for sales and use tax. The tax is a debt from the purchaser to the retailer until paid and is recoverable at law by the retailer in the same manner as other debts. A retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser on a taxable sale. The tax must be stated and charged separately on the invoices or other documents of the retailer given to the purchaser at the time of the sale except for either of the following:

1. Vending machine sales.
2. Where a retailer displays a statement indicating the sales price includes the tax.

2-2 RETAILER'S OBLIGATION TO COLLECT TAX; REMOTE SALES SUBJECT TO TAX

A. A retailer is required to collect sales and use tax imposed, notwithstanding any of the following:

1. That the purchaser's order or the contract of sale is delivered, mailed, or otherwise transmitted by the purchaser to the retailer at a point outside this State as a result of solicitation by the retailer through the medium of a catalogue or other written advertisement.

2. That the purchaser's order or the contract of sale is made or closed by acceptance or approval outside this State, or before any tangible personal property or certain digital property that is part of the order or contract enters this State.

3. That the purchaser's order or the contract of sale provides that the property shall be or is in fact procured or manufactured at a point outside this State and shipped directly to the purchaser from the point of origin.

4. That the property is mailed to the purchaser in this State or a point outside this State or delivered to a carrier outside this State f.o.b. or otherwise and directed to the purchaser in this State regardless of whether the cost of transportation is paid by the retailer or by the purchaser.

5. That the property is delivered directly to the purchaser at a point outside this State.

6. Any combination in whole or in part of any two or more of the foregoing statements of fact, if it is intended that the property purchased be brought to this State for storage, use, or consumption in this State.

B. A remote sale is a sale of an item ordered by mail, telephone, Internet, mobile phone application, or another method by a retailer who receives the order in another state and delivers the item or makes it accessible to a person in this State or causes the item to be delivered or made accessible to a person in this State or performs a service sourced to this state. It is presumed that a resident of this State who makes an order was in this State at the time the order was made. A retailer who makes a remote sale is engaged in business in this State and is subject to sales and use tax if at least one of the conditions below is met.

1. The retailer is a corporation engaged in business under the laws of this State or a person domiciled in, a resident of, or a citizen of, this State.

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2. The retailer maintains retail establishments or offices in this State, whether the remote sales thus subject to taxation by this State result from or are related in any other way to the activities of the establishments or offices.

3. The retailer solicits or transacts business in this State by employees, independent contractors, agents, or other representatives, whether the remote sales subject to taxation by this State result from or are related in any other way to the solicitation or transaction of business. A retailer is presumed to be soliciting or transacting business by an independent contractor, agent, or other representative if the retailer enters into an agreement with a person of this State under which the person, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet Web site or otherwise, to the retailer. This presumption applies only if the cumulative gross receipts from sales by the retailer to purchasers in this State who are referred to the retailer by all persons of this State with this type of agreement with the retailer is in excess of ten thousand dollars ($10,000) during the preceding four quarterly periods. This presumption may be rebutted by proof that the person with whom the retailer has an agreement did not engage in any solicitation in the State on behalf of the retailer that would satisfy the nexus requirement of the United States Constitution during the four quarterly periods in question.

4. The retailer, by purposefully or systematically exploiting the market provided by this State by any media-assisted, media-facilitated, or media-solicited means, including direct mail advertising, distribution of catalogs, computer-assisted shopping, television, radio or other electronic media, telephone solicitation, magazine or newspaper advertisements, or other media, creates nexus with this State. A nonresident retailer who purchases advertising to be delivered by television, by radio, in print, on the Internet, or by any other medium is not considered to be engaged in business in this State based solely on the purchase of the advertising.

5. Through compact or reciprocity with another jurisdiction of the United States, that jurisdiction uses its taxing power and its jurisdiction over the retailer in support of this State's taxing power.

6. The retailer consents, expressly or by implication, to the imposition of the tax imposed by Article 5 of Chapter 105 of the North Carolina General Statutes. For purposes of this subsection, evidence that a retailer engaged in the activity described in SUTB 2-2B.1. is prima facie evidence that the retailer consents to the imposition of the tax imposed by Article 5 of Chapter 105 of the North Carolina General Statutes.

7. The retailer is a holder of a wine shipper permit issued by the ABC Commission pursuant to G.S. § 18B-1001.1.

8. The retailer makes gross sales in excess of one hundred thousand dollars ($100,000) from remote sales sourced to this State, including sales as a marketplace seller, for the previous or the current calendar year.

9. The retailer is a marketplace facilitator that makes gross sales in excess of one hundred thousand dollars ($100,000), including all marketplace-facilitated sales for all marketplace sellers, from sales sourced to this State for the previous or the current calendar year.

C. A retailer who is required to collect the tax imposed by Article 5 of Chapter 105 of the North Carolina General Statutes must collect a local use tax on a transaction if a local sales tax does not apply to the transaction. The sourcing principles in G.S. § 105-164.4B determine whether a local sales tax or a local use tax applies to a transaction. A local sales tax or local use tax is a tax imposed under Chapter 1096 of the 1967 Session Laws or by Subchapter VIII of Chapter 105 of the North Carolina General Statutes.

D. A retailer that that does not have a place of business in this State but delivers property for storage, use, or consumption in this State or provides services sourced to this State is required to register with the Department in accordance with G.S. § 105-164.29.

2-3 PRESUMPTION THAT SALES ARE TAXABLE

For the proper administration of sales and use tax and to prevent evasion of the retail sales tax, the following presumptions apply:

1. That all gross receipts of wholesale merchants and retailers are subject to the retail sales tax until the contrary is established by the proper records required by Article 5 of Chapter 105 of the North Carolina General Statutes.
2. That tangible personal property sold by a person for delivery in this State is sold for storage, use, or other consumption in this State.
3. That tangible personal property delivered outside this State and brought to this State by the purchaser is for storage, use, or consumption in this State.
4. That certain digital property sold for delivery or access in this State is sold for storage, use, or consumption in this State.
5. That a service purchased for receipt in this State is purchased for storage, use, or consumption in this State.

2-4 CONSUMER USE TAX

A. General Provisions

North Carolina consumer use tax is due to be paid by individuals and businesses on the following items if the seller fails to collect the applicable tax:

1. Tangible personal property purchased, leased or rented inside or outside this State for storage, use, or consumption in this State. This includes tangible personal property that becomes part of a building or another structure.
2. Certain digital property purchased inside or outside this State for storage, use, or consumption in this State.
3. Services sourced to this State.

Common items on which sales tax may not have been collected and where use tax may be due by the purchaser include, but are not limited to:

1. Tangible personal property including, but not limited to:

a. Computers and other electronic equipment.
b. Home furnishings.
c. Clothing.
d. Jewelry.
e. Sporting goods.
f. Audio compact discs (CDs), tapes, and records.
g. ATVs (All-Terrain Vehicles).

2. Certain digital property listed below:

a. A digital audio work. (*Examples include, but are not limited to, ringtones, digital music, readings of books or other written materials, speeches, and other sound recordings.*)

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b. A digital audiovisual work. (*Examples include, but are not limited to, movies, motion pictures, musical videos, news and entertainment programs, and live events.*)

c. A book, magazine, newspaper, newsletter, report, or another publication, if transferred electronically.

d. A photograph or a greeting card, if transferred electronically.

3. Prewritten software including electronic downloads of software.

4. Purchases of or recharges of prepaid telephone calling cards and phones.

5. Certain service contracts.

6. Admission tickets to an entertainment activity purchased outside the State where admission to the activity may be gained in this State.

7. Repair, maintenance, and installation services performed outside the State where the item is returned to the owner or owner's designee in this State.

B. Consumer Use Tax Filing Requirements

1. An individual required to file Form D-400, North Carolina Individual Income Tax Return, must report the consumer use tax liability on non-business purchases of taxable items, other than a boat, an aircraft, and food subject to the 2% rate of tax, on the individual's income tax return.

2. An individual not required to file Form D-400 must report the consumer use tax liability on taxable purchases other than a boat or aircraft, on Form E-554, Consumer Use Tax Return.

3. Any individual who purchases food subject to the 2% food rate of sales and use tax must report the consumer use tax liability on Form E-554, Consumer Use Tax Return.

4. An individual who purchases a boat or aircraft must report the consumer use tax liability on Form E-555, Boat and Aircraft Use Tax Return.

5. A business is required to report consumer use tax liability on a sales and use tax return. Generally, a business will report and remit use tax on Form E-500, Sales and Use Tax Return, or through the Department's online filing and payment system.

6. A person that is engaged in business, is not otherwise required to file a sales and use tax return, and on one or more occasions within a twelve-month period purchases property subject to consumer use tax must register, file a return, and pay the tax due within twenty (20) days after the end of the month in which the purchase was made.

2-5 EFFECTIVE DATE OF A RATE OR TAX CHANGE

A. The effective date of a tax rate change for items that are taxable at the general State, applicable local, and applicable transit rates of sales and use tax is as follows:

1. For a taxable item that is provided and billed on a monthly or other periodic basis:

a. A new tax or a tax rate increase applies to the first billing period that is at least thirty (30) days after enactment and that starts on or after the effective date.

b. A tax repeal or a tax rate decrease applies to bills rendered on or after the effective date.

2. For a taxable item that is not billed on a monthly or other periodic basis, a tax change applies to amounts received for items provided on or after the effective date, except amounts received for items purchased to fulfill a real property contract for a capital improvement entered into or awarded before the effective date or entered into or awarded pursuant to a bid made before the effective date.

B. The effective date of a tax rate change for an item that is taxable at the combined general rate of sales and use tax is as follows:

1. For a taxable item that is not billed on a monthly or other periodic basis, a tax change applies to amounts received for items provided on or after the effective date of a change in the State general rate of tax set in G.S. § 105-164.4.

2. For a taxable item that is provided and billed on a monthly or other periodic basis:

a. A tax increase applies to the first billing period that is at least 30 days after enactment and that starts on or after the effective date.

b. A tax rate decrease applies to bills rendered on or after the effective date.

3. For an increase in the authorization for local sales and use taxes, the date on which local sales and use taxes authorized by Subchapter VIII of Chapter 105 of the North Carolina General Statutes for every county become effective in the first county or group of counties to levy the authorized taxes.

4. For a repeal in the authorization for local sales and use taxes, the effective date of the repeal.

2-6 BASIS OF REPORTING

A. General Information

Except as otherwise provided in SUTB 2-6B, persons having both cash and credit sales may elect to report their tax liability on either the cash or accrual basis of accounting provided their records are kept in such a manner that they can determine their tax liability correctly on the basis used. If a taxpayer desires to change from one basis of reporting to another, a person must apply to the Secretary for permission to make such change. Permission granted by the Secretary to report on a selected basis continues in effect until revoked by the Secretary or the person receives permission from the Secretary to change the basis selected.

B. Accrual Basis Required

The following retailers must report gross receipts on an accrual basis of accounting for purposes of reporting and remitting sales tax:

1. A retailer who sells electricity, piped natural gas, or telecommunications service. A sale of electricity, piped natural gas, or telecommunications service is considered to accrue when the retailer bills its customer for the sale.

2. A retailer who derives gross receipts from a prepaid meal plan, notwithstanding that the retailer may report tax on the cash basis for other sales at retail and notwithstanding that the revenue has not been recognized for accounting purposes.

3. A retailer who sells or derives gross receipts from a service contract, as provided in SUTB 79.

2-7 OCCASIONAL AND ISOLATED SALES

An occasional or isolated sale occurs when the seller sells an item that is not of, or similar to, the type of item that the seller is engaged in the business of selling. Occasional and isolated sales do not include sales of items by a facilitator liable for collecting and remitting tax on the sale. The term "business" does not include an occasional and isolated sale or transaction by a person that does not claim to be "engaged in business." An occasional and isolated sale is not subject to sales and use tax.

2-8 CREDIT FOR SALES AND USE TAX PAID TO ANOTHER TAXING JURISDICTION

A. A credit is allowed for the amount of state sales or use tax legally due and paid to another state on purchases of a taxable item against the North Carolina State use tax due on the same item. If the amount of tax paid to the other state is less than the amount of use tax due to this State, the purchaser must pay to the Department an amount equal to the difference between the amount of tax paid to the other State and the amount of State use tax due in North Carolina. Records must be maintained and available for inspection by the Secretary to establish proof of payment of the tax to another taxing jurisdiction.

B. A credit is allowed for the amount of sales or use tax legally due and paid to another county or local taxing jurisdiction on purchases of a taxable item against the local or transit use tax due in North Carolina on the same item if the purpose of the tax legally due and paid is similar in purpose and intent as the local or transit use tax. If the amount of local or transit sales or use tax paid to another county or taxing jurisdiction is less than the amount of local or transit use tax due to this State, the purchaser must pay to the Department an amount equal to the difference between the amount of tax paid to the other taxing jurisdiction and the amount of local or transit tax due in North Carolina.

C. Records must be maintained and available for inspection by the Secretary to establish proof of payment of the tax to another taxing jurisdiction. The local or transit use tax is not subject to credit for payment of any State tax levy. No credit shall be allowed for sales and use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not allow a credit for local sales taxes paid in this State.

Note: For additional information, refer to Disclosed Practice 2 in the North Carolina State's Taxability Matrix.

2-9 STATUTE OF LIMITATIONS FOR ASSESSMENTS PROPOSED BY THE SECRETARY OF REVENUE

The general statute of limitations when proposing an assessment for an underpayment of tax is the later of the following:

1. Three years after the due date of the return or
2. Three years after the taxpayer filed the return.

If a taxpayer, as a trustee, collects taxes on behalf of North Carolina, but fails to remit all of the taxes held in trust when due, the period for proposing an assessment for underpayment of tax is the later of the following:

1. Ten years after the due date of the return or
2. Ten years after the taxpayer filed the return.

There is no statute of limitations when proposing an assessment for an underpayment of tax when any of the following apply:

1. The taxpayer did not file a return;
2. The taxpayer filed a fraudulent return; or
3. The taxpayer attempted in any manner to fraudulently evade or defeat the tax.

SUTB 3 SALES AND USE TAX - GENERAL

3-1 MEASURE OF SALES AND USE TAX DUE

A. Sales and use tax is due on the retailer's or facilitator's gross sales or gross receipts after deducting exempt sales and other nontaxable receipts. The retailer or facilitator shall pay to the State the amount of sales and use tax due, as provided by statute, at the applicable rate(s) on net taxable sales and gross receipts, as applicable, whether or not the tax thereon has been collected, and shall also pay any amount of tax collected in excess of the amount which should have been collected on taxable sales. If tax is collected in excess of the total amount that should have been collected on a taxable sale or is collected on an exempt or nontaxable sale, the total amount of tax collected must be paid to the Secretary, and no refund shall be made to a retailer or facilitator by the Secretary unless the purchaser has received credit for or has been refunded the amount of tax erroneously collected.

B. The retailer must pay tax on the sales price of all taxable items sold during the period covered by the return, whether or not such sales are cash, credit, installment, or conditional sales and whether or not the retailer retains the installment and conditional sales contracts or sells or assigns them to others and without regard to any finance reserve withheld on finance paper sold or assigned to others. Finance charges, service charges, or interest from credit extended under conditional sales contracts providing for deferred payment of the purchase price are not subject to tax if such charges are separately stated on the invoice or similar billing document given to the purchaser at the time of the sale and maintained in the retailer's records.

If, on conditional, installment, or other deferred payment sales, the person sells or assigns the finance paper, he is deemed to have received the full balance of the consideration for the sale of the item and is liable for remitting tax on the total sales price of such item at the close of the period during which the paper was assigned or sold including any finance reserve withheld on the finance paper. If such person sells their accounts receivable, the person is liable for payment of tax on the outstanding taxable balance of such accounts at the time they are sold notwithstanding that the accounts may be sold at a discount to the purchaser.

C. When a customer purchases more than one item in a transaction, the applicable rate of sales and use tax can be applied to each item purchased or to the total charge for all items purchased. Those businesses having cash registers at each counter or in each department shall collect a tax equal to the sales and use tax due on the total sales price of the items sold to a customer.

D. Rounding

The tax computation must be computed to the third decimal place and the tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. A retailer may elect to compute the tax due on a transaction on an item or an invoice basis and the rounding rule is applied to the aggregated tax due.

Note: This guidance addresses the rounding of tax, not after-tax rounding of cash transactions by retailers.

E. Trade-Ins or Barters

Sales and use tax must be computed and paid on the gross sales price of items sold at retail without any deduction for any trade-in credit or allowance or barter.

F. Installation Charges

Installation charges made by a retailer as part of a retail sale of an item are part of the sales price subject to sales and use tax. Charges by a retailer solely to install tangible personal property owned by a customer are also subject to sales and use tax.

Note: For information regarding repair, maintenance, and installation charges, refer to SUTB 75.

G. Surcharges

Surcharges made by a retailer for a retail sale, whether separately stated or not, are part of the sales price of an item subject to sales and use tax. *(Examples: Fees for using a credit card, fuel surcharges, trip surcharges, service fees unless exempt under SUTB 32-18, etc.)*

H. Tariffs

Tariffs imposed on a retailer are part of the sales price of an item subject to sales and use tax, whether separately stated or not.

If a consumer imports a product and is responsible for paying the tariff to the customs authority, the tariff paid by the consumer to the customs authority is not subject to use tax.

I. Single Charge for Taxable and Nontaxable or Exempt Items

1. General

Generally, when a person makes a single charge for taxable and nontaxable or exempt items, the entire sales price or gross receipts derived from such are subject to sales and use tax without deduction for any amount the person contends is charged for an item that is not subject to sales and use tax. Special rules apply to bundled transactions and mixed transaction contracts.

2. Bundled Transactions

Refer to SUTB 16 for information regarding bundled transactions.

3. Mixed Transaction Contracts

Refer to SUTB 72-6 for information regarding mixed transaction contracts.

3-2 RETURNS AND PAYMENT OF TAXES

A. A sales tax return must state the taxpayer's gross receipts sourced to the State for the reporting period, the amount and type of sales made in the period that are exempt from tax or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the purchase price of taxable items that were purchased or received during the reporting period, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed.

Sales and use taxes are payable when a return is due. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

B. Filing Frequency

The Secretary must assign a filing frequency for taxpayers filing sales and use tax returns. A taxpayer must file sales and use tax returns and pay the tax due according to the assigned filing frequency. The filing frequencies and requirements are as follows:

1. Quarterly

The Secretary assigns taxpayers whose total monthly tax liability is consistently less than $100 per month the quarterly filing frequency. Taxpayers assigned this filing frequency must file a return and pay taxes due quarterly. The return and payment are due on or before the last day of the month following the end of the calendar quarter for all taxes due for the preceding calendar quarter (e.g., April 30th, for the preceding calendar quarter of January, February, and March).

2. Monthly

The Secretary assigns taxpayers whose total monthly tax liability is consistently $100 or more, but less than $20,000 per month the monthly filing frequency. Taxpayers assigned this filing frequency must file a return and pay taxes due monthly. The return and payment are due on or before the 20th day of each month for all taxes due for the preceding calendar month.

3. Monthly with Prepayment

The Secretary assigns taxpayers whose total monthly tax liability is consistently $20,000 or more the monthly with prepayment filing frequency. Taxpayers assigned this filing frequency must make a monthly prepayment of the next month's tax liability. The prepayment is due on the date a monthly return is due. In addition, taxpayers assigned this filing frequency must file a return and pay the taxes due electronically every month. The return and payment are due on or before the 20th day of the following month using the Department's online filing and payment system. The prepayment must equal at least 65% of any of the following:

a. The amount of tax due for the current month.
b. The amount of tax due for the same month in the preceding year.
c. The average monthly amount of tax due in the preceding calendar year.

A taxpayer will not be subject to interest or penalties on any underpayment of a prepayment if the correct amount of tax due is paid by the due date and one of the above three calculation methods is used. In addition, a taxpayer is not required to utilize the same method for calculating the amount of the prepayment each month.

Note: For more detailed information on making electronic payments, refer to the Monthly Filing with Prepayment section of the Filing Frequency and Due Dates webpage.

4. Due Date Falls on a Saturday, Sunday, or Legal Holiday

Any document with a due date on a Saturday, Sunday, or legal holiday is timely filed if delivered in person or mailed or electronically submitted to the Department on or before the next business day after the Saturday, Sunday, or legal holiday. If the Federal Reserve Bank is closed on a due date that prohibits a person from making a payment by ACH debit or credit, the payment is timely if made on the next day the Federal Reserve Bank is open.

C. Schedule of County Sales and Use Taxes

A person must file Form E-536, Schedule of County Sales and Use Taxes with Form E-500, Sales and Use Tax Return, if:

1. A person reports sales and use tax for more than one county.

2. A person is required to collect and remit county tax for any county where the person's business is not located.

A person should enter the total amount of local and any applicable transit tax due for each county under the appropriate column on Form E-536. The 2% food tax rate (on qualifying food that is exempt from the State tax) for all counties should be entered on the 2.00% Food Tax line at the bottom of Form E-536 as a cumulative amount.

D. No Sales or Purchases by Business

A person registered to collect and remit sales or use tax that does not make any sales or purchases during a reporting period must file a return for that period and indicate $0.00 on the Total Due line.

E. Seasonal Business

A retailer engaged in business for six or fewer consecutive months during a year may register as a seasonal filer and indicate the months in which the retailer is engaged in business. A retailer that is registered as a seasonal filer is not required to file a return for an off-season reporting period in which the retailer did not engage in business.

F. Wholesale Merchant

A person that engages exclusively in the business of making wholesale sales is not required to file a return but is required to register to obtain a Certificate of Registration. A wholesale merchant that makes taxable sales to users, consumers, or nonregistered merchants or makes purchases subject to consumer use tax is not engaged exclusively in the business of making wholesale sales and must begin filing sales and use tax returns and pay the tax due.

G. Consumer Use Tax on Purchases for Non-Business Use

An individual who purchases taxable items sourced to this State for a non-business purpose is required to accrue and remit any consumer use tax due on the purchase price of the items. Individuals must pay consumer use tax to the Department when retailers or facilitators do not collect sales or use tax on taxable transactions. For information on use tax, refer to SUTB 2-4.

H. Grossly Incorrect, False, or Fraudulent Returns; Estimate of Tax Due

If a retailer, a wholesale merchant, a facilitator, or a consumer fails to file a return and pay the tax due under Article 5 of Chapter 105 of the North Carolina General Statutes or files a grossly incorrect or false or fraudulent return, the Secretary must estimate the tax due and assess the retailer, the wholesale merchant, the facilitator, or the consumer based on the estimate.

3-3 RECORDS REQUIRED TO BE KEPT

A. General Information

Every retailer, wholesale merchant, facilitator, real property contractor, and consumer must keep records that establish their sales and use tax liability. The Secretary or a person designated by the Secretary may inspect these records at any reasonable time during the day. Exemptions and exclusions may not be allowed unless the required records are kept. It is the duty of the Secretary or his authorized agents to assess a tax upon gross sales at the rate levied upon retail sales. If records are not kept disclosing gross sales, it is the duty of the Secretary to estimate and assess tax due based upon the best information available.

Generally, the records required to establish a person's sales and use tax liability include, but are not limited to the following:

1. All cash and credit sales, including sales under any type of financing or installment plan.

2. The amount of all items purchased and copies of all bills of lading, invoices, and purchase orders.

3. Copies of all sales invoices furnished by wholesale merchants, that must show the name and address of the purchaser, the date of purchase, the item or items purchased, and the purchase price of the item.

4. All deductions and exemptions allowed by law and claimed in filing sales and use tax returns.

5. All items used or consumed in the conduct of business.

6. A true and complete inventory of the value of the stock on hand.

7. All exemption certificates, and records of all sales made to a person furnishing an exemption certificate.

8. All affidavits of capital improvement or other records that establish a transaction is a real property contract.

9. All affidavits certifying tax paid by the purchaser on an item that becomes a part of real property.

10. Records of all sales made through a facilitator engaged in business in the State.

11. All affidavits of export.

12. All shipping records for items that are delivered.

13. All agreements with facilitators.

14. All bank account records.

15. All point-of-sale records and cash register z-tapes.

16. Any other document, report, form, or other similar record that establishes a person's sales and use tax liability.

B. Retailers and Facilitators

A retailer's or facilitator's records must include records of gross income, gross sales, net taxable sales, all items purchased for resale, and any reports or records related to transactions with a facilitator or retailer with whom it has a contract as provided in Article 5 of Chapter 105 of the North Carolina General Statutes. Failure of a retailer or facilitator to keep records that establish that a sale is exempt from sales and use tax subjects the retailer or facilitator to liability for tax on the sale.

C. Wholesale Merchants

A wholesale merchant's records must include a bill of sale for each customer that contains the name and address of the purchaser, the date of the purchase, the item purchased, and the sales

price of the item. A wholesale merchant must also keep records that establish a sale is exempt from tax and any reports or records related to transactions with a facilitator with whom it has a contract as provided in Article 5 of Chapter 105 of the North Carolina General Statutes. Failure of a wholesale merchant to keep records that establish a sale is exempt from sales and use tax subjects the wholesale merchant to liability for tax at the rate that applies to the retail sale of the item.

D. Real Property Contractors

A real property contractor's records must include substantiation that a transaction is a real property contract or a mixed transaction contract pursuant to G.S. § 105-164.4H(a1). Failure of a real property contractor to keep records that establish a transaction is a real property contract under Article 5 of Chapter 105 of the North Carolina General Statutes subjects the real property contractor to liability for tax on the sale. For additional information, refer to SUTB 72-5.

E. Consumers

A consumer's records must include an invoice or other statement of the purchase price of an item the consumer purchased from inside or outside the State and any sales and use tax paid thereon. Failure of the consumer to keep these records subjects the consumer to liability for tax on the purchase price of the item, as determined by the Secretary.

SUTB 4 SOURCING

The determination of the taxing jurisdiction for which a retailer is liable for collecting sales or use tax is referred to as sourcing. Generally, the sale is sourced to the jurisdiction where the purchaser or its delivery agent takes delivery of items purchased or the location where the purchaser can make first use of a service pursuant to the sourcing principles in G.S. § 105-164.4B.

4-1 GENERAL SOURCING PRINCIPLES

A. The following principles apply in determining where to source the sale of an item for the seller's purpose and do not alter the application of the consumer use tax imposed under G.S. § 105-164.6. For purposes of sourcing, the terms "receive" and "receipt" mean taking possession of tangible personal property; making first use of services; or taking possession or making first use of certain digital property, whichever comes first. The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser. Except as otherwise provided in this SUTB, a service is sourced where the purchaser can potentially first make use of the service. These principles apply regardless of the nature of the item, except as otherwise noted in this SUTB.

1. When a purchaser receives an item at a business location of the seller, the sale is sourced to that business location.

2. When a purchaser or purchaser's donee receives an item at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser or the purchaser's donee receives the item.

3. When (1) and (2) above do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

4. When (1), (2), and (3) above do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

5. When (1), (2), (3), and (4) above do not apply, including the circumstance in which the seller is without sufficient information to apply the rules, the location will be determined based on the following:

a. Address from which tangible personal property was shipped.

b. Address from which the digital good or the computer software delivered electronically was first available for transmission by the seller.

c. Address from which the service was provided.

Note: Supplemental sourcing information regarding specific topics may be found in the SUTB regarding the topic.

B. Exceptions

The sourcing principles as provided in this SUTB do not apply to the following:

1. Telecommunications services. Refer to SUTB 80 for sourcing information.

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2. Direct mail. Refer to SUTB 68-5 for sourcing information.

3. A florist wire sale. A florist wire sale is sourced to the business location of the florist that takes an order for the sale. A florist wire sale is a sale in which a retail florist takes a customer's order and transmits the order to another retail florist to be filled and delivered.

4-2 PERIODIC RENTAL PAYMENTS – SOURCING

A. Transportation Equipment Defined

For purposes of this section the following definition applies:

"Transportation equipment" – Any of the following used to carry persons or property in interstate commerce: a locomotive, a railway car, a "commercial motor vehicle" as defined in G.S. § 20-4.01, or an aircraft. The term includes a container designed for use on the equipment and a component part of the equipment.

B. When a lease or rental agreement requires recurring periodic payments, the payments are sourced as follows:

1. For leased or rented property, the first payment is sourced in accordance with the principles set out in SUTB 4-1 and each subsequent payment is sourced to the primary location of the leased or rented property for the period covered by the payment. This subsection applies to all property except a motor vehicle, aircraft, transportation equipment, and utility company railway car.

2. For leased or rented property that is a motor vehicle or an aircraft but is not transportation equipment, all payments are sourced to the primary location of the leased or rented property for the period covered by the payment.

3. For leased or rented property that is transportation equipment, all payments are sourced in accordance with the principles set out in SUTB 4-1.

4. For a railway car that is leased or rented by a utility company and would be transportation equipment if it were used in interstate commerce, all payments are sourced in accordance with the principles set out in SUTB 4-1.

4-3 ACCOMMODATIONS – SOURCING

The rental of an accommodation is sourced to the location of the accommodation.

4-4 CERTAIN DIGITAL PROPERTY – SOURCING

A purchaser receives certain digital property when the purchaser takes possession of the property or makes first use of the property, whichever comes first.

4-5 PREPAID MEAL PLAN – SOURCING

The gross receipts derived from a prepaid meal plan are sourced to the location where the food or prepared food is available to be consumed by the person.

4-6 ADMISSIONS – SOURCING

The gross receipts derived from an admission charge to an entertainment activity are sourced to the location where admission to the entertainment activity may be gained by the person. When the

location where admission may be gained is not known at the time of the receipt of the gross receipts for an admission charge, the sourcing principles in SUTB 4-1 apply.

4-7 COMPUTER SOFTWARE RENEWAL – SOURCING

The gross receipts derived from the renewal of a service contract for prewritten software is generally sourced pursuant to SUTB 4-1. However, sourcing the renewal to an address where the purchaser received the underlying prewritten software does not constitute bad faith provided the seller has not received information from the purchaser that indicates a change in the location of the underlying software.

SUTB 5 EXEMPTION ADMINISTRATION

5-1 PURCHASES EXEMPT FROM SALES AND USE TAX

A. Certificate of Exemption – Form E-595E

Unless otherwise provided in this SUTB, a purchaser should issue Form E-595E, Streamlined Sales and Use Tax Certificate of Exemption ("Certificate of Exemption") to purchase an item exempt from sales and use tax. The purchaser must provide a properly completed Certificate of Exemption or the same data elements required on a certificate to claim an exemption. If any of the data elements are not provided, the Certificate of Exemption is incomplete and invalid. A retailer is not required to verify the validity of a purchaser's certificate of registration number or other North Carolina issued exemption number provided by the purchaser on a Certificate of Exemption. Refer to the instructions on Form E-595E for additional detailed information.

Except as provided in SUTB 5-1B, a retailer is not liable for the applicable sales and use tax if the Secretary determines that a purchaser improperly claimed an exemption, or if the seller within 90 days of the sale meets the following requirements:

1. For a sale made in person, the retailer obtains a Certificate of Exemption or a blanket Certificate of Exemption from a purchaser with whom the retailer has a recurring business relationship. A recurring business relationship exists when a period of no more than 12 months elapses between sales transactions. If the purchaser provides a paper certificate, the certificate must be signed by the purchaser and provide the required data elements that include the purchaser's name, address, sales and use tax identification number or other North Carolina issued exemption number, type of business, and reason for exemption. For purposes of this subsection, a certificate received by fax is a paper certificate. If the purchaser does not provide a paper certificate, the seller must obtain and maintain the same required data elements had a certificate been provided by the purchaser.

2. For a sale made over the Internet or by other remote means, the retailer obtains the required data elements that include a purchaser's name, address, sales and use tax identification number or other North Carolina issued exemption number, type of business, and reason for exemption. The retailer must maintain this information in a retrievable format in its records. If a Certificate of Exemption is provided electronically for a remote sale, the requirements of SUTB 5-1A.1. apply except the electronic Certificate of Exemption is not required to be signed by the purchaser.

3. In the case of drop shipment sales, a third-party vendor obtains a Certificate of Exemption provided by its customer or any other acceptable information evidencing qualification for a resale exemption, regardless of whether the customer is registered to collect and remit sales and use tax in North Carolina.

Foreign diplomats and consular personnel must enter the individual tax identification number shown on the sales tax exemption card issued by the U.S. Department of State's Office of Foreign Missions.

A purchaser may make purchases for the purchaser's own use pursuant to the Certificate of Exemption and assume liability for payment of the applicable tax to the Department when the character of the business of the purchaser is such that it would impose undue hardship upon the retailer and purchaser to determine the transactions upon which the retailer would ordinarily be required to collect and remit the tax.

A person that issues a Certificate of Exemption to a retailer to obtain property and avoid payment of tax when due may be guilty of a Class H Felony. In addition, the person is subject to assessment

of the penalties set out in G.S. § 105-236, including a two hundred fifty-dollar ($250) penalty for misuse of a Certificate of Exemption. The penalty for misuse of an exemption certificate is imposed on a purchaser for each seller identified by the Department from which the person made a taxable purchase. Misuse of an exemption certificate occurs when a purchaser issues an exemption certificate for a taxable item and no sales or use tax is charged by the retailer due to reliance on the certificate furnished by the purchaser, but the item is used in a manner that renders it taxable. The penalty for misuse of an exemption certificate applies to the person issuing the certificate, not a seller who accepts the certificate. This penalty is subject to the discretionary authority of the Secretary pursuant to G.S. § 105-237.

The foregoing provisions regarding Certificates of Exemption are applicable to sales to nonresident retail or wholesale merchants. The term “nonresident retail or wholesale merchant” is defined as a person who does not have a place of business in this State, is registered for sales and use tax purposes in a taxing jurisdiction outside this State, and is engaged in the business of acquiring, by purchase, consignment, or otherwise, tangible personal property or certain digital property and selling the property outside this State or in the business of providing services.

Note: For additional information on nonresident retail or wholesale merchants, refer to SUTB 51-3.

B. Exemption Substantiation when Requested by the Department

If the Secretary determines that a retailer obtains an incomplete Certificate of Exemption, or incomplete data elements provided electronically, at the time of the sale or within 90 days subsequent to the date of sale, the Secretary may request substantiation from the retailer. The retailer may, within 120 days subsequent to a request for substantiation by the Department, either:

1. Obtain a fully completed Certificate of Exemption from the purchaser provided in good faith. The certificate is provided in good faith if it claims an exemption that meets all the following conditions:

- **a.** It was statutorily available in this State on the date of the transaction.
- **b.** It could be applicable to the item being purchased.
- **c.** It is reasonable for the purchaser’s type of business.

2. Obtain other information establishing that the transaction was not subject to tax.

A seller is not required to verify that a certificate of registration number provided by the purchaser is correct.

C. Direct Pay Permits

The Secretary is authorized to issue a direct pay permit upon proper application by a business. Direct pay permits issued by the Department authorize a business to make certain purchases without payment of sales and use tax to retailers. A business who issues a direct pay permit assumes responsibility for payment of the applicable taxes directly to the Department on items purchased without tax under a direct pay permit.

A business that has a direct pay permit is allowed to provide a retailer a copy of the direct pay permit as the retailer’s authority to not collect sales and use tax on the sale to the permit holder. A business may also provide a properly completed Certificate of Exemption to the retailer at the time of sale which includes the direct pay permit number in the Reason for Exemption section, as the retailer’s authority to not collect sales and use tax on the sale.

Note: For information regarding direct pay permits, refer to SUTB 24.

D. United States Government or North Carolina State Agencies

The United States Government and North Carolina State Agencies are not required to furnish a Certificate of Exemption to a retailer for a purchase that is exempt from sales and use tax. Purchase requisitions, affidavits signed by purchasing officers, and applicable credit cards issued by the United States Government are acceptable documentation for exempting purchases by the United States Government. Purchase orders or other documentation on file with the retailer bearing the assigned State agency exemption number are acceptable documentation for exempting purchases by North Carolina State Agencies. The United States Government or a North Carolina State Agency may complete and provide a Certificate of Exemption to a retailer as the retailer's authority to exempt the sale from sales and use tax.

Note: For information regarding the United States Government or North Carolina State Agencies, refer to SUTBs 36 and 37, respectively.

5-2 LIABILITY - EXEMPTIONS

A. Purchaser Liable for Tax on Items Purchased Exempt from Tax

A purchaser who does not resell an item purchased under a Certificate of Exemption is liable for any tax and any applicable interest and penalties subsequently determined to be due on the purchase of the item. This includes any item purchased for resale as well as any item purchased under a blanket Certificate of Exemption, provided SUTB 5-2B does not apply.

B. No Relief from Liability

The relief from liability provided to a retailer in SUTB 5-1 does not apply to a retailer that does any of the following:

1. Fraudulently fails to collect tax.

2. Solicits purchasers to participate in the unlawful claim of an exemption.

3. Accepts a Certificate of Exemption when the purchaser claims an entity-based exemption when the subject of the transaction sought to be covered by the Certificate of Exemption is received by the purchaser at a location operated by the retailer, and the claimed exemption is not available in this State. The term "entity-based exemption" means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals is not an entity-based exemption.

4. Had knowledge or had reason to know at the time information was provided relating to the exemption claimed that the information was materially false.

5. Knowingly participated in activity intended to purposefully evade tax properly due on the transaction.

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SUTB 6 ACCOMMODATIONS

6-1 DEFINITIONS

G.S. § 105-164.3 provides the following terms and definitions:

1. **"Accommodation"** – A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.

2. **"Accommodation facilitator"** – A person that contracts, either directly or indirectly, with a provider of an accommodation to perform, either directly or indirectly, one or more of the activities listed in this subdivision. The term includes a real estate broker as defined in G.S. § 93A-2. The activities are:

   a. Market the accommodation and accept payment or collect credit card or other payment information for the rental of the accommodation.
   b. List the accommodation for rental on a forum, platform, or other application for a fee or other consideration.

6-2 IMPOSITION AND RESPONSIBILITY FOR COLLECTING AND REMITTING TAX

A. Tax Imposed

The gross receipts derived from the rental of an accommodation are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Gross receipts derived from the rental of an accommodation include the sales price of the rental of the accommodation. The sales price of the rental of an accommodation is determined as if the rental were a rental of tangible personal property. The sales price of the rental of an accommodation made by an accommodation facilitator includes any charges or fees, by whatever named called, charged by the accommodation facilitator to the purchaser of the accommodation that are necessary to complete the rental. The tax is due and payable by the retailer in accordance with G.S. § 105-164.16.

B. Responsibility for Collecting and Remitting Tax

Except as otherwise provided in SUTB 6-2C, the retailer of the rental of an accommodation is one or more of the persons listed below that collects the payment, or a portion of the payment, for the rental of the accommodation. In the event the person who collects the payment cannot be determined or is a third party that is not listed in this subsection, and SUTB 6-2C does not apply, the provider of the accommodation shall be considered the retailer of the transaction. The retailer is liable for reporting and remitting the tax due on the portion of the gross receipts derived from the rental of the accommodation that the retailer collects. The retailer may be one or more of the following:

1. The provider of the accommodation.
2. An accommodation facilitator.

C. Certain Accommodation Facilitator Transactions

This subsection applies only to an accommodation facilitator that is operated by or on behalf of a hotel or a hotel corporation, that facilitates the rental of hotel accommodations solely for the hotel or the hotel corporation's owned or managed hotels and franchisees, and that collects payment, or a portion of the payment, for the rental of an accommodation. An accommodation facilitator subject to this subsection is not considered the retailer of the rental of the accommodation. The accommodation facilitator must send the retailer the sales tax due on the sales price or the portion of the sales price, the accommodation facilitator collected no later than ten (10) days after the end of each calendar month. An accommodation facilitator that does not send the retailer the sales tax

due on the sales price, or the portion of the sales price the accommodation facilitator collected, is liable for the amount of sales tax the accommodation facilitator fails to send. An accommodation facilitator is not liable for sales tax sent to a retailer but not remitted by the retailer to the Secretary. Sales tax payments received by a retailer from an accommodation facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a sales tax payment from an accommodation facilitator must remit the amount received to the Secretary. A retailer is not liable for sales tax due but not received from an accommodation facilitator.

D. Accommodation Facilitator Report

An accommodation facilitator must file with the Secretary an annual report by March 31 of each year for the prior calendar year for accommodation rentals it makes. The annual report must be provided in electronic format and include the property owner's name, the property owner's mailing address, the physical location of the accommodation, and gross receipts information for the rentals. The report may only be used by the Secretary, and any person receiving the report, pursuant to G.S. § 105-259, for tax compliance purposes.

E. Local Occupancy Tax Imposed by Certain Counties and Cities

The gross receipts derived from the rental of an accommodation may be subject to a local occupancy tax imposed, administered, and collected by certain counties and cities. A retailer of accommodations should inquire with the applicable counties and cities regarding the local occupancy tax.

6-3 FEES OR CHARGES ASSOCIATED WITH THE RENTAL OF AN ACCOMMODATION

A. Charges Subject to Sales and Use Tax as Part of Gross Receipts from the Rental of an Accommodation

Charges for certain items or amenities furnished by a retailer or accommodation facilitator of an accommodation are considered part of the gross receipts derived from the rental of an accommodation and are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Items that are taxable as part of the gross receipts derived from the rental of the accommodation include, but are not limited to:

1. Credit card fees.
2. Damage fees.
3. Early/late departure fees.
4. Extra person charges.
5. In-room safe rentals.
6. Inspection fees.
7. Linen fees.
8. Maid/cleaning fees.
9. Peace of mind fees (similar to insurance but provided by hotel or rental agency rather than third-party carrier).
10. Pet fees (incurred by guests who have pets traveling with them).
11. Reservation fees (also referred to as a handling, processing, or administrative fee).
12. Security deposits.
13. Smoking fees.
14. Transfer fees (for changing to a different room, unit, or date).
15. Tentative reservation fees (for priority reservation the following year).
16. Charges for cribs and roll-away beds.
17. Charges for microwave ovens and refrigerators.
18. Accommodation facilitator fees or any other charges necessary to complete the rental.

B. Charges Subject to Sales and Use Tax as Rentals of Tangible Personal Property

Charges for rentals of taxable tangible personal property, that are considered separate from the charges for the accommodation, are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Items that are considered rentals of tangible personal property include, but are not limited to:

1. Video tapes, DVDs, and related video equipment.
2. Beach equipment such as chairs, toys, and umbrellas.
3. Recreational equipment such as skis, surf boards, and snorkeling equipment.
4. Audio visual equipment.

C. Charges Not Subject to Sales and Use Tax

Certain charges made by the retailer or accommodation facilitator of an accommodation are considered neither part of the gross receipts derived from the rental of an accommodation nor rentals of tangible personal property. Such charges are either not subject to sales and use tax or exempt from sales and use tax provided the charges are separately stated on the invoice or similar billing document given to the lessee of the accommodation. Examples include, but are not limited to:

1. Banquet room rental only (no food included).
2. Cancellation fees.
3. Internet services.
4. Returned check charges.
5. Telephone calls (unless a set fee is charged to all persons regardless of whether calls are made).
6. Trip insurance provided by a third party.
7. Security deposits refunded to the purchaser of an accommodation rental.
8. Parking fees.

6-4 EXEMPTIONS FOR THE RENTAL OF AN ACCOMMODATION

A. Rental of an Accommodation For 90 Continuous Days

Gross receipts derived from the rental of an accommodation to the same person for a period of 90 or more continuous days are exempt from sales and use tax. Sales tax collected from the person for the rental of the accommodation prior to the accumulation of the 90 continuous days of occupancy shall be refunded by the retailer collecting the tax. A retailer making a refund of such sales tax that has been paid to the Department is entitled to claim a credit on a subsequent return filed with the Department for the sales tax refunded by the retailer.

B. Rental of a Private Residence, Cottage, or Similar Accommodation for Less than 15 Days

Gross receipts derived from the rental of a private residence, cottage, or similar accommodation by the owner for fewer than 15 days in a calendar year are exempt from sales and use tax. The exemption provided in this section does not apply to rentals of a private residence, cottage, or similar accommodation by an accommodation facilitator.

C. Rental of an Accommodation by a School, Camp, or Similar Entity

Gross receipts derived from the rental of an accommodation arranged or provided to a person by a school, camp, or similar entity where tuition or a fee is charged to the person for enrollment in the school, camp, or similar entity is exempt from sales and use tax.

6-5 SOURCING - ACCOMMODATIONS

The rental of an accommodation is sourced to the location of the accommodation.

6-6 PURCHASES OF SUPPLIES, EQUIPMENT, OR FIXTURES

A provider of an accommodation making purchases of supplies, equipment, or fixtures including, but not limited to, linens, bathroom supplies, cleaning supplies, and furniture must pay the general State, applicable local, and applicable transit rates of sales and use tax.

6-7 COMPLIMENTARY MEALS BY PROVIDERS OF ACCOMMODATIONS

A. If a provider of accommodations provides a complimentary meal or snack without charge and does not sell food or drink to the general public (e.g., operating a restaurant or similar place in which it sells prepared food), the qualifying and non-qualifying food purchased by the accommodations provider is subject to the applicable rates of sales and use tax at the time of purchase. The food is used by the accommodations provider rather than resold and is an operating expense similar to other expenses subject to sales and use tax.

B. If, in addition to providing a complimentary meal or snack, a provider of accommodations sells food or drink to the general public (e.g., operating a restaurant or similar place in which it sells prepared food), the qualifying and non-qualifying food used in providing the complimentary meal or snack is considered sold along with the prepared food or drink and is not subject to sales or use tax. The accommodations provider should purchase all food for resale as provided in SUTB 5. The accommodations provider is liable for collecting and remitting the applicable sales and use tax on the retail sales price of the food or drink when sold.

6-8 ADDITIONAL MEALS FOR BED AND BREAKFAST GUESTS

A bed and breakfast home and a bed and breakfast inn are defined in G.S. § 130A-247. The gross receipts derived from the rental of an accommodation from a bed and breakfast home or bed and breakfast inn, which includes the price of breakfast in the room rate, are subject to the general State, applicable local, and applicable transit rates of sales and use tax. The price of additional meals served shall be listed as a separate charge on the overnight guest's bill at the conclusion of the overnight guest's stay. Any charge by a bed and breakfast home or by a bed and breakfast inn for meals served in addition to breakfast that are separately stated on the invoice or similar billing document given to the overnight guest at the time of sale is subject to the general State, applicable local, and applicable transit rates of sales tax as the sale of prepared food.

A bed and breakfast home or bed and breakfast inn should pay sales and use tax on the purchase of any qualifying and non-qualifying food for use in serving breakfast or any additional meals, even if the additional meals are separately stated on the invoice or similar billing document given to the overnight guest. Food served for breakfast, the price of which is included in the room rate, or food served as a complimentary meal or snack without charge is used by the business rather than resold and is an operating expense similar to other expenses such as purchases of linens, toiletries, and cleaning supplies. A bed and breakfast home or bed and breakfast inn that serves meals in addition to breakfast that are separately stated on the invoice or similar billing document given to the overnight guest at the time of sale may recover the sales or use tax originally paid on the food purchased for use in serving the additional meals as provided in SUTB 73-3. Sales and use tax originally paid on food purchased for use in serving breakfast may not be recovered.

A bed and breakfast home and a bed and breakfast inn, by definition, are not engaged in business of selling prepared food or drink to the general public for immediate or on-premises consumption and the provisions in G.S. § 105-164.12C do not apply.

6-9 GUARANTEED NO-SHOW FEES

A. Guaranteed no-show fees or charges made at the customary or agreed-upon room rate constitute taxable gross receipts subject to the general State, applicable local, and applicable transit rates of sales and use tax provided the customer is entitled to the use of the room for the rental period and the room cannot be rented to another party. A rental has occurred notwithstanding that the customer may choose not to occupy the room. If, under the same circumstances, the amount of the fee is less than the customary room rental rate, the amount charged would constitute a penalty and would not be subject to sales and use tax.

B. If the party who reserved the room fails to cancel the reservation and the room is subsequently rented to another guest, any fee charged to the party who originally reserved the room is considered a penalty and is not subject to sales and use tax notwithstanding that the fee may be the customary room rental fee. A rental to the party who originally reserved the room did not occur since the room was made available for rental to another party.

6-10 PAY-PER-VIEW MOVIES

Pay-per-view movies are considered video programming and are subject to the combined general rate of sales and use tax. The video programming service provider is liable for collecting the tax, but, depending on the terms of the contract, a retailer of accommodation rentals may act as agent for the service provider and collect the tax from the purchaser of an accommodation rental.

Note: For information regarding video programming, refer to SUTB 85.

6-11 TIME SHARE OR INTERVAL OWNERSHIP PROPERTY

Sales of time share or interval ownership property that can be transferred by estate, gift, or devise pursuant to deeds or documents under which the owners have a fixed and continuing right to occupy such units during a specified period of time in the same manner as a person who owns or is buying a private residence or cottage are considered to be sales of real property not subject to sales or use tax. When owners of interval ownership and time share property do not occupy the property but rent the accommodation or contract with a retailer of accommodation rentals, for rental on their behalf, such retailers are engaged in business and the gross receipts derived from the rental of the accommodation are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

6-12 VENUE RENTALS

Refer to SUTB 60-28 for additional information on venue rentals.

SUTB 7 ADMISSION CHARGES TO AN ENTERTAINMENT ACTIVITY

7-1 DEFINITIONS

G.S. § 105-164.3 provides the following terms and definitions:

1. **"Admission charge"** – Gross receipts derived for the right to attend an entertainment activity. The term includes a charge for a single ticket, a multi-occasion ticket, a seasonal pass, and an annual pass; a membership fee that provides for admission; a cover charge; a surcharge; a convenience fee, a processing fee, a facility charge, a facilitation fee, or similar charge; or any other charges included in gross receipts derived from admission.

2. **"Admission facilitator"** – A person who accepts payment of an admission charge to an entertainment activity and who is not the operator of the venue where the entertainment activity occurs.

3. **"Amenity"** – A feature that increases the value or attractiveness of an entertainment activity that allows a person access to items that are not subject to tax under Article 5 of Chapter 105 of the North Carolina General Statutes and that are not available with the purchase of admission to the same event without the feature. The term includes parking privileges, special entrances, access to areas other than general admission, mascot visits, and merchandise discounts. The term does not include any charge for food, prepared food, and alcoholic beverages subject to tax.

4. **"Entertainment activity"** – An activity listed below:

   a. A live performance or other live event of any kind, the purpose of which is for entertainment.
   b. A movie, motion picture, or film.
   c. A museum, a cultural site, a garden, an exhibit, a show, or a similar attraction.
   d. A guided tour at a museum, a cultural site, a garden, an exhibit, a show, or a similar attraction.

7-2 IMPOSITION OF AND LIABILITY FOR COLLECTING AND REMITTING TAX

A. Tax Imposed

The gross receipts derived from an admission charge to an entertainment activity are subject to the general State, applicable local, and applicable transit rates of sales and use tax. For the purposes of this SUTB, the term "gross receipts" has the same meaning as the term "sales price." The gross receipts derived from an admission charge to the following entertainment activities are subject to sales and use tax:

1. A live performance or other live event of any kind, the purpose of which is for entertainment.

2. A movie, motion picture, or film.

3. A museum, a cultural site, a garden, an exhibit, a show, or a similar attraction.

4. A guided tour at a museum, a cultural site, a garden, an exhibit, a show, or a similar attraction.

The sales and use tax is due at the time the admission charges are received notwithstanding that the admission charges may be for the right to attend an entertainment activity for a future date. Where season tickets are billed in advance of the season and payment is rendered at such time, the sales and use tax is due in the reporting period in which the payment is rendered.

B. Liability for Collecting and Remitting Tax

1. Retailer

For purposes of collecting and remitting the sales and use tax imposed on the gross receipts derived from an admission charge to an entertainment activity, the retailer is the applicable person listed below:

a. The operator of the venue where the entertainment activity occurs, unless the retailer and the admission facilitator have a contract between them allowing for dual remittance.

b. The person that provides the entertainment and that receives admission charges directly from a purchaser.

c. A person other than a person listed in SUTB 7-2B.1.a or SUTB 7-2B.1.b that receives gross receipts derived from an admission charge sold at retail.

For purposes of sales and use tax due on the gross receipts derived from admission charges, if a retailer displays a statement that admission charges include sales and use tax or a similar statement on its website, at the box office, printed on the tangible ticket, or otherwise available to a purchaser, the sales and use tax will be considered to be included in the amount of admission charges. Where a retailer does not display a statement indicating that admission charges include sales and use tax or a similar statement, the retailer is liable for sales and use tax on admission charges without any allowance for sales and use tax included in the charges.

2. Admission Facilitator

An admission facilitator must report to the retailer with whom it has a contract the admission charge a consumer pays to the admission facilitator for an entertainment activity. The admission facilitator must send the retailer the portion of the gross receipts the admission facilitator owes the retailer and the sales and use tax due on such gross receipts no later than 10 days after the end of each calendar month. An admission facilitator that does not send the retailer the sales and use tax due on the gross receipts derived from an admission charge is liable for the amount of sales and use tax the admission facilitator fails to send to the retailer. An admission facilitator is not liable for sales and use tax sent to a retailer but not remitted by the retailer to the Department. Sales and use tax payments received by a retailer from an admission facilitator are held in trust by the retailer for remittance to the Department. A retailer that receives a sales and use tax payment from an admission facilitator must remit the amount received to the Department. A retailer is not liable for sales and use tax due but not received from an admission facilitator. The requirements imposed on a retailer and an admission facilitator are considered terms of the contract between the retailer and the admission facilitator.

3. Dual Remittance Option

The sales and use tax due on the gross receipts derived from an admission charge may be partially reported and remitted to the operator of the venue for remittance to the Department and partially reported and remitted by the admission facilitator directly to the Department. The portion of the sales and use tax not reported and remitted to the operator of the venue must be reported and remitted directly by the admission facilitator to the Department. An admission facilitator that elects to remit sales and use tax under the dual remittance option is required to obtain a Certificate of Registration in accordance with G.S.

§ 105-164.29. An admission facilitator is subject to the provisions of Article 9 of Chapter 105 of the North Carolina General Statutes.

7-3 EXCEPTIONS RELATED TO AN ADMISSION CHARGE

The following do not constitute gross receipts derived from an admission charge sold at retail:

1. An amount paid solely for the right to participate, other than to be a spectator, in sporting activities. (*Examples of these types of charges include bowling fees for the use of the bowling alley, skating rink fees for the use of a skating rink, golf green fees, charges by golf driving ranges for the use of the range, and gym memberships.)*

2. Tuition, registration fees, or charges to attend instructional seminars, conferences, or workshops for educational purposes, notwithstanding that entertainment activity may be offered as an ancillary purpose of an event listed in this section.

3. A political contribution.

4. A charge for lifetime seat rights, lease, or rental of a suite or box for an entertainment activity, provided the charge is separately stated on an invoice or similar billing document given to the purchaser at the time of sale.

5. An amount paid solely for transportation.

6. An amount paid for the right to participate, other than be a spectator, in the following activities:

a. Rock climbing, skating, skiing, snowboarding, sledding, zip lining, or other similar activities.

b. Instruction classes related to the activities included in SUTB 7-3 6.a.

c. Riding on a carriage, boat, train, plane, horse, chairlift, or other similar rides.

d. Amusement rides, including a waterslide.

If the items listed above are included in a bundled transaction, sales and use tax applies to the sales price of the bundled transaction in accordance with SUTB 16.

7-4 EXEMPTIONS RELATED TO AN ADMISSION CHARGE

The following are exempt from sales and use tax:

1. The portion of a membership charge that is deductible as a charitable contribution under section 170 of the Internal Revenue Code or that is described in section 170(*l*)(2) of the Internal Revenue Code.

2. A donation that is deductible as a charitable contribution under section 170 of the Internal Revenue Code or that is described in section 170(*l*)(2) of the Internal Revenue Code.

3. Charges for an amenity. If the charges for amenities are separately stated on a billing document given to the purchaser at the time of the sale, then the tax does not apply to the separately stated charges for amenities.

If charges for amenities are not separately stated on the billing document given to the purchaser at the time of the sale, then the transaction is a bundled transaction and taxed in accordance with SUTB 16, except that SUTB 16-1C.3 does not apply. If charges for amenities are not separately stated on the face of an admission ticket, a retailer may use a reasonable allocation based on the retailer's business records to determine the allocated price of the taxable portion of the admission charge included in a bundled transaction. A retailer may determine such an allocated price is equal to the admission charge for a ticket to the same event that does not include amenities and is for a seat located directly in front of or closest to a seat that includes amenities.

4. An event that is sponsored by an elementary or secondary school. For purposes of this exemption, the term "school" is an entity regulated under Chapter 115C of the North Carolina General Statutes.

5. An event sponsored solely by a nonprofit entity that is exempt from tax under Article 4 of Chapter 105 of the North Carolina General Statutes if all of the following conditions are met:

a. The entire proceeds of the activity are used exclusively for the entity's nonprofit purposes.

b. The entity does not declare any dividends, receive profits, or pay salary or other compensation to any members or individuals.

c. The entity does not compensate any person for participating in the event, performing in the event, placing in the event, or producing the event. For purposes of this exemption, the term "compensate" means any remuneration included in a person's "gross income" as defined in Section 61 of the Internal Revenue Code.

6. An event sponsored by a farmer that takes place on farmland and is related to farming activities, such as a corn maze or a tutorial on raising crops or animals. For purposes of this exemption, a farmer is a person who holds a qualifying farmer sales tax exemption certificate and farmland is land that is enrolled in the present-use value program under G.S. § 105-277.3.

7-5 SOURCING

An admission charge to an entertainment activity is sourced to the location where admission to the entertainment activity may be gained by a person. When the location where admission may be gained is not known at the time of receipt of the gross receipts for an admission charge, the general sourcing principles provided in SUTB 4-1 apply.

Examples:

1. *A retailer sells an admission ticket to a movie to a purchaser at the retailer's box office located in Guilford County. The admission charge is sourced to Guilford County, the business location of the retailer and the location where the purchaser gains admission to the movie. The retailer should collect and remit the general State and the Guilford County rates of sales and use tax on the admission charge.*

2. *A purchaser receives an admission charge via an online transaction for an NHL Hockey game to be held in Wake County. The purchaser resides in Durham County and requests that the admission ticket be mailed to the purchaser's residence in Durham County. The admission charge is sourced to Wake County, the location where the event is to be held and where the purchaser may gain admission to the event. The retailer should collect and*

remit the general State and the Wake County local and transit rates of sales and use tax on the admission charge.

3. *An entertainment venue located in North Carolina receives payment for an admission charge via an online transaction for a concert that will be held in Mecklenburg County, North Carolina. The purchaser resides in South Carolina and requests that the admission ticket be left at the will call window in Mecklenburg County, North Carolina. The operator of the entertainment venue, as retailer, is liable for the general State and the Mecklenburg County local and transit rates of sales and use tax on the admission charge.*

7-6 TICKETS PURCHASED FOR RESALE

The general State, applicable local, and applicable transit rates of sales and use tax are due on the gross receipts derived from an admission charge to an entertainment activity sold at retail by a ticket reseller. A ticket reseller should purchase tickets for resale exempt from sales and use tax as provided in SUTB 5.

SUTB 8 ADVERTISING AGENCIES AND ARTISTS

8-1 PROFESSIONAL ADVERTISING SERVICES

A. Producing Advertising – Advertising agencies are engaged in the business of rendering professional services when they produce advertising, such as radio and television spots or newspaper, magazine, or billboard advertising, and contract on their own behalf with radio and television stations, newspaper or magazine publishers, outdoor advertising companies, or other media for time or space to televise, broadcast, publish, or otherwise display their advertising. Charges by advertising agencies for furnishing such professional services are not subject to sales and use tax if the charges are separately stated on the invoice or similar billing document given to the purchaser at the time of sale.

Advertising agencies rendering professional services rely on expertise in advertising strategy, media buying, and in graphic arts production in their specialized fields to secure and retain clients. Usually, agreements to provide professional advertising services have the following characteristics:

1. The agency selects or advises the client on the different kinds of advertising to be used.

2. The agency is primarily responsible for developing the concept or design of the advertising.

3. The agency produces or arranges for the production of the advertising.

4. The agency places or arranges for the placement of the advertising on radio or television stations or in newspapers, magazines, or other media and the agency purchases time or space in the media to display the advertising instead of delivering it to the client for placement or distribution.

B. Producing a Report – Advertising agencies are also engaged in the business of rendering professional services when they contract to do market research, consulting, statistical analysis, or other services that result only in a report of their findings to the client. Charges by advertising agencies for furnishing such services are not subject to sales and use tax if the receipts are separately stated on the invoice or similar billing document given to the purchaser at the time of sale.

8-2 RETAIL SALES BY ADVERTISING AGENCIES AND ARTISTS

Advertising agencies and artists are retailers when they produce, cause to be produced, fabricate, purchase, or otherwise acquire items that they sell at retail for any use or purpose other than for resale. The items include: catalogs, magazines, handbills, brochures, programs, pamphlets or similar materials, signs, paintings, portraits, negatives, photographs, vinyl wraps, certain digital property, or taxable services.

Advertising agencies and artists making retail sales of items must collect and remit the applicable rates of sales and use tax on the sales price of such property unless the property is specifically exempt by statute, whether it is prepared by the agency, artist, other person or acquired from outside sources.

The sales price to which the tax applies is the total amount for which the item is sold including all charges for services rendered in the production, fabrication, manufacture, or delivery of the property, such as charges for creative time, commissions, supervision, research, transportation, installation, postage, telephone and electronic messages, copy, models' fees, stage props, printing, printing plates, film, positives, negatives, transparencies, and color separations, even though the agency or artist may separately state the charges on the invoice or similar billing document given to the purchaser at the time of sale.

Note: For information on direct mail, refer to SUTB 68-5.

8-3 PURCHASES BY ADVERTISING AGENCIES AND ARTISTS

A. Purchases For Use

Advertising agencies are the users or consumers of items purchased by them for use in rendering professional services regardless of whether the items purchased are acquired in the name or account of the advertising agency or their client. Advertising agencies making such purchases for use are consumers of the item and must pay the sales and use tax directly to the retailers on the purchase price without regard to the disposition that may be made of the item by the advertising agency.

Advertising agencies and artists that purchase taxable items sourced to this State from suppliers who do not charge and remit the applicable sales and use tax must remit the use tax due directly to the Department on the purchase price of the item without any deduction on account of the cost of the materials used, labor or service costs, transportation charges, or any expenses whatsoever.

B. Purchases for Resale

Purchases by advertising agencies or artists of items for resale that become a part of tangible personal property or certain digital property resold by advertising agencies may be purchased for resale as provided in SUTB 5. Purchases that become a part of tangible personal property or certain digital property include only those items that are incorporated into and become a part of property sold and do not include items that are used or consumed in production.

Note: a photograph, transparency, printing plate, positive, negative, or color separation does *not* become an ingredient or component part of property sold even though the image thereon is reproduced as a part of the property

8-4 ADVERTISING AGENCY ACTING AS AN AGENT

A. An agent is one who represents another, called the principal, with third parties. Purchases by an advertising agency of items sourced to this State are regarded as purchases by the agency on its own behalf for resale or for use unless the agency clearly establishes with respect to any acquisition that it is acting as agent for its principal pursuant to a prior express contract.

B. Establishing a Purchase is Made by an Agent

For sales and use tax purposes, to establish that a particular acquisition is made by an agency as agent for its client and not on the agency's own behalf, all of the following must apply:

1. The agency must clearly disclose to the supplier the name of the principal for whom the agency is acting as agent and establish that it has the authority to bind the principal with respect to the purchase.

2. The agency must be able to document that its status as agent existed prior to the acquisition.

3. The price billed by the agency to the principal for the property, exclusive of any agency fee, must be the same as the amount paid to the supplier, and the principal must be entitled to any profits realized by the agent from rebates, bonuses, commissions, or divisions of profits received by the agent.

4. The agency may make no use of the property for its own account.

C. Purchases for Client's Use

An advertising agency purchasing items sourced to this State as an agent on behalf of its client for the client's use in North Carolina must pay the applicable sales or use tax due as agent for its principal.

D. Use Tax Due as an Agent

An advertising agency acting as an agent must remit the sales and use tax due on its purchases. An advertising agency that purchases taxable items sourced to this State on behalf of a principal from a seller who did not charge and remit the applicable tax must remit the use tax due, as agent for its principal, directly to the Department on the purchase price of the item without any deduction on account of the cost of the materials used, labor or service costs, transportation charges, or any expenses whatsoever.

8-5 RETAINER AND CONSULTATION FEES

A. Retainer Fees

A retainer is generally collected in advance for future services to be rendered.

Charges by advertising agencies and artists to their clients for a retainer that are directly related to the purchase, acquisition, fabrication, or production and retail sale of taxable items are part of the sales price and subject to the applicable rates of sales and use tax. These charges are subject to sales and use tax whether the retainer is separately stated on the customer's invoice or not.

A retainer charged to clients is not subject to sales and use tax when it is solely in connection with the performance of professional services that are not subject to sales and use tax.

B. Consultation Fees

Charges by advertising agencies and artists to their clients for consultation fees directly related to the purchase, acquisition, fabrication, or production and retail sale of taxable items are part of the sales price and are subject to the applicable rates of sales and use tax. These charges are subject to sales and use tax whether the consultation fees are separately stated on the customer's invoice or not.

Consultation fees charged to clients are not subject to sales and use tax when they are solely in connection with the performance of professional services that are not subject to sales and use tax.

8-6 SIGN FABRICATION AND SIGN PAINTING

A. Sign Fabrication

1. The sales price of electrical, neon, or other made-to-order signs sold at retail is subject to the general State, applicable local, and applicable transit rates of sales and use tax. Any charges by a retailer to install a sign are part of the sales price subject to tax.

2. Sign fabricators performing real property contracts with respect to a capital improvement are the consumers of items that they purchase, install, or apply for others to fulfill such contracts and are liable for the sales and use tax due on the purchase price of the items.

Note: For information regarding real property contracts, refer to SUTB 72.

B. Sign Painting

1. The sales price of or the gross receipts derived by retailers for painting signs on tangible personal property are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Sales to retailers of paint or similar tangible personal property that become a part of the tangible personal property belonging to others are wholesale sales exempt from sales and use tax when purchased as provided in SUTB 5. Sales of brushes and other tangible personal property to retailers for use or consumption are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

2. Persons engaged in the business of painting signs on billboards, on the side of buildings, or on other real property are performing real property contracts and are the consumers of any items that they purchase, install, or apply for others to fulfill such contracts and are liable for the sales and use tax on the purchase price of the items.

Note: For information regarding real property contracts, refer to SUTB 72.

8-7 PAINTING SERVICES

A person or artist that provides painting services and performs those services on tangible personal property, whether it is the client's or otherwise, is liable for collecting and remitting the general State, applicable local, and applicable transit rates of sales and use tax on the sales price of the tangible personal property or services.

A person or artist that contracts to provide painting services and performs those services on the client's real property is making a capital improvement with respect to real property and is not liable for collecting and remitting sales and use tax on the capital improvement.

Note: For information on real property contracts, refer to SUTB 72.

8-8 ADVERTISING SUPPLEMENTS

Sales of advertising supplements and any other printed matter ultimately to be distributed with or as part of a newspaper are exempt from sales and use tax.

SUTB 9 AIRCRAFT AND QUALIFIED JET ENGINES

9-1 DEFINITIONS

G.S. § 105-164.3 provides the following terms and definitions:

1. **"Qualified aircraft"** – An aircraft with a maximum take-off weight of 2,000 pounds and above.

2. **"Qualified jet engine"** – An engine certified pursuant to Part 33 of Title 14 of the Code of Federal Regulations.

9-2 IMPOSITION OF TAX

A. Aircraft

The sales price of each aircraft sold at retail, including all accessories attached to the aircraft when it is delivered to the purchaser, is subject to the 4.75% general State rate of sales and use tax with a maximum tax per article of $2,500. An aircraft sold at retail is not subject to any local or transit rates of sales and use tax.

B. Qualified Jet Engines

The sales price of each qualified jet engine sold at retail, including all accessories attached to the qualified jet engine when it is delivered to the purchaser, is subject to the 4.75% general State rate of sales and use tax. There is no maximum tax on the sale of a qualified jet engine nor is the qualified jet engine subject to any local or transit rates of sales and use tax.

C. Direct Pay Permit for Qualified Jet Engines

A person that purchases a qualified jet engine may apply to the Secretary for a direct pay permit. The maximum use tax on a qualified jet engine purchased with a direct pay permit is two thousand five hundred dollars ($2,500). For information on the direct pay permit for qualified jet engines, refer to SUTB 24-7.

9-3 EXEMPTIONS RELATED TO AIRCRAFT AND QUALIFIED JET ENGINES

The following are exempt from sales and use tax:

1. Parts and accessories used to repair or maintain a qualified aircraft or qualified jet engine.

2. The sales price of or the gross receipts derived from repair, maintenance, and installation services and service contracts for a qualified aircraft or a qualified jet engine.

   Note: For information on repair, maintenance, and installation services and service contracts, refer to SUTBs 75 and 79, respectively.

3. The amount of repair, maintenance, and installation services for an aircraft for which the purchaser elects for the seller to collect and remit the tax due under G.S. § 105-164.27A(a3).

4. The sale of an aircraft by a person that does not meet the definition of "engaged in business," such as an individual selling an aircraft personally owned.

5. Any aircraft, accessories, and supplies purchased for resale as provided in SUTB 5.

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9-4 INTERSTATE AIR BUSINESSES

For information on interstate air businesses, refer to SUTB 50.

9-5 AVIATION GASOLINE AND JET FUEL

For information on aviation gasoline and jet fuel, refer to SUTB 12.

9-6 DIRECT PAY PERMIT - CERTAIN AIRCRAFT AND QUALIFIED JET ENGINE CHARGES AND SERVICES

For information on the direct pay permit for certain aircraft and qualified jet engine charges and services and the election to have the seller collect and remit the use tax due on behalf of the purchaser, refer to SUTB 24-8.

SUTB 10 ALCOHOLIC BEVERAGES (SPIRITUOUS LIQUOR, MIXED BEVERAGES, ETC.)

10-1 DEFINITIONS

For purposes of this SUTB, the following terms and definitions apply:

1. **"Alcoholic beverage"** – Defined in G.S. § 18B-101.
2. **"Antique spirituous liquor"** – Defined in G.S. § 18B-101.
3. **"Mixed beverage"** – Defined in G.S. § 18B-101.
4. **"Spirituous liquor"** – Defined in G.S. § 18B-101.

10-2 IMPOSITION OF TAX

A. Spirituous Liquor

Sales of spirituous liquor and antique spirituous liquor are subject to the combined general rate of sales and use tax. This does not include the sale of mixed beverages. Sales of spirituous liquor and antique spirituous liquor in North Carolina are generally made by an ABC Store or a distillery permit holder for consumption off the premises.

B. Beer, Wine, Mixed Beverages, Etc.

Retail sales of the following are subject to the general State, applicable local, and applicable transit rates of sales and use tax:

1. Mixed beverages by restaurants, bars, and other similar establishments.
2. Straight shots of spirituous liquor or antique spirituous liquor by restaurants, bars, and other similar establishments.
3. Beer, whether by the drink or in closed containers.
4. Wine, including fortified wine, whether by the drink or in closed containers.
5. Malt beverages, whether by the drink or in closed containers.

10-3 WINE SHIPPER PERMIT HOLDERS

A retailer who holds a wine shipper permit issued by the ABC Commission is engaged in business in North Carolina. The retailer is required to collect and remit the general State, applicable local, and applicable transit rates of sales and use tax on its retail sales of wine to purchasers in this State, notwithstanding that the retailer may be located outside North Carolina. A person that ships wine directly to a purchaser in this State as authorized by G.S. § 18B-1001.1 is engaged in business in North Carolina. Such retailer must register with the Department to obtain a Certificate of Registration and is required to collect and remit the general State, applicable local, and applicable transit rates of sales and use tax.

10-4 EXEMPTION FOR ALCOHOLIC BEVERAGE MANUFACTURERS

A. Exemption

Sales of machinery, equipment, parts, and accessories to the following permittees for use in the manufacture of the following items and supplies and ingredients used or consumed by the permittee in the manufacturing process:

1. The holder of an unfortified winery permit for the manufacture of unfortified wine, as authorized in G.S. § 18B-1101.
2. The holder of a fortified winery permit for the manufacture of fortified wine, as authorized in G.S. § 18B-1102.
3. The holder of a brewer permit for the manufacture of malt beverages, as authorized in G.S. § 18B-1104.
4. The holder of a distillery permit for the manufacture of spirituous liquor, as authorized in G.S. § 18B-1105.

B. Machinery, Equipment, Parts, and Accessories

Machinery, equipment, parts and accessories subject to this exemption must be primarily used in the production phase of the manufacturing process as defined in SUTB 57-1 to qualify for this exemption. Machinery, equipment, parts, and accessories not used primarily in the production phase are subject to the applicable sales and use tax. Machinery, equipment, parts and accessories that are not subject to this exemption include the items listed in SUTB 57-4.

C. Supplies and Ingredients

Supplies and ingredients subject to this exemption must be primarily used or consumed in the production phase of the manufacturing process, as defined in SUTB 57-1, to qualify for this exemption. Supplies and ingredients not primarily used in the production phase are subject to the applicable sales and use tax.

SUTB 11 ARTISTS AND ART DEALERS

11-1 OBJECTS OF ART

Retail sales of objects of art and art supplies are subject to the general State, applicable local, and applicable transit rates of sales and use tax unless specifically exempt by statute.

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SUTB 12 AVIATION GASOLINE AND JET FUEL

12-1 IMPOSITION AND COMPUTATION OF TAX

A. Tax Imposed

The gross receipts derived from the sale of aviation gasoline and jet fuel are subject to the combined general rate of sales and use tax. For purposes of this SUTB, the term “gross receipts” has the same meaning as the term “sales price.” For sales and use tax purposes, the definitions for aviation gasoline and jet fuel reference the definitions as set out in G.S. § 105-449.60.

B. Computation of Tax

The gross receipts subject to tax include any federal excise tax imposed on the retailer, even if the federal excise tax is listed separately on the invoice, bill of lading, or similar billing document. Gross receipts do not include federal excise taxes imposed directly on a consumer if the tax is separately stated on the invoice, bill of sale, or similar document given to the customer.

12-2 EXEMPTION RELATED TO AVIATION GASOLINE AND JET FUEL

Sales of aviation gasoline and jet fuel to an interstate air business for use in a commercial aircraft are exempt from sales and use tax. This exemption also applies to aviation gasoline and jet fuel purchased for use in a commercial aircraft used in interstate or foreign commerce by a person whose primary business is scheduled passenger air transportation. For purposes of the exemption, the term “commercial aircraft” includes only aircraft that has a certified maximum take-off weight of more than twelve thousand five hundred (12,500) pounds and is regularly used to carry for compensation passengers, commercial freight, or individually addressed letters and packages. An interstate air business is an interstate air courier, an interstate freight air carrier, or an interstate passenger air carrier. This exemption expires January 1, 2029.

SUTB 13 BANKRUPTCY

13-1 DEBTOR'S LIABILITY IN BANKRUPTCY

A. A discharge under 11 U.S.C. Section 727, 1141, 1228(a), 1228(b), or 1328 (a) and (b) does not relieve an individual debtor in bankruptcy from liability for payment of pre-petition sales and use tax. Furthermore, it does not relieve an individual debtor from liability for payment of a tax:

1. On pre-petition transactions for which a return is last due, including any extension, after three years before the petition date.

2. On transactions with respect to which a return:

a. Was not filed.

b. Was filed after the due date, including any extension, and after two years before the petition date.

3. With respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.

B. Associated penalties are not discharged on such sales and use tax imposed with respect to transactions occurring within three years prior to the petition date.

C. An individual debtor's discharge under 11 U.S.C. Section 1328(a) does not release the debtor from liability for payment of pre-petition sales and use taxes, penalties, and interest.

A corporate debtor's confirmation under 11 U.S.C. Section 1141 releases the debtor from liability for payment of pre-petition sales and use taxes, penalties, and interest. The confirmed plan determines the debtor's tax liability.

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SUTB 14 BARBER AND BEAUTY SHOPS

14-1 BARBER AND BEAUTY SHOP SERVICES

The gross receipts of barber and beauty shop operators derived from rendering personal services are not subject to sales and use tax.

14-2 SALES BY BARBER AND BEAUTY SHOPS

Barber and beauty shop operators who purchase hair care products, cosmetics, and other health and beauty aids and make retail sales of such tangible personal property to their customers, are required to register with the Department as retailers and are liable for collecting and remitting the general State, applicable local, and applicable transit rates of sales and use tax on such sales.

14-3 SALES TO AND PURCHASES BY BARBER AND BEAUTY SHOPS

A. Retail sales to barber and beauty shop operators of tools, furniture, fixtures, equipment, materials, health and beauty aids, and any other supplies purchased for use in connection with the operation of their businesses are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Barber and beauty shop supply wholesalers and other businesses making retail sales of tangible personal property to barber and beauty shop operators, to be used or consumed in rendering personal services to their customers, are liable for collecting and remitting the general State, applicable local, and applicable transit rates of sales and use tax to the Department on such sales.

B. Barber and beauty shop operators who purchase hair care products, cosmetics, and other health and beauty aids, some of which are regularly and continuously sold at retail to their customers and some of which are used or consumed in rendering personal services to their customers, may purchase such tangible personal property without payment of sales and use tax as provided in SUTB 5.

In such case, the barber and beauty shop operators assume responsibility for payment of the general State, applicable local, and applicable transit sales and use taxes directly to the Department on the sales price of tangible personal property sold to their customers and on the purchase price of tangible personal property used or consumed in rendering personal services to their customers.

SUTB 15 BOATS AND RELATED ITEMS

15-1 IMPOSITION AND COMPUTATION OF TAX

The sales price of each boat sold at retail, including all parts and accessories attached to the boat when it is delivered to the purchaser, is subject to the 3% State rate of sales and use tax with a maximum tax of one thousand five hundred dollars ($1,500). The tax is computed on the sales price of the boat without any deduction for any trade-in credit or allowance. A boat sold at retail is not subject to any local or transit rates of sales and use tax. For purposes of this bulletin, a boat is a watergoing vessel propelled by engine, sail, oar, paddle or similar means, which is designed to be used to travel from place to place by water. A boat does not include boards, innertubes, and similar items used for water-based recreation.

The sales price of a boat includes charges for the boat motor, fenders, boat and motor controls, compass, windshield, horn, lights, labor for installing such parts and accessories, freight or delivery charges, and any other charges for preparing the boat for sale.

Subsequent retail sales of used articles taken in trade as a credit on the sale of a boat are subject to the applicable rate of sales and use tax on the sales price when sold.

15-2 EXEMPTIONS RELATED TO BOATS

The following are exempt from sales and use tax:

1. Sales of fuel and other tangible personal property for use or consumption by or on a watergoing vessel when delivering to an officer or agent of the vessel for the use of the vessel engaged in either of the activities listed in this subsection. Sales of fuel and other tangible personal property made to officers, agents, members of the crew, or passengers of these vessels for their personal use are not exempt from payment of the sales tax. The activities are:

- **a.** The transport of freight in intrastate, interstate, or foreign commerce, whether on the high seas, intracoastal waterways, sounds, or rivers.
- **b.** The transport of passengers for hire exclusively on the high seas.

2. Sales of boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories, and supplies to any of the following:

- **a.** The holder of a standard commercial fishing license issued under G.S. § 113-168.2 for principal use in a commercial fishing operation.
- **b.** The holder of a shellfish license issued under G.S. § 113-169.2 for principal use in commercial shell fishing operations.
- **c.** The operator of a “for-hire vessel,” as defined in G.S. § 113-174, for principal use in the commercial use of the boat.

Note: For information regarding commercial fishing, refer to SUTB 29.

3. The amount of repair, maintenance, and installation services for a boat for which the purchaser elects for the seller to collect and remit the tax due under G.S. § 105-164.27A(a3).

4. The sale of a boat by a person that does not meet the definition of “engaged in business,” such as an individual selling a boat personally owned.

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5. Any boats, accessories, or supplies purchased for resale as provided in SUTB 5.

15-3 BOAT EXAMPLES

A. The following are considered a boat subject to the 3% State rate of sales and use tax with a maximum tax of one thousand five hundred dollars ($1,500).

1. Yacht.
2. Sailboat.
3. Jet ski.
4. Canoe.
5. Kayak.
6. Dinghy.
7. Paddle boat.
8. Pontoon boat.
9. Jon boat.
10. Houseboat (self-propelled).
11. Ski boat.
12. Rowboat.
13. Motorboat.
14. Tugboat.
15. Lifeboat.
16. Fan boat.

B. The following are not a boat and are therefore subject to the general State, applicable local, and applicable transit rates of sales and use tax.

1. Wind surfer.
2. Surfboard.
3. Innertube.
4. Sailboard.
5. Paddle board.
6. Skim board.
7. Boogie board.
8. Knee board.
9. Jet board.
10. Kite board.
11. Foil board or hydrofoil board.
12. A float.
13. Hovercraft.
14. Amphibious ATV.
15. Toys.

15-4 RETAIL SALES OF PARTS AND ACCESSORIES FOR BOATS

A. Retail sales of parts and accessories for boats including boat motors, fenders, boat and motor controls, lights, windshields, horns, and other accessories sold separately from the sale of a boat are subject to the general State, applicable local, and applicable transit rates of sales and use tax unless exempt as provided in SUTB 15-2.

B. Life jackets, life rings, cushions, flares, fire extinguishers, and rope are considered to be safety equipment rather than accessories to a boat, therefore, any retail sales of such tangible personal property are subject to the general State, applicable local, and applicable transit rates of sales and use tax notwithstanding that the tangible personal property may be sold with the boat.

15-5 BOAT TRAILERS

A. Retail Sales of Boat Trailers

A retail sale of a boat with a boat trailer is considered to be the sale of two separate articles. A boat trailer is a motor vehicle that is exempt from sales and use tax and subject to the 3% highway use tax imposed under Article 5A of Chapter 105 of the North Carolina General Statutes. The highway use tax must be paid to the Commissioner of Motor Vehicles by the dealer, the purchaser, or other applicant for a certificate of title at the time of making application.

B. Retail Sales of Parts and Accessories for Boat Trailers

The sales price of parts and accessories for boat trailers sold at retail is subject to the general State, applicable local, and applicable transit rates of sales and use tax when sold separately from the sale of the trailers.

15-6 OUT-OF-STATE PURCHASES OF BOATS

A. The purchase of a boat outside of North Carolina for storage, use, or consumption in this State is subject to the 3% State rate of North Carolina use tax with a maximum tax of one thousand five hundred ($1,500) dollars. The sales price of a boat includes all accessories attached to the boat when it is delivered to the purchaser and any delivery charges imposed by the retailer. A purchaser that purchases a boat outside this state, takes title or possession outside this state, and is required to pay sales tax or a similar tax to another state, is allowed credit for the other state's tax paid against the amount of North Carolina use tax due. A purchaser of a boat who is liable for use tax who is not otherwise required to register in the State for sales and use tax purposes must file Form E-555, Boat and Aircraft Use Tax Return, and pay the amount of tax due by the 20th day of the month following the month in which the purchase was made. A return filed after the due date is subject to penalty and interest.

B. The purchase of a boat from a person outside of the State that does not meet the definition of "engaged in business," such as an individual selling a boat personally owned, is exempt from sales and use tax as an occasional and isolated sale.

15-7 DIRECT PAY PERMIT - CERTAIN BOAT CHARGES AND SERVICES

For information on the direct pay permit for certain boat charges and services and the election to have the seller collect and remit the sales and use tax due on behalf of the purchaser, refer to SUTB 24-8.

SUTB 16 BUNDLED TRANSACTIONS

16-1 GENERAL PROVISIONS

A. Bundled Transaction Defined

A retail sale of two or more distinct and identifiable items, at least one of which is taxable and one of which is nontaxable, for one nonitemized price. The term does not apply to real property or services to real property. Items are not sold for one nonitemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each item. A bundled transaction does not include the retail sale of any of the following:

1. An item and any packaging that accompanies the item and is exempt from sales and use tax under G.S. § 105-164.13(23).
2. A sale of two or more items whose combined price varies, or is negotiable, depending on the items the purchaser selects.
3. A sale of an item accompanied by a transfer of another item with no additional consideration.
4. An item and the delivery or installation of the item.
5. An item and any service necessary to complete the sale.

B. In General

A bundled transaction occurs when a person has no option except to purchase two or more items packaged together and pay one nonitemized price. Examples of bundled transactions are gift baskets containing food and non-food items and medical kits containing drugs required by federal law to be dispensed only on prescription and taxable medical supplies.

Note: A mixed transaction contract is a contract that includes both a real property contract for a capital improvement and repair, maintenance, and installation services for real property that are not related to the capital improvement. For information on a mixed transaction contract, refer to SUTB 72-6. A mixed service contract is a contract for real property that includes two or more services, one of which is subject to sales and use tax and one of which is not. For information on mixed service contracts, refer to SUTB 79-9.

C. Application of Tax

Tax applies to the sales price of a bundled transaction unless one of the following applies:

1. Fifty Percent Test

The bundle consists of only tangible personal property, the bundle includes one or more of the exempt tangible personal property listed in this subsection, and the price of the taxable tangible personal property in the bundle does not exceed 50% of the price of the bundle:

a. Food exempt from State sales and use tax under G.S. § 105-164.13B. For a bundled transaction that consists of more than 50% food exempt from State sales and use tax, the sales price of the bundled transaction is subject to the 2% food rate of sales and use tax.

b. A drug exempt from sales and use tax under G.S. § 105-164.13(13). If the price of drugs required by federal law to be dispensed only on prescription, over-the-counter drugs sold on prescription, or insulin, including packaging materials and any instructions or information about the drugs included in the package with them, exceeds 50% of the price of the bundle, the sales price of the bundled transaction is exempt from sales and use tax.

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c. Medical devices, equipment, or supplies exempt from sales and use tax under G.S. § 105-164.13(12). For a bundled transaction that consists of more than 50% prosthetic devices for human use, mobility enhancing equipment sold on a prescription, durable medical equipment sold on prescription, or durable medical supplies sold on prescription, the sales price of the bundled transaction is exempt from sales and use tax.

Determining Threshold: In determining if a transaction meets the 50% test, a retailer of a bundled transaction may use either the purchase price or the sales price of the tangible personal property in the bundle. A retailer may not use a combination of purchase price and sales price to make this determination.

2. Allocation

The bundle includes a service, and the retailer determines an allocated price for each item in the bundle based on a reasonable allocation of revenue that is supported by the retailer's business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of each taxable item in the bundle.

3. Ten Percent Test

The price of the taxable items in the bundle does not exceed 10% of the price of the bundle, and no other subsection in this section applies. The sales price for the bundled transaction is not subject to sales and use tax, and sales and use tax is not due on the purchase price of the taxable items included in the bundle.

Determining Threshold: In determining if a transaction meets the 10% test, a retailer of a bundled transaction may use either the purchase price or the sales price of the tangible personal property in the bundle. A retailer may not use a combination of purchase price and sales price to make this determination. If a bundled transaction includes a service contract, the retailer must use the full term of the contract in determining whether the transaction meets the threshold.

4. Prepaid Meal Plan

The bundle includes a prepaid meal plan and a dollar value that declines with use. In this circumstance, sales and use tax applies to the allocated price of the prepaid meal plan. The sales and use tax applies to items purchased with the dollar value that declines with use as the dollar value is presented for payment.

5. Tuition, Room, and Meals

The bundle includes tuition, room, and meals offered by an institution of higher education. In this circumstance, tax applies to the allocated price of the meals. The institution determines the allocated price for meals based on a reasonable allocation of revenue that is supported by the institution's business records kept in the ordinary course of business.

6. True Object Exclusion

The true object of a bundled transaction is fact-based and should be considered on a case-by-case basis. A transaction that otherwise meets the definition of a "bundled transaction" is not a bundled transaction if it is one of the following:

a. The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service.

b. The retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service.

Transactions that qualify under the true object exclusion are not affected by special bundled transaction taxability rules.

D. Distinct and Identifiable Items

Distinct and identifiable items do not include:

1. Packaging such as wrapping paper, labels, wrapping twine, paper, cloth, plastic bags, cartons, packages and containers, cores, cones or spools, wooden boxes, baskets, coops and barrels, including paper cups, napkins and drinking straws and like articles when such articles constitute a part of the sale of tangible personal property and are delivered with it to the customer.

2. An item provided free of charge. An item is provided free of charge in a retail sale when in order to obtain the item, the purchaser is required to make a purchase of one or more other items and the price of the purchased items does not change based on the seller providing an item free of charge. Items provided free of charge with the necessary purchase of another item are considered promotional items.

3. Charges included in the definition of the terms “sales price” and “purchase price,” including but not limited to, delivery charges, installation charges, charges by the retailer for any service necessary to complete the sale, the seller’s cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller.

E. One Nonitemized Price of a Bundled Transaction

One nonitemized price of a bundled transaction does not include:

1. A sales price that varies, whether by negotiation or otherwise, with the selection of distinct and identifiable items by the purchaser. A purchaser having the option of declining to purchase any of the items where the sales price will vary as a result of the selection of items, or a different price is negotiated as a result of the selection of items made by the purchaser is evidence that the retail sale is not made for one nonitemized price.

2. A price that is separately identified by item on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list. The sales-related documents made available to a purchaser must provide enough information to a purchaser so that the purchaser is able to determine the prices of taxable and nontaxable items.

16-2 BUNDLED TRANSACTIONS AND SERVICES

For a bundled transaction that includes services, a retailer is authorized to allocate a price to each item included in the bundle and collect tax on the price allocated to the taxable items. A retailer’s

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business records kept in the ordinary course of business must be maintained to support the allocation made.

Example: A person provides taxable telecommunications services, taxable video programming services, and exempt Internet access services and offers all the services in a bundled transaction. The person can allocate the portion of its services attributable to the taxable items and collect and remit tax on the amount of revenues allocated to the taxable services.

Note: A bundled transaction does not include services to real property.

SUTB 17 INDIAN TRIBES

17-1 SALES BY MERCHANTS ON THE CHEROKEE INDIAN RESERVATION

Sales of items by merchants on the Eastern Band of Cherokee Indian (EBCI) Reservation are exempt from sales and use tax when such merchants are authorized to do business on the Reservation and are paying the tribal gross receipts levy to the Tribal Council, without regard to the status of the purchaser.

17-2 SALES TO FEDERALLY RECOGNIZED INDIAN TRIBES

A. Items Sourced to the Reservation

Sales of items to a federally recognized Indian tribe or to an enrolled member of the federally recognized tribe residing on the Reservation are exempt from sales and use tax when such items are sourced to the tribe's Reservation.

B. Items Sourced Outside the Reservation

Retail sales of items to a federally recognized Indian tribe, to an enrolled member of the federally recognized tribe, to contractors, or others representing an enrolled member of the federally recognized tribe are subject to sales and use tax when sourced outside the tribe's Reservation even though such items may be incorporated into improvements on the Reservation.

17-3 REAL PROPERTY CONTRACTS WITH FEDERALLY RECOGNIZED INDIAN TRIBES

A. Items Sourced Outside the Reservation

A real property contractor is the consumer of an item sourced to this State that the real property contractor purchases, installs, or applies for others to fulfill a real property contract. A real property contractor purchasing such item sourced to a North Carolina location other than a federally recognized Indian tribe's Reservation, is liable for remitting the sales and use tax due, regardless of whether the real property contractor will use it to fulfill a real property contract on the Reservation.

Note: For information regarding real property contracts, refer to SUTB 72.

B. Items Sourced to the Reservation

Purchases by a real property contractor of an item sourced to a federally recognized Indian tribe's Reservation to be used to fulfill a real property contract with a federally recognized tribe or an enrolled member of the federally recognized Indian tribe residing on the Reservation is exempt from sales and use tax.

C. Other Taxable Items

Purchases by a real property contractor of an item sourced to federally recognized Indian tribe's Reservation that is not used to fulfill a real property contract with the federally recognized tribe is subject to the applicable rate(s) of sales and use tax unless subject to the exemption in SUTB 17-1 or other exemption.

17-4 ADMISSION CHARGES – CHEROKEE INDIAN RESERVATION

Admission charges to an entertainment activity offered on the Cherokee Indian Reservation are exempt from sales and use tax, provided the retailer that offers the entertainment activity is

authorized to do business on the Reservation and pays the tribal gross receipts levy to the Tribal Council.

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SUTB 18 COLLECTIBLES, STAMPS, AND INVESTMENTS (COINS, BULLION, AND NON-COIN CURRENCY)

18-1 STAMPS - GENERAL

A. Collectable Stamps

Retailers engaged in the business of selling collectible stamps must register with the Department for the purpose of collecting and remitting the general State, applicable local, and applicable transit rates of sales and use tax on such sales.

B. Stamps for Use as United States Postal Fees

Purchases of stamps through vending machines or in any other manner for use as United States postal fees are not subject to sales and use tax.

18-2 EXEMPTION FOR CERTAIN COINS, METAL BULLION, AND NON-COIN CURRENCY

Sales of investment coins, investment metal bullion, and non-coin currency are exempt from sales and use tax. For purposes of this exemption, the following terms and definitions apply:

1. **"Investment coins"** – Numismatic coins or other forms of money and legal tender manufactured of metal under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value of such coins.

2. **"Investment metal bullion"** – Any elementary precious metal that has been put through a process of smelting or refining and that is in such state or condition that its value depends upon its content and not upon its form. The term does not include fabricated precious metal that has been processed or manufactured for one or more specific and customary industrial, professional, or artistic uses.

3. **"Non-coin currency"** – Forms of money and legal tender manufactured of a material other than metal under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value of such currency.

SUTB 19 COMPUTERS (HARDWARE, SOFTWARE, SERVICES, AND MAINTENANCE)

19-1 DEFINITIONS

G.S. § 105-164.3 provides the following terms and definitions:

1. **"Computer"** – An electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

2. **"Computer software"** – A set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

3. **"Custom computer software"** – Computer software that is not prewritten computer software. The term includes a user manual or other documentation that accompanies the sale of the software.

4. **"Datacenter"** – A facility that provides infrastructure for hosting or data processing services and that has power and cooling systems that are created and maintained to be concurrently maintainable and to include redundant capacity components and multiple distribution paths serving the computer equipment at the facility. Although the facility must have multiple distribution paths serving the computer equipment, a single distribution path may serve the computer equipment at any one time. The following definitions apply to this definition:

   a. **"Concurrently maintainable"** – Capable of having any capacity component or distribution element serviced or repaired on a planned basis without interrupting or impeding the performance of the computer equipment.

   b. **"Multiple distribution paths"** – A series of distribution paths configured to ensure that failure on one distribution path does not interrupt or impede other distribution paths.

   c. **"Redundant capacity components"** – Components beyond those required to support the computer equipment.

5. **"Electronic"** – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

6. **"Information service"** – A service that generates, acquires, stores, processes, or retrieves data and information and delivers it electronically to or allows electronic access by a consumer whose primary purpose for using the service is to obtain the processed data or information.

7. **"Prewritten computer software"** – Computer software, including prewritten upgrades that is not designed and developed by the author or another creator to the specifications of a specific purchaser. The term includes software designed and developed by the author or another creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser.

19-2 COMPUTER HARDWARE AND BASIC OPERATIONAL PROGRAMS

A. Computer Hardware

The retail sale, lease, or rental of computer hardware is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

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B. Basic Operational Programs

The basic operational program or control program that controls the basic operations of a computer causing it to execute instructions contained in the program is an integral part of the computer hardware. A basic operational program is that part of an operating system, including supervisors, monitors, executives, and control or master programs, that consists of the control program elements of that system. A control or master program, as opposed to a processing program, controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main storage unit, input/output devices, and processing programs. Retail sales of such basic operational programs or control programs are considered part of the computer hardware sold and are subject to the general State, applicable local, and applicable transit rates of sales and use tax, notwithstanding that the retailer does or does not charge separately for such programs or that such programs are prepared to the specifications of the customer.

19-3 COMPUTER SOFTWARE

A. Retail Sales of Computer Software

The retail sale of computer software is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

B. Exemptions

The following exemptions from sales and use tax apply to retail sales and purchases of computer software and related items. This is not an all-inclusive list.

1. Custom computer software and the portion of prewritten computer software that is modified or enhanced if the modification or enhancement is designed and developed to the specifications of a specific purchaser and the charges for the modification or enhancement are separately stated on the invoice or similar billing document given to the purchaser at the time of the sale.

2. Computer software that meets any of the following descriptions:

a. It is purchased to run on an enterprise server operating system. The exemption includes a purchase or license of computer software for high-volume, simultaneous use on multiple computers that is housed or maintained on an enterprise server or end users' computers. The exemption includes software designed to run a computer system, an operating program, or application software.

b. It is sold to a person who operates a datacenter and is used within the datacenter.

c. It is sold to a person who provides cable service, telecommunications service, or video programming and is used to provide ancillary service, cable service, Internet access service, telecommunications service, or video programming.

3. Computer software or certain digital property that becomes a component part of other computer software or certain digital property that is offered for sale or of a service that is offered for sale.

C. Software as a Service ("SaaS")

Generally, software as a service is a computer software distribution model that involves a service provider's use of computer hardware infrastructure and computer software to allow a consumer electronic access to the service provider's computer software. The computer software is not

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downloaded to the consumer's computer, but is instead accessed electronically over a computer network, usually the Internet. North Carolina does not impose sales or use tax on software as a service.

D. Enhancements

The portion of computer software that is modified or enhanced, if the modification or enhancement is designed and developed to the specifications of a specific purchaser and the charges for the modification or enhancement are separately stated on an invoice or similar billing document given to the purchaser at the time of sale, is exempt from sales and use tax. Sales of software designed and developed by the author or another creator to the specifications of a specific purchaser do not qualify for the exemption when it is sold to a person other than the specific purchaser. Computer software sold to a person other than the specific purchaser for whom the software was designed and developed are sales of prewritten computer software and subject to the general State, applicable local, and applicable transit rates of sales or use tax.

E. Sourcing – Prewritten Computer Software

Prewritten computer software is sourced in accordance with the general sourcing provisions provided in SUTB 4-1.

1. When prewritten computer software is received by the purchaser at a business location of the seller, the retail sale is sourced to that business location.

2. When prewritten computer software is not received by the purchaser at a business location of the seller, the retail sale is sourced to the location(s) where receipt by the purchaser first occurs. Receipt may occur at multiple locations if the seller delivers the software to multiple locations. The transaction is sourced to those locations if the seller receives delivery information from the purchaser by the time of the invoice.

3. When SUTB 19-3E.1 and SUTB 19-3E.2 do not apply, the retail sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of business when use of this address does not constitute bad faith.

4. When SUTB 19-3E.1, SUTB 19-3E.2, and SUTB 19-3E.3 do not apply, the retail sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the retail sale, including the address of a purchaser's payment instrument if no other address is available, when this address does not constitute bad faith.

5. When SUTB 19-3E.1, SUTB 19-3E.2, SUTB 19-3E.3, or SUTB 19-3E.4 do not apply, including circumstances in which the seller is without sufficient information to apply SUTB 19-3E.1, SUTB 19-3E.2, SUTB 19-3E.3, or SUTB 19-3E.4, the retail sale is sourced to the jurisdiction for the address of the location from which the prewritten computer software was shipped or, if delivered electronically, was first available for transmission by the seller. "First available for transmission" means the location from which the software originated, irrespective of where it is routed, including intermediary servers.

19-4 COMPUTER SERVICES

A. Systems and Programming Services

A person performing repair, maintenance, and installation services on computer hardware and software is liable for collecting and remitting the general State, applicable local, and applicable

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transit rates of sales and use tax on the sales price of or gross receipts derived from the services, unless specifically exempt by statute.

Note: For information on repair, maintenance, and installation services, refer to SUTB 75.

B. Time Sharing

Charges made to customers for the use of a computer that the customer has access to through a remote terminal device are not subject to sales and use tax.

C. Information Service

An information service is not subject to sales and use tax.

Note: For information on an information service, refer to SUTB 48.

D. Consulting and Training Services

Charges by a person to solely furnish consulting and training services for how to use computer software are not subject to sales and use tax.

E. Sourcing – Computer Related Services

A retail sale of a computer-related service is sourced where the purchaser receives the service. For purposes of this subsection and in accordance with Rule 311.1 of the Streamlined Sales Tax® Governing Board, the term "receives" means making first use of services. The purchaser may make first use of a service in more than one location.

1. If the purchaser receives the service at a business location of the seller, the retail sale is sourced to that business location of the seller.

2. When the service is not received by the purchaser at a business location of the seller, the retail sale is sourced to the location(s) where receipt by the purchaser occurs.

If the service is received by the purchaser exclusively at one or more locations of the purchaser and the amount of the service received by the purchaser at each location is known by the seller, the retail sale is sourced to those locations.

If receipt occurs in multiple locations and the purchaser and seller agree to allocate the retail sale to multiple locations based on a reasonable and consistent method, the seller shall source the retail sale to those locations using such method. The locations and allocation must be provided by the purchaser by the time of the invoice.

If the seller does not receive information as to the location(s) where the service will be received by the purchaser or the purchaser and seller do not agree how to allocate the sale to multiple locations, the seller shall source the retail sale to a single location of the purchaser.

3. When SUTB 19-4E.1 and SUTB 19-4E.2 do not apply, the retail sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of business when use of this address does not constitute bad faith.

4. When SUTB 19-4E.1, SUTB 19-4E.2, and SUTB 19-4E.3 do not apply, the retail sale is sourced to the location indicated by an address for the purchaser obtained during the

consummation of the retail sale, including the address of a purchaser's payment instrument, if no other address is available, when this address does not constitute bad faith.

5. When SUTB 19-4E.1, SUTB 19-4E.2, SUTB 19-4E.3, and SUTB 19-4E.4 do not apply, including circumstances in which the seller is without sufficient information to apply SUTB 19-4E.1, SUTB 19-4E.2, SUTB 19-4E.3, or SUTB 19-4E.4, then the location is determined by the address from which the service was provided.

19-5 SERVICE CONTRACTS FOR COMPUTER HARDWARE AND COMPUTER SOFTWARE

The sales price of or the gross receipts derived from the sale or the renewal of a service contract for computer hardware or computer software sold at retail is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Service contracts for computer hardware or software that provide support services that meet the definition of “repair, maintenance, and installation services” are taxable unless exempt by statute. Service contracts for computer hardware or software that provide support services that do not meet the definition of “repair, maintenance, and installation services” are not subject to sales and use tax.

Note: For information on service contracts refer to SUTB 79.

SUTB 20 CONTAINERS USED IN WRAPPING, PACKING, AND SHIPPING MATERIALS

20-1 CONTAINERS: WRAPPING, PACKING, AND SHIPPING MATERIALS

Sales to manufacturers, producers, wholesalers, and retailers of wrapping paper, labels, wrapping twine, paper, cloth, plastic bags, cartons, packages and containers, cores, cones or spools, wooden boxes, baskets, coops and barrels, including paper cups, napkins and drinking straws and like articles are exempt from sales and use tax when such materials are used for packaging, shipping, or delivering tangible personal property sold at wholesale or retail and when such materials constitute a part of the sale of the property and are delivered with the property to the customer. Except for the items described in SUTB 20-4A, this exemption does not apply to items that are used solely for delivery purposes and do not become a part of the sale of tangible personal property.

20-2 DRUMS FOR PACKAGING PRODUCTS

Sales of drums to manufacturers, producers, wholesalers, and retailers are exempt from sales and use tax when the drums are used for packaging, shipment, or delivery of tangible personal property that is sold at wholesale or retail and when the drums constitute a part of the sale of such tangible personal property and are delivered with it to the customer. Sales of paint to manufacturers, producers, wholesalers, and retailers for use in painting the drums are also exempt from sales and use tax.

20-3 EGG CARTONS

Sales of egg cartons to persons engaged in the business of selling eggs are exempt from sales and use tax when such cartons become a part of the sale of the eggs to the customer.

20-4 RETURNABLE CONTAINERS

A. Sales of containers, such as barrels and drums, that are used as packaging to enclose tangible personal property for delivery to the customer that are required to be returned to the owner for reuse are exempt from sales and use tax.

The North Carolina Court of Appeals in *Parkdale Am., LLC v. Hinton, 200 N.C. App. 275 (2009*) held that a yarn pak was a container that enclosed tangible personal property and qualified for the sales and use tax exemption in G.S. § 105-164.13(23).

B. When a retailer or wholesale merchant sells tangible personal property in returnable containers and no charge is made for the use of the containers for a specified time but, at the expiration of the specified time, the containers enter a demurrage period and a penalty is charged to encourage the return of the containers, the charge is not subject to sales and use tax.

20-5 DEPOSITS FOR CONTAINERS

A. Deposits charged by a retailer or a wholesale merchant for reusable containers, other than returnable beverage containers and deposits as described in SUTB 20-5B, are subject to the general State, applicable local, and applicable transit rates of sales and use tax when the purchasers of the property contained therein can exercise such control over the containers as is ordinarily associated with ownership, while the container is in their possession. Such amounts are a part of the sales price even though designated as deposits for the containers.

B. Deposits charged by a retailer or wholesale merchant as a deposit on a beverage container that is returnable to the retailer or wholesale merchant for reuse and the amount charged is refundable or creditable to the purchaser is not subject to sales and use tax, whether or not the deposit is separately stated on the invoice or similar billing document.

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C. When the retailer or wholesale merchant retains title to reusable containers and the right to control the use which the customer makes of the containers, the containers are not considered to be a part of the sale of the property packaged within the containers. In such cases, amounts charged to the customers as security for the return of the containers are not subject to sales or use tax if such charges are shown separately from the sales price of the property on the invoice or similar billing document given to the purchaser at the time of sale. If such amounts are not separately stated on the invoice or similar billing document given to the purchaser at the time of sale, the total charge is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

SUTB 21 COUPONS AND VOUCHERS

21-1 COUPONS

A. Sales of Coupons and Coupon Booklets

Sales of coupons and coupon booklets to advertising agencies, promoters, and other users or consumers for use in advertising programs aimed at the promotion of sales by retailers are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Such coupons are considered to be for the purpose of advertising discounts or special sales prices, such as the sale of two items for the price of one item, and are not considered to be a part of the sale price upon which sales tax is due.

B. Retailer's Coupons

When a retailer issues coupons or coupon codes relating to products the retailer sells and later receives the coupons or coupon codes from customers in connection with sales of the products, the retailer must charge and remit sales and use tax on the net amount charged for the products after deduction of any credit allowed for the coupons or coupon codes. Coupons or coupon codes issued by retailers are considered to be for the purpose of advertising discounts or reductions in the sales price of products and are not part of the sales price upon which sales tax is due.

C. Manufacturer's Coupons

When manufacturers issue coupons or coupon codes relating to their products and the coupons or coupon codes are subsequently accepted by retailers from their customers in connection with sales of the manufacturers' products, the retailers must charge and remit sales and use tax on the sales price of the products before deduction of any credit or issuance of any refund allowed for any coupon or coupon code. A manufacturer's coupon or coupon code accepted by retailers from their customers constitutes payment, or partial payment, of the sales price of the product upon which sales and use tax is due. Any amount paid by the manufacturer to the retailer for the value of the coupons or coupon codes is not subject to sales and use tax.

21-2 VOUCHERS

For purposes of this SUTB the following guidance from the Streamlined Agreement applies. Refer to Disclosed Practice 1 - Tax Administration Practices on Vouchers in the North Carolina State Taxability Matrix for additional information.

A. Vouchers

A voucher is an instrument that is:

1. Issued to a purchaser for an amount less than the face value of the voucher, and both the face value and the amount paid by the purchaser are noted on the voucher.

2. Redeemable for personal property or services in a single visit only at the seller's business.

3. Redeemable either for a specific product or for a certain dollar amount towards the purchase price of any product sold by the seller.

4. Issued, marketed, or distributed by a third party pursuant to a specific agreement with the seller, and the seller determines the price at which the voucher is to be issued and allows redemption of the specific voucher for personal property or services ('third party agreement').

5. Not a "digital code" as defined by the Streamlined Agreement or the Streamlined Governing Board Rules.

6. Not a ticket for admission to a performance or event on a specific date and time.

7. Not a gift card nor a gift certificate; nor is it convertible, in whole or in part, to a gift card, a gift certificate, or cash.

8. Not usable in combination with other promotions or coupons offered by the seller.

9. Not a prepaid calling service or a prepaid wireless calling service.

A voucher may be provided to a purchaser in the form of an electronic instrument that is scanned by the seller from the purchaser's electronic device.

B. Application of a Voucher to a Sale

1. The difference between the value of a voucher allowed by the seller and the amount the purchaser paid for the voucher is administered as a discount that is not included in the sales price of an item (i.e., same treatment as a retailer's in-store coupon) provided the seller is not reimbursed by a third party in money, or otherwise, for some or all of that difference.

2. When the discount on a voucher will be fully reimbursed by a third party, the seller is to use the face value of the voucher (i.e., same as the treatment of a manufacturer's coupon) and not the price paid by the purchaser as the sales price that is subject to sales and use tax.

3. Costs and expenses of the seller are not deductible from the sales price and are included in the sales price that is subject to sales and use tax. Further, reductions in the amount of consideration received by the seller from the third party that issued, marketed, or distributed the vouchers, such as advertising or marketing expenses, are costs or expenses of the seller included in the sales price subject to sales and use tax.

SUTB 22 DELIVERY AND TRANSPORTATION CHARGES

22-1 DELIVERY CHARGES

A. Definition

G.S. § 105-164.3 provides the following term and definition:

"Delivery charges" – Charges imposed by the retailer for preparation and delivery of an item to a location designated by the consumer.

B. All freight, delivery, shipping, postage, handling, crating, packing, or other transportation charges in any way connected with or arising by reason of any taxable sale or purchase are subject to sales and use tax at the same rate as the taxable sale or purchase, regardless of whether such charges are billed separately or are separately stated on the invoice or similar billing document given to the purchaser at the time of sale.

C. Allocation of Charges

If a sale or shipment includes a taxable item and a non-taxable or exempt item, the retailer must allocate the delivery charge by using one of the following percentages:

1. A percentage based on the total sales price of the taxable item compared to the total sales prices of all items in the sale or shipment.

2. A percentage based on the total weight of the taxable item compared to the total weight of all items in the sale or shipment.

The portion of the delivery charge allocated to the taxable item is subject to the same rate of sales and use tax as the taxable item. The retailer should not tax the portion of the delivery charge allocated to the non-taxable or exempt item. Such allocation must be supported by the retailer's business records kept in the ordinary course of business.

SUTB 23 DIGITAL PROPERTY (CERTAIN DIGITAL PROPERTY)

23-1 DEFINITIONS

A. G.S. § 105-164.3 provides the following terms and definitions (excluding examples):

1. **"Additional digital goods"** – All of the following if transferred electronically:

a. A magazine, a newspaper, a newsletter, a report, or another publication.
b. A photograph.
c. A greeting card.

2. **"Certain digital property"** – Specified digital products and additional digital goods. The term does not include an information service or an educational service.

3. **"Digital audio work"** – A work that results from the fixation of a series of musical, spoken, or other sounds, including a ringtone, that is transferred electronically. *(Examples include, but are not limited to, the following: recorded songs, music, readings of books, or other written materials, speeches, and other sound recordings.)*

4. **"Digital audiovisual work"** – A series of related images, that when shown in succession, impart an impression of motion, together with accompanying sounds, if any, and that is transferred electronically. *(Examples include, but are not limited to, the following: movies, motion pictures, and musical videos.)*

5. **"Digital book"** – A work that is generally recognized in the ordinary and usual sense as a book that is transferred electronically.

6. **"Digital code"** – A code that gives a purchaser of the code a right to receive an item by electronic delivery or electronic access. A digital code may be obtained by an electronic means. A digital code does not include a gift certificate or a gift card. *(Examples include, but are not limited to, the following: song code, video code, or book code.)*

7. **"Educational service"** – The delivery of instruction or training, whether provided in real time, on demand, or at another set time, by or on behalf of a qualifying educational entity where at least one of the following conditions applies:

a. The instruction or training is part of the curriculum for an enrolled student.
b. The instruction or training is encompassed within the institution's accreditation or prepares an enrolled student for gainful employment in a recognized occupation.
c. The participant is evaluated by an instructor. "Evaluated by an instructor" does not include being graded by, scored by, or evaluated by a computer program or an interactive, automated method.
d. The participant is connected to the presenter or instructor via the Internet or other networks, allowing the participant to provide, receive, or discuss information through live interaction, contemporaneous with the presentation.

8. **"Electronic"** – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

9. **"Information service"** – A service that generates, acquires, stores, processes, or retrieves data and information and delivers it electronically to or allows electronic access by a consumer whose primary purpose for using the service is to obtain the processed data or information.

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10. **"Qualified educational entity"** – An entity listed in this subdivision. For purposes of this definition, references to the United States Code mean the United States Code as enacted as of January 1, 2020. The entities are:

a. An elementary or secondary school, as defined in 20 U.S.C. § 7801.
b. An institution of higher education, as defined in 20 U.S.C. § 1002.

11. **"Ringtone"** – A digitized sound file that is downloaded onto a device and that may be used to alert the user of the device with respect to a communication.

12. **"Specified digital products"** – Digital audio works, digital audiovisual works, and digital books.

13. **"Transferred electronically"** – Obtained by the purchaser by means other than tangible storage media and includes delivered or accessed electronically. Delivered electronically is delivery by download, email, or other method; while accessed electronically is delivery by online access generally accompanied by a password or digital code.

B. For purposes of this SUTB, the following terms and definitions apply:

1. **"Magazine, newspaper, newsletter, report, or another publication"** – These items will be generally recognized as such in the ordinary and usual sense.

2. **"Photograph"** – An image captured by a camera.

3. **"Greeting card"** – An imprint with a greeting and often with a suitable moving or still image with or without music.

23-2 IMPOSITION OF TAX

The general State, applicable local, and applicable transit rates of sales and use tax apply to the sales price of certain digital property sold at retail and sourced to this State. Certain digital property includes specified digital products and additional digital goods. The tax applies regardless of whether the purchaser of the property has the right to use it permanently or to use it without making continued payments. The sale at retail or the use, storage, or consumption in this State of a digital code is treated the same as the sale at retail or the use, storage, or consumption in this State of certain digital property for which the digital code relates.

An educational service and an information service, as the terms are defined in SUTB 23-1A, are excluded from the tax imposed on certain digital property.

23-3 EXEMPTIONS RELATED TO CERTAIN DIGITAL PROPERTY

The following are exempt from sales and use tax:

1. A sale of certain digital property for reproduction into certain digital property or tangible personal property offered for sale (wholesale sale).

2. Sales of a digital audio work or a digital audiovisual work that is a qualifying education expense under G.S. § 115C-595(a)(3) to the operator of a home school as defined in G.S. § 115C-563.

3. Sales of a digital audio work or digital audiovisual work that consists of nontaxable service content when the electronic transfer of the digital audio work or digital audiovisual work occurs contemporaneously with the provision of the nontaxable service in real time.

23-4 SOURCING – CERTAIN DIGITAL PROPERTY

Certain digital property is sourced to the location where a purchaser receives the certain digital property. A purchaser "receives" certain digital property when the purchaser takes possession of the property or makes first use of the property, whichever comes first. Refer to SUTB 4 for the general sourcing principles.

23-5 EXAMPLES – CERTAIN DIGITAL PROPERTY

The following are examples of sales of certain digital property subject to sales and use tax.

1. *Speedy.com, an internet-based business, sells music online. Speedy charges a fixed fee per song and allows a purchaser to download a song and store it on a device to play as many times as desired. No time restriction exists as to how long the purchaser can keep the song. Sales of the downloaded songs are certain digital property subject to sales and use tax. If Speedy.com charges a fixed fee per song and allows purchasers access to the song to play as many times as they want, even if the song is not stored on their own devices, the sales of access to the songs as certain digital property are subject to sales and use tax.*

2. *Smiley Orthodontists, Inc. sells a video presentation that helps orthodontists explain procedures to patients. Braces R Us purchases the video presentation from Smiley Orthodontists, Inc. on a per use basis for its customers. Braces R Us will not be able to save or copy the presentation; it will only have access to the video electronically. Patients of Braces R Us will view the presentation at the Braces R Us office. Smiley Orthodontists, Inc.'s sales of the video presentation come within the definition of a "digital audiovisual work" and are subject to sales and use tax as certain digital property.*

3. *Rembrandt's Photography Company is a photography business. It takes pictures of clients for various occasions. Rembrandt's Photography Company gives its client access to the digital images on the internet. Regardless of whether Rembrandt's Photography Company delivers electronic images to the client, allows the client to download the digital images, or allows the client to print the digital images without downloading, the digital images are certain digital property that is accessed electronically and subject to sales and use tax.*

SUTB 24 DIRECT PAY PERMITS

24-1 ISSUANCE AND USE OF DIRECT PAY PERMITS

When an application for direct pay permit is approved, the Department will issue a numbered direct pay permit.

A. Traditional Commerce

A direct pay permit holder should issue a copy of the numbered direct pay permit to a retailer at the time of purchase. Once received, a retailer is relieved of the liability from collecting and remitting sales and use tax on its sales to the direct pay permit holder. The direct pay permit holder is liable for accruing and remitting the applicable use tax directly to the Department.

A retailer must maintain documentation in its records in support of the exemption from tax. Proper documentation includes a copy of the direct pay permit, a Certificate of Exemption, or the required data elements, as applicable.

B. Electronic Commerce

If a retailer has the capability of retaining records electronically, the retailer may retain direct pay permit information in a digitized format in lieu of obtaining a paper copy of the direct pay permit. The information must include the following: direct pay permit number, name and address of the direct pay permit holder, and date the direct pay permit was issued.

C. Entity Entitled to Use Direct Pay Permit

A direct pay permit cannot be used by a subsidiary or an affiliate of an entity; only the entity to which the permit is issued by the Department is entitled to submit the permit to retailers. If a permit holder undergoes reorganization and forms a new business entity, the new entity must apply for a permit of its own.

24-2 DIRECT PAY PERMIT HOLDER LIABLE FOR TAX

A person who purchases a taxable item with a direct pay permit is responsible for accruing and remitting the use tax due on its purchases. A direct pay permit holder must use its direct pay permit for all purchases that are within the scope of the permit and is responsible for payment of the tax when the item is used or received, notwithstanding that the direct pay permit holder may have failed to provide a copy of its direct pay permit to a retailer. A direct pay permit holder should maintain the records necessary to verify the accrual of tax in an electronic format.

24-3 REVOCATION OF DIRECT PAY PERMIT

The Department may revoke a direct pay permit if the holder of the permit does not timely file a sales and use tax return, does not pay sales or use tax when due, or otherwise fails to comply with the sales and use tax laws.

24-4 GENERAL DIRECT PAY PERMIT

A. Eligibility

A general direct pay permit may be issued by the Department to a person that makes purchases of certain items in North Carolina when the sales and use tax status of such items cannot be determined at the time of purchase for one of the following reasons:

1. The place of business where the items will be stored, used, or consumed in the State is not known at the time of the purchase and a different tax consequence applies depending on where the items are used in the State.

2. The manner in which the items will be stored, used, or consumed in the State is not known at the time of the purchase and one or more of the potential uses are taxable but others are not taxable in the State.

Businesses that purchase certain items that could be either subject to or exempt from sales and use tax are eligible for a general direct pay permit. A taxpayer's annual purchases of certain items must be at least five million dollars ($5,000,000) to qualify for a general direct pay permit. Retail and wholesale businesses with locations only in North Carolina whose exempt purchases are for resale are not eligible for a direct pay permit.

B. Application

A person must complete and submit Form E-595A, Application for Direct Pay Permit, Sales and Use Taxes for Tangible Personal Property, Digital Property, and Services, to the Sales and Use Tax Division to apply for a general direct pay permit.

C. Prohibited Uses

A general direct pay permit is not applicable to the purchases or taxes listed below. The permit holder must pay these taxes directly to retailers who are registered with the Department or other authorities who collect and remit the taxes.

1. State and local sales taxes levied on sales of prepared meals and beverages.

2. State and local sales taxes levied on gross receipts derived from the rental of an accommodation.

3. Sales taxes levied on electricity, piped natural gas, video programming, spirituous liquor, qualified jet engine, telecommunications services or ancillary services and direct mail.

4. Highway use taxes or alternate highway use taxes paid on the purchase, lease, or rental of motor vehicles.

5. Scrap tire disposal tax levied on new tires.

6. Occupancy taxes levied and administered by local governments in the State.

7. Prepared food and beverage taxes levied by local governments in the State.

8. White goods disposal tax levied on new white goods.

9. Dry cleaning solvent tax levied on dry cleaning solvent purchased by a dry-cleaning facility.

10. 911 service charge for prepaid wireless telecommunications service.

A direct pay permit cannot be used by a subsidiary or an affiliate of an entity; only the entity to which the permit is issued by the Department is entitled to submit the permit to retailers. If a permit holder undergoes reorganization and forms a new business entity, the new entity must apply for a permit of its own.

24-5 DIRECT PAY PERMIT – TELECOMMUNICATIONS SERVICE AND ANCILLARY SERVICE

A. Eligibility

A direct pay permit for telecommunications service and ancillary service may be issued by the Department to a call center that purchases telecommunications service and ancillary service that originates outside this State and terminates in this State provided the call center complies with the sales and use tax laws and if its compliance burden will be greatly reduced by use of the permit. A call center is a business that is primarily engaged in providing support services to customers by telephone to support products or services of the business. A business is primarily engaged in providing support services by telephone if at least 60% of its calls are incoming.

B. Application

A call center must complete and submit Form E-595B, Application for Direct Pay Permit, Sales and Use Taxes for Telecommunications Service and Ancillary Service, to the Sales and Use Tax Division to apply for a direct pay permit for telecommunications service and ancillary service.

C. Prohibited Uses

A direct pay permit issued for telecommunications service and ancillary service does not apply to any purchase other than the purchase of telecommunications service and ancillary service. A direct pay permit cannot be used by a subsidiary or an affiliate of an entity; only the entity to which the permit is issued by the Department is entitled to submit the permit to retailers. If a permit holder undergoes reorganization and forms a new business entity, the new entity must apply for a permit of its own.

D. Cap on Certain Telecommunications Service and Ancillary Service

The tax on telecommunications service and ancillary service that originates outside North Carolina, terminates in North Carolina, and is provided to a call center that has a direct pay permit may not exceed fifty thousand dollars ($50,000) a year. This cap applies separately to each legal entity. There is no cap on other types of telecommunications service and ancillary service.

24-6 DIRECT PAY PERMIT – DIRECT MAIL

A. Eligibility

A direct pay permit for direct mail may be issued by the Department to a person that purchases direct mail. “Direct mail” is defined as printed material delivered or distributed by the United States Postal Service or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. The term includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. The term does not include multiple items of printed material delivered to a single address.

B. Application

A person must complete and submit Form E-595C, Application for Direct Pay Permit for Sales and Use Taxes on Direct Mail, to the Sales and Use Tax Division to apply for a direct pay permit for direct mail.

C. Prohibited Uses

A direct pay permit issued for direct mail does not apply to any purchase other than the purchase of direct mail. A direct pay permit cannot be used by a subsidiary or an affiliate of an entity; only the entity to which the permit is issued by the Department is entitled to submit the permit to retailers.

If a permit holder undergoes reorganization and forms a new business entity, the new entity must apply for a permit of its own.

24-7 DIRECT PAY PERMIT – QUALIFIED JET ENGINE

A. Eligibility

A direct pay permit for a qualified jet engine may be issued by the Department to a person that purchases a qualified jet engine. “Qualified jet engine” is defined as an engine certified pursuant to Part 33 of Title 14 of the Code of Federal Regulations.

B. Application

A person must complete and submit Form E-595JE, Application for Direct Pay Permit for Qualified Jet Engine, to the Sales and Use Tax Division to apply for a direct pay permit for a qualified jet engine.

C. Prohibited Uses

A direct pay permit issued for a qualified jet engine does not apply to any purchase other than the purchase of a qualified jet engine. A direct pay permit cannot be used by a subsidiary or an affiliate of an entity; only the entity to which the permit is issued by the Department is entitled to submit the permit to retailers. If a permit holder undergoes reorganization and forms a new business entity, the new entity must apply for a permit of its own.

D. Maximum Use Tax

The maximum use tax on the purchase of a qualified jet engine under a direct pay permit is two thousand five hundred dollars ($2,500).

24-8 DIRECT PAY PERMIT - CERTAIN BOAT, AIRCRAFT, AND QUALIFIED JET ENGINE CHARGES AND SERVICES

A. Eligibility and Election to Remit Tax

In lieu of purchasing tangible personal property, certain digital property, or repair, maintenance, and installation services for a boat, an aircraft, or a qualified jet engine under a direct pay permit, filing a return, and remitting the use tax due to the Secretary, a purchaser may elect to have the seller collect and remit the sales and use tax due on behalf of the purchaser. Where the purchaser elects for the seller to collect and remit the tax, an invoice given to the purchaser bearing the proper amount of tax on a retail transaction extinguishes the purchaser's liability for the tax on the transaction. Where a seller cannot or does not separately state installation charges that are a part of the sales price of tangible personal property or certain digital property for a boat, an aircraft, or a qualified jet engine on the invoice or other documentation given to the purchaser at the time of the sale, tax is due on the total purchase price.

Alternatively, a direct pay permit may be issued by the Department to a person that purchases tangible personal property, certain digital property, or repair, maintenance, and installation services for a boat, an aircraft, or a qualified jet engine without paying tax to the seller and authorizes the seller to not collect tax on the purchased items from the permit holder.

A permit holder is allowed a use tax exemption on one or more of the following: (i) the installation charges that are a part of the sales price of tangible personal property or certain digital property purchased by the permit holder for a boat, an aircraft, or a qualified jet engine, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the permit holder at the time of the sale and (ii) the sales price of or gross

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receipts derived from repair, maintenance, and installation services provided for a boat or an aircraft.

B. Application

A person, who expects to or will incur qualifying expenses in excess of twenty-five thousand dollars ($25,000) must complete and submit Form E-595RMI, Application for Direct Pay Permit for Certain Boat, Aircraft, and Qualified Jet Engine Charges and Services, to the Sales and Use Tax Division if the person desires to take advantage of the use tax exemption as discussed in this section.

C. Prohibited Uses

A direct pay permit issued for tangible personal property, certain digital property, or repair, maintenance, and installation services for a boat, an aircraft, or a qualified jet engine does not apply to any purchase other than the purchase of those items for a boat, an aircraft, or a qualified jet engine. A direct pay permit cannot be used by a subsidiary or an affiliate of an entity; only the entity to which the permit is issued by the Department is entitled to submit the permit to retailers. If a permit holder undergoes reorganization and forms a new business entity, the new entity must apply for a permit of its own.

D. Use Tax Exemption Amount

The amount of the use tax exemption is the amount of the installation charges and the sales price of or gross receipts derived from the repair, maintenance, and installation services that exceed twenty-five thousand dollars ($25,000).

24-9 DIRECT PAY PERMIT – QUALIFYING SPIRITUOUS LIQUOR

A. Eligibility and Election to Remit Tax

In lieu of the purchaser purchasing qualifying spirituous liquor under a direct pay permit, filing a return, and remitting use tax due to the Secretary, a seller may elect to collect and remit the sales and use tax due on behalf of the purchaser. Where the seller elects to collect and remit the tax, an invoice given to the purchaser bearing the proper amount of tax on a retail transaction extinguishes the purchaser's liability for the tax on the transaction. For purposes of this section, "qualifying spirituous liquor" is a single container of spirituous liquor, as defined in G.S. § 18B-101, the purchase price of which is equal to or greater than fifty thousand dollars ($50,000).

Alternatively, a direct pay permit may be issued by the Department to a person that purchases qualifying spirituous liquor without paying tax to the seller and authorizes the seller to not collect tax on the purchased qualifying spirituous liquor from the permit holder. A permit holder is allowed a use tax exemption on any use tax in excess of one thousand dollars ($1,000).

B. Application

A person, who expects to or will incur sales and use tax on qualifying spirituous liquor in excess of one thousand dollars ($1,000) must complete and submit Form E-595SL, Application for Direct Pay Permit for Qualifying Spirituous Liquor, to the Sales and Use Tax Division if the person desires to take advantage of the use tax exemption as discussed in this section.

C. Prohibited Uses

A direct pay permit issued for qualifying spirituous liquor does not apply to any purchase other than the purchase of the qualifying spirituous liquor. A direct pay permit cannot be used by a subsidiary or an affiliate of an entity; only the entity to which the permit is issued by the Department is entitled

to submit the permit to retailers. If a permit holder undergoes reorganization and forms a new business entity, the new entity must apply for a permit of its own.

D. Maximum Tax

The maximum use tax on a purchase of qualifying spirituous liquor is one thousand dollars ($1,000).

24-10 REGISTRY OF DIRECT PAY PERMIT HOLDERS

The Department's website provides a registry of direct pay permit holders.

SUTB 25 DISCOUNTS AND TRADE-INS

25-1 CASH DISCOUNTS

A cash or terms discount is a reduction in the price a seller charges that is extended to the purchaser for prompt payment of an invoice. The sales price of an item does not include a cash or terms discount that is not reimbursed by a third party.

25-2 TRADE DISCOUNTS AND BARGAINING DISCOUNTS

A trade discount is a reduction in the price a seller charges that is extended to a particular purchaser or group of purchasers without reservation at the time the sale is being negotiated. A bargaining discount is a reduction in the price a seller charges that is extended to a purchaser at the time the sale is being negotiated as a result of bargaining between the purchaser and the seller. The sales price of an item does not include a trade discount or bargain discount that is not reimbursed by a third party.

25-3 CREDIT FOR TRADE-INS

The amount of a trade-in, including an over-allowance, taken by a purchaser as a credit or partial payment on the sale of an item is not a reduction in the sales price of the item. The trade-in is consideration given towards the purchase of the item. Any applicable sales or use tax shall be computed and paid on the sales price of the item without any deduction for a trade-in.

25-4 EMPLOYEE DISCOUNTS

An employee discount is a reduction in the price a seller charges a purchaser because the purchaser is an employee of the seller. The sales price of an item does not include an employee discount that is not reimbursed by a third party.

25-5 EMPLOYEE INCENTIVE PROGRAM

An employee incentive program is a program that provides employees points or credits for achieving a specific goal. An employee incentive program credit, whether measured in a dollar or point value, is not an employee discount but rather constitutes payment or partial payment of the sales price for which an item is sold, leased, or rented. Any applicable sales or use tax shall be computed and paid on the sales price of the item without any deduction for any employee incentive credit allowed.

SUTB 26 ELECTRICITY

26-1 IMPOSITION, GROSS RECEIPTS, AND REPORTING TAX

A. Tax Imposed

The gross receipts derived from the retail sale of electricity, including any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction, are subject to the combined general rate of sales and use tax unless specifically exempt by statute.

B. Computation of the Tax

The amount actually charged to customers for electricity consumed during the billing period is the amount on which the sales tax is due notwithstanding that the customers may be under equal pay agreements. Sales and use tax is computed on the gross receipts after any allowance for conservation discounts and load control discounts on metered electric service for residential customers.

C. Reporting the Tax

Gross receipts derived from the retail sale of electricity must be reported on an accrual basis of accounting. A sale of electricity is considered to accrue when the customer is billed for the sale. Gross receipts must be reported on Form E-500E, Combined General Rate Sales and Use Tax Return (Utility, Liquor, Gas, and Other).

D. Lessor of a Single-Family Dwelling, Residential Building, or Multiunit Apartment Complex

A lessor of a single-family dwelling, residential building, or multiunit apartment complex that has individually metered units for electricity service in the lessor's name and that charges the actual costs of providing electric service to each lessee pursuant to Chapter 62 of the North Carolina General Statutes is not considered a retailer for sales and use tax purposes. A lessor who charges for electric service under this subsection is the consumer of the electricity and is liable for payment of the sales and use tax to the electric power supplier providing service to the leased premises. Refer to G.S. § 62-110(h) for the additional information.

26-2 GROSS RECEIPTS SUBJECT TO SALES AND USE TAX

The gross receipts derived from the retail sale of electricity is the total amount or consideration for which electricity is sold. All charges for items provided in the production and delivery of electricity to customers are a part of the gross receipts derived from the retail sale of electricity upon which the tax is due, notwithstanding that some charges may be billed separately from the charge for the metered service.

The following specific charges are a part of the gross receipts derived from the sale of electricity subject to sales and use tax:

1. Electric service meter charges.

2. Basic service charges to the customer, whether or not the customer uses metered service.

3. Charges made to customers when the company first supplies electricity under any applicable metered rate schedule.

4. Charges for construction to new customers for extending facilities to these customers including contribution in aid of construction charges.

5. Charges for underground service to residential, commercial, and industrial customers who are served by underground facilities.

6. Charges for installing and removing a service of a temporary nature.

7. Charges or advance payments for temporary service that are collected prior to meter installation and customer account establishment. If the amount charged to the customer is in excess of the amount due by the customer for this service, it shall be refunded to the customer, including the sales tax.

8. Charges for providing customers additional facilities to furnish service, notwithstanding that the facilities are requested by the customers.

9. Charges for transformers that constitute charges for additional equipment furnished as a part of the electric service.

10. Charges for area lighting service that is available to customers for the purpose of lighting private streets, private driveways, and other outdoor areas.

11. Charges for residential subdivision street lighting services supplied in the lighting of residential dedicated public streets.

12. Charges for reconnecting service to customers after service has been terminated for nonpayment.

13. Interconnection charges.

14. Charges for repair, maintenance, installation services.

26-3 CHARGES OR FEES THAT ARE NOT PART OF GROSS RECEIPTS SUBJECT TO TAX

The following list describes specific items that are not part of the gross receipts derived from the sale of electricity subject to sales and use tax:

1. Charges to customers for supplying information through energy or time pulses if the customer already has the facilities for electric service in place.

2. Demand profile charges or pulse data charges for demand information as requested by a customer.

3. Energy audit amounts charged to customers for a comprehensive energy audit provided by a utility.

4. Late payment charges billed on a balance that was not paid on the previous month's bill.

5. Charges related to electronic fund transfers or checks for payment of an account that are returned by the bank because of insufficient funds.

6. Home energy loan amounts that represent the amount due under the Home Energy Loan Program and late payment charges for an amount due under the loan program that are not paid in accordance with the loan agreement.

7. Security deposit interest paid to customers on deposits.

26-4 EXEMPTIONS RELATED TO ELECTRICITY

The following are exempt from sales and use tax:

1. The purchase of electricity by a secondary metals recycler for use at its facility at which the primary activity is secondary metals recycling.

2. The purchase of electricity for use at an eligible Internet datacenter. An eligible Internet datacenter is a datacenter that satisfies each of the conditions in G.S. § 105-164.3(79).

3. The purchase of electricity for use at a qualifying datacenter. A qualifying datacenter is a datacenter that satisfies each of the conditions in G.S. § 105-164.3(201).

4. The purchase of electricity by a major recycling facility provided the electricity is used at the facility.

5. The purchase of electricity by a qualifying or conditional farmer that is measured by a separate meter or another separate device, is used by the qualifying or conditional farmer primarily in farming operations, and is not used for preparing food, heating dwellings, and other household purposes. An item is used by a farmer for farming operations if it is used for the planting, cultivating, harvesting, or curing of farm crops, in the production of dairy products, eggs, or animals, or by a person who boards horses.

Gross receipts derived from the sale of electricity to a qualifying or conditional farmer where the electricity is measured through a single meter and used for both qualifying farming purposes and for preparing food, heating dwellings, or other household purposes are subject to the combined general rate of sales and use tax.

6. The purchase of electricity by a manufacturer provided the electricity is for use in connection with the operation of the manufacturing facility. This exemption includes electricity used both inside and outside of the facility, including electricity used for parking lot lighting at the facility.

This exemption does not include electricity used at a facility at which the primary activity is not manufacturing.

For purposes of the exemption, a “facility” is a single building or structure, or a group of buildings or structures that are located on a single parcel of land or on contiguous parcels of land under common ownership and any other related real property contained on the parcel or parcels.

7. The sale of electricity directly to the North Carolina Department of Transportation or any division thereof. In order to be a sale to the North Carolina Department of Transportation, the North Carolina Department of Transportation division involved must make the purchase of electricity and pay directly to the retailer the purchase price of the electricity. While sales directly to the North Carolina Department of Transportation or a division thereof are exempt from sales tax, a purchase requisition from the North Carolina Department of Transportation or the purchasing division must be obtained. This exemption does not apply to any other State agency.

8. The sale of electricity to the United States Government or any agencies or qualifying instrumentalities thereof. In order to be a sale to the United States Government, the United States Government or agency involved must make the purchase of electricity and pay directly to the retailer the purchase price of the electricity. While sales directly to the United States Government or an agency thereof are exempt from sales tax, a purchase requisition from the United States Government or the purchasing agency must be obtained.

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9. The sale of electricity by a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes.

10. The sale of electricity to registered electric membership cooperatives and to registered municipalities for resale. Electric membership cooperatives and municipalities selling electricity at retail must add and collect sales tax to the gross receipts derived from the sale of electricity.

Note: For information for electric power companies, refer to SUTB 57-8.

SUTB 27 FARMERS, AGRICULTURE, AND WILDLIFE MANAGERS

27-1 DEFINITIONS

For purposes of this SUTB, the following terms and definitions apply:

1. **"Animal"** – Includes swine, cattle, horses, mules, sheep, chickens, turkeys, and other similar domestic animals, bees, fowl, and fish held or produced for commercial purposes.

2. **"Commercial"** – Means held or produced for income or profit and does not include the production of animals or crops for one's personal use or consumption and not for sale.

3. **"Farming operations"** – The planting, cultivating, harvesting, or curing of farm crops; the production of dairy products, eggs, or animals; or boarding horses.

4. **"Income from farming operations"** – All sales plus any other amounts treated as gross income from farming operations under the Internal Revenue Code.

5. **"Livestock"** – Cattle, sheep, goats, swine, horses, or mules.

6. **"Seeds"** – Means seeds in their generally accepted sense and includes flower seeds, sets, tubers, roots, tobacco plants, tomato plants, pepper plants, potato plants, and other small plants that are raised in beds or hothouses for transplanting. The term seeds does not include potted plants, trees, shrubs, cut flowers, and other larger plants.

7. **"Taxable year"** – Defined in G.S. § 105-153.3.

27-2 QUALIFYING FARMERS

A. General Information

A qualifying farmer is a person who has an annual income from farming operations for the preceding taxable year of ten thousand dollars ($10,000) or more or who has an average annual income from farming operations for the three preceding taxable years of ten thousand dollars ($10,000) or more. A qualifying farmer includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, a farmer of an "aquatic species," as defined in G.S. § 106-758, and a person who boards horses.

B. Application for Exemption Certificate Number

A person that meets the requirements of a qualifying farmer and wants to purchase qualifying items for use primarily in farming operations exempt from sales and use tax, must apply for a qualifying farmer exemption certificate number. To apply for a qualifying farmer exemption certificate number, a person must complete and submit to the Department Form E-595QF, Application for Qualifying Farmer Exemption Certificate Number for Qualified Purchases. A qualifying farmer exemption certificate number issued by the Department begins with the numeral seven (7).

C. Expiration of Exemption Certificate Number

A qualifying farmer exemption certificate number expires when a person fails to meet the income threshold for three consecutive taxable years or ceases to engage in farming operations, whichever comes first. A person that no longer qualifies for a qualifying farmer exemption certificate number or a person that has ceased farming operations, must give notice to each seller that may rely on the qualifying farmer exemption certificate or exemption certificate number, on or before the next purchase. Additionally, such person must notify the Department within thirty (30) days to cancel the qualifying farmer exemption certificate number.

27-3 CONDITIONAL FARMERS

A. General Information

A person that does not meet the definition of "qualifying farmer" may apply to the Department for a conditional farmer exemption certificate number. A person issued a conditional farmer exemption certificate number by the Department may purchase qualifying items exempt from sales and use tax to the same extent as a qualifying farmer. To receive a conditional farmer exemption certificate number, a person must certify that the person intends to engage in "farming operations" as defined in SUTB 27-1 and that the person will timely file State and federal income tax returns that reflect income and expenses incurred from farming operations during the taxable years to which the conditional farmer exemption certificate number applies.

A conditional farmer exemption certificate number is valid for the taxable year in which the certificate is issued and the following two taxable years, provided the person to whom the exemption certificate number is issued does not cease engaging in farming operations prior to the expiration of the conditional farmer exemption certificate number and the holder of the conditional farmer exemption certificate number provides the required information to the Department, as detailed below.

The Department may not issue a conditional farmer exemption certificate number to a person who has had a conditional farmer exemption certificate number issued during the prior 15 taxable years.

B. Application for Exemption Certificate Number

To apply for a conditional farmer exemption certificate number, a person must complete and submit to the Department Form E-595CF, Application for Conditional Farmer Exemption Certificate Number for Qualified Purchases. A conditional farmer exemption certificate number issued by the Department begins with the numeral eight (8).

C. Requirements of a Conditional Farmer

1. A person that is issued a conditional farmer exemption certificate is required to submit copies of State and federal income tax returns to the Department within 90 days following the due date of an income tax return for each taxable year covered by the conditional farmer exemption certificate.

Where a person obtains an extension to file its income tax return, such person must provide copies of the extension, proof of payment of any taxes due, and must provide copies of the income tax return filed on or before the extended due date.

2. A person that purchases items with a conditional farmer exemption certificate must maintain documentation of the items purchased and copies of State and federal income tax returns that reflect activities from farming operations for the period of time covered by the conditional farmer exemption certificate for three years following the expiration of the conditional farmer exemption certificate. The Secretary may require a person that has a conditional farmer exemption certificate to provide any other information requested by the Secretary to verify the person met the mandatory conditions. A person that fails to provide the information required in a timely manner or that fails to meet the requirements described herein becomes liable for the sales and use tax for which an exemption was claimed by the person. The sales and use tax becomes due and payable at the expiration of the conditional farmer exemption certificate. Interest accrues on the sales and use tax due from the date the tax was originally due until the date the tax is paid. Additionally, where the person does not timely provide the information requested by the Department, the two hundred fifty-dollar ($250) misuse of exemption certificate penalty, per G.S. § 105-

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236(a)(5a), applies to each seller identified by the Department from which the person made a purchase.

D. Extension for Conditional Farmer Exemption Certificate Number

A conditional farmer may request a one-year extension of the conditional farmer exemption if the person satisfies all of the following conditions:

1. The person holds a conditional farmer exemption certificate that is scheduled to expire within 30 days of an extension request.

2. The person suffers a weather-related disaster that prevents the person from becoming eligible for a qualifying farmer exemption certificate.

3. The person provides the Department all of the following:

a. Documents showing that, but for the disaster, the person would have earned ten thousand dollars ($10,000) or more in gross sales for the year in which the disaster occurred. Documentation may include, but is not limited to, information necessary to complete U.S. Department of Agriculture Form CCC-576, Notice of Loss and Application for Payment of Noninsured Crop Disaster Assistance Program.

b. Documentation of revenues and expenses relating to the damaged crop. Documentation may include, but is not limited to, information necessary to complete a person's applicable Federal income tax return related to the damaged crop.

c. An affidavit from a county extension director or FSA county committee that the disaster occurred in the area of the county in which the person farms.

To request an extension, a conditional farmer must complete and submit to the Department Form E-595CFEX, Application for One-Year Extension for Conditional Farmer Exemption Certificate Number.

E. Expiration of Exemption Certificate Number or Ceasing Farming Operations

A person that no longer qualifies for a conditional farmer exemption certificate number at any time or a person that was issued a conditional farmer exemption certificate that is no longer valid, must give notice to each seller that may rely on the conditional farmer exemption certificate or conditional farmer exemption certificate number, on or before the next purchase. Additionally, a person that no longer qualifies for a conditional farmer exemption certificate must notify the Department within 30 days to cancel the conditional farmer exemption certificate number.

F. Conditional Farmer Transitioning to Qualifying Farmer

A person issued a conditional farmer exemption certificate does not have to wait until the conditional farmer exemption certificate expires to apply for a qualifying farmer exemption certificate. A person who has been issued a conditional farmer exemption certificate number who meets the ten thousand dollar ($10,000) gross income threshold for a prior income tax year and meets the eligibility requirements for a qualifying farmer during the period of time covered by the conditional farmer exemption certificate, can apply for a qualifying farmer exemption certificate number prior to the expiration of the conditional farmer exemption certificate. Such persons should submit Form E-595QF, Application for Qualifying Farmer Exemption Certificate Number for Qualified Purchases, in order to apply for a qualifying farmer exemption certificate number.

27-4 AGRICULTURAL EXEMPTIONS

A. The following are exempt from sales and use tax when purchased as provided in SUTB 5. This is not an all-inclusive list. Wildlife managers refer to SUTB 27-9.

1. Products of forests and mines in their original or unmanufactured state when such sales are made by the producer in the capacity of producer.

Note: For information on sales made by the producer in the capacity of producer, refer to SUTB 63-3.

2. Any cotton, tobacco, peanuts, or other farm products sold to manufacturers for further manufacturing or processing.

3. Products of a farm sold in their original state by the producer of the products if the producer is not primarily a retailer.

4. Ice used to preserve agriculture, aquaculture, and commercial fishery products until the products are sold at retail.

5. Gross receipts derived from an admission charge to an entertainment activity for an event sponsored by a qualifying farmer that takes place on farmland and is related to farming activities, such as a corn maze or a tutorial on raising crops or animals. For purposes of this exemption the farmer must be a qualifying farmer. Farmland is land that is enrolled in the present-use value program under G.S. § 105-277.3.

B. Exempt Purchases by a Qualifying or Conditional Farmer

The retail sale, lease, or rental, and the storage, use, or consumption of the following items are exempt from sales and use tax if purchased by a qualifying or conditional farmer and used by the farmer primarily in farming operations. If an item is used for both farming operations and other purposes, the farmer must retain documentation showing the item is used primarily in farming operations to qualify. The following items are exempt from sales and use tax when purchased as provided in SUTB 5. This is not an all-inclusive list.

1. Fuel, piped natural gas, and electricity measured by a separate meter or another separate device and used for a purpose other than preparing food, heating dwellings, and other household purposes. Any fuel, piped natural gas, and electricity measured through a single meter and used for both qualifying farming purposes and for preparing food, heating dwellings, or other household purposes, is not exempt and is subject to the applicable rate of sales and use tax.

2. Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, potting soil, baler twine, and compost.

3. Processed poultry or cow manure used as fertilizer.

4. Farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery. The term “machinery” includes implements that have moving parts or are operated or drawn by an animal. The term does not include implements operated wholly by hand or motor vehicles required to be registered under Chapter 20 of the North Carolina General Statutes. Refer to SUTB 27-5A for examples.

5. A container used in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals or used in packaging and transporting the farmer's products for sale. Containers that go with and become a part of the sale of the farmer’s products.

6. A grain, feed, or soybean storage facility and parts and accessories attached to the facility.

7. Seeds.

8. The following substances, when purchased for use on animals or plants, as appropriate, held or produced for commercial purposes, are exempt from sales and use tax:

a. Remedies, vaccines, and medications including all medicines in the generally accepted sense of the term, tonics for internal use, vitamins, ointments, liniments, antiseptics, anesthetics, and other medicinal substances having preventive and curative properties in the prevention, treatment, or cure of disease in animals.

b. Litter materials.

c. Feed for animals including bulk sales of bread and dietary supplements such as minerals, oyster shells, salt, bone, meal, and other similar preparations or compounds to be fed directly to animals or to be mixed with feed for animals for normal growth, maintenance, lactation, or reproduction, but does not include sand or grit.

d. Rodenticides that include any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents.

e. Insecticides that include any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects.

f. Herbicides that include any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

g. Fungicides that include any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi or plant disease.

h. Pesticides that include any substance used to kill rats, mites, insects, and bacteria.

i. Defoliants for use on cotton or other crops.

j. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.

k. Semen.

9. Fowl. Refer to SUTB 27-8 for detailed information.

10. Livestock.

11. Any of the following used in housing, raising, or feeding animals (Refer to SUTB 27-5B for examples):

a. Commercially manufactured facilities to be used for commercial purposes for housing, raising, or feeding animals or for housing equipment necessary for these commercial activities. The exemption also applies to commercially manufactured equipment, and parts and accessories for the equipment, used in the facility.

b. Building materials, supplies, fixtures, and equipment that become a part of and are used in the construction, repair, or improvement of an enclosure or a structure

specifically designed, constructed, and used for housing, raising, or feeding animals or for housing equipment necessary for one of these commercial activities. The exemption also applies to commercially manufactured equipment, and parts and accessories for the equipment, used in the enclosure or structure.

12. A bulk tobacco barn or rack, parts and accessories attached to the tobacco barn or rack, and any similar apparatus, part, or accessory used to cure or dry tobacco or another crop.

13. Repair, maintenance, and installation services purchased by a qualifying or conditional farmer for an item used by the farmer primarily in farming operations. Refer to SUTB 27-5D for examples.

Note: For information regarding repair, maintenance, and installation services, refer to SUTB 75.

14. A service contract for items that are exempt pursuant to G.S. § 105-164.13E that are purchased by a qualifying or conditional farmer and used by the farmer primarily in farming operations.

Note: For information regarding a service contract, refer to SUTB 79.

C. Zoo Exemption

A qualifying farmer or conditional farmer who operates a zoo in addition to the farmer's farming operations is allowed a sales and use tax exemption for the items used in the farmer's zoo operations. The income derived from the farmer's zoo operations is not included for purposes of determining if the farmer meets the qualifications for a qualifying farmer under G.S. § 105-164.13E.(a) or the qualifications for a conditional farmer under G.S. § 105-164.13E.(b). The items that may be exempt from sales and use tax are the items listed under SUTB 27-4B that are purchased by a qualifying farmer or conditional farmer and used by the farmer primarily in zoo operations. The provisions of SUTB 27-6 and 27-7 apply to the exemption provided in this subsection. For purposes of this subsection, an item is used in a farmer's zoo operations if it is used for the housing, raising, or feeding of animals for public display.

27-5 EXAMPLES OF ITEMS SOLD TO QUALIFYING OR CONDITIONAL FARMERS

A. Examples of farm machinery and attachment and repair parts for farm machinery, and lubricants applied to farm machinery that are exempt from sales and use tax when sold at retail to qualifying or conditional farmers and used primarily in farming operations. This is not an all-inclusive list.

1. Balers (not tobacco balers).
2. Calcium chloride solutions for use as an antifreeze in tractor tires.
3. Chainsaws.
4. Combines.
5. Corn and hay elevators.
6. Corn pickers and snappers.
7. Cotton-picking bags and cotton sheets for use in harvesting cotton.
8. Cotton pickers.
9. Cultivators.
10. Fertilizer distributors.
11. Forage blowers.
12. Grain loaders
13. Harrows.
14. Harvesters.
15. Hydraulic fluids.
16. Irrigation equipment, including irrigation pumps, irrigation pipe, sprays, and nozzles.

17. Liquid fertilizer applicators.
18. Manure loaders.
19. Manure spreaders.
20. Mechanical post-hole diggers.
21. Mechanical rakes.
22. Motor oils, greases, lubricants, and anti-freeze that will be applied to or installed in qualifying farm machinery.
23. Mowers. (Does not include lawn mowers)
24. Non-highway trailers.
25. Planters.
26. Platform carriers.
27. Plows.
28. Portable insecticide sprayers.
29. Power loader lifts.
30. Rod weeders.
31. Rotary hoes.
32. Rotary tillers.
33. Seeders.
34. Shredders for corn stalks.
35. Stalk cutters.
36. Tobacco transplanters.
37. Tobacco trucks or slides.
38. Tractors. Including tractors, backhoes, or draglines for use in the construction and maintenance of drainage facilities to promote the growth of farm crops.
39. Wagons.
40. Windrowers.

Note: If an item is used for both farming operations and other purposes, the farmer must retain documentation showing the item is used primarily in farming operations to qualify.

B. Examples of commercially manufactured equipment, and parts and accessories for the equipment, that are exempt from sales and use tax when placed or installed in or affixed to a commercially manufactured facility, enclosure, or structure for housing, raising, or feeding animals. This is not an all-inclusive list.

1. Animal clippers and parts therefor to animal farmers for use in the production of animals.
2. Cooling fans.
3. Egg cooling cabinets for housing, raising, or feeding poultry.
4. Feed mills.
5. Mechanical barn cleaners.
6. Scales.
7. Silo unloaders.

C. Examples of items subject to the general State, applicable local, and applicable transit rates of sales and use tax when sold at retail to qualifying or conditional farmers. This is not an all-inclusive list.

1. Drainage tile and culvert pipe.
2. Egg cleaning detergent.
3. Lawn mowers.
4. Oil or fuel storage tanks, whether mobile or stationary, and their fittings.
5. Paint, cleaning compounds, and brushes.
6. Repair, maintenance, and installation services to or motor vehicles required to be registered under Chapter 20 of the North Carolina General Statutes; this includes motor vehicles with “Farm Tags.”
7. Sickle grinders.

8. Snap bean graders.
9. Snowplows.
10. Tobacco balers.
11. Tools for maintaining machinery and equipment.
12. Ventilators that have no moving parts and are installed in tobacco barns, other than bulk tobacco barns. The ventilators are a part of the building or structure and are not classified as farm machines or machinery.
13. All-terrain vehicles (ATVs) not used primarily in farming operations.

D. Examples of repair, maintenance, and installation services that are exempt from sales and use tax when purchased by a qualifying or conditional farmer and performed on items that are exempt from sales and use tax. This is not an all-inclusive list.

1. Repair or maintenance of a tractor.

2. Repair of a roof for a chicken house used for housing, raising, or feeding chickens for commercial purposes.

3. Repair or maintenance for any of the items listed in SUTB 27-5A.

4. Repair of a fence used for housing, raising, or feeding animals held or produced for commercial purposes.

27-6 SERVICES FOR A QUALIFYING OR CONDITIONAL FARMER

A. Exempt Purchases by a Service Provider

The purchase of a qualifying item listed below purchased to fulfill a service for a qualifying or conditional farmer is exempt from sales and use tax to the same extent as if purchased directly by the qualifying or conditional farmer.

1. Remedies, vaccines, and medications including all medicines in the generally accepted sense of the term, tonics for internal use, vitamins, ointments, liniments, antiseptics, anesthetics, and other medicinal substances having preventive and curative properties in the prevention, treatment, or cure of disease in animals.

2. Litter materials.

3. Feed for animals including bulk sales of bread and dietary supplements such as minerals, oyster shells, salt, bone, meal, and other similar preparations or compounds to be fed directly to animals or to be mixed with feed for animals for normal growth, maintenance, lactation, or reproduction, but does not include sand or grit.

4. Rodenticides that include any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents.

5. Insecticides that include any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects.

6. Herbicides that include any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

7. Fungicides that include any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi or plant disease.

8. Pesticides that include any substance used to kill rats, mites, insects, and bacteria.

9. Defoliants for use on cotton or other crops.

10. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.

11. Semen.

B. Procedure for a Service Provider Making an Exempt Purchase

A service provider that purchases an item listed in SUTB 27-6A without paying sales or use tax must provide a properly completed Certificate of Exemption, or the required data elements as provided in SUTB 5-1, to the retailer. The Certificate of Exemption, or required data elements, must include the following information:

a. The service provider's name.
b. The service provider's address.
c. The service provider's type of business.
d. The reason for exemption that includes all of the following information (Note: For a paper Certificate of Exemption, in Section 4 select "other" and provide the reason in the space provided):

1) The name of the qualifying or conditional farmer.
2) The exemption certificate number of the qualifying or conditional farmer.
3) The following statement: "105-164.13E(c1)"

e. If providing a paper Certificate of Exemption, the service provider's signature.

A service provider that purchases an item exempt from tax pursuant to this section must maintain records to substantiate that an item is used to provide a service for a qualifying or conditional farmer and that the item qualifies for the exemption.

27-7 CONTRACTS WITH A QUALIFYING OR CONDITIONAL FARMER

A. Exempt Purchases by a Contractor

The purchase of a qualifying item listed below by a contractor to fulfill a contract with a qualifying or conditional farmer is exempt from sales and use tax to the same extent as if purchased directly by the qualifying or conditional farmer.

1. A grain, feed, or soybean storage facility and parts and accessories attached to the facility.

2. A commercially manufactured facility to be used for commercial purposes for housing, raising, or feeding animals or for housing equipment necessary for these commercial activities. The exemption also applies to commercially manufactured equipment, and parts and accessories for the equipment, used in the facility.

3. Building materials, supplies, fixtures, and equipment that become a part of and are used in the construction, repair, or improvement of an enclosure or a structure specifically designed, constructed, and used for housing, raising, or feeding animals or for housing equipment necessary for one of these commercial activities. The exemption also applies to commercially manufactured equipment, and parts and accessories for the equipment, used in the enclosure or a structure.

4. A bulk tobacco barn or rack, parts and accessories attached to the tobacco barn or rack, and any similar apparatus, part, or accessory used to cure or dry tobacco or another crop.

B. Procedure for a Contractor Making an Exempt Purchase

A contractor that purchases an item listed in SUTB 27-7A without paying sales or use tax must provide a properly completed Certificate of Exemption, or the required data elements as provided in SUTB 5-1, to the retailer. The Certificate of Exemption, or required data elements, must include the following information:

1. The contractor's name.
2. The contractor's address.
3. The contractor's type of business.
4. The reason for exemption that includes all of the following information (Note: For a paper Certificate of Exemption, in Section 4 select "other" and provide the reason in the space provided):

a. The name of the qualifying or conditional farmer.
b. The exemption certificate number of the qualifying or conditional farmer.
c. The following statement: "105-164.13E(c)"

5. If providing a paper Certificate of Exemption, the contractor's signature.

A contractor that purchases an item exempt from tax pursuant to this section must maintain records to substantiate that the item is used fulfill the contract with a qualifying or conditional farmer and that the item qualifies for the exemption.

27-8 FOWL (CHICKS AND POULTS)

A. Sales of Fowl and Fowl Eggs

All sales of fowl eggs and fowl are subject to the general State, applicable local, and applicable transit rates of sales and use tax, unless exempt as provided below.

B. Exempt Sales of Fowl and Fowl Eggs

The following sales are exempt from sales and use tax:

1. Sales of fowl to qualified or conditional farmers and used by the farmer primarily in farm operations, including egg producers and hatcheries.

2. Sales of fowl eggs to a qualified or conditional farmer to be used in hatching fowl that will be sold or used for commercial fowl or egg production.

3. Sales of fowl eggs and fowl for resale.

4. Sales of fowl eggs and fowl by egg producers and qualified or conditional farmers when such sales are made by them in their capacity as producers. Generally, hatcheries do not qualify as producers of farm products. Hatchery sales which do not qualify for an exemption under SUTB 27-8B.1., SUTB 27-8B.2., or SUTB 27-8B.3 are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Note: For information on sales made by the producer in the capacity of producer, refer to SUTB 63-3.

27-9 WILDLIFE MANAGERS

A. Definitions

For purposes of this section, the following terms and definitions apply:

1. **"Wildlife management activities"** – One or more of the activities for which wildlife conservation land must be used to qualify for the wildlife conservation land classification under G.S. § 105-277.15.

2. **"Wildlife manager"** – A person who owns land classified and taxed as wildlife conservation land under G.S. § 105-277.15.

B. Exemption

The retail sale, lease, or rental, and the storage, use, or consumption of the following items are exempt from sales and use tax if purchased by a wildlife manager who holds a valid wildlife manager exemption certificate number and used primarily for wildlife management activities. This is not an all-inclusive list.

1. Feed and feeders.

2. Rodenticides, insecticides, herbicides, fungicides, and pesticides when their application is prescribed in and compatible with the objectives of the Wildlife Habitat Conservation Agreement.

3. Commercial fertilizer, lime, land plaster, mulch, plant plugs, seedlings, saplings, seeds, and seed inoculants.

4. Machinery used for one or more of the purposes listed in this subdivision. The term "machinery" includes implements that have moving parts or are operated by an animal. The term does not include implements operated solely by hand or motor vehicles required to be registered under Chapter 20 of the General Statutes. The purposes for which the machinery must be used are:

   a. To establish, restore, enhance, or maintain wildlife habitats.
   b. To access or develop access to wildlife habitats.
   c. To implement other wildlife management practices, including land and forest conservation and management.

5. Fuel that is measured by a separate meter or another separate device and used only to operate machinery exempt under SUTB 27-9B.4. and used for one or more of the purposes listed in SUTB 27-9B.4. Examples of a separate device include a tank, a container, and a transfer tank.

6. Fuel storage tanks, containers, transfer tanks, and pumps when used only to provide fuel to operate machinery exempt under SUTB 27-9B.4. and used for one or more of the purposes listed in SUTB 27-9B.4.

7. Materials, supplies, fixtures, and equipment that become part of or are used for one or more of the following:

   a. The construction, repair, or improvement of an impoundment, wetland, or ephemeral pool specifically designed, constructed, and used for the benefit of one or more wildlife species.
   b. Erosion control.
   c. The installation and maintenance of infrastructure used to access land areas for wildlife management activities. Examples of this type of infrastructure include bridges, culverts, and gravel.

d. The construction and maintenance of structures used by wildlife for reproduction, travel, or cover. Examples of this type of structure include nest boxes, road crossing development, and structures providing cover or other valuable functions for life processes.

e. The construction and maintenance of fencing, signage, and other exclusion methods to protect wildlife from access by people or other species or to manipulate livestock access as a method of habitat management.

8. Repair, maintenance, and installation services for items exempt under this subsection.

C. Application for an Exemption Number

A wildlife manager must complete and submit Form E-595EA, Application for Exemption Certificate Number for Qualified Purchases to apply for a valid exemption number. In addition, a wildlife manager must attach a completed Form WM-1, Certification of Classification and Taxation as Wildlife Conservation Land Under G.S. § 105-277.15, to Form E-595EA. If approved, the Department will mail the applicant their wildlife manager exemption certificate number. A wildlife manager exemption certificate number will include a six-digit exemption number that begins with the numeral nine. The exemption certificate is valid for three years and may be renewed.

D. Expiration of an Exemption Number

The exemption certificate expires when the wildlife manager ceases to engage in wildlife management activities or when the land no longer qualifies for classification and taxation under G.S. § 105-277.15. A person who no longer qualifies for an exemption certificate must notify the Secretary within 30 days to cancel the exemption number.

E. Services for a Wildlife Manager

1. Exempt Purchases by a Service Provider

An item exempt under SUTB 27-9B purchased to perform a service for a person who holds a wildlife manager exemption certificate is exempt from sales and use tax to the same extent as if purchased directly by the person who holds the exemption certificate. A person that purchases one of the items allowed an exemption under this subsection must provide an exemption certificate to the retailer that includes the name of the wildlife manager certificate holder and the exemption number issued to the wildlife manager by the Department. A person that purchases an item exempt from tax under this subsection must maintain records to substantiate that it is used to provide a service for a person who holds a wildlife manager exemption certificate. The records must be maintained for at least three years.

2. Procedure for a Service Provider Making an Exempt Purchase

A service provider that purchases an item listed in SUTB 27-9B without paying sales or use tax must provide a properly completed Certificate of Exemption, or the required data elements as provided in SUTB 5-1, to the retailer. The Certificate of Exemption, or required data elements, must include the following information:

a. The service provider's name.

b. The service provider's address.

c. The service provider's type of business.

d. The reason for exemption that includes all of the following information (Note: For a paper Certificate of Exemption, in Section 4 select "other" and provide the reason in the space provided):

1) The name of the wildlife manager.
2) The exemption certificate number of the wildlife manager.
3) The following statement: “105-164.13F(e)”

e. If providing a paper Certificate of Exemption, the service provider’s signature.

A service provider that purchases an item exempt from tax pursuant to this section must maintain records to substantiate that an item is used to provide a service for a wildlife manager and that the item qualifies for the exemption.

F. Contracts with a Wildlife Manager

1. Exempt Purchases by a Contractor

A qualifying item listed in SUTB 27-9B.7. purchased to fulfill a contract with a person who holds a wildlife manager exemption certificate is exempt from sales and use tax to the same extent as if purchased directly by the person who holds the exemption certificate. A contractor that purchases one of the items allowed an exemption under this section must provide an exemption certificate to the retailer that includes the name of the wildlife manager certificate holder and the exemption number issued to the wildlife manager. A contractor that purchases an item exempt from tax under this subsection must maintain records to substantiate that it is used to fulfill a contract with a person who holds a wildlife manager exemption certificate. The records must be maintained for at least three years.

2. Procedure for a Contractor Making an Exempt Purchase

A contractor that purchases an item listed in SUTB 27-9B without paying sales or use tax must provide a properly completed Certificate of Exemption, or the required data elements as provided in SUTB 5-1, to the retailer. The Certificate of Exemption, or required data elements, must include the following information:

a. The contractor’s name.
b. The contractor’s address.
c. The contractor’s type of business.
d. The reason for exemption that includes all of the following information (Note: For a paper Certificate of Exemption, in Section 4 select “other” and provide the reason in the space provided):

1) The name of the wildlife manager.
2) The exemption certificate number of the wildlife manager.
3) The following statement: “105-164.13F(e)”

e. If providing a paper Certificate of Exemption, the contractor’s signature.

A contractor that purchases an item exempt from tax pursuant to this section must maintain records to substantiate that the item is used to fulfill the contract with a wildlife manager and that the item qualifies for the exemption.

SUTB 28 FILM

28-1 SALES OF DEVELOPED MOVIE FILM

The sale of developed movie film or digital audiovisual works to users or consumers is subject to the general State, applicable local, and applicable transit rates of sales and use tax. Sales of developed movie film to commercial television companies licensed by the Federal Communications Commission for use by companies in broadcasting and telecasting programs are exempt from sales and use tax.

Note: For information on the sale of film to television stations and on the lease of motion picture film or prerecorded videotape cassettes for public exhibition, refer to SUTB 85.

28-2 DEVELOPING FILM INTO NEGATIVES

Charges by photo finishers for developing customers' film into negatives that are returned to such customers only as the exposed film are not subject to sales or use tax. Chemicals and other tangible personal property used by such photo finishers are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

SUTB 29 FISHING, COMMERCIAL

29-1 DEFINITIONS

For purposes of this SUTB, the following terms and definitions apply:

1. **"Commercial fishing operation"** – Defined in G.S. § 113-168.

2. **"For-hire vessel"** – Defined in G.S. § 113-174.

29-2 EXEMPTIONS RELATED TO COMMERCIAL FISHING AND FOR-HIRE VESSELS

The following are exempt from sales and use tax:

1. Sales of boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories, and supplies, such as paint brushes, acetylene, oxygen, paint rollers, funnels, sanding discs, welding rods, saw blades, drill bits, and similar property, when sold to the following:

   a. The holder of a standard commercial fishing license issued under G.S. § 113-168.2 for principal use in commercial fishing operations.

   b. The holder of a shellfish license issued under G.S. § 113-169.2 for principal use in commercial shellfishing operations.

   c. The operator of a "for-hire vessel," as defined in G.S. § 113-174, for principal use in the commercial use of the boat.

   This exemption includes foul weather gear, gloves, and life vests, but does not include food, clothing, or other personal effects such as tableware, toothpaste, and soap.

2. Ice used to preserve aquaculture and commercial fishery products until the products are sold at retail.

3. Sales of fish, seafood, commercial fishery products, and other products of the water when such sales are made by the producer in the capacity of the producer and the products are in their original or unmanufactured state.

   Note: For information on sales made by the producer in the capacity of producer, refer to SUTB 63-3.

29-3 COMMERCIAL FISHING EXEMPTION CERTIFICATE NUMBER

To obtain a commercial fishing exemption certificate number, a qualifying person must complete and submit to the Department Form E-595EA, Application for Exemption Certificate Number for Qualified Purchases. A commercial fishing license holder that is already registered to remit sales and use tax should use the previously assigned sales and use tax account identification number to make purchases exempt from sales and use tax.

29-4 FISH BAIT

Retail sales of fish bait to consumers, other than commercial fishermen, are subject to the applicable rates of sales and use tax except when such products are sold in their original or unmanufactured state by the producer in its capacity as the producer. Taxable sales of bloodworms and crickets are subject to the general State, applicable local, and applicable transit rates of sales

and use tax. Taxable sales of raw shrimp or seafood for bait are subject to the 2% food rate of sales and use tax unless such items meet the definition of “prepared food.”

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SUTB 30 FLEA MARKETS OR SPECIALTY MARKETS

30-1 DEFINITIONS

For purposes of this SUTB, the following terms and definitions apply:

1. **"Specialty market"** – Defined in G.S. § 66-250 as a location, other than a permanent retail store, where space is rented to others for the purpose of selling goods at retail or offering goods for sale at retail.

2. **"Specialty market operator"** – Defined in G.S. § 66-250 as a person, other than the State or a unit of local government, who rents space, at a location other than a permanent retail store, to others for the purpose of selling goods at retail or offering goods for sale at retail.

30-2 RETAILER REQUIREMENTS – SPECIALTY MARKETS

A. Registration Requirements

Every person that sells items sourced to this State at a specialty market in this State, other than as provided in SUTB 30-2A.1 and SUTB 30-2A.2, is required to register with the Department.

A person that attends a single event or function in this State to make sales in this State is required to register to obtain a Certificate of Registration and collect and remit the applicable rates of sales and use tax.

A person that engages in business in this State for six or fewer consecutive months each year may register as a seasonal filer and indicate the months in which the person engages in business. A person registered as a seasonal filer is not required to file a return for an off-season reporting period in which the person did not engage in business in this State.

1. Selling Products of the Farm

A person is not required to obtain a Certificate of Registration if the person only sells products of the farm in their original state that are produced by the person.

A person that purchases products of the farm for resale that are not produced by the person is required to obtain a Certificate of Registration.

2. Selling Own Household Personal Property

A person who only makes occasional sales of the person's own household personal property on which tax has been paid is not required to obtain a Certificate of Registration.

B. Collect and Remit Sales and Use Tax Due

Every person that sells taxable items sourced to this State at a specialty market must collect and remit the applicable sales and use tax.

C. Provide Information to Specialty Market Operator

Every person that sells taxable items sourced to this State at a specialty market must provide the specialty market operator one of the following:

1. The person's name, permanent address, and certificate of registration number.

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2. A person that only sells products of the farm in their original state that are produced by the person, must provide either a qualifying farmer or conditional farmer exemption number or a written statement that attests the items were produced by the person and include the person's name and permanent address.

3. A person who only makes occasional sales of their own household personal property on which tax was been paid, must provide the specialty market operator their name, permanent address, and a written certification that they are only making occasional sales of personally owned household property on which tax has been paid.

D. Displaying the Certificate of Registration

When making sales at a specialty market, a person must conspicuously display the Certificate of Registration unless one of the following apply:

1. The person has registered, has not received the Certificate of Registration, and conspicuously displays a copy of the confirmation page received after completing the online registration application reflecting the sales and use tax account number issued by the Department.

2. The person only sells products of the farm produced by that person and conspicuously displays a copy of a written statement certifying that the person produced the products or a copy of a qualifying or conditional farmer exemption certificate.

3. The person only sell the person's own household personal property and conspicuously displays a copy of a written statement certifying only personally owned household personal property is being sold.

30-3 OPERATOR REQUIREMENTS – SPECIALTY MARKETS

A. Daily Registration List

A specialty market operator must maintain a daily registration list of all specialty market retailers selling or offering goods for sale at the specialty market. The registration list must clearly and legibly show each retailer's name, permanent address, and certificate of registration number.

Each daily registration list must be maintained by the specialty market operator for no less than two years and must be made available upon request to any duly authorized agent of the Department.

In conjunction with the daily registration list, a specialty market operator is required to keep all written statements and other information referenced in this SUTB.

For purposes of the registration list, the exemptions in G.S. § 66-256 do not apply.

B. Certificate of Registrations Displayed

The specialty market operator must require each retailer to exhibit a valid Certificate of Registration for visual inspection at the time of registration and must require each retailer to keep the Certificate of Registration conspicuously and prominently displayed so as to be visible for inspection by patrons of the retailer at the places or locations at which the goods are offered for sale.

30-4 EXEMPTIONS RELATED TO SPECIALTY MARKETS

The following are exempt from sales and use tax. This is not an all-inclusive list.

1. Sales of products of forests and mines in their original or unmanufactured state when such sales are made by the producer in the capacity of producer.

2. Sales of products of a farm sold in their original state by the producer of the products if the producer is not primarily a retailer.

3. Sales of products of waters in their original or unmanufactured state when such sales are made by the producer in the capacity of producer. Fish and seafood are likewise exempt when sold by the fisherman in that capacity.

Note: For information on sales made by the producer in the capacity of producer, refer to SUTB 63-3.

30-5 SALES OF HOUSEHOLD PERSONAL PROPERTY

Owners making occasional and isolated sales of household items, on which sales and use tax was paid at the time of initial purchase by the owner, are not required to collect and remit sales and use tax on the sale.

Note: For information on occasional and isolated sales, refer to SUTB 2-7.

30-6 MARKETPLACE FACILITATORS AND MARKETPLACE SELLERS

For information regarding marketplace facilitators and marketplace sellers, refer to SUTB 59.

SUTB 31 FLORISTS

31-1 SALES BY FLORISTS

Retail sales of flowers, potted plants, wreaths, bouquets, and other tangible personal property are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

All charges imposed by a retailer for preparation and delivery of tangible personal property to a location designated by a purchaser in connection with a taxable sale of tangible personal property are subject to sales and use tax. Therefore, all delivery and service charges associated with taxable sales of flowers or other tangible personal property in North Carolina, whether delivered to the purchaser or to a person other than the purchaser, are considered to be a part of the sales price and are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

31-2 FLORISTS' DELIVERY ASSOCIATIONS

A. A “florist wire sale” is a sale in which a retail florist takes a customer’s order and transmits the order to another retail florist to be filled and delivered. A florist wire sale is sourced to the business location of the florist that takes an order for the sale.

A florist in North Carolina that accepts a customer’s order as part of a florist wire sale and transmits the order to another retail florist located inside or outside North Carolina shall collect and remit the general State, and applicable local and transit rates of sales tax on the sales price of the order. The sales price of a florist wire sale includes charges for delivery, relay charges, and charges for other services. Charges are a part of the sales price regardless of whether the florist keeps the charges or forwards them to other florists through a florist delivery association or other person. The sales price is subject to sales and use tax even if the florist separately states the charges on an invoice or other similar billing document given to the purchaser at the time of sale.

B. A retail florist in North Carolina that receives a florist wire sale from another retail florist located inside or outside North Carolina is not liable for sales tax on the receipts derived from the transactions.

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SUTB 32 FOOD (PREPARED FOOD, CANDY, PREPAID MEAL PLAN, ETC.)

32-1 DEFINITIONS

For purposes of this SUTB, the following terms and definitions apply:

1. **"Alcoholic beverage"** – Defined in G.S. § 18B-101.

2. **"Artisan bakery"** – Refer to SUTB 32-3 for detailed information.

3. **"Bakery item"** – Refer to SUTB 32-3 for detailed information.

4. **"Candy"** – Refer to SUTB 32-4 for detailed information.

5. **"Dietary supplement"** – A product that is intended to supplement the diet of humans and is required to be labeled as a dietary supplement under federal law, identifiable by the Supplement Facts box found on the label. A dietary supplement contains one or more of the following ingredients:

   a. A vitamin.
   b. A mineral.
   c. An herb or other botanical.
   d. An amino acid.
   e. A dietary substance for use by humans to supplement the diet by increasing the total dietary intake.
   f. A concentrate, metabolite, constituent, extract, or combination of any ingredient described above. A dietary supplement is intended for ingestion in tablet, capsule, powder, soft gel, gel cap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet.

6. **"Food"** – Substances that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. The substances may be in liquid, concentrated, solid, frozen, dried, or dehydrated form. The term does not include an alcoholic beverage or a tobacco product.

7. **"Food sold through a vending machine"** – Food dispensed from a machine or another mechanical device that accepts payment.

8. **"Soft drink"** – A nonalcoholic beverage that contains natural or artificial sweeteners. The term does not include powdered fruit drinks, powdered tea with flavoring and sweeteners, frozen fruit drink concentrate, and beverages that contain one or more of the following:

   a. Milk or milk products.
   b. Soy, rice, or similar milk substitutes.
   c. More than 50% vegetable or fruit juice.

9. **"Prepaid meal plan"** – Refer to SUTB 32-10 for detailed information.

10. **"Prepared food"** – Refer to SUTB 32-3 for detailed information.

11. **"Tobacco product"** – Defined in G.S. § 105-113.4.

32-2 TAX IMPOSED ON FOOD

A. Tax Imposed at 2% Rate for Qualifying Food

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Retail sales and purchases of qualifying food not included in SUTB 32-2B and SUTB 32-2C are subject to the 2% food rate of sales and use tax and exempt from the general State rate of sales and use tax. The local and transit taxes imposed by Articles 43 and 46, respectively, do not apply to qualifying food that is exempt from the State sales and use tax.

B. Tax Imposed on Non-Qualifying Food

The following non-qualifying food is subject to the general State, applicable local, and applicable transit rates of sales and use tax:

1. Dietary supplements.
2. Food sold through a vending machine.
3. Prepared food, other than bakery items sold without eating utensils by an artisan bakery, and as provided in SUTB 32-3.
4. Soft drinks.
5. Candy as provided in SUTB 32-4.

C. Tax Imposed on a Prepaid Meal Plan

The general State, applicable local, and applicable transit rates of sales and use tax apply to the sales price of or gross receipts derived from a prepaid meal plan.

Note: For information on a prepaid meal plan, refer to SUTB 32-10.

32-3 PREPARED FOOD

Prepared food is a non-qualifying food subject to the general State, applicable local, and applicable transit rates of sales and use tax unless otherwise determined by this section. This section provides information about prepared food.

A. Prepared Food Definition

Prepared food is food that meets at least one of the following conditions:

1. It is sold in a heated state, or it is heated by the retailer.

2. It consists of two or more foods mixed or combined by the retailer for sale as a single item. This does not include:

a. Food containing raw eggs, fish, meat, or poultry that requires cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code so as to prevent foodborne illnesses. (*Example: A butcher sells raw chicken that it mixed with spices and vegetables. The raw chicken is not prepared food.)*

b. Food that is only sliced, repackaged, or pasteurized by the retailer. *(Example: A retailer purchases food items and only repackages two or more of the food items in a gift box for sale as a single item. The gift box is not prepared food.)*

3. It is sold with eating utensils provided by the retailer, such as plates, knives, forks, spoons, glasses, cups, napkins, and straws. A plate does not include a container or packaging used to transport the food. An eating utensil placed in a package with the food items by a person other than the retailer, if that other person's NAICS classification code is that of a manufacturer, sector 311, is not treated as an eating utensil provided by the retailer. For a packager with any other NAICS classification code, the retailer is considered to have provided the eating utensil.

B. Definition of "Provided by the Retailer" for purposes of SUTB 32-3

The meaning of the phrase "provided by the retailer" depends on the retailer's prepared food sales percentage determined in accordance with SUTB 32-3C. The meanings based on the retailer's prepared food sales percentage are as follows:

1. Sales Percentage of Greater than Seventy-Five Percent (75%)

If a retailer has a prepared food sales percentage of greater than seventy-five percent (75%), "provided by the retailer" means the retailer makes eating utensils available to purchasers, except that an item sold by the retailer containing four or more servings packaged as one item and sold for a single price does not become prepared food because the retailer makes utensils available to the purchaser of the item, but is prepared food if the retailer physically gives or hands utensils to the purchaser of the item. Serving sizes are determined based on the label of an item sold. If no label is available, a retailer must reasonably determine the number of servings in an item.

2. Sales Percentage of Seventy-Five Percent (75%) or Less

If a retailer has a prepared food sales percentage of seventy-five percent (75%) or less, "provided by the retailer" means the retailer's business practice is to physically give or hand eating utensils to purchasers, except that plates, bowls, glasses, and cups necessary for the purchaser to receive the food need only be made available to purchasers.

C. Prepared Food Sales Percentage

1. Definition

A percentage determined by dividing the following described numerator by the following described denominator:

a. The numerator is the retailer's annual sales of prepared food described in SUTB 32-3A.1 and 32-3A.2 and food sold when plates, bowls, glasses, or cups are necessary to receive the food. The numerator shall not include alcoholic beverages or food excluded from prepared food.

b. The denominator is the retailer's total annual sales of all food and prepared food, excluding alcoholic beverages.

2. Administration of Definition

a. A retailer must calculate the prepared food sales percentage for each tax year or business fiscal year based on the retailer's data from the prior tax year or business fiscal year, as soon as possible after accounting records are available, but not later than 90 days after the beginning of the retailer's tax year or business fiscal year.

b. A single prepared food sales percentage shall be determined annually for all of the retailer's establishments in this State.

c. A new retailer shall make a good-faith estimate of its prepared food sales percentage for its first year in business. The new retailer must adjust its good-faith estimate prospectively after the first three months of its business operation if actual prepared food sales percentages materially affect the seventy-five percent (75%) threshold described in SUTB 32-3B.

D. Artisan Bakeries

1. Definitions

For purposes of this SUTB, the following terms and definitions apply:

a. **"Artisan bakery"** – A bakery that meets both of the following requirements:

1) It derives over 80% of its gross receipts from bakery items. A bakery item includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danishes, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

2) Its annual gross receipts, combined with the gross receipts of all related persons do not exceed one million eight hundred thousand dollars ($1,800,000). For purposes of this definition the term "related person" means a person described in one of the relationships set forth in Sections 267(b) or 707(b) of the Internal Revenue Code.

b. **"Bakery item"** – Bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danishes, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

2. Bakery Items Sold Without Eating Utensils by an Artisan Bakery

Bakery items sold without eating utensils by an artisan bakery are subject to the 2% food rate of sales and use tax for qualifying food. For purposes of the exception from prepared food for bakery items sold without eating utensils by an artisan bakery, eating utensils only need to be made available to purchasers in order for a sale of a bakery item to be considered sold with eating utensils and, therefore, subject to the general State, applicable local, and applicable transit rates of sales and use tax. (*Examples of utensils being made available to purchasers include plates, knives, forks, spoons, glasses, cups, napkins, and straws being placed on individual tables, on a common counter area, or in another area where the utensils are accessible to the purchaser without assistance.)*

E. Take and Bake Pizzas

The following specific set of facts pertains to this subsection:

1. The retailer of take and bake pizzas makes the pizzas on-site. They are not pre-made by someone other than the retailer.

2. Pizzas are not heated by the retailer or sold in a heated state.

3. No food is sold on the premises in a heated state.

4. The retailer creates the pizzas by adding sauces, cheeses, and toppings to a selected crust.

5. Only the pizza dough is made on site. The meats, cheese, and sauce are food products prepared and packaged by another business. The meats come pre-sliced and the cheese is shredded in the store.

6. All meats used by the retailer are pre-cooked by someone other than the retailer.

7. The crust used by the retailer does not contain egg or raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration.

8. It is not the retailer's practice to provide utensils with the pizza. Utensils are not made available.

9. No customer seating is available.

10. Take and bake pizzas are not ready for immediate consumption as they require additional preparation as instructed by the retailer.

11. The pizzas are sold by size and not sold by weight or volume.

12. The smallest pizza contains 8 servings.

13. For food safety, it is recommended the pizzas be heated to over 140 degrees.

14. The retailer's NAICS classification is not manufacturing in sector 311.

15. Payments under the federal Supplemental Nutrition Assistance Program (SNAP - previously known as food stamps) can be used to purchase the unbaked pizzas.

Take and bake pizzas, as specifically described in this subsection, meet the definition of "prepared food" subject to the general State, applicable local, and applicable transit rates of sales and use tax. The take and bake pizzas are two or more ingredients mixed or combined by the seller for sale as a single item and there is no exclusion in the definition of "prepared food" that would remove these take and bake pizzas from that definition. However, a take and bake pizza that contains raw eggs, fish, meat, or poultry that require cooking by the purchaser as recommended by the Food and Drug Administration to prevent food borne illness would not be considered prepared food according to the statutory definition and such sales would be subject to the 2% food rate of sales and use tax.

32-4 CANDY

Candy is a non-qualifying food subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Rule 327.8 issued by the Streamlined Sales Tax® Governing Board advises that the definition of "candy" is not intended to be applied to every type of food sold, as many products, such as meat products, breakfast cereals, potato chips, and canned fruits and vegetables, are not commonly thought of as candy. The information contained in this section is intended to be used when a person is trying to determine if a product that is commonly thought of as candy is in fact candy.

A. Definition

G.S. § 105-164.3 provides the following term and definition:

"Candy" – A preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces that do not require refrigeration. The term does not include any preparation that contains flour.

B. Preparation

Candy must be a preparation that contains certain ingredients, other than flour. A preparation is a product that is made by means of heating, coloring, molding, or otherwise processing any of the ingredients listed in the candy definition. (*For example, reducing maple syrup into pieces and adding coloring to make maple candy is a form of preparation.*)

C. Bars, Drops, or Pieces

Candy must be sold in the form of bars, drops, or pieces.

1. A bar is a product that is sold in the form of a square, oblong, or similar form.

Example: A retailer sells one pound square blocks of chocolate. The blocks of chocolate are bars.

2. A drop is a product that is sold in a round, oval, pear-shaped, or similar form.

Example: A retailer sells chocolate chips in a bag. Each individual chocolate chip contains all of the ingredients indicated on the label. The chocolate chips are drops.

3. A piece is a portion that has the same make-up as the product as a whole. Individual ingredients and loose mixtures of items that make-up the product as a whole are not pieces. Exception: If a loose mixture of different items that make up the product as a whole are all individually considered candy and are sold as one product, that product is also candy.

Examples:

a. *A retailer sells jellybeans in a bag. Each jellybean is made up of the ingredients indicated on the label. Each jellybean is a piece or drop.*

b. *A retailer sells trail mix in a bag. The product being sold (e.g., trail mix) is made up of a mixture of carob chips, peanuts, raisins, and sunflower seeds. The individual items that make-up the trail mix are not pieces, but instead are the ingredients, which when combined, make up the trail mix. Therefore, the trail mix is not sold in the form of bars, drops, or pieces.*

c. *A retailer sells a product called candy lover's mix. Candy lovers mix is a product that is made up of a loose mixture of jellybeans, toffee, and caramels. Individually, the jellybeans, toffee, and caramels are all candy. The sale of the mixture is the sale of candy since all of the individual items that make up the product are individually considered to be candy.*

D. Flour

Flour must be specifically listed on the product label as an ingredient in order for the product to be excluded from the definition of "candy."

Many products commonly thought of as candy contain flour. There is no requirement that the flour be grain based and it does not matter from what the flour is made. Ingredient labels must be examined to determine which products contain flour and which products do not contain flour. (*For example, a Twix® bar that contains flour is excluded from the definition of "candy."*)

Examples:

1. *The ingredient list for a breakfast bar lists flour as one of the ingredients. This breakfast bar is not candy since it contains flour.*

2. *The ingredient list for a breakfast bar lists peanut flour as one of the ingredients. This breakfast bar is not candy because it contains flour.*

3. *The ingredient list for a breakfast bar that otherwise meets the definition of "candy" lists whole grain as one of the ingredients but does not specifically list flour as one of the*

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ingredients. This breakfast bar is candy because the word flour is not included in the ingredient list.

4. *A retailer sells a box of chocolates that are not individually wrapped. The ingredient list on the label for the box of chocolates identifies flour as one of the ingredients. The box of chocolates is not candy since flour is identified as one of the ingredients on the label.*

5. *A retailer sells a box of chocolates that are not individually wrapped. The ingredient list on the label for the box of chocolates, that otherwise meets the definition of "candy," does not identify flour as one of the ingredients. The box of chocolates is candy.*

E. Other Ingredients or Flavorings

Other ingredients or flavorings as used in the definition of "candy" means other ingredients or flavorings that are similar to chocolate, fruits, or nuts. This phrase includes candy coatings such as carob, vanilla, and yogurt; flavorings or extracts such as vanilla, maple, mint, and almond; seeds; and other products similar to the classes of ingredients or flavorings. This phrase does not include meats, spices, seasonings such as barbeque or cheddar flavor, or herbs that are not similar to the classes of ingredients or flavorings associated with chocolate, fruits, or nuts, unless the product otherwise meets the definition of "candy."

Examples:

1. *A retailer sells barbeque flavored peanuts. The ingredient label for the barbeque flavored peanuts indicates that the product contains peanuts, sugar, and various other ingredients, including barbeque flavoring. Since the barbecue flavored peanuts contain a combination of sweeteners and nuts, flour is not listed on the label, and the nuts do not require refrigeration, the barbeque flavored peanuts are candy.*

2. *A retailer sells barbeque potato chips. Potato chips are potatoes, a vegetable, and are not commonly thought of as candy. The barbeque potato chips are food and food ingredients and are not candy. The fact that the ingredient label for the barbeque potato chips indicates that the product contains barbeque seasoning, which contains a sweetener, does not change the fact that the barbeque potato chips are not commonly thought of as candy.*

F. Sweeteners

The term "natural or artificial sweeteners" means an ingredient of a food product that adds a sugary sweetness to the taste of the food product and includes, but is not limited to, corn syrup, dextrose, invert sugar, sucrose, fructose, sucralose, saccharin, aspartame, stevia, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, maltitol, agave, and artificial sweeteners.

G. Refrigeration

A product that otherwise meets the definition of "candy" is not candy if it requires refrigeration. A product requires refrigeration if it must be refrigerated at the time of sale or after being opened. In order for a product to be treated as requiring refrigeration, the product label must indicate that refrigeration is required. If the label on a product that contains multiple servings indicates that it requires refrigeration, smaller size packages of the same product are also considered to require refrigeration. A product that otherwise meets the definition of "candy" is candy if the product is not required to be refrigerated, but is sold refrigerated for the convenience or preference of the customer, retailer, or manufacturer.

Examples:

1. *A retailer sells sweetened fruit snacks in a bag that contain multiple servings. The label on the bag indicates that after opening, the sweetened fruit snacks must be refrigerated. The sweetened fruit snacks require refrigeration.*

2. *A retailer sells sweetened fruit snacks in single serving containers. Other than for packaging, the sweetened fruit snacks are identical to the sweetened fruit snacks in Example 1 above. However, since this container of sweetened fruit snacks only contains one serving, it is presumed that it will be used immediately, and the label does not indicate the product must be refrigerated after the container is opened. Even though the label does not contain the statement that after opening the sweetened fruit snacks must be refrigerated, these sweetened fruit snacks are considered to require refrigeration since the multiple serving bag of the same sweetened fruit snacks require refrigeration.*

3. *A retailer sells chocolate truffles. The label on the truffles indicates to keep the product cool and dry, but does not indicate that the product must be refrigerated. Since the chocolate truffles are not required to be refrigerated, even though the label indicates to keep them cool, the chocolate truffles do not require refrigeration.*

H. Items Classified as Candy

The following is a list of items classified as candy. This is not an all-inclusive list.

1. Almond bark.
2. Baking ingredients that meet the definition of "candy," even though such ingredients are not intended to be consumed as candy.
3. Beer Nuts Party Mix®.
4. Breath mints.
5. Butterscotch chips.
6. Candy with liquor.
7. Caramel apples.
8. Carmel Corn Rice Cakes that do not have ingredient labeling specifying flour and do not require refrigeration.
9. Cereal bars without flour.
10. Chocolate chips.
11. Chocolate covered potato chips.
12. Cracker Jacks®.
13. Dried fruit with sweetener.
14. Edible cake decorations.
15. Flaked coconut with sweetener.
16. Fruit Roll-Ups®.
17. Gluten-free candy products.
18. Gum.
19. Heath bar® bits.
20. Honey roasted nuts.
21. Licorice without flour.
22. M & M's Baking Bits®.
23. Marshmallows.
24. Natural or artificially sweetened breakfast bars that do not have ingredient labeling specifying flour and do not require refrigeration.
25. Popped caramel and kettle corn.
26. Rice Krispie Treats® that do not have ingredient labeling specifying flour and do not require refrigeration.

For further information on the determination of items included in the list above, refer to Appendix N of the Streamlined Sales Tax® Governing Board Rules and Procedures available on the Streamlined Sales Tax® website.

I. Items Not Classified as Candy

The following is a list of items that are not classified as candy. This is not an all-inclusive list.

1. Barbecue potato chips.
2. Barbeque sunflower seeds.
3. Breakfast cereals.
4. Breath sprays and strips.
5. Canned fruit and vegetables.
6. Cereal bars with flour.
7. Cotton candy.
8. Cough drops.
9. Dried fruit without sweetener.
10. Flaked coconut without sweetener.
11. Fritos® Honey BBQ Flavor Twists.
12. Frosting in containers.
13. Gluten-free non-candy products.
14. Icing in tubes.
15. Jell-O® pudding.
16. Kit Kat® bars.
17. Licorice with flour.
18. Lightly salted rice cakes.
19. Meat products.
20. Nestle Crunch®.
21. Pixie Sticks®.
22. Powdered Tang®.
23. Spray candy.
24. Sugar cubes.
25. Throat lozenges.
26. Trail mix with candy.
27. Twix bars®.
28. Un-popped popcorn.

For further information on the determination of items included in the list above, refer to Appendix N of the Streamlined Sales Tax® Governing Board Rules and Procedures available on the Streamlined Sales Tax® website.

32-5 SALES OF SEAFOOD

A person making retail sales of fish or other seafood must collect and remit the applicable rates of sales tax on the sales price of the fish or other seafood, unless exempt by statute. The rates of sales tax on fish and other seafood are as follows:

1. Fish or other seafood sold for ingestion or chewing by humans and that is consumed for its taste or nutritional value is subject to the two percent (2%) food rate of sales tax, unless the fish or other seafood is prepared food.

2. Fish or other seafood meeting the definition of prepared food in G.S. 105-164.4L is subject to the general State, and applicable local and transit rates of sales tax.

3. Live fish or other seafood not intended for human consumption, such as pet fish or fish for ponds, is subject to the general State, and applicable local and transit rates of sales tax.

4. Fish or other seafood sold for bait is subject to the general State, and applicable local and transit rates of sales tax.

5. Other sales of fish or other seafood are subject to the general State, and applicable local and transit rates of sales tax.

32-6 SOURCING SALES OF FOOD

A. General

The general sourcing principles provided in SUTB 4-1 apply to the sales price of food, unless otherwise provided in SUTB 32-6E.

B. Food Trucks and Other Mobile Restaurants

The general sourcing principles provided in SUTB 4-1 apply to the sales price of food sold by a food truck or mobile restaurant, unless otherwise provided in SUTB 32-6E.

The following are sourcing examples for a food truck or other mobile restaurant:

1. ABC Food Truck is based in County A. ABC Food Truck hands customers their orders at the food truck's window. Every Monday, ABC Food Truck travels to County B for lunch and dinner. When located in County B on Mondays, ABC Food Truck must collect and remit the applicable sales and use tax rate for County B on the retail sale of food. When located in County A, ABC Food Truck must collect and remit the applicable sales and use tax rate for County A on the retail sale of food.

2. ABC Food Truck is based in County A. ABC Food Truck prepares all of the food that will be served from the food truck in County A. ABC Food Truck hands customers their orders at the food truck's window. Every Monday ABC Food Truck travels to County B for lunch and dinner. Every Friday ABC Food Truck travels to County C for breakfast and lunch. ABC Food Truck must collect and remit the applicable sales and use tax rates on the retail sale of food for County B while located in County B on Mondays and for County C while located in County C on Fridays. When located in County A, ABC Food Truck must collect and remit the applicable sales and use tax rate for County A on the retail sale of food.

Refer to SUTB 3-2 for information on filling returns and Form E-536, Schedule of County Sales and Use Taxes.

C. Retailers Delivering Food

The general sourcing principles provided in SUTB 4-1 apply to the sales price of food sold by a retailer delivering food, unless otherwise provided in SUTB 32-6E.

Generally, the sale of food that is delivered by the retailer is sourced to the location that the food is delivered by the retailer. Refer to the general sourcing principles provided in SUTB 4-1.

D. Caterers

The general sourcing principles provided in SUTB 4-1 apply to the sales price of food sold by a caterer, unless otherwise provided in SUTB 32-6E.

Example: A customer hires a caterer to provide a meal at a banquet hall located in County A. The caterer prepares the meal in County B. The caterer then drives to County A and serves the meal at the banquet hall in County A. All charges of the caterer for the meal are sourced to County A.

For information on caterers, refer to SUTB 32-9.

E. Prepaid Meal Plans

The gross receipts derived from a prepaid meal plan are sourced to the location where the food or prepared food is available to be consumed by the person. For information on prepaid meal plans, refer to SUTB 32-10.

32-7 EXEMPTIONS RELATED TO FOOD

A. The following sales are exempt from sales and use tax:

1. Peanuts or other farm products sold to manufacturers for further manufacturing or processing.

2. Products of a farm sold in their original state by the producer of the products if the producer is not primarily a retail merchant.

3. Ice used to preserve agriculture, aquaculture, and commercial fishery products until the products are sold at retail.

4. Sales of products of the waters in their original or unmanufactured state by the producer in the capacity of producer. Fish and seafood are likewise exempt from sales and use tax when sold by fisherman in the capacity of producer.

5. Food and prepared food sold within the school building during the regular school day. For purposes of this exemption, the term “school” is an entity regulated under Chapter 115C of the North Carolina General Statutes.

6. Food and prepared food sold not for profit by a public school cafeteria to a child day care center that participates in the North Carolina Child and Adult Care Food Program of the Department of Health and Human Services.

7. Food, prepared food, soft drinks, candy, and other tangible personal property sold not for profit for or at an event that is sponsored by an elementary or secondary school when the net proceeds of the sales will be given or contributed to the school or to a nonprofit charitable organization, one of whose purposes is to serve as a conduit through which the net proceeds will flow to the school. For purposes of this exemption, the term ‘‘school’’ is an entity regulated under Chapter 115C of the North Carolina General Statutes.

8. Sales of meals not for profit to elderly and incapacitated persons by charitable or religious organizations not operated for profit which are entitled to refunds pursuant to G.S. § 105-164.14(b) when the meals are delivered to the purchasers at their places of abode.

9. Food and prepared food sold by a church or religious organization not operated for profit when the proceeds of the sales are actually used for religious activities.

10. Food and other products lawfully purchased with debit cards issued under the Supplemental Nutrition Assistance Program (SNAP), 7 U.S.C. § 2011, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental Nutrition Program, 42 U.S.C. § 1786, and supplemental foods purchased for direct distribution by the Special Supplemental Nutrition Program. Under SNAP, “food” means any food for human consumption and also includes seeds and plants for use in home gardens to produce food for consumption by SNAP households. Products that may not be purchased with a SNAP issued debit card include alcoholic beverages, tobacco, hot foods ready to eat, lunch counter items, foods to be eaten in the store, vitamins or medicines, pet foods, and any nonfood items. The Special Supplemental Nutrition Program foods list currently includes whole, skim, evaporated, and nonfat milk; specific cereals; certain juices;

cheese; eggs; dry beans and peas; dry infant cereal and infant juice; and other special formulas. The items on the Special Supplemental Nutrition Program food list are subject to change.

11. Tangible personal property, including food and prepared food, that is purchased by a retailer for resale or is manufactured or purchased by a wholesale merchant for resale and then withdrawn from inventory and donated by the retailer or wholesale merchant to either a governmental entity or a nonprofit organization, contributions to which are deductible as charitable contributions for federal income tax purposes.

12. An amount charged as a deposit on a beverage container that is returnable to the vendor for reuse when the amount is refundable or creditable to the vendee, whether or not the deposit is separately charged.

13. Fifty percent of the sales price of tangible personal property sold through a coin-operated vending machine, other than tobacco and newspapers.

14. Tangible personal property, including food and prepared food, purchased for resale.

15. Tangible personal property purchased with a client assistance debit card issued for disaster assistance relief by a State agency or a federal agency or qualifying instrumentalities.

16. Food and prepared food to be provided to a person entitled to the food and prepared food under a taxable prepaid meal plan. This exemption applies to packaging including wrapping paper, labels, plastic bags, cartons, packages and containers, paper cups, napkins and drinking straws, and like articles that meet all of the following requirements:

a. Use for packaging, shipment, or delivery of the food and prepared food.
b. Constitute a part of the sale of the food and prepared food.
c. Delivered with the food and prepared food.

B. Use of Certificate of Exemption by Schools, Institutions, and Organizations Making Exempt Sales

Schools, institutions, and organizations making exempt sales in accordance with SUTBs 32-7A.5 and 32-7A.6 above are not required to register with the Department and unless otherwise required to register by reason of making other sales or purchases subject to sales or use tax, cannot furnish a Certificate of Exemption, to their suppliers. When making purchases of food to be sold, such nonregistered schools, institutions, and organizations are required to furnish their suppliers with written documentation stating the food purchased is to be sold within the school building, and the suppliers are required to enter such information in their records and on the sales invoices. Otherwise, such transactions may be subject to sales and use tax. Schools, institutions, and organizations that are registered with the Department are required to furnish properly executed Certificates of Exemption, or the required data elements as provided in SUTB 5-1, to their suppliers where applicable.

32-8 BUNDLED TRANSACTIONS - FOOD

A. A “bundled transaction” is defined as a retail sale of two or more distinct and identifiable items, at least one of which is taxable and one of which is nontaxable, for one nonitemized price. Items are not sold for one nonitemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each item. A bundled transaction does not include the retail sale of any of the following:

1. An item and any packaging that accompanies the item and is exempt from sales and use tax under G.S. § 105-164.13(23).

2. A sale of two or more items whose combined price varies, or is negotiable, depending on the items the purchaser selects.

3. A sale of an item accompanied by a transfer of another item with no additional consideration.

4. An item and the delivery or installation of the item.

5. An item and any service necessary to complete the sale.

B. The applicable rate of sales and use tax imposed on a bundled transaction that only includes tangible personal property and contains food that is exempt from State sales and use tax depends on the percentage of food included in the bundle. For a bundled transaction that only includes tangible personal property and consists of 50% or more of food that is exempt from State sales and use tax, the total charge for the bundle is subject to the 2% food rate of sales and use tax. For a bundled transaction that only includes tangible personal property and consists of less than 50% food that is exempt from State sales and use tax, the total charge for the bundle is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

In determining the percentage of items included in a bundle, a retailer may use either the purchase price of the items included in the bundle or the sales price of the items when sold separately. A retailer cannot use a combination of the purchase price and sales price of the items to make this determination.

Tax applies to the sales price of a bundled transaction including food as provided in this section, unless otherwise provided in this SUTB.

Examples:

1. *A gift basket containing meats, cheeses, and a carving board sells for $50. The sales price of the meats and cheeses is $45 when sold separately and the sales price of the carving board is $15 when sold separately. Since the sales price of the food (meats and cheeses) that is exempt from State sales and use tax when sold separately is more than 50% of the sales price of the bundle, the total sales price of the bundle is subject to the 2% food rate of sales and use tax.*

2. *A retailer sells a package that contains 100 total pieces of food. There are 10 different types of food in the package. Eight of the types of food included in the package meet the definition of "candy," while two types of food included do not meet the definition of "candy." It is a reasonable presumption that 20 (2/10 times 100) of the pieces are not candy and 80 (8/10 times 100) of the pieces are candy. Therefore, since 80% of the package is candy, the retailer shall tax the entire package as a bundled transaction containing primarily candy subject to the general State, applicable local, and applicable transit rates of sales and use tax.*

3. *A retailer sells bulk food by the pound. Each type of food is in a separate bin or container. Some of the food is candy and some of it is not candy because it contains flour. However, regardless of the type of food chosen, the retailer charges the customer $3.49/lb. A customer selects some types of food that are candy and some that are not candy and puts them in a bag. Since some of the food in the bag is candy, the retailer shall treat the entire package as a bundled transaction containing primarily candy subject to the general State, applicable local, and applicable transit rates of sales and use tax, unless the retailer determines that 50% or less of the food in the bag is candy. In such case, the total sales price for the bundle is subject to the 2% food rate of sales and use tax.*

C. Tuition, Room, and Meals - Bundled Transaction

Where a retailer includes the gross receipts from meals in a bundled transaction, the retailer may display a statement indicating the gross receipts include the sales and use tax on the allocated price of the meals. The retailer is encouraged to include such statement in its marketing material and on any invoice or billing issued.

For a bundled transaction that includes tuition, room, and meals offered by an institution of higher education, tax applies to the allocated price of the meals. The institution must determine the allocated price for meals based on a reasonable allocation of revenue that is supported by the institution's business records kept in the ordinary course of business.

D. Prepaid Meal Plan – Bundled Transaction

For information on a bundled transaction that includes a prepaid meal plan and a dollar value that declines with use, refer to SUTB 32-10.

32-9 CATERERS

Catering is the retail sale of food, prepared food, beverages, and other tangible personal property or services at a location designated by the customer or another person. A person engaged in the catering business, including a personal chef that provides and prepares food for consumers, is a retailer. A location may include the caterer's banquet facility, a hotel, a restaurant, the customer's home, or any other location. All charges connected with the furnishing, preparing, or serving of food or drink are part of the sales price subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Charges for services, including bartending or carving, connected with the sale of catered food or drink are part of the sales price subject to sales and use tax even if the charges for the services are separately stated on the invoice or similar billing document. Separately stated bartending charges, including corkage fees, for the service of beverages owned or provided by the customer are not part of the sales price subject to sales tax, even if the services are provided concurrently with the taxable sale of catered food.

Charges for a venue by a caterer that are connected with the furnishing, preparing, and serving of food or drink and are part of the sales price subject to sales and use tax even if the charges are separately stated on the invoice or similar billing document. Refer to SUTB 60-28 for additional information.

Charges by a caterer for chairs, linens, tables, flatware, and similar items used to provide catering are subject to sales and use tax even if the charges are separately stated on the invoice or similar billing document. In addition, a caterer shall pay the applicable rates of sales and use tax on the purchase price of such items as they are not resold to their customers.

Charges for nontaxable services that are not part of the sales price of catered food or drink and are not connected with the furnishing, preparing, or serving of the food or drink, are not subject to sales and use tax, provided the charges are separately stated on the invoice or similar billing document given to the customer at the time of the sale and in the vendor's records. If the charges for such services are not separately stated on the invoice or similar billing document given to the purchaser at the time of sale, the charges are part of the sales and subject to sales and use tax.

32-10 PREPAID MEAL PLAN

A. Definition

G.S. § 105-164.3 provides the following term and definition:

"Prepaid meal plan" – A plan offered by an institution of higher education that meets all of the following requirements:

1. Entitles a person to food or prepared food.
2. Must be billed or paid for in advance.
3. Provides for predetermined units or unlimited access to food or prepared food but does not include a dollar value that declines with use.

B. Basis of Reporting

A retailer who derives gross receipts from a prepaid meal plan is required to report gross receipts on an accrual basis of accounting for purposes of reporting and remitting sales and use tax, notwithstanding that the retailer may report tax on the cash basis for other sales at retail and notwithstanding that the revenue has not been recognized for accounting purposes.

C. Reporting Options

A retailer whose gross receipts are derived from a prepaid meal plan is offered the following reporting options for remitting sales and use tax to the Department:

When the retailer enters into an agreement with a food service contractor by which the food service contractor agrees to provide food or prepared food under a prepaid meal plan, and the food service contractor with whom the retailer contracts is also a retailer for sales and use tax purposes, the retailer may include in the agreement that the food service contractor is liable for collecting and remitting the sales and use tax due on the gross receipts derived from the prepaid meal plan on behalf of the retailer.

Where such agreement executed between the retailer and the food service contractor indicates the food service contractor is liable for the sales and use tax on prepaid meal plans, the food service contractor is liable for any underpayment of sales and use tax, provided the retailer has not misrepresented the sales price of the prepaid meal plan to the food service contractor. The agreement must provide that sales and use tax applies to the allocated sales price of the prepaid meal plan paid by or on behalf of the person entitled to the food or prepaid food under the plan and not the amount charged by the food service contractor to the retailer under the agreement for the food and prepared food for the person.

A retailer who elects this option must report to the food service contractor, with whom it has an agreement, the gross receipts a person pays to the retailer for a prepaid meal plan. The retailer must report the gross receipts on an accrual basis of accounting. The retailer must send the food service contractor the sales and use tax due on the gross receipts derived from a prepaid meal plan. Sales and use tax payments received by a food service contractor from a retailer are held in trust by the food service contractor for remittance to the Department. A food service contractor that receives a sales and use tax payment from a retailer must remit the amount received to the Department. A food service contractor is not liable for sales and use tax due but not received from a retailer. A retailer that does not send the food service contractor the sales and use tax due on the gross receipts derived from a prepaid meal plan is liable for the amount of sales and use tax the retailer fails to send to the food service contractor.

Where the agreement between the retailer and food service contractor provides that the food service contractor is liable for collecting and remitting the sales and use tax due on the gross receipts from prepaid meal plans, such sales and use tax is to be reported by the food service contractor along with any other sales and use tax liability of the food service contractor. In such instance, the food service contractor should maintain records that clearly document any sales and use tax remitted on the gross receipts from prepaid meal plans on behalf of the retailer.

D. Sourcing – Prepaid Meal Plan

The gross receipts derived from a prepaid meal plan are sourced to the location where the food or prepared food is available to be consumed by the person.

E. Bundled Transactions – Prepaid Meal Plans

Where a retailer includes the gross receipts derived from prepaid meal plans in a bundled transaction, the retailer may display a statement indicating the gross receipts include the sales and use tax on the allocated price of the meals. The retailer is encouraged to include such statement in its marketing material and on any invoice or similar billing document issued for the gross receipts derived from a prepaid meal plan.

For a bundled transaction that includes a prepaid meal plan and a dollar value that declines with use, sales and use tax applies to the following:

1. The allocated price of the prepaid meal plan.

2. Items purchased with the dollar value that declines with use as the dollar value is presented for payment.

F. Exemption Related to a Prepaid Meal Plan

Food and prepared food provided to a person entitled to the food and prepared food under a taxable prepaid meal plan are exempt from sales and use tax. This exemption applies to packaging including wrapping paper, labels, plastic bags, cartons, packages and containers, paper cups, napkins and drinking straws, and like articles that meet all of the following requirements:

1. Used for packaging, shipment, or delivery of the food and prepared food.
2. Constitute a part of the sale of the food and prepared food.
3. Delivered with the food and prepared food.

32-11 FOOD AT SUMMER CAMPS

A. Summer Camp

For purposes of this section, a summer camp is a program primarily providing children and adolescents recreational, athletic, or educational facilities and programming for a limited period of time during the summer vacation period. Similar camps include camps that operate during other school breaks or that provide services to persons with special needs.

B. Cafeterias, Restaurants, or Snack Stands

Summer camps or similar camps that operate cafeterias, restaurants, snack stands, or other similar places where they make sales of food, prepared food, and other tangible personal property to students or other persons shall register with the Department and collect and remit the applicable rates of sales and use tax on such sales.

C. Food Provided as Part of the Operation of the Camp

A summer camp or similar camp that charges a weekly or monthly fee for campers enrolled in the courses or activities offered by the camp is not liable for collecting sales and use tax on such charges even if the fee include food and prepared food provided to campers during time spent at the camp.

Summer camps and similar camps purchasing food, prepared food, or other tangible personal property that is used to provide food and prepared food to campers as part of the operation of the camp shall pay the applicable rates of sales and use tax on the purchases.

32-12 SALES OF FOOD ON TRAINS, PLANES, ETC.

Sales of food and prepared food by railroads, ships, airlines, or other transportation companies, while within this State, are subject to the applicable rates of sales and use tax.

32-13 SALES OF FOOD BY A FRATERNITY OR SORORITY

Sales of food and prepared food by fraternities and sororities are subject to the applicable rates of sales and use tax.

32-14 COMPLIMENTARY MEALS BY PROVIDERS OF ACCOMMODATIONS

For information regarding food used in providing complimentary meals or snacks, refer to SUTB 6-7.

32-15 ADDITIONAL MEALS FOR BED AND BREAKFAST GUESTS

For information regarding additional meals for bed and breakfast guests, refer to SUTB 6-8.

32-16 ITEMS GIVEN AWAY BY RETAILERS

When a retailer, engaged in the business of selling prepared food or drink for immediate or on-premises consumption, also gives prepared food or drink to its patrons or employees free of charge (e.g., employee meals), the food or drink given away is considered sold along with the food or drink sold. The retailer is not liable for use tax on the purchase price of the prepared food or drink given away free of charge.

If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase a similar or related item, the item given away is considered sold along with the item sold. The retailer is not liable for use tax on the purchase price of the item given away free of charge.

In all other cases, items given away or used by any retailer or wholesale merchant are not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the items from sales of other items. The retailer or wholesale merchant is liable for use tax on the purchase price of the items given away or used.

32-17 FOOD SERVICE SUPPLIES

A. Taxable Purchases

Purchases of plastic or cloth place mats; cork, plastic or china coasters; china; silverware; cloth napkins; tablecloths; or other reusable items by restaurants, cafes, cafeterias, and other similar places of business for use in serving meals are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Purchases of brooms, mops, soaps, and other supplies and equipment by such businesses are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Purchases of patty paper and paper containers by such businesses for use in storing food are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

B. Exempt Purchases

Paper doilies, paper place mats, paper coasters, paper cups, paper napkins, drinking straws, and similar disposable items, that become a part of the sale or service of food and are used by customers in consuming their meals, are exempt from sales and use tax when sold to restaurants, cafes, cafeterias, school lunchrooms, and other similar places of business selling and serving prepared food and meals. Items included in this subsection are purchases for resale provided the items become a part of the sale or service of food and are used by customers in consuming their meals.

32-18 SERVICE CHARGE IMPOSED ON FOOD, BEVERAGES, OR PREPARED FOOD

A. Service Charges Up To Twenty Percent (20%)

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 if it meets all of the following requirements:

1. The service charge does not exceed twenty percent (20%) 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 Twenty Percent (20%)

If a service charge imposed by a retailer for the service of food, beverages, or prepared food, exceeds twenty percent (20%) of the sales price, the portion of the service charge that equals twenty percent (20%) of the sales price is considered a tip and not subject to sales and use tax 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 twenty percent (20%) 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 Charge Examples

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

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 the Applicable State, Local and Transit Rates of Sales and Use Tax

1. Service Charges of Twenty Percent (20%) or Less of the Sales Price

For service charges of twenty percent (20%) 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. *(Example: A caterer separately states a twenty percent (20%) service charge on its written contract and invoice. The caterer turns the service charge over as follows: fifteen percent (15%) of the sales price to waiters who deliver prepared food and beverages; and five percent (5%) of the sales price to bussers. The caterer maintains sufficient records. In this scenario, the entire service charge is subject to sales and use tax because personnel directly involved in the service of prepared food and beverages do not receive the full amount of the twenty percent (20%) service charge.)*

2. Service Charges that Exceed Twenty Percent (20%) of the Sales Price

For service charges that exceed twenty percent (20%) of the sales price, the full amount of a service charge if any portion of the service charge that is less than twenty percent (20%) of the sales price is paid to personnel not directly involved in service of food, beverages, or prepared food. *(Example: A restaurant separately states a twenty five percent (25%) automatic gratuity on its menu and bills. The restaurant turns the gratuity over as follows: fifteen percent (15%) of the sales price to waiters who deliver prepared food and beverages; five percent (5%) of the sale prices to hosts; and five percent (5%) of the sales price to bussers. The restaurant maintains sufficient records. In this case, the entire service charge is subject to sales and use tax because personnel directly involved in the service of prepared food and beverages do not receive the full amount of the twenty percent (20%) service charge.)*

3. Service Charges Not Separately Stated

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 Twenty Percent (20%)

The portion of any service charge that exceeds twenty percent (20%). *(Example, a nightclub separately states a thirty percent (30%) service charge for bottle service on its menu and bills. The nightclub turns the service charge over as follows: twenty five percent (25%) of the sales price to waiters who deliver beverages; and five percent (5%) of the sales price to barbacks and other support staff. The nightclub maintains sufficient records. In this case, the amount of the service charge that equals twenty percent (20%) of the sales price is considered a tip and not subject to sales and use tax because servers receive an amount of the service charge that is at least twenty percent (20%) of the sales price. The remaining portion of the service charge is subject to sales and use tax because it exceeds twenty percent (20%) of the sales price.)*

F. Record Keeping

Failure of a retailer to keep records that establish that a service charge meets the requirements in SUTB sections 32-18A and 32-18B subjects the retailer to liability for sales and use tax on the full amount of the service charge.

32-19 SALES OF ICE AND RELATED ITEMS

A. Ice Subject to the General State, Applicable Local, and Applicable Transit Rates of Sales and Use Tax

1. Ice Sold as Prepared Food

Ice sold with eating utensils "provided by the retailer," as the phrase is provided in SUTB 32-3B, is subject to the general State, applicable local, and applicable transit rates of sales and use tax. *(Example: A cup of ice sold at a restaurant or convenience store.)*

2. Bags of Ice Sold Through a Vending Machine

Bags of ice sold through a vending machine are subject to the general State, applicable local, and applicable transit rates of sales and use tax. *(Example: Sales of bags of ice through an ice house.)*

Fifty percent (50%) of the sales price of bags of ice sold through a coin-operated vending machine is exempt from sales and use tax.

Note: For information on sales through vending machines, refer to SUTB 83-2.

3. Large Blocks of Ice

Large blocks of ice are subject to the general State, applicable local, and applicable transit rates of sales and use tax unless purchased for resale as provided in SUTB 5. *(Examples: Ice for carving, shaving, or ice sculptures)*

B. Ice Subject to the 2% Food Rate of Sales and Use Tax

Bags of ice sold for human consumption out of a cooler at grocery or convenience store are subject to the 2% food rate of sales and use tax.

C. Ice Handling Supplies

Refer to SUTB 60-3.

D. Exempt Sales of Ice

Exemptions in SUTB 32-7 apply to the sales of ice.

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SUTB 33 FUELS - CERTAIN TYPES

33-1 SALES OF BOTTLED GAS, COAL, COKE, FUEL OIL, OXYGEN, ACETYLENE, HYDROGEN, LIQUEFIED PETROLEUM GAS, AND OTHER COMBUSTIBLES

Sales of fuels, including bottled gas, coal, coke, fuel oil, oxygen, acetylene, hydrogen, liquefied petroleum gas, or other combustibles, are subject to the general State, applicable local, and applicable transit rates of sales and use tax unless specifically exempt by statute.

The sale of propane gas to public and private schools for use or consumption is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Note: For information on piped natural gas, refer to SUTB 66. For information on aviation gasoline and jet fuel, refer to SUTB 12.

33-2 EXEMPTIONS RELATED TO FUELS

The following are exempt from sales and use tax:

1. The sale of fuel to a manufacturer for use in connection with the operation of a manufacturing facility. The exemption does not apply to fuel that is used solely for comfort heating at a manufacturing facility where there is no use of fuel in a manufacturing process.

2. The sale of fuel to a small power production facility used by the facility to generate electricity. A small power production facility is a facility which is an eligible solar, wind, waste, or geothermal facility, or a facility that:

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. The sale of fuel to a qualifying or conditional farmer that is measured by a separate meter or another separate device, is used by the qualifying or conditional farmer primarily in farming operations, and is not used for preparing food, heating dwellings, and other household purposes. Fuel is used for farming operations if it is used for the planting, cultivating, harvesting, or curing of farm crops, in the production of dairy products, eggs, or animals, or in the boarding of horses.

Gross receipts derived from the sale of fuel to a qualifying or conditional farmer where the fuel is measured through a single meter and used for both qualifying farming purposes and for preparing food, heating dwellings, or other household purposes are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

4. The sale of fuel to commercial laundries or to pressing and dry-cleaning establishments used in the direct performance of the laundering or the pressing and cleaning service.

5. The sale of sawdust to manufacturing plants for use as a fuel in connection with the manufacturing process.

6. The sale of coal in its original state when the sale is 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.

7. The sale of fuel to a person engaged in the commercial logging business for use in the operation of logging machinery.

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SUTB 34 FUNERALS, MONUMENT MANUFACTURERS, AND MEMORIAL STONE AND MONUMENT DEALERS

34-1 FUNERALS

A. Funeral Expenses and Funeral Home Retailers

1. Funeral-Related Services

The gross receipts derived from services rendered by a funeral home retailer, such as funeral directors, morticians, or undertakers, that include, but are not limited to funeral director services; embalming; dressing; cosmetizing; casketing; use of facilities; tent at the grave site; chairs at the funeral service; family car; ambulance service; cemetery lots; death certificates; beautician and barber services; cremation; transport fee; digging a grave for placement of a vault, casket, or other tangible personal property for burial of remains; lower or place a vault or casket for burial of remains; placement of an urn in a crypt or columbarium for burial of remains; and services for the burial of remains are exempt from sales and use tax, provided the charges are separately stated and identified on the invoice or similar billing document given to the purchaser at the time of the sale.

2. Taxable Sales

Sales of taxable tangible personal property are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Examples of taxable tangible personal property are coffins, caskets, vaults, memorial stones, monuments, grave markers, and similar property.

The rental of tangible personal property that is not a part of a funeral-related service is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

3. Cremation Charges

Charges for cremation services are not subject to sales and use tax provided the charges are separately stated and identified on the invoice or similar billing document given to the purchaser at the time of sale. Sales of urns and similar tangible personal property are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

B. Taxable Purchases by Funeral Home Retailers

Purchases by a funeral home retailer of graveside equipment, embalming fluid, cosmetics, disinfectants, chairs, flower racks, casket trucks, and other supplies or equipment for use in conducting their business are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

34-2 MONUMENT MANUFACTURERS - PURCHASES OF TOOLS AND SUPPLIES

Purchases by monument manufacturers of stencils, abrasives and cutting tools and equipment used by such manufacturers in the cutting, shaping, and polishing process and the solvents used to remove the stencils from the monuments are exempt from sales and use tax and may be purchased as provided in SUTB 5.

34-3 MEMORIAL STONE AND MONUMENT DEALERS

A. Sales of Memorial Stones, Monuments and Bronze Grave Markers

Sales of memorial stones, monuments, grave markers, and similar items to users or consumers are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

The charge for installation or placement of a memorial stone, monument, grave marker, or similar item is subject to the general State, applicable local, and applicable transit rates of sales and use tax regardless of whether the charge is separately stated on the invoice or similar billing document given to the purchaser at the time of sale and in the retailer's records.

B. Purchases of Supplies by Monument Dealers

1. Supplies Used to Install Memorial Stones, Monuments, Grave Markers, and Similar Items

Purchases of lumber and other tangible personal property by monument dealers for use in installing memorial stones, monuments, grave markers, and similar items that do not become part of the memorial stone, monument, grave marker, or similar item are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

2. Supplies for Lettering or Polishing Monuments

Monument dealers that do not cut, shape, polish or otherwise process blocks of stone into appropriate sizes to become monuments are not classified as manufacturers and purchases of stencils and other supplies by such monument dealers for use in lettering or polishing monuments that they sell are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

SUTB 35 GIFTS AND GIFT WRAPPING SERVICES

35-1 GIFTS

Sales to a retailer of items for use by the retailer as gifts are subject to the applicable rates of sales and use tax. The retailer shall remit the tax on such purchases to its suppliers if its suppliers are registered to collect the North Carolina sales and use tax. If the suppliers do not collect North Carolina sales and use tax on such sales, the purchaser must remit the applicable use tax directly to the Department. If the item purchased is of the type or character customarily sold by the retailer, the retailer may purchase the item without payment of the tax as provided in SUTB 5. In such case, the retailer must remit the use tax to the Department on all taxable items withdrawn from inventory and used as gifts. Retailers that purchase items for use in satisfying a customer's redemption of reward points or earned by the customer through a rewards program, must pay the applicable rates of sales and use tax to their suppliers at the time of purchase or directly to the Department if the supplier is not registered to collect North Carolina sales and use tax.

35-2 GIFT CERTIFICATES AND GIFT CARDS

Charges by retailers for gift certificates and gift cards that can be redeemed for items are not subject to sales and use tax at the point of sale. When the holder of such gift certificate or gift card redeems the gift certificate or gift card for items, the transaction is subject to the applicable rates of sales and use tax unless specifically exempt by statute.

35-3 GIFTS BY EMPLOYERS TO EMPLOYEES OR OTHER USERS

A. Except as provided in SUTB 35-3B., an employer shall pay the sales or use tax due on the purchase of an item that is provided to an employee or other person as a gift or as compensation. The tax due shall be computed at the applicable State, local, and transit rates of sales and use tax on the sales price or purchase price of the item given away, irrespective of whether the item is fabricated, produced, manufactured, or processed by the employer, or acquired elsewhere.

B. If a retailer engaged in the business of selling prepared food or drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, the food or drink given away is considered sold along with the food or drink sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase a similar or related item, the item given away is considered sold along with the item sold. In all other cases, items given away or used by any retailer or wholesale merchant are not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the items from sales of other items.

35-4 GIFT WRAPPING AS PART OF SALES PRICE

When a retailer gift wraps an item that the retailer sells, the paper, ribbon, and bow become a part of the sale of the item notwithstanding that the wrapping of the item may take place at the point of delivery to the customer or at one of the retailer's wrapping stations. If a charge is made for gift wrapping, the charge for gift wrapping is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

35-5 GIFT WRAPPING AS A SERVICE

When a retailer offers to gift wrap items that it did not sell, the retailer is considered to be performing repair, maintenance, and installation services that are subject to the general State, applicable local, and applicable transit rates of sales and use tax on the service charge.

Note: For more information on repair, maintenance, and installation services, refer to SUTB 75.

SUTB 36 GOVERNMENT - FEDERAL

36-1 SALES BY AND SALES TO THE UNITED STATES GOVERNMENT, OR ANY QUALIFYING AGENCIES OR INSTRUMENTALITIES THEREOF

A. Exemptions

Sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State are exempt from sales and use tax. Sales by and directly to the United States Government, or any qualifying agency or instrumentality thereof, are exempt from sales and use tax. Generally, in order for the sale to be exempt from sales and use tax, the United States Government, or qualifying agency or instrumentality thereof must purchase the items directly from a retailer and make payment directly to the retailer with its own funds. For example, meals and lodging billed to and paid for by the federal government are exempt. Meals and lodging billed to and paid for by a federal employee who is subsequently reimbursed by the federal government are taxable.

Sales made to Army, Navy, and Air Force Activities Funds, post exchanges, officers' mess funds, noncommissioned officers funds and other voluntary unincorporated organizations of Army, Navy, Marine Corps, Air Force, or Coast Guard personnel authorized by regulations issued by the Departments of Defense, Army, Navy, or Air Force are likewise exempt from sales and use tax.

The United States Government, or a qualifying agency or instrumentality thereof must furnish retailers with any of the following: (1) a properly completed Certificate of Exemption, (2) purchase requisitions or affidavits signed by a purchasing officer stating that such sales are being made directly to the United States Government or an agency or instrumentality thereof, or (3) applicable credit cards issued by the United States Government or qualifying agency or instrumentality thereof to make a purchase exempt from sales and use tax.

A retailer that makes sales directly to the United States Government, or a qualifying agency or instrumentality thereof must retain copies of any Certificates of Exemption, purchase requisitions or affidavits, or other information provided to substantiate the exemption from sales and use tax. Copies of the documentation must be available for inspection by the Secretary or the Secretary's agents, upon request.

B. United States Government Agencies and Qualifying Instrumentalities

Qualifying United States Government agencies and instrumentalities thereof are divisions of the federal government created to provide a necessary public service and are immune from sales and use tax under federal law. The following are examples of qualifying government agencies and instrumentalities: the Departments of Defense, Army, Navy, Air Force, United States hospitals, American Red Cross, Federal Reserve Banks, federal land banks, federal housing projects, federal housing authorities, and United States Postal Service. (For the American Red Cross status as a U.S. government instrumentality see Department of Employment, et.al. v. United States, 385 U.S. 355 (1966)).

C. United States Government Credit Card Program

1. GSA SmartPay

The United States Government implemented a credit card program called "GSA SmartPay." All cards issued under the program have unique prefixes and account numbers, government-designed artwork, and wording that denote the card is for use by the United States of America. Under the program, credit cards may be individually billed or centrally billed. The 6th digit of the account numbering structure will denote how it is billed. Individually billed charges are billed to and paid by the federal employee who is then

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reimbursed by the Federal Government. These charges are subject to the applicable rates of sales and use tax. Centrally billed charges are billed directly to and paid directly by the Federal Government and are exempt from sales and use tax.

Refer to the GSA SmartPay Program website for more detailed information.

2. Other Credit Card Programs

Other credit card programs implemented by United States Government Agencies or Qualifying Instrumentalities (e.g., the American Red Cross) are exempt from sales and use tax when the charges are centrally billed and paid directly by the United States Government Agency or Qualifying Instrumentality with its own funds.

36-2 BUSINESSES IN FEDERAL AREAS

The fact that a business is located in a federal area does not exempt the business from liability for collecting and remitting sales tax. Title 4 of the U.S. Code, Section 105, provides that a state that levies sales and use taxes shall have full jurisdiction and the power to levy and collect sales and use taxes in any federal area within such state to the same extent and with the same effect as though such area was not a federal area with certain exemptions provided in Title 4, U.S. Code, Section 107, for sales by the United States Government or its qualifying instrumentalities.

36-3 CONTRACTORS FOR THE FEDERAL GOVERNMENT

A. Contracts without FAR Provisions

Generally, sales of items to contractors for use in performing contracts with the United States Government or its agencies or instrumentalities are subject to the general State, applicable local, and applicable transit rates of sales and use tax. The Federal Government is entitled to an annual refund of the general State, applicable local, and applicable transit rates of sales and use tax paid by its contractors on purchases of building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered or repaired for use by the governmental entity. A request for refund must be submitted on Form E-585, Nonprofit and Governmental Entity Claim for Refund State, County, and Transit Sales and Use Taxes.

Note: For information on refunds to the Federal Government, refer to SUTB 74-4.

B. Contracts with Certain FAR Provisions

Sales of items to contractors for use in performing contracts with the United States Government or its agencies and instrumentalities are exempt from sales and use tax when the terms of the contract between the contractor and the United States Government contain title-passage provisions of the Federal Acquisition Regulations where the title to the items purchased by the contractor is transferred to the United States Government on a regular, recurring, and routine basis.

36-4 DIPLOMATIC TAX EXEMPTION PROGRAM

A. The Diplomatic Tax Exemption Program is administered by the Office of Foreign Missions (OFM). This program provides sales and use tax exemptions to certain official personnel from foreign countries who are stationed in the United States while working as diplomats, consular officers, or staff members at foreign embassies and consulates, and other organizations such as the United Nations. Not all foreign missions and their personnel are entitled to tax exemption, because this privilege is based on the principle of reciprocity and not all foreign countries grant such tax exemption to American Embassies and personnel.

B. A foreign official who is entitled to tax exemption is issued a tax exemption card by OFM. For identification purposes, the individual's name, photograph, mission employed by, expiration date, and protocol identification number are provided on the card. Tax exemption cards are labeled one of two ways: Personal Tax Exemption and Mission Tax Exemption – Official Purchases Only. Each type of card will have one of two different levels of sales and use tax exemption. The level and type of exemption are designed to match the levels of exemption encountered by American Embassies in foreign countries. An exemption card can generally be used to obtain an exemption if eligible, in person and at the point-of-sale from sales tax imposed on purchases.

An exemption card cannot be used to obtain exemption from taxes imposed on purchases of motor vehicles, gasoline/diesel fuel, utility services, airline tickets, or cruises.

C. OFM currently issues exemption cards that use animal images to visually convey to retailers the level of exemption a cardholder is authorized to receive. The images are: an owl, a buffalo, an eagle, and a deer. The animal images provide the following information:

a. **Owl**: mission card with unrestricted tax exemption.
b. **Buffalo**: mission card with restricted tax exemption.
c. **Eagle**: personal card with unrestricted tax exemption.
d. **Deer**: personal card with restricted tax exemption.

An image of a bird (owl or eagle) on an exemption card means the exemption is unrestricted. An image of a land animal (buffalo or deer) on an exemption card means the exemption is restricted in some manner and the text of the exemption card must be read to determine the restrictions placed on the exemption card.

In addition to text and animal images providing exemption information, an exemption card has the following security features:

a. Laser engraved personalized data.
b. Optically variable device (holographic kinegram).
c. Tactile micro-text (small, raised text).

1. The exemption card labeled Personal Tax Exemption is for use by eligible foreign mission members and their dependents, who are not U.S. nationals or permanently resident in the United States for purposes of the Vienna Convention on Diplomatic Relations (VCDR) and Vienna Convention on Consular Relations (VCCR), to obtain exemption from sales and use tax on personal purchases. The personal tax exemption card must be presented in person to the retailer at the time of the purchase. A telephone or internet sale is not allowed since such transaction does not allow for the presentation of the personal tax exemption card to the retailer. The personal tax exemption card is for use solely by the person identified and pictured on the card, is not transferrable, and cannot be loaned to any other person, even if that person is also eligible for tax exemption. Any form of payment is allowed for a purchase made with a personal tax exemption card.

2. The card labeled Mission Tax Exemption – Official Purchases Only is used for official purchases of a foreign consulate or embassy. The mission card bears the photograph and identification of a consulate, embassy, or international organization employee who has been allowed official purchasing privileges for that office. A mission exemption card is for use by a foreign mission to obtain exemption from sales and use tax on purchases that are necessary for the mission's operations and functions. For example, the purchasing agent might use the card to buy office supplies or to book twenty hotel rooms for a visiting official delegation from that foreign country, provided the reservation is in the name of the mission and the bill is paid for by a mission check or credit card.

OFM will only issue a mission tax exemption card to an individual who:

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a. Is a principal member or employee of the mission.

b. Holds an A or G series visa (and in the case of a G series visa, is a diplomatic agent.)

c. Is not considered to be permanently resident in the United States for purposes of the VCDR and the VCCR.

This cardholder's photo will appear on the mission tax exemption card and is the mission's point of contact. This person need not be present when purchases are made in the name of the mission. However, the mission tax exemption card must be presented to the retailer at the time of purchase. Since purchases made by telephone, internet, mobile phone application, or another similar method do not allow the purchaser to present the exemption card to the retailer, the exemption card cannot be honored in such transactions. Additionally, payment for purchases by the foreign mission must be made with a mission check, a mission credit card, or a wire transfer transaction in the name of the mission in order to purchase items for the mission without payment of sales or use tax. Mission purchases cannot be paid with cash, personal checks, or personal credit cards. The mission tax exemption card is not transferable and is not to be used for personal purchases. (There are instances where a mission tax exemption cardholder would not have access to a personal tax exemption card.)

Note: For additional information regarding the diplomatic tax exemption, refer to OFM's website.

D. The cardholder should be allowed an exemption from tax to the extent noted on the card. A retailer that accepts a purchaser's exemption card must retain a copy of the front and back of the exemption card and a copy of the receipt for the tax-exempt transaction as documentation to support the exemption. If unable to make a copy of the exemption card, the retailer should retain in the retailer's records the name of the mission or office, the name of the individual pictured on the exemption card, whether the card is to be used for official purchases or personal purchases, any restrictions listed on the exemption card, the date of sale, exemption card number, and the expiration date of the exemption card.

A seller should not accept an exemption card if:

1. The amount of the purchase is less than any minimum amount required by the card.

2. The card has expired.

3. The individual identified on a personal tax exemption card is not the purchaser.

4. The foreign mission purchase is being made with payment other than a mission check, a mission credit card, or a wire transfer in the name of the mission.

36-5 FEDERAL CREDIT UNIONS AND THE FARM CREDIT SYSTEM

A. Federal Credit Unions

Sales of items to federal credit unions organized under the Federal Credit Union Act, 12 U.S.C. §§ 1751 et seq., are exempt from sales and use tax.

B. The Farm Credit System

The Farm Credit System, 12 U.S.C. §§ 2001 et seq., includes the Farm Credit Banks, the bank for cooperatives, Agricultural Credit Banks, the Federal Land Bank Associations, the Federal Land Credit Associations, the Production Credit Associations, the agricultural credit associations, the Federal Farm Credit Banks Funding Corporation, the Federal Agricultural Mortgage Corporation, service corporations established pursuant to 12 U.S.C. 221, and such other institutions as may be made part of the System, all of which are chartered by and subject to the regulation of the Farm Credit Administration.

1. Sales of items to Farm Credit Banks and Federal land banks are exempt from sales and use tax. Refer to 12 U.S.C. §§ 2023 and 2098.

2. Sales of items to production credit associations and banks for cooperatives are subject to the applicable rates of sales and use tax.

36-6 FEDERAL SAVINGS AND LOAN ASSOCIATIONS AND NATIONAL BANKS

Sales of items to federal savings and loan associations and national banks are subject to the applicable rates of sales and use tax.

36-7 GOVERNMENT AGRICULTURAL OFFICES

The Farm Service Agency (FSA), Natural Resource Conservation Service (NRCS), and the Risk Management Agency (RMA) belonging to the Farm Production and Conservation Business Center are agencies or instrumentalities of the Federal Government that are exempt from sales and use taxes on their purchases of items for use in carrying on their work.

36-8 RESERVE OFFICERS' UNIFORMS

Sales of uniforms, other than sales directly to the United States Government, for use in reserve officers training programs are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

36-9 POSTAL EMPLOYEES' ASSOCIATIONS

A post office employees' association is not an exempt instrumentality of the United States Government, therefore, sales to and sales by such organizations are subject to sales and use tax.

36-10 DONATIONS OF TANGIBLE PERSONAL PROPERTY TO THE FEDERAL GOVERNMENT

Tangible personal property that is purchased by a retailer for resale or is manufactured or purchased by a wholesale merchant for resale and then withdrawn from inventory and donated by the retailer or wholesale merchant to either a governmental entity or to a nonprofit organization, contributions to which are deductible as charitable contributions for federal income tax purposes, is exempt from sales and use tax.

36-11 CLIENT ASSISTANCE DEBIT CARDS

Purchases of tangible personal property with a client assistance debit card issued for disaster assistance relief by a federal agency or instrumentality are exempt from sales and use tax.

SUTB 37 GOVERNMENT - STATE, LOCAL, ETC.

37-1 PURCHASES, SALES BY, AND DONATIONS TO GOVERNMENTAL ENTITIES

A. Sales to and Purchases by Governmental Entities

Sales to counties, cities, and other political subdivisions are subject to the applicable rates of sales and use tax.

Sales of taxable items to counties, cities, towns, and political subdivisions or any agencies thereof are subject to the applicable rates of sales and use tax. Such governmental entity or agency must remit the sales or use tax on such purchases to the retailer. Any governmental entity or agency making taxable purchases of items from a retailer who does not collect the applicable North Carolina rates of sales or use tax is required to register with the Department and remit the use tax due on such purchases directly to the Department.

B. Exempt Governmental Entities

1. North Carolina State Agencies

With the exception of electricity, telecommunications service, and ancillary service, sales to North Carolina State agencies are exempt from sales and use tax if all of the following conditions are met:

a. The State agency must obtain from the Department a State agency sales tax exemption number using Form E-592A, Application for State Agency Exemption Number for Sales and Use Taxes.

b. The items must be purchased by the North Carolina State agency for its own use pursuant to a valid purchase order issued by the State agency that contains its exemption number and a description of the property purchased, or the items must be paid for with a North Carolina State-issued check, electronic deposit, credit card, procurement card, or credit account of the North Carolina State agency.

c. For all purchases other than by a State agency-issued purchase order, the State agency's exemption number must be provided to or be on file with the retailer. The exemption from sales and use tax does not apply to sales of items to a real property contractor for use in the performance of real property contracts with State agencies or to sales of items to employees of State agencies.

Governmental entities eligible for annual refunds of sales and use tax paid, as provided in SUTB 74-4, are not eligible for State agency sales tax exemption numbers.

2. North Carolina Department of Transportation

Sales of items to the Department of Transportation are exempt from sales and use tax.

This exemption does not apply to retail sales of items to real property contractors or other persons for use in the performance of contracts with the North Carolina Department of Transportation or to retail sales of items to employees of the Department of Transportation.

C. Taxable Sales by Governmental Entities

A governmental entity that sells items at retail is a retailer. Any governmental entity or agency that makes retail sales of items must register with the Department and collect and remit the applicable sales and use tax due on such sales unless such sales are exempt from sales and use tax. The

annual refund for certain governmental agencies, as provided by G.S. § 105-164.14, does not apply to the tax on such sales and no part thereof shall be refunded or claimed as a refund. Governmental entities and agencies properly registered for sales and use tax purposes may purchase the items that they resell without paying sales tax to their suppliers as provided in SUTB 5. Certificates of Exemption may not be used by any governmental entity or agency when making purchases of tangible personal property to be used or consumed by such purchaser, unless such purchaser is a North Carolina State agency that meets the conditions described in SUTB 37-1B.

D. Donations of Tangible Personal Property to Governmental Entities

Tangible personal property that is purchased by a retailer for resale or is manufactured or purchased by a wholesale merchant for resale and then withdrawn from inventory and donated by the retailer or wholesale merchant to a governmental entity whose contributions to such are deductible as charitable contributions for federal income tax purposes, is exempt from sales and use tax.

37-2 REFUNDS TO CERTAIN GOVERNMENTAL ENTITIES AND NORTH CAROLINA STATE AGENCIES

For information regarding refunds for certain governmental entities and North Carolina State agencies, refer to SUTB 74-4 and 74-5, respectively.

37-3 HOUSING AUTHORITIES

Sales of items to housing authorities created and existing under Chapter 157 of the North Carolina General Statutes for use in carrying on their activities are subject to the applicable rates of sales and use tax, and such housing authorities are not entitled to refunds under the provisions of G.S. § 105-164.14. Refer to *Housing Authority v. Johnson*, 261 N.C.76, 134 S.E. 2d 121 (1964) for additional information.

37-4 NORTH CAROLINA CIVIL AIR PATROL

A. The Civil Air Patrol is a private corporation of a benevolent character, incorporated by the United States Congress on July 1, 1946 (36 USC 201-208). It is divided into units that are not separate legal entities but are integral units of the corporation. The basic membership unit for each state is a single wing whose subordinate units are squadrons and flights. All funds and property acquired by any unit of the Civil Air Patrol become the property of the corporation. The North Carolina Wing of the Civil Air Patrol and its chartered squadrons and flights are eligible for refunds of sales and use taxes under G.S. § 105-164.14.

B. G.S. § 143B-1030 established a Civil Air Patrol Section as a State agency within the North Carolina Department of Public Safety. The mission of the Civil Air Patrol Section, among other things, is to receive and supervise the expenditure of State funds provided by the General Assembly or otherwise secured by the State of North Carolina for the use and benefit of the North Carolina Wing - Civil Air Patrol. The Civil Air Patrol Section is eligible for refunds of sales and use taxes under G.S. § 105-164.14.

37-5 STATE BANKS AND STATE CHARTERED CREDIT UNIONS

Retail sales of items to state banks and state-chartered credit unions are subject to the applicable rates of sales and use tax.

37-6 CLIENT ASSISTANCE DEBIT CARDS

Purchases of tangible personal property with a client assistance debit card issued for disaster assistance relief by a State agency are exempt from sales and use tax.

SUTB 38 HEALTHCARE - DENTISTS AND ORTHODONTISTS

38-1 DENTAL PROSTHETICS

G.S. § 105-164.3 provides the following term and definition:

"Prosthetic device" – A replacement, corrective, or supporting device worn on or in the body that meets one of the conditions below. The term includes repair and replacement parts for the device.

1. Artificially replaces a missing portion of the body.
2. Prevents or corrects a physical deformity or malfunction.
3. Supports a weak or deformed portion of the body.

The term includes headgear, bows, neck straps, wires, bands, brackets, rubber bands, jackscrews, bonding agent used to attach prosthetic device to teeth, and other similar tangible personal property when purchased by orthodontists to assemble into various types of appliances to be worn on or in the body and also includes dental prosthesis. Dental prosthesis includes an artificial replacement of one or more teeth and includes bridges, crowns, and dentures.

38-2 SALES TO DENTISTS AND ORTHODONTISTS

Dentists and orthodontists are the users or consumers of items they purchase for use in rendering professional services. Sales to dentists and orthodontists of dental supplies, furnishings, and other tangible personal property that do not become a part of a dental prosthesis, such as materials used by dentists in the direct restoration of teeth or in the fabrication of dentures, are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Prosthetic devices for human use and drugs required by federal law to be dispensed only on prescription are specifically exempt from sales and use tax.

Some instruments and equipment purchased by dentists and orthodontists for use in rendering professional services may be classified as durable medical equipment; however, since these items are not acquired by the dentists and orthodontists pursuant to a prescription, the purchases are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Note: For information on prosthetic devices and durable medical equipment, refer to SUTBs 47 and 40, respectively.

38-3 SALES TO DENTAL LABORATORIES

A. Sales to dental laboratories of tangible personal property that becomes a component part of a dental prosthesis being manufactured by such laboratories are not subject to sales or use tax.

B. Sales to dental laboratories of tangible personal property that does not become a component part of a dental prosthesis or that is not used directly in the manufacturing of a dental prosthesis are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

C. Purchases by dental laboratories of machinery and equipment, and parts and accessories thereto for use directly in the manufacture of a dental prosthesis are exempt from sales and use tax. Purchases by contractors and subcontractors purchasing such machinery and equipment or parts and accessories thereto for use by them in the performance of contracts with dental laboratories are exempt from sales and use tax when the machinery and equipment or parts and accessories thereto are used by such dental laboratories directly in the fabrication of a dental prosthesis. Qualifying persons should make such purchases exempt from sales and use tax as provided in SUTB 5.

38-4 DENTAL SUPPLY HOUSES

Dental supply houses making taxable retail sales are required to register with the Department and collect and remit the general State, applicable local, and applicable transit rates of sales and use tax on such sales.

SUTB 39 HEALTHCARE - DRUGS

39-1 DEFINITIONS

G.S. § 105-164.3 provides the following terms and definitions:

1. **"Drug"** – A compound, substance, or preparation or a component of one of these that meets any of the following descriptions and is not food, a dietary supplement, or an alcoholic beverage:

   a. Is recognized in the United States Pharmacopoeia, Homeopathic Pharmacopoeia of the United States, or National Formulary.
   b. Is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.
   c. Is intended to affect the structure or function of the body.

2. **"Over-the-counter-drug"** – A drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The label includes either of the following:

   a. A Drug Facts panel.
   b. A statement of its active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

3. **"Prescription"** – An order, formula, or recipe issued orally, in writing, electronically, or by another means of transmission by a physician, dentist, veterinarian, or another person licensed to prescribe drugs.

39-2 DRUGS

A. Exemption

The following drugs, including their packaging materials and any instructions or information about the drugs included in the package with the drugs, are exempt from sales and use tax. This exemption does not apply to pet food or feed for animals.

1. Drugs required by federal law to be dispensed only on prescription.

2. Over-the-counter drugs sold on prescription. This exemption does not apply to purchases of over-the-counter drugs by hospitals and other medical facilities for use and treatment of patients.

3. Insulin.

B. Records

Persons making exempt sales of drugs required by federal law to be dispensed only on prescription, over-the-counter drugs sold on prescription, or insulin must keep sales records that clearly segregate such exempt sales. All original prescriptions must be filed and kept available for inspection by the Secretary or his authorized agent. When a sale is made to refill a prescription, the person's records must indicate the original prescription number.

39-3 DRUGS SOLD TO AND BY PHYSICIANS, DENTISTS, AND HOSPITALS

A. Purchases of Drugs by Physicians, Dentists, and Hospitals

Drugs required by federal law to be dispensed only on prescription, including ingredients used to produce drugs, packaging materials, and product instructions or information packaged with the drug are exempt from sales and use tax. All drugs required by federal law to be dispensed only on prescription are exempt from sales and use tax regardless of their use, including such drugs used by physicians in administering treatment to patients and samples of such drugs.

Purchases of over-the counter drugs by hospitals and other medical facilities for use and treatment of patients are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Insulin is exempt from sales and use tax whether or not sold on prescription.

B. Drugs Purchased Under a Certificate of Exemption

Physicians, dentists, and hospitals making sales of drugs may purchase the drugs that they will resell without payment of sales and use tax to their retailers, as provided in SUTB 5, if the physician, dentist, or hospital making the purchase is registered with the Department for sales and use tax purposes.

39-4 OVER-THE-COUNTER DRUGS

Sales of over-the-counter drugs to users or consumers are subject to the general State, applicable local, and applicable transit rates of sales and use tax, except when the sales are made pursuant to a prescription.

Over-the-counter drugs used and not sold or dispensed on prescription are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

39-5 NUTRITIONAL SUPPLEMENTS

The sale of nutritional supplements, including sales made by a chiropractor, are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

SUTB 40 HEALTHCARE - DURABLE MEDICAL EQUIPMENT, DURABLE MEDICAL SUPPLIES, AND OTHER HEALTHCARE EQUIPMENT

40-1 DURABLE MEDICAL EQUIPMENT

A. Definition and Exemption

"Durable medical equipment" is defined as equipment that meets all of the following conditions:

1. It can withstand repeated use.
2. It is primarily and customarily used to serve a medical purpose.
3. It is generally not useful to a person in the absence of an illness or injury.
4. It is not worn in or on the body.

The term includes repair and replacement parts for the equipment. The term does not include mobility enhancing equipment.

Durable medical equipment, when sold on prescription, is exempt from sales and use tax.

Purchases of durable medical equipment by hospitals and other medical facilities for use and treatment of patients are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

A. Items that Qualify as Durable Medical Equipment

The items in the following list are considered to be durable medical equipment and are exempt from sales and use tax when sold on prescription. This is not an all-inclusive list.

1. Abduction, cervical, and orthotic pillows.
2. Ambu resuscitators (reusable).
3. Anesthesia machines.
4. Anesthesia ventilators.
5. Anti-thrombolytic pumps.
6. Apnea monitors.
7. Aqua K pumps and pads.
8. Audiology equipment – diagnostic.
9. Automatic external defibrillators.
10. Autotransfusion equipment.
11. Bed – kodel pads.
12. Beds – alternating pressure pads.
13. Beds – blanket cradles.
14. Beds – hospital beds – bassinets.
15. Beds – hospital beds – beds and accessories/repair parts.
16. Beds – incubators/isolettes.
17. Beds – specialty care.
18. Billie lights.
19. Blood pressure equipment – diagnostic.
20. Bone growth stimulators – external – not worn.
21. C.P.A.P. – not worn.
22. Cardiology equipment – diagnostic.
23. Cardiopulmonary bypass machines.
24. Cauterization equipment.
25. Chair scales.
26. Cofflators.
27. Collection basins – urinals, bedpans, etc.
28. Commode chairs.

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29. Commodes.
30. Compressors and other air power sources for a device in this list or for use in administering medication.
31. Continuous passive motion devices.
32. Continuous positive airway pressure (CPAP) devices – not worn.
33. Crash carts – stocked.
34. Dialyzers – single patient – multiple use.
35. EEG.
36. Enteral – feeding bags – disposable.
37. Enteral – feeding connectors.
38. Enteral – feeding tubing.
39. Enteral pumps and I.V. stands.
40. Exam tables.
41. External insulin pumps; adaptors, piston rods, and batteries for the pumps - not worn.
42. Feeding plugs.
43. Fever thermometers – reusable.
44. Glucose meters – not worn.
45. Heat lamps – medical purposes.
46. Heated humidifier systems.
47. Heating pads.
48. Humidifiers.
49. ICD/Pacemaker Programmers.
50. Infra-red lamps and bulbs.
51. Infusion pumps, whether parenteral or another type - reusable.
52. Intermittent positive pressure breathing (IPPB) machines.
53. Intraaortic balloon pump (IABP).
54. Intravenous stands.
55. IV poles.
56. IV therapy arm boards – reusable.
57. Kidney dialysis machines and associated parts.
58. Kinetic therapy beds.
59. Lithotripters.
60. Mammography equipment – diagnostic.
61. Mattresses, whether spring, foam, or pressure.
62. Medical atomizers – reusable.
63. Medical instruments – reusable.
64. Monitors – stationary.
65. MRI/CT.
66. Nebulizers.
67. Needleless drug delivery system – reusable – such as injection guns.
68. Nerve stimulators – programmers.
69. Ophthalmascopes.
70. Ostomy irrigation sets.
71. Otoscopes.
72. Overbed tables and trays.
73. Oxygen delivery – Oxygen concentrators; oxygen regulators; oxygen systems, whether liquid or gas.
74. Oxygen tents/beds.
75. Pacemakers – not implanted – not worn.
76. Pacemaker transmitters.
77. Paraffin bath units.
78. Parenteral – feeding bags – disposable.
79. Parenteral – feeding connectors.
80. Parenteral – feeding tubing.
81. Parenteral pumps and I.V. stands.
82. Patient positioners, including prone or side-lying positioners.

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83. Percussors.
84. Platelet separators.
85. Pressure reduction therapy beds.
86. Programmable drug infusion pumps.
87. Radiology equipment – diagnostic.
88. Respiratory bags – resuscitation.
89. Respiratory equipment – ABG machines, blood gas analyzer.
90. Respiratory equipment – not oxygen delivery – such as sensors or analyzers.
91. Respiratory-pulse oximetry equipment.
92. Resuscitators – reusable.
93. Scopes and lasers – endoscope, etc.
94. Sling scales.
95. Speech aids – electronic (not worn).
96. Staplers – empty – reusable.
97. Stethoscopes.
98. Stirrups.
99. Stretchers.
100. Suction pumps.
101. Suction regulators.
102. Surgical laser devices.
103. Tourniquets – non-pneumatic.
104. Tourniquets – pneumatic.
105. Traction equipment.
106. Transcutaneous electrical nerve stimulator (TENS) units – not worn.
107. Ultrasound equipment.
108. Ultraviolet lights.
109. Vaporizers.
110. Ventilators.
111. Wheelchair cushions - brace/support.
112. Whirlpools - portable, over-the-tub type devices only (not available for sale to the general public, specifically manufactured for a medical purpose).
113. X-ray equipment.

B. Records

A person that sells durable medical equipment pursuant to a prescription must keep sales records that clearly segregate these exempt sales. The person must keep the original prescription for inspection by the Secretary or an agent of the Secretary. Failure of a person to keep records that establish that a sale is exempt from sales and use tax subjects the person to liability for the general state, applicable local, and applicable transit rates of sales and use tax.

40-2 DURABLE MEDICAL SUPPLIES

A. Definition and Exemption

“Durable medical supplies” is defined as supplies related to use with durable medical equipment that are eligible to be covered under the Medicare or Medicaid program.

Durable medical supplies sold on prescription are exempt from sales and use tax.

Purchases of durable medical supplies by hospitals and other medical facilities for use and treatment of patients are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

B. Items that Qualify as Durable Medical Supplies

The items in the following list are considered to be durable medical supplies and are exempt from tax when sold on prescription. This is not an all-inclusive list.

1. Administration sets for small volume non-filtered pneumatic nebulizers.
2. Aerosol masks used with durable medical equipment nebulizers.
3. Enteral feeding supply kits whether syringe, pump-fed, or gravity-fed.
4. Filters used with aerosol compressors.
5. Spacer bags or reservoirs for use with metered dose inhalers.

C. Records

A person that sells durable medical supplies pursuant to a prescription must keep sales records that clearly segregate these exempt sales. The person must keep the original prescription for inspection by the Secretary or an agent of the Secretary. Failure of a person to keep records that establish that a sale is exempt from sales and use tax subjects the person to liability for the general State, applicable local, applicable transit rates of sales and use tax.

40-3 OXYGEN, OXYGEN TANKS, AND OTHER OXYGEN DISPENSING EQUIPMENT

A. Oxygen

The sale of oxygen to a person for use in administering oxygen to patients is subject to the general State, applicable local, and applicable transit rates of sales and use tax. Oxygen sold on prescription is exempt from sales and use tax.

B. Oxygen Tanks

An oxygen tank is classified as a reusable container and is exempt from sales and use tax provided its usage meets the statutory provisions in G.S. § 105-164.13.

C. Other Oxygen Dispensing Equipment

Oxygen dispensing equipment such as regulators and tubing are subject to the general State, applicable local, and applicable transit rates of sales and use tax when sold to a person for use in administering oxygen to patients.

D. Non-Medical Oxygen Sales

The sale of oxygen to a person for non-medical purposes, including a sale to a consumer at an oxygen bar, is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

40-4 BREAST PUMPS AND RELATED ITEMS

A. Definitions

G.S. § 105-164.3 provides the following terms and definitions:

1. **"Breast pump" –** An electrically or manually controlled pump device designed or marketed to be used to express milk from a human breast during lactation. The term includes the electrically or manually controlled pump device and any battery, AC adapter, or other power supply unit packaged and sold with the pump device at the time of sale to power the pump device.

2. **"Breast pump collection and storage supplies" –** Items of tangible personal property designed or marketed to be used in conjunction with a breast pump to collect milk expressed from a human breast and to store collected milk until it is ready for consumption.

   The term includes:

   a. breast shields and breast shield connectors,
   b. breast pump tubes and tubing adapters,
   c. breast pump valves and membranes,
   d. backflow protectors and backflow protector adaptors,
   e. bottles and bottle caps specific to the operation of the breast pump,
   f. breast milk storage bags, and
   g. other items that may be useful to initiate, support, or sustain breast-feeding using a breast pump during lactation that may be sold separately, but are generally sold as part of a breast pump kit.

   The term does not include:

   a. bottles and bottle caps not specific to the operation of the breast pump,
   b. breast pump travel bags and other similar carrying accessories, including ice packs, labels, and other similar products,
   c. breast pump cleaning supplies,
   d. nursing bras, bra pads, breast shells, and other similar products, and
   e. creams, ointments, and other similar products that relieve breastfeeding-related symptoms or conditions of the breasts or nipples, unless sold as part of a breast pump kit pre-packaged by the breast pump manufacturer or distributor.

3. **"Breast pump kit"** – A kit that contains a breast pump and one or more of the following items: breast pump collection and storage supplies and other taxable items of tangible personal property that may be useful to initiate, support, or sustain breast-feeding using a breast pump during lactation, so long as the other taxable items of tangible personal property sold with the breast pump kit at the time of sale are less than ten percent (10%) of the total sales price of the breast pump kit.

B. Exemption

Sales of breast pumps, including repair and replacement parts, breast pump kits, and breast pump collection and storage supplies are exempt from sales and use tax.

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SUTB 41 HEALTHCARE - EYEGLASSES, CONTACT LENSES, ETC.

41-1 EYEGLASSES, EYEGLASS FRAMES, AND REPAIR PARTS

A. Eyeglasses

1. Corrective Eyeglasses

Sales of corrective eyeglasses for human use, including frames as an integral part thereof, are exempt from sales and use tax as prosthetic devices. Sales of corrective eyeglasses, whether prescription eyeglasses or reading glasses, are not required to be sold on prescription in order to be exempt from sales and use tax. When eyeglass cases, patient instruction booklets, patient care kits, lens solution, and squeeze bottles are given to the purchaser as part of the sale and included in the sales price of corrective eyeglasses for human use, they are also exempt from sales and use tax. A person who sells corrective eyeglasses must keep sales records that clearly separate its sales of corrective eyeglasses from sales of other items. Failure of a person to keep records that establish that a sale is exempt from sales and use tax subjects the person to liability for the general State, applicable local, and applicable transit rates of sales and use tax on the sale.

2. Non-Corrective Eyeglasses

Sales of non-corrective eyeglasses for human use are subject to the general State and applicable local and transit rates of sales and use tax unless specifically exempt by statute.

B. Corrective Eyeglass Frames and Repair Parts

Eyeglass frames sold in connection with the repair or replacement of corrective eyeglasses for human use are exempt from sales and use tax as prosthetic devices. Sales of temples and similar items that are considered repair or replacement parts for prosthetic devices are also exempt from sales and use tax. A person who sells eyeglass frames and repair parts for corrective eyeglasses for human use must keep sales records that clearly separate its sales of eyeglass frames and repair parts for corrective eyeglasses for human use from sales of other items. Failure of a person to keep records that establish that a sale is exempt from sales and use tax subjects the person to liability for the general State, applicable local, and applicable transit rates of sales and use tax on the sale.

Eyeglass frames or other parts sold in connection with the repair or replacement of non-corrective eyeglasses for human use are subject to the general State, and applicable local and transit rates of sales and use tax unless specifically exempt by statute.

C. Optical Supplies

1. Sales to consumers of solutions for cleaning eyeglasses, eyeglass cleaning cloths or wipes, eyeglass cases, eyeglass chains or cords, and similar corrective eyeglass supplies when such sales are made separate and apart from a corrective eyeglass sale or when they are sold with corrective eyeglasses, but billed separate and apart from the corrective eyeglasses, are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

2. Sales to consumers of optical supplies for non-corrective eyeglasses are subject to the general State, and applicable local and transit rates of sales and use tax. Such sales include sale of solutions for cleaning eyeglasses, telescopes, binoculars, opera glasses, and similar items. All persons making taxable sales are required to register to collect and remit the sales and use tax due thereon.

3. Sales of eyeglass frames, cases, optical merchandise, and optical supplies by optical supply houses and opticians to registered retailers or wholesale merchants for resale are exempt from sales and use tax. A registered retailer or wholesale merchant should purchase such items exempt from sales and use tax as provided in SUTB 5.

41-2 CONTACT LENSES AND SUPPLIES

A. Contact Lenses

1. Corrective Contact Lenses

Sales of corrective contact lenses for human use are exempt from sales and use tax as prosthetic devices. When carrying cases, patient instruction booklets, patient care kits, aseptors, salt tablets, lens solution, and squeeze bottles are given to the purchaser as part of the sale and included in the sales price of corrective contact lenses for human use, they are also exempt from sales and use tax.

2. Non-Corrective Contact Lenses

Sales of non-corrective contact lenses for human use are subject to the general State and applicable local and transit rates of sales and use tax unless specifically exempt by statute.

B. Supplies Sold or Billed Separate and Apart From Contact Lenses

Sales of aseptors, salt tablets, squeeze bottles, carrying cases, patient instruction booklets, and patient care kits when such sales are made separate and apart from a corrective contact lens sale or when they are sold with corrective contact lenses, but billed separate and apart from the corrective contact lenses, are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Contact lens solution that meets the definition of “over-the-counter drug” is exempt from sales and use tax when sold on prescription. The person must keep the original prescription for inspection by the Secretary or an agent of the Secretary. Failure of a person to keep records that establish that a sale is exempt from sales and use tax subjects the person to liability for sales and use tax on the sale.

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SUTB 42 HEALTHCARE - HOSPITALS AND OTHER HEALTHCARE FACILITIES

42-1 DEFINITIONS

G.S. § 105-164.3 provides the following terms and definitions:

1. **"Drug"** – A compound, substance, or preparation or a component of one of these that meets any of the following descriptions and is not food, a dietary supplement, or an alcoholic beverage:

- **a.** Is recognized in the United States Pharmacopoeia, Homeopathic Pharmacopoeia of the United States, or National Formulary.
- **b.** Is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.
- **c.** Is intended to affect the structure or function of the body.

2. **"Over-the-counter drug"** – A drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The label includes either of the following:

- **a.** A Drug Facts panel.
- **b.** A statement of its active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

3. **"Prescription"** – An order, formula, or recipe issued orally, in writing, electronically, or by another means of transmission by a physician, dentist, veterinarian, or another person licensed to prescribe drugs.

42-2 SALES TO AND BY PHYSICIANS, HOSPITALS, AND SIMILAR INSTITUTIONS

A. Tangible Personal Property for Use

Physicians, hospitals and similar institutions are primarily engaged in rendering services and are the users or consumers of all items that they purchase for use in connection with the operation of such facilities.

Purchases of linens, soap, toilet paper, facial tissues, and other supplies by physicians, hospitals, and similar institutions for use are subject to the general State, applicable local, and applicable transit rates of sales and use tax, unless exempt by statute.

For purposes of this section, similar institutions include nursing homes, ambulatory surgical facilities, psychiatric hospitals, chemical dependency facilities, and other institutions primarily engaged in providing a health service, as the term is defined in G.S. 131E-176(9a).

B. Purchases, Sales, and Use of Drugs

Physicians, hospitals, and similar institutions are considered to be the users or consumers of drugs and over-the-counter drugs used in administering treatment to patients. Such purchases by a physician, hospital, or similar institutions are subject to the general State, applicable local, and applicable transit rates of sales and use tax, unless otherwise exempt from tax by statute.

The following drugs, including their packaging materials and any instructions or information about the drugs included in the package with them, are exempt from sales and use tax. This exemption does not apply to pet food or feed for animals.

1. Drugs required by federal law to be dispensed only on prescription.

2. Over-the-counter drugs sold on prescription. This exemption does not apply to purchases of over-the-counter drugs by hospitals and similar institutions for use and treatment of patients.

3. Insulin.

All drugs required by federal law to be dispensed only on prescription, including such drugs used by a physician, hospital, or similar institutions in treating patients, are specifically exempt from sales and use tax.

Drugs and over-the-counter drugs used and not sold or dispensed on prescription are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Insulin is exempt from sales and use tax whether or not sold on prescription.

Note: For information on drugs, refer to SUTB 39.

C. Purchases and Sales of Food

1. Purchases by hospitals and similar institutions of food for use in furnishing meals to patients are subject to the applicable rates of sales and use tax.

2. Hospital or similar institutions that make sales of food to guests, visitors, employees, staff, students, or other persons must register with the Department and collect and remit the applicable sales and use tax on such sales.

3. If food purchased by a hospital or similar institution for use in furnishing meals to patients cannot be distinguished from the food purchased for resale, the hospital or similar institutions may purchase all the food exempt from sales and use tax as provided in SUTB 5. A hospital or similar institutions that purchases all food exempt from sales and use tax assumes liability for payment of the sales and use tax on the purchase price of food used to furnish meals to its patients.

Note: For information on food, refer to SUTB 32.

D. Gift Shops and Other Retail Sales

A hospital or similar institution that operates a gift shop or other business making retail sales shall register with the Department and collect and remit the sales and use tax due on its retail sales. The tax due shall be computed at the applicable rates on the sales price or purchase price of the item sold. If, at the time of sale, a hospital or similar institution cannot distinguish whether an item will be used or resold, the hospital or similar institution may purchase the item exempt from sales and use tax under a certificate of exemption. A hospital or similar institution that purchases an item under a certificate of exemption which is subsequently used by the hospital, including items used to provide services to patients, must pay the sales or use tax due on the purchase price of the item.

E. Use of a Certificate of Exemption

Except as provided by SUTB 42-2C., a Certificate of Exemption may not be used by hospitals and similar institutions when making taxable purchases of items for use or consumption. The sales and use tax due on taxable purchases from North Carolina suppliers or out-of-state suppliers who charge North Carolina sales or use tax must be paid to the suppliers. A hospital or similar institutions that makes taxable purchases from suppliers who do not collect and remit North Carolina sales or use tax thereon must register with the Department and remit the tax due on such purchases.

42-3 DIAPERS AND INCONTINENCE UNDERPADS

For information on diapers and incontinence underpads, refer to SUTB 60-25.

42-4 REFUNDS TO CERTAIN NONPROFITS AND HOSPITALS

A. Semiannual Refunds for Certain Hospitals in G.S. § 105-164.14(b)

Certain hospitals may be entitled to a semiannual refund of sales and use tax paid on qualifying purchases of items.

Note: For information on refunds to certain nonprofit entities and hospitals, refer to SUTB 74-3.

B. Annual Refunds for Certain Hospitals in G.S. § 105-164.14(c)

Hospitals and other healthcare facilities that are agencies of certain governmental entities may be entitled to an annual refund of sales and use tax paid on qualifying purchases of items.

Note: For information on refunds for certain governmental agencies, refer to SUTB 74-4.

SUTB 43 HEALTHCARE - MEDICAL PRODUCTS BUNDLED TRANSACTIONS

43-1 BUNDLED TRANSACTIONS

If taxable and nontaxable medical products are sold together for one non-itemized price, the transaction may be considered a bundled transaction and qualify for specific bundled transaction taxability rules.

Note: For information on bundled transactions, refer to SUTB 16.

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SUTB 44 HEALTHCARE - MEDICAL SUPPLIES, BLOOD, AND HUMAN TISSUE

44-1 SUPPLIES SOLD TO PHYSICIANS, DENTISTS, AND HOSPITALS

Sales to physicians, dentists, hospitals, or similar users or consumers of medical supplies, medical instruments, medical equipment, and laboratory equipment used to diagnose, prevent, treat, or cure disease are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Examples of medical supplies, equipment, and instruments include:

1. Adhesive tape;
2. Alcohol;
3. Bandages;
4. Battery chargers;
5. Bed pans;
6. Betadine solution;
7. Blood glucose monitors;
8. Blood glucose test/reagent strips;
9. Blood or urine control strips;
10. Breathing circuits;
11. Carbon dioxide (CO2) saturation monitors and accessories;
12. Cold packs and hot packs;
13. Collection bags;
14. Cotton;
15. Crutch and cane holders;
16. Cylinder tank carriers;
17. Denture adhesive;
18. Dial-a-dose insulin delivery devices;
19. Dressings;
20. Exam and surgical gloves;
21. Gauze;
22. Glucose for insulin reactions;
23. Incontinence pads, sheets, and liners;
24. Intravenous (IV) hangers;
25. Knives;
26. Lancets;
27. Lubricants;
28. Microscopes
29. Mouthpieces
30. Needles and syringes;
31. Non-corrective eye lenses;
32. Ostomy barrier wipes and powders;
33. Ostomy cleansers, deodorants, and adhesive removers;
34. Peak flow meters;
35. Percussors;
36. Pulse oximeters;
37. Rollabout chairs;
38. Soap;
39. Scissors;
40. Sterile water;
41. Tissues;
42. Tracheal suction catheters;
43. Tracheostomy care kits;
44. Tracheostomy cleaning brushes;
45. Tracheostomy masks and collars;
46. Tubing, sold by the linear foot or otherwise;
47. Urinals;

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48. Urine test or reagent strips or tablets; or
49. X-ray machines.

44-2 BLOOD PRODUCTS AND HUMAN TISSUE

A. Sales of human blood, including whole, plasma, and derivatives, and human tissue, eyes, DNA, or an organ are exempt from sales and use tax.

B. A transaction involving the procurement, processing, distribution, or use of whole blood, plasma, blood products, blood derivatives, and other human tissue or organs, such as corneas, bones, or organs, that are to be injected, transfused or transplanted into the human body is the rendition of a service exempt from sales and use tax.

44-3 REAGENTS

Sales to hospitals, laboratories, or similar users or consumers of reagents to be used by the hospital, laboratory, or similar user or consumer in testing are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

SUTB 45 HEALTHCARE - MOBILITY ENHANCING EQUIPMENT

45-1 MOBILITY ENHANCING EQUIPMENT

A. Definition and Exemption

"Mobility enhancing equipment" is defined as equipment that meets all of the following conditions:

1. It is primarily and customarily used to provide or increase the ability of an individual to move from one place to another.
2. It is appropriate for use either in a home or motor vehicle.
3. It is not generally used by a person with normal mobility.
4. It is not normally provided on a motor vehicle by a motor vehicle manufacturer.

The term "mobility enhancing equipment" includes repair and replacement parts for the equipment but does not include durable medical equipment.

Mobility enhancing equipment sold on a prescription is exempt from sales and use tax.

Purchases of mobility enhancing equipment by hospitals and other medical facilities for use and treatment of patients are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

B. Items that Qualify as Mobility Enhancing Equipment

The items in the following list are considered to be mobility enhancing equipment and are exempt from sales and use tax when sold on prescription. This is not an all-inclusive list.

1. Bath aids – raised toilet seats.
2. Bath aids – tub and shower seats and stools; bathtub transfer benches.
3. Bed cradles.
4. Bed pull-up T handles/bars.
5. Bedside rails.
6. Canes; repair and replacement parts for canes.
7. Crutches.
8. Handrails and grab bars.
9. Lift chairs and replacement parts.
10. Mobility enhancing car seats.
11. Patient lifts (sling or seat).
12. Scooters and transporters.
13. Specialty chairs – (wheelchairs adapted for specific uses or functions).
14. Swivel seats.
15. Transfer belts (worn by patients).
16. Transfer boards.
17. Trapeze bars.
18. Walkers; repair and replacement parts for walkers; attachments and accessories designed specifically for walkers.
19. Wheelchair ramps (tangible personal property – does not include ramps constructed of building materials such as wood or concrete).
20. Wheelchairs and other travel chairs; repair and replacement parts for the chairs; attachments and accessories designed specifically for the chairs.

C. Records

A person that sells mobility enhancing equipment pursuant to a prescription must keep sales records that clearly segregate these sales. The person must keep the original prescription for

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inspection by the Secretary or an agent of the Secretary. Failure of a person to keep records that establish that a sale is exempt from sales and use tax subjects the person to liability for sales and use tax on the sale.

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SUTB 46 HEALTHCARE - OPHTHALMOLOGISTS, OPTOMETRISTS, AND OPTICIANS

46-1 OPHTHALMIC INSTRUMENTS AND SUPPLIES

Sales of ophthalmic instruments and supplies to ophthalmologists, optometrists, opticians, and other users are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Some instruments may be classified as durable medical equipment that are exempt from sales and use tax when sold on prescription; however, since these items are not acquired pursuant to a prescription, the exemption does not apply.

SUTB 47 HEALTHCARE - PROSTHETIC DEVICES

47-1 PROSTHETIC DEVICES FOR HUMAN USE

A. Definition and Exemption

"Prosthetic device" is defined as a replacement, corrective, or supporting device worn on or in the body that meets one of the following conditions:

1. It artificially replaces a missing portion of the body.
2. It prevents or corrects a physical deformity or malfunction.
3. It supports a weak or deformed portion of the body.

The term includes repair and replacement parts for the device.

Prosthetic devices for human use are exempt from sales and use tax whether or not the devices are sold on prescription.

B. Items that Qualify as Prosthetic Devices

The items in the following list are exempt from sales and use tax as prosthetic devices for human use. This is not an all-inclusive list.

1. Abdominal belts (brace type).
2. Abdominal binders and supports.
3. Access ports.
4. Acetabular cups (part of hip implant).
5. Ankle braces.
6. Anti-embolism stockings.
7. Arch supports.
8. Artificial eyes.
9. Artificial heart valves.
10. Artificial larynx.
11. Artificial limbs.
12. Atrial valves.
13. Back braces.
14. Bone cement and wax.
15. Bone growth stimulators – implanted.
16. Bone pins, plates, nails, screws.
17. Braces.
18. Breast implants.
19. Breast prosthesis – external.
20. C.P.A.P. – worn.
21. Casts and casting materials.
22. Catheters – excluding suction catheters and similar catheters.
23. Cervical collars.
24. Cochlear implants.
25. Collagen (not injectable collagen).
26. Contact lenses.
27. Corrective eyeglasses.
28. Defibrillator and leads – implanted.
29. Dental prosthesis.
30. Dialysis catheters – hemodialysis.
31. Dialysis catheters – peritoneal.
32. Drainage catheters.
33. Drainage catheters – urinary.

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34. Drainage drains.
35. Drainage shunts.
36. Ear, nose, and throat implants.
37. Feeding catheters.
38. Foley catheters.
39. Gastric bands.
40. Gastrostomy kits.
41. Grafts.
42. Hands and feet implants.
43. Head halters.
44. Hearing aids and hearing aid batteries.
45. Hip and knee implants.
46. Humid vents for tracheostomies.
47. Implanted expander – tissue and breast.
48. Infuser pumps – worn.
49. Infusion sets for external insulin pumps.
50. Insulin pumps.
51. Intragastric balloons.
52. Knee immobilizers.
53. Mastectomy surgical bras.
54. Maxillofacial devices – implanted.
55. Membranes implants.
56. Nasal cannulas.
57. Nerve stimulators – implanted with leads.
58. Obturators for cleft palates.
59. Ocular implants.
60. Orbital implants.
61. Orthobiologics implants.
62. Orthopedic shoes, shoe lifts, inserts, arch supports, heel protectors.
63. Ostomy – adhesives.
64. Ostomy – barriers (wafer, seal ring, protective film, paste, stomahesive, but not prep wipes, powder, cleansers, skin prep items, lubricants).
65. Ostomy – catheters.
66. Ostomy – collection leg bags and pouches.
67. Ostomy – drain tubes and valves.
68. Pacemakers and leads.
69. Pacemakers – not implanted – worn.
70. Penile pumps.
71. Pressure garments.
72. Programmable drug infusion devices.
73. Salem sump with anti-reflux valves.
74. Seprafilm.
75. Shoes – post operative.
76. Shoulder and elbow implants.
77. Skin implants – synthetic.
78. Sleeves – compression; excluding compression clothing for athletic purposes.
79. Slings.
80. Speech aids – electronic (worn).
81. Sphincters.
82. Splint and splint materials.
83. Staples, sutures and suture alternatives.
84. Stents – implanted in body.
85. Stockings – compression; excluding compression clothing for athletic purposes.
86. Stump shrinkers.
87. Supports – dorsolumbar, lumbosacral, maternity, post-operative, or sacroiliac.
88. Surgical mesh implants.

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89. Suspensories.
90. Tendon implants.
91. Testicular and penile implants.
92. Trachea tubes.
93. Tracheostomy inner cannulas.
94. Tracheostomy speaking values.
95. Traction devices – worn on the body.
96. Transcutaneous electrical nerve (TENS) units – worn.
97. Trusses.
98. Tubes of the following types that are implanted in the body: tracheotomy or laryngectomy.
99. Vena cava filters.

Note: For more information on corrective eyeglasses and contact lenses, refer to SUTB 41. For more information on dental prosthesis, refer to SUTB 38.

C. Orthodontic Materials

The items listed below qualify as prosthetic devices for human use when they are purchased by an orthodontist to be assembled into an appliance to be worn by a patient:

1. Bows.
2. Bands.
3. Brackets.
4. Headgear.
5. Jackscrews.
6. Neck straps.
7. Rubber bands.
8. Wires.
9. Bonding agents used to attach prosthetic devices to teeth.

Note: For more information on dentists and orthodontists, refer to SUTB 38.

D. Records

A person that sells prosthetic devices for human use must keep sales records that clearly segregate these sales. Failure of a person to keep records that establish that a sale is exempt from sales and use tax subjects the person to liability for sales and use tax on the sale.

SUTB 48 INFORMATION SERVICE

48-1 DEFINITION

G.S. § 105-164.3 provides the following term and definition:

"Information service" – A service that generates, acquires, stores, processes, or retrieves data and information and delivers it electronically to or allows electronic access by a consumer whose primary purpose for using the service is to obtain the processed data or information.

48-2 TAXABILITY OF AN INFORMATION SERVICE

The sales price of or gross receipts derived from an information service are not subject to sales and use tax.

The sales and use tax imposed on the retail sale of certain digital property and on the gross receipts derived from providing telecommunications service and ancillary service does not apply to the sale of an information service.

SUTB 49 INTERIOR DESIGNERS

49-1 RETAIL SALES

Retail sales of items by interior designers or decorators are subject to sales and use tax.

49-2 INTERIOR DESIGNER SERVICES

Charges for interior design services provided in conjunction with a sale of items are exempt from sales and use tax provided the charges for such services are separately stated on the invoice or similar billing document given to the purchaser at the time of sale.

49-3 REAL PROPERTY CONTRACTS – INTERIOR DESIGNERS

If an interior designer receives Form E-589CI, Affidavit of Capital Improvement, from a homeowner or a real property contractor, the form gives notice that the transaction is to be taxed for sales and use tax purposes as a real property contract with respect to a capital improvement for real property. Therefore, the interior designer would be responsible for the general State, applicable local, and applicable transit rates of sales and use taxes on the purchase of the materials needed to fulfill the real property contract with respect to a capital improvement to real property.

For a sale of tangible personal property or certain digital property where the tangible personal property or certain digital property does not become part of real property, the item is taxable as provided in SUTB 49-1, notwithstanding that a Form E-589CI is received by the interior designer.

Note: For information on a real property contract, refer to SUTB 72.

SUTB 50 INTERSTATE AIR BUSINESSES

50-1 DEFINITIONS

For purposes of this SUTB, the following terms and definitions apply:

1. **"Commercial aircraft"** – For purposes of the exemptions provided in SUTB 50-3, the term commercial aircraft includes only aircraft that has a certified maximum take-off weight of more than 12,500 pounds and is regularly used to carry for compensation passengers, commercial freight, or individually addressed letters and packages.

2. **"Hub"** – Either of the following:

   a. An interstate air courier's hub is the interstate air courier's principal airport within the State for sorting and distributing letters and packages and from which the interstate air courier has, or expects to have upon completion of construction, no less than 150 departures a month under normal operating conditions.

   b. An interstate passenger air carrier's hub is the airport in this State that meets both of the following conditions:

      (1) The air carrier has allocated to the airport under G.S. § 105-338 more than 60% of its aircraft value apportioned to this State.
      (2) The majority of the air carrier's passengers boarding at the airport are connecting from other airports rather than originating at that airport.

3. **"Interstate air business"** – An interstate air courier, an interstate freight air carrier, or an interstate passenger air carrier.

4. **"Interstate air courier"** – A person whose primary business is the furnishing of air delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service.

5. **"Interstate carrier"** – A person who is engaged in transporting persons or property in interstate commerce for compensation.

6. **"Interstate freight air carrier"** – A person whose primary business is "scheduled freight air transportation," as defined in the North American Industry Classification System adopted by the United States Office of Management and Budget, in interstate commerce.

7. **"Interstate passenger air carrier"** – A person whose primary business is "scheduled passenger air transportation," as defined in the North American Industry Classification System adopted by the United States Office of Management and Budget, in interstate commerce.

8. **"Qualified aircraft"** – An aircraft with a maximum take-off weight of 2,000 pounds and above.

9. **"Qualified jet engine"** – An engine certified pursuant to Part 33 of Title 14 of the Code of Federal Regulations.

50-2 INTERSTATE AIR BUSINESSES' LIABILITY FOR TAX ON PURCHASES

Interstate air businesses are liable for the applicable rates of sales and use tax on all purchases of taxable items for storage, use, or consumption in this State unless exempt by statute. The sales and use tax is to be paid to retailers inside or outside North Carolina that are liable for collecting

and remitting the sales and use tax to the Department. Interstate air businesses must report and pay use tax directly to the Department on purchases from retailers that do not charge the applicable North Carolina sales and use tax. The fact that interstate air businesses may be eligible for a refund of sales and use tax paid does not relieve them of liability for remitting sales or use tax on taxable purchases of fuel, lubricants, repair parts, accessories, service contracts, and repair, maintenance, and installation services for aircraft the carrier operates.

50-3 EXEMPTIONS RELATED TO INTERSTATE AIR BUSINESSES

The following are exempt from sales and use tax:

1. Sales of aviation gasoline and jet fuel to an interstate air business for use in a commercial aircraft. This exemption also applies to aviation gasoline and jet fuel purchased for use in a commercial aircraft in interstate or foreign commerce by a person whose primary business is scheduled passenger air transportation. This exemption expires January 1, 2029.

2. Sales to an interstate air business of tangible personal property that becomes a component part of or is dispensed as a lubricant into commercial aircraft during its maintenance, repair, or overhaul.

3. Sales to an interstate passenger air carrier of aircraft lubricants, aircraft repair parts, and aircraft accessories for use at its hub.

4. Sales of the following items to an interstate air courier for use at its hub:

a. Aircraft lubricants, aircraft repair parts, and aircraft accessories.

b. Materials handling equipment, racking systems, and related parts and accessories for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility.

5. Sales of aircraft simulators to a company for flight crew training and maintenance training.

6. Parts and accessories for use in the repair or maintenance of a qualified aircraft or a qualified jet engine.

7. For information on sales to an interstate air and ground courier, refer to SUTB 52-2.

8. The sales price of or the gross receipts derived from a service contract for a qualified aircraft or a qualified jet engine.

Note: For information on service contracts, refer to SUTB 79.

9. Repair, maintenance, and installation services provided for a qualified aircraft or a qualified jet engine.

Note: For information on repair, maintenance, and installation services, refer to SUTB 75.

50-4 REFUNDS TO INTERSTATE AIR BUSINESSES

For information on refunds for an interstate air business, refer to SUTB 74-1.

SUTB 51 INTERSTATE AND FOREIGN TRANSACTIONS

51-1 SALES IN INTERSTATE COMMERCE

A. North Carolina Sales Delivered Out-of-State

Sales within the State of items that the retailer delivers to the purchaser at a point outside the State, or causes to be delivered to the purchaser at a point outside the State by common carrier or the United State Postal Service, are not subject to North Carolina sales and use tax if the item is not returned to a point within the State, and the retailer furnishes acceptable proof of transportation and delivery to a point outside the State as provided in SUTB 51-1D.

B. Gifts to Out-of-State Donees

1. Sale to a North Carolina Purchaser - Delivery to an Out-of-State Donee

Sales of taxable items to any person in North Carolina that such person provides without charge to recipients in North Carolina, whether it be advertising materials, gifts, or donations are subject to the applicable rates of sales and use tax. The donated items are not subject to North Carolina sales and use tax if the retailer delivers the items to the donee at a point outside the State or causes the items to be delivered to a point outside the State. The retailer must maintain acceptable proof of transportation and delivery to the purchaser's designee, donee, or other recipient to a point outside the State as provided in SUTB 51-1D. Sales of taxable items delivered to a donee or to any other user or consumer in North Carolina are subject to the applicable rates of sales and use tax.

2. Sale to a Nonresident Purchaser - Delivery to an Out-of-State Donee

Sales of items by a North Carolina retailer to a nonresident purchaser when the order is placed by mail, telephone, or other electronic medium and the items are delivered by the retailer to a nonresident donee at a point outside the State, or that the retailer causes to be delivered to a nonresident donee at a point outside the State, are not subject to North Carolina sales and use tax. The retailer must maintain acceptable proof of transportation and delivery to a point outside the State as provided in SUTB 51-1D.

C. Machinery or Other Property Entering State

When a North Carolina retailer sells tangible personal property or certain digital property and installs the property on machinery or other tangible personal property brought into this State by a person for the purpose of having the property installed thereon, and the North Carolina retailer delivers the property to the person at a point outside this State, the sale is consummated outside this State and is exempt from North Carolina sales and use tax. The retailer's business records must reflect the property was delivered to the person at a point outside this State as provided in SUTB 51-1D.

D. Acceptable Proof of Delivery

Acceptable proof of transportation and delivery to a point outside the State is any of the following:

1. A waybill or bill of lading made out to the seller's order calling for delivery.

2. An insurance or registry receipt issued by the United States Postal Service, or a postal service receipt.

3. A trip sheet that is signed by the retailer's delivery agent, shows the signature and address of the person who received the delivered goods outside the State, and states the location and time of delivery.

4. Adequate business records kept by a retailer in the ordinary course of business substantiating that a sale of certain digital property is sourced to a location outside of North Carolina.

E. In-State Deliveries

The sales price of items sold at retail that are delivered to a purchaser or the purchaser's agent in this State are subject to the applicable State, local, and transit rates of sales and use tax, unless exempt by statute. Tax is due even if the purchaser or the purchaser's agent may subsequently transport, or employ someone else to transport the item out of this State.

51-2 FOREIGN COMMERCE SALES AND USE TAX EXEMPTION

Tangible personal property purchased solely for the purpose of export to a foreign country for exclusive use or consumption in that foreign country and which purpose is consummated is exempt from sales and use tax if the transaction is supported by a Form E-599C, Purchaser's Affidavit of Export, and such property is exported within 90 days of purchase. This exemption from sales and use tax applies only when the tangible personal property is purchased for export to a foreign country for exclusive use or consumption in that or some other foreign country, either in the direct performance or rendition of professional or commercial services, or in the direct conduct or operation of a trade or business, all of which purchases are actually consummated, or purchased by the government of a foreign county for export which purpose is actually consummated. This exemption from sales and use tax does not extend to property acquired for personal use or consumption by the purchaser, including gifts.

For purposes of this exemption, the following terms and definitions apply:

1. **"Export"** – The term includes the acts of possessing and marshalling property, by the seller or purchaser, for transportation to a foreign country, but shall not include the devoting of such property to any other use in North Carolina or the United States.

2. **"Foreign country"** – The term does not include any territory or possession of the United States.

51-3 SALES OF TANGIBLE PERSONAL PROPERTY OR CERTAIN DIGITAL PROPERTY TO OUT-OF-STATE MERCHANTS FOR RESALE

For sales and use tax purposes, a "nonresident retail or wholesale merchant" is defined as a person who does not have a place of business in this State, is registered for sales and use tax purposes in a taxing jurisdiction outside this State, and is engaged in the business of acquiring, by purchase, consignment or otherwise, tangible personal property or certain digital property and selling the property outside the State or in the business of providing a service. Sales of tangible personal property or certain digital property that are not a sale in interstate commerce to registered nonresident retail or wholesale merchants for resale are exempt from sales and use tax, if all of the following conditions are met:

1. The wholesale merchant that sells tangible personal property or certain digital property for resale delivers to the nonresident retail or wholesale merchant a bill of sale for each sale of merchandise whether sold for cash or on credit, itemizing the various articles of tangible personal property or certain digital property included in the sale, and makes and retains a duplicate of each bill of sale, and keeps a file of all duplicate bills of sale.

2. The character of the tangible personal property or certain digital property is similar to items the nonresident retail or wholesale merchant ordinarily and customarily purchases as a part of its stock for resale.

3. The nonresident retail or wholesale merchant is registered for sales and use tax purposes in a taxing jurisdiction outside this State and furnishes to the wholesale merchant a properly completed Certificate of Exemption, certifying that they are a nonresident retail or wholesale merchant, and further certifying that the tangible personal property or certain digital property is purchased for the purpose of resale in accordance and compliance with the laws of the jurisdiction in which the nonresident retail or wholesale merchant resides or does business. The Certificate of Exemption containing the nonresident retail or wholesale merchant's identification number assigned by the jurisdiction in which the nonresident retail or wholesale merchant resides or does business is deemed sufficient evidence that the nonresident retail or wholesale merchant is duly registered in a taxing jurisdiction outside this State. If the sale is made over the Internet or by other remote means, the wholesale merchant may obtain the required data elements as provided in SUTB 5 in lieu of a Certificate of Exemption.

This exemption shall apply only to sales of tangible personal property or certain digital property to nonresident retail or wholesale merchants for resale who comply strictly with these terms and conditions, and do not apply to any sales of tangible personal property or certain digital property to users or consumers not for resale irrespective of the price, quantity, or any other circumstances or conditions pertaining to such sale. Failure to comply with the provisions of this requirement subjects the nonresident retail or wholesale merchant to liability for the applicable rates of sales and use tax upon all taxable sales that do not conform to this section.

SUTB 52 INTERSTATE CARRIERS

52-1 INTERSTATE CARRIERS' LIABILITY FOR TAX ON PURCHASES

An "interstate carrier" is a person who is engaged in transporting persons or property in interstate commerce for compensation. Interstate carriers are liable for payment of the applicable rates of sales and use tax on all purchases of items for storage, use, or consumption in this State unless exempt by statute. The sales and use tax is to be paid to retailers inside or outside North Carolina who are liable for collecting and remitting the sales and use tax to the Department. Interstate carriers must report and pay use tax directly to the Department on purchases from retailers who did not charge the applicable North Carolina sales and use tax due. The fact that interstate carriers may be eligible for a refund of sales and use tax paid does not relieve them of liability for remitting sales or use tax on taxable purchases of railway cars and locomotives, fuel, lubricants, repair parts, accessories, service contracts, and repair, maintenance, and installation services for a motor vehicle, railroad car, locomotive, or aircraft the carrier operates.

52-2 EXEMPTION FOR INTERSTATE AIR AND GROUND COURIERS

A. Definitions

G.S. § 105-164.3 provides the following terms and definitions:

1. **"Interstate air and ground courier"** – A person whose primary business is the furnishing of air and ground delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service.

2. **"Package sorting facility"** – A facility that satisfies both of the following conditions:

a. The facility is used primarily for sorting and distributing letters and packages for an interstate air and ground courier.

b. The Secretary of Commerce has certified that an investment of private funds of at least one hundred million dollars ($100,000,000) has been or will be made in real and tangible personal property for the facility within five years after the date on which the first property investment is made and that the facility will achieve an employment level of at least 400 within five years after the date the facility is placed into service and maintain that minimum level of employment throughout its operation.

B. Exemption for Certain Items Purchased by an Interstate Air and Ground Courier for use at a Package Sorting Facility

Sales to an interstate air and ground courier that meet both of the following requirements are exempt from tax:

1. The item will be used for one of the following purposes at the package sorting facility that has been certified by the Secretary of Commerce at the time of purchased of the item:

a. Storage of tangible personal property.

b. Handling and movement of tangible personal.

2. The items is one of the following:

a. Materials handling equipment.

b. Automated conveyor systems.

c. Racking systems.

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d. Parts and accessories related to one of the types of items listed in a. through c.

C. Items Purchased to Fulfill a Contract with an Interstate Air and Ground Courier

1. Exempt Purchases by a Contractor

A qualifying item listed in subdivision SUTB 74-2B. that is purchased to fulfill a contract with an interstate air and ground courier is exempt to the same extent as if purchased directly by the interstate air and ground courier.

2. Procedure for a Contractor Making an Exempt Purchase

A contractor that purchases a qualifying item exempt from sales and use tax must provide the retailer a properly completed Certificate of Exemption, or the required data elements as provided by SUTB 5. The Certificate of Exemption, or required data elements, must include the following information:

a. The contractor's name
b. The contractor's address
c. The contractor's type of business
d. The reason for exemption that includes all of the following information. (Note: For a paper Certificate of Exemption, in Section 4 select "other" and provide the reason in the space provided):

1) The Courier's name
2) The Courier's certificate of registration number
3) The following statement: "105-164.13(45e)"

e. If providing a paper Certificate of Exemption, the contractor's signature.

A contractor that purchases an item exempt from tax must maintain records that substantiate the item was used to fulfill a contract with a Courier and that the item qualifies for the Exemption.

D. Forfeiture

If the level of investment or employment required by G.S. § 105-164.3(166)b. is not timely made, achieved, or maintained, then the exemption provided under this subdivision is forfeited.

If the exemption is forfeited due to a failure to timely make the required investment or to timely achieve the minimum required employment level, then the exemption provided under this subdivision is forfeited on all purchases.

If the exemption is forfeited due to a failure to maintain the minimum required employment level once that level has been achieved, then the exemption provided under this subdivision is forfeited for those purchases occurring on or after the date the taxpayer fails to maintain the minimum required employment level.

A taxpayer that forfeits an exemption under this subdivision is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. § 105-241.21. Interest is computed from the date the sales or use tax would otherwise have been due. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. § 105-236.

52-3 REFUNDS TO INTERSTATE CARRIERS

For information on refunds for an interstate carrier, refer to SUTB 74-1.

SUTB 53 LAUNDRIES, DRY CLEANING ESTABLISHMENTS, ALTERATIONS AND REPAIRS OF CLOTHING, ETC.

53-1 IMPOSITION AND LIABILITY FOR COLLECTING AND REMITTING THE TAX

A. Tax Imposed

Every person engaged in the business of operating a dry cleaning, pressing, or hat-blocking establishment, a laundry, or any similar business, engaged in the business of renting clean linen or towels or clothing, or any similar business, or engaged in the business of soliciting cleaning, pressing, hat-blocking, laundering or linen rental business for any of these businesses, is considered a retailer and is liable for collecting and remitting the general State, applicable local, and applicable transit rates of sales and use tax on such services. The sales price of or gross receipts derived from the following are subject to the general State, applicable local, and applicable transit rates of sales and use tax:

1. Services rendered by a dry cleaning, pressing, or hat blocking establishment, a laundry, or any similar type businesses.

2. The rental of clean linen, towels, clothing, and similar items.

3. Solicitation of cleaning, pressing, hat blocking, and laundering or linen rental business.

4. Rug-cleaning services performed by persons operating rug-cleaning plants or performed by any of the businesses named in this SUTB when the rug-cleaning service is performed at the plant or at the customer's location for throw rugs, area rugs, or other rugs considered tangible personal property. Receipts derived from carpet cleaning services performed at the customer’s location for wall-to-wall carpet that is for sales and use tax purposes considered real property are exempt from sales and use tax.

5. Charges for the wash and fold laundering services or dry cleaning of linen, towels, clothing, and similar items owned by lessors that are held for lease or rental.

6. Sales through coin-operated vending machines of detergents, bleaches, and other taxable tangible personal property, excluding tobacco and newspapers, are taxed on 50% of the sales price. Sales of tobacco products and newspapers sold through vending machines are taxed on 100% of the sales price.

Note: For information regarding vending machine sales, refer to SUTB 83.

7. Retail sales of tangible personal property by persons, such as those named in this SUTB, including any charges for labor or services rendered in applying or installing such property regardless of whether the charges are separately stated on the invoice or similar billing document given to the purchaser at the time of sale and in the retailer’s records.

B. Exemptions

1. Receipts derived from coin, token, or card-operated washing machines, extractors, and dryers are not subject to the sales and use tax imposed under this SUTB.

2. Gross receipts derived from services performed for resale by a retailer that pays the tax on the total gross receipts derived from the services is not subject to the sales and use tax imposed under this SUTB.

53-2 REPAIRS AND ALTERATIONS TO CLOTHING

A. Definition

G.S. § 105-164.3 provides the following term and definition:

"Clothing" – All human wearing apparel suitable for general use.

B. Items that Qualify as Clothing

As provided by the Streamlined Agreement, examples of clothing include, but are not limited to:

1. Aprons, household and shop.
2. Athletic supporters.
3. Baby receiving blankets.
4. Bathing suits and caps.
5. Beach capes and coats.
6. Belts and suspenders.
7. Boots.
8. Coats and jackets.
9. Costumes.
10. Diapers, children and adult, including disposable diapers.
11. Earmuffs.
12. Footlets.
13. Formal wear.
14. Garters and garter belts.
15. Girdles.
16. Gloves and mittens for general use.
17. Hats and caps.
18. Hosiery.
19. Insoles for shoes.
20. Lab coats.
21. Neckties.
22. Overshoes.
23. Pantyhose.
24. Rainwear.
25. Rubber pants.
26. Sandals.
27. Scarves.
28. Shoes and shoelaces.
29. Slippers.
30. Sneakers.
31. Socks and stockings.
32. Steel toed shoes.
33. Underwear.
34. Uniforms, athletic and non-athletic.
35. Wedding apparel.

As provided by the Streamlined Agreement, examples of items that are not clothing include:

1. Belt buckles sold separately.
2. Costume masks sold separately.
3. Patches and emblems sold separately.
4. Sewing equipment and supplies including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles.
5. Sewing materials that become part of clothing including, but not limited to, buttons, fabric, lace, thread, yarn, and zippers.

C. Application of Tax

The sales price of or the gross receipts derived from the alteration and repair of clothing are exempt from sales and use tax except where the alteration or repair service constitutes a part of the gross receipts derived from the taxable lease or rental of clothing and except for the alteration and repair of belts and shoes which are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

D. Items Used for Clothing Alterations or Repairs

Generally, sales of thread, buttons, zippers, pockets, and other similar tangible personal property that are used to alter or repair clothing are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

However, thread, buttons, zippers, pockets, and other similar tangible personal property may be purchased by a retailer exempt from sales and use tax as provided in SUTB 5 provided one of the following applies:

1. The purchases become a part of or are applied to a belt or a shoe as provided in SUTB 53-2E.

2. The purchases become a part of or applied to clothing being held in inventory by the retailer for sale, lease, or rental.

E. Belt and Shoe Repair

1. Persons engaged in the business of repairing belts or shoes must collect and remit the general State, applicable local, and applicable transit rates of sales and use tax on the sales price of such services.

2. Sales of machinery, machinery parts, tools, equipment, and supplies sold at retail which are used or consumed by persons engaged in the business of repairing belts or shoes are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

3. Sales to belt or shoe repair service retailers of leather, rubber or like products, cement, thread, and other tangible personal property that ordinarily becomes a part of or is applied to belts or shoes that are repaired are sales for resale and may be purchased exempt from sales and use tax as provided in SUTB 5. Bags for delivery of the repaired belts and shoes to customers may be purchased for resale exempt from sales and use tax as provided in SUTB 5. If belt or shoe repair service retailers purchase other tangible personal property specifically for resale to their customers, such retailers should purchase such tangible personal property exempt from sales and use tax as provided in SUTB 5.

53-3 SOURCING AND INTERSTATE LAUNDRY BUSINESS

The sale of an item is sourced according to the principles found in SUTB 4.

1. When a person operating a North Carolina laundry performs cleaning services within this State, the location where the cleaned clothing or other tangible personal property are delivered by the laundry is the location where the sale is sourced for sales and use tax purposes. If the laundry delivers the cleaned clothing or other tangible personal property in North Carolina, the general State, applicable local, and applicable transit rates of sales and use tax is due on the sale price of or gross receipts derived from the laundry services. If

the cleaned item is delivered outside North Carolina, North Carolina tax is not due notwithstanding the service is performed in this State.

2. When a laundry located outside of North Carolina sends an employee into this State to pick up cleaned clothing or other tangible personal property to be cleaned at the laundry's location in another state and then the cleaned clothing or other tangible personal property is delivered to the customer in this State, the gross receipts derived from the laundry services are sourced to the customer's location and are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

3. When a nonresident solicitor comes into this State to solicit cleaning business on his own behalf that will be cleaned by a nonresident laundry, the gross receipts derived from the laundry service are sourced to the customer's location and the solicitor is liable for collecting and remitting the North Carolina general State, applicable local, and applicable transit rates of sales and use tax. The law does not provide any exemptions or exclusions based upon the residence of the solicitor.

53-4 INDEPENDENT CLEANING SOLICITORS

For purposes of this section, an independent cleaning solicitor is a person engaged in the business of soliciting laundry, dry cleaning, or hat blocking services to customers but engages another business to perform the laundering, dry cleaning, or hat blocking.

An independent cleaning solicitor is liable for collecting and remitting the general State, applicable local, and applicable transit rates of sales and use tax on their gross receipts derived from laundering, dry cleaning, or hat blocking services it solicits.

The purchase of laundering, dry cleaning, or hat blocking services by an independent cleaning solicitor to sell to its customers from a company that performs the laundering, cleaning, or other service is a sale for resale. The independent cleaning solicitor shall comply with SUTB 5 when making such a purchase. In the event an independent cleaning solicitor is unable to provide documentation substantiating an exemption from North Carolina sales and use tax to the person performing the laundering, cleaning, or similar type services, such person must collect and remit the general State, applicable local, and applicable transit rates of sales and use tax on the sales price of or gross receipts derived from the services performed for the independent operator.

53-5 EQUIPMENT AND SUPPLIES FOR LAUNDRIES, DRY CLEANING ESTABLISHMENTS, ETC.

A. Machinery, Parts, and Accessories

Purchases by commercial laundries or by pressing and dry-cleaning establishments of laundry and dry-cleaning machinery that are used in the direct performance of the laundering or the pressing and cleaning service are exempt from sales and use tax when purchased as provided in SUTB 5. Parts and accessories attached to such equipment and lubricants applied to the machinery are exempt from sales and use tax when purchased by commercial laundries and pressing and dry-cleaning establishments.

Items exempt from sales and use tax when purchased by commercial laundries or by pressing and dry-cleaning establishments include, but are not limited to:

1. Washing machines, water heaters, water softener tanks, central control collection systems, pressing machines, marking machines, packaging machines, folding machines, and similar cleaning machines.

2. Hydraulic fluids used in laundry and dry-cleaning machinery.

3. Boiler compounds used in boilers furnishing water or steam to the laundering, pressing, or cleaning machinery; steam hose leading directly from the boiler to the laundering and dry-cleaning machinery; boiler room machinery, including valves, fittings, and water pumps.

4. Press pads and covers for laundering and dry-cleaning machinery.

5. Baskets, hampers, casters, or other containers used between the laundering and cleaning processes to transport or contain clothing or other tangible personal property being laundered or cleaned.

6. Carbon and carbon filters used for reprocessing cleaning compounds.

7. Lint rolls and refills therefor.

8. Conveyors used to transport clothing or other tangible personal property along the laundering, cleaning, and pressing line during the process, but not conveyors used before the laundering, cleaning, and pressing process begins or after it has been completed.

9. Transformers located on or adjacent to motors that power machinery used in the direct performance of laundering and cleaning services.

10. Lubricants used in laundering, pressing, or cleaning machines.

11. Fuel and piped natural gas used in the direct performance of the laundering or the pressing and cleaning service. The exemption does not apply to electricity.

12. Tags or labels used to identify garments being laundered or dry cleaned that are applied directly to garments in the direct performance of laundering or the pressing and cleaning service;

13. Bags, paper, and hangers applied directly to garments in the direct performance of laundering or the pressing and cleaning service; and

14. starch, soaps, detergents, cleaning fluids, and other compounds or chemicals applied directly to garments in the direct performance of laundering or the pressing and cleaning service.

B. Items Not Classified as Machinery, Parts, and Accessories

Items not classified as laundering and dry-cleaning machinery, or parts and accessories attached to the machinery, are subject to the general State, applicable local, and applicable transit rates of sales and use tax when purchased by commercial laundries or by pressing and dry-cleaning establishments. Items not classified as laundering and dry-cleaning machinery or parts or accessories include the following:

1. Coin-operated musical devices, amusement devices, coin changers, vending machines, and repair or replacement parts for such machines.

2. Baskets, hampers, casters, or containers used for general purposes such as picking up soiled clothing or other tangible personal property or delivering clean clothing or other tangible personal property.

3. Smokestacks, including the steel ladders attached thereto.

4. Wiring used in the general wiring system and the transformers used in connection therewith.

5. Sewing machines used in repairing or altering the customers' property and replacement or repair parts to such machines.

6. Tailoring supplies such as buttons, threads, and zippers for use in repairing or altering clothing or other tangible personal property for which no charge is made to the customer.

7. Letterheads, monthly reports, envelopes, and other office supplies.

8. Protective clothing for employees such as rubber gloves, aprons, protective shoes, etc., whether paid for by the employer or the employee.

9. Steam hose or pipe used in the general heating system.

10. Janitorial supplies.

11. Office furniture, fixtures, and equipment, including cash registers.

12. Uniforms for employees.

13. Advertising materials.

14. Structural or building materials, supplies, fixtures, and equipment that shall become a part of or be annexed to any building or structure being erected, altered, or repaired.

15. Equipment used in the storage process to revitalize furs.

16. Conveyors used before or after the laundering, pressing, and cleaning process, but not conveyors used to move the clothing or other tangible personal property along the laundering, pressing, and cleaning line.

17. Transformers used in connection with general wiring and power supply.

18. Water softener chemicals.

C. Exempt Laundry Supplies

Purchases by retailers, such as those named in this SUTB, of articles or materials used for the identification of clothing or other tangible personal property being laundered or dry cleaned, wrapping paper, bags, hangers, starch, soaps, detergents, cleaning fluids, and other compounds or chemicals applied directly to the clothing or other tangible personal property in the direct performance of the laundering or the pressing and cleaning service are not subject to sales or use tax. Mesh bags and tickets that accompany the clothing or other tangible personal property through the laundering and cleaning process for identification purposes are exempt from sales and use tax. Retailers should purchase such laundry supplies exempt from sales and use tax as provided in SUTB 5.

53-6 REPAIRS TO LAUNDRY MACHINERY

A. The sales price of repair, maintenance, and installation services purchased at retail and sourced to this State for machinery used directly in the laundering or dry-cleaning service is exempt from sales and use tax when purchased as provided in SUTB 5.

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Note: For information regarding repair, maintenance, and installation services, refer to SUTB 75.

B. Purchases of welding rods by commercial laundries and dry-cleaning operators for use in repairing machinery used directly in the laundering or dry-cleaning service are exempt from sales and use tax. Purchases of oxygen and acetylene by such operators for use in repairing machinery are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

53-7 ELECTRICITY AND FUEL SOLD TO LAUNDRIES, DRY CLEANING ESTABLISHMENTS, ETC.

A. Electricity

The gross receipts derived from sales of electricity to commercial laundries or to pressing and dry-cleaning establishments are subject to the combined general rate of sales and use tax.

B. Fuel and Piped Natural Gas

The gross receipts derived from sales of fuel or piped natural gas to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering, pressing, or cleaning services are exempt from sales and use tax when purchased as provided in SUTB 5.

Gross receipts derived from sales of fuel or piped natural gas that is measured through a single meter and used in both the direct performance of the laundering, pressing, or cleaning service and for other non-qualifying purposes, such as heating, are subject to the applicable rates of sales and use tax.

53-8 DYEING OF CLOTHING AND OTHER TANGIBLE PERSONAL PROPERTY

When North Carolina laundries or dry-cleaning establishments accept dyeing jobs that they ship to out-of-state dyers for dyeing, the North Carolina laundries or dry-cleaning establishments are liable for collecting and remitting the general State, applicable local, and applicable transit rates of sales and use tax on the charges to their customers for the dyeing work.

53-9 RUG REINSTALLATION CHARGES

The sales price of or gross receipts derived from reinstalling a rug after it has been cleaned are subject to the general State, applicable local, and applicable transit rates of sales and use tax, regardless of whether the charge is separately stated on the invoice or similar billing document given to the customer at the time of sale and in the retailer's records.

53-10 LAUNDERING OF UNIFORM RENTALS

The gross receipts derived by commercial laundries and dry-cleaning establishments for laundering or dry-cleaning uniforms or other articles of tangible personal property that are leased or rented are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

53-11 DRY CLEANING SOLVENT TAX

For information regarding the dry-cleaning solvent tax, refer to the Dry-Cleaning Solvent Tax Bulletin.

SUTB 54 LEASE OR RENTAL OF TANGIBLE PERSONAL PROPERTY

54-1 TAXABILITY OF LEASE RECEIPTS

The gross receipts derived from the lease or rental of tangible personal property are subject to sales and use tax, including any maximum tax, that apply to the retail sale of such property. The maximum tax, if applicable, must be determined for each lease or rental of tangible personal property, not on the aggregate tax for all leases or rentals of the leased tangible personal property.

The tax is computed and paid on the gross receipts without any deduction whatsoever for any expense incident to the conduct of business including, but not limited to, property taxes, interest, insurance charges, maintenance fees, and delivery charges. The tax is due and payable at the time the lessor bills the lessee for rent whether such billing is for the lump sum rental or on a monthly or other periodic basis. In the event of a tax or rate change, refer to SUTB 2-5 for guidance.

Note: For information regarding the lease or rental of certain digital property, refer to SUTB 23.

54-2 ROYALTIES

Royalties paid or agreed to be paid, either on a lump sum or production basis, for tangible personal property used in this State are rentals subject to the general State, applicable local, and applicable transit rates of sales and use tax.

54-3 LOCAL PROPERTY TAXES ON LEASED PROPERTY

Local property taxes imposed on tangible personal property being leased are an expense of conducting business incurred by the owner-lessor. Payments by the lessee to the lessor for property taxes constitute a part of the total consideration paid by the lessee for the lease of the property and, therefore, are includable as a part of the lessor's gross receipts that are subject to sales tax or, in the case of motor vehicles, the alternate highway use tax. It has no bearing on the application of sales tax or alternate highway use tax whether the property tax is assessed against the lessor who bills the lessee as a separate charge or the taxes are paid by the lessee directly to the taxing authority on behalf of the lessor.

Note: For information regarding the lease, rental, or subscription of a motor vehicle and the alternate highway use tax, refer to the Alternate Highway Use Tax Bulletin.

54-4 INSURANCE ON LEASED PROPERTY

The gross receipts derived from the lease or rental of tangible personal property for storage, use, or consumption within this State are subject to the applicable State, applicable local, and applicable transit sales or use tax. The tax shall be computed on the gross receipts without any deduction whatsoever for any insurance charges paid to insure the property of the lessor or to insure the lessor against liability for damages to the property or person of others. When the lessee purchases insurance on the lessee’s own property or to insure the lessee against liability for damages to the property or person of others, insurance premiums paid by such lessee directly to the insurer, or to the lessor as agent for transmittal to the insurer, are not subject to tax. If the lessee pays such insurance premiums directly to the lessor as agent for transmittal to the insurer, such amounts are not subject to tax provided they are separately stated from the charges for the lease or rental of tangible personal property in the lessor's records and on the invoice or similar billing document given to the lessee; otherwise, the total amount charged by the lessor is subject to sales and use tax.

54-5 MAINTENANCE OF LEASED PROPERTY

A. Purchases of tangible personal property by lessors are wholesale sales when such property is used to repair or maintain tangible personal property and becomes part of the tangible personal property held for lease or rental. These wholesale sales are exempt from sales and use tax when purchased by lessors as provided in SUTB 5. Lessors are responsible for payment of the applicable rates of sales and use tax on any tangible personal property (1) used for a purpose other than repairing or maintaining leased or rented property as described in this subsection, or (2) if the property is resold instead of being used to repair or maintain the tangible personal property being leased or rented as described in this subsection.

When lessors purchase other items that are used to maintain leased tangible personal property the lessor is liable for payment of the applicable rates of sales and use tax. Such items include tools, shop supplies, and other tangible personal property that do not become part of the tangible personal property held for lease or rental.

B. Purchases of repair, maintenance, and installation services by lessors to maintain or repair any tangible personal property held for lease or rental are exempt from sales and use tax when purchased for resale as provided in SUTB 5.

Note: For information regarding repair, maintenance, and installation services, refer to SUTB 75.

C. When lessees purchase tangible personal property to repair or maintain tangible personal property leased by them or repair, maintenance and installation services for tangible personal property leased by them, the lessees are liable for payment of the general State, applicable local, and applicable transit rates of sales and use tax on the purchase price.

D. For information regarding service contracts applicable to leased property, refer to SUTB 79.

54-6 EQUIPMENT FURNISHED WITH OPERATOR

A person that provides tangible personal property with an operator for a fixed or indeterminate period of time is rendering a service if the operator is necessary for the equipment to perform as designed. The receipts from such services are not subject to sales or use tax unless the service is a repair, maintenance, and installation service or other taxable service. An operator is necessary for tangible personal property to perform as designed when the operator's presence, skill, knowledge, and expertise are necessary for the tangible personal property to perform as designed. An operator who only maintains, sets-up, inspects, or monitors the tangible personal property, or any combination of such actions, is not necessary for the tangible personal property to perform as designed.

A person that purchases tangible personal property to provide a service identified above must pay the applicable rates of sales and use tax on the purchase price of the tangible personal property. A person that provides tangible personal property with an operator identified above and rents similar items of tangible personal property shall pay the applicable rates of sales and use tax on the purchase price of all items of tangible personal property it purchases unless it keeps separate inventory of items purchased to rent.

A person that provides the type of service described above that purchases repair parts, lubricants, other tangible personal property, or repair, maintenance, and installation services to maintain or repair tangible personal property must pay the applicable rates of sales and use tax on the purchase price of the tangible personal property.

Note: For information regarding repair, maintenance, and installation services, refer to SUTB 75.

54-7 LEASES OF PROPERTY FOR OUT-OF-STATE USE

If a lessee leases tangible personal property from a North Carolina lessor for the original purpose of using it outside this State and if the property is, in fact, used outside this State, the initial lease payment will be subject to the applicable State, applicable local, and applicable transit rates of sales and use tax in North Carolina if the property is delivered to the lessee in this State and immediately thereafter taken outside this State for use. In such cases, the lessor's records shall clearly reflect the nature of the transaction. If the property is returned to North Carolina, the receipts from use in North Carolina are subject to sales and use tax. If the face amount of the lease is paid in a lump sum, the face amount is subject to North Carolina sales and use tax. Records must be maintained to substantiate the location of the tangible personal property.

Note: For information on sourcing periodic rental payments, refer to SUTB 4-2B.

54-8 MOTOR VEHICLE LEASES AND SUBSCRIPTIONS - ALTERNATE HIGHWAY USE TAX

For information regarding the highway use tax and the alternate highway use tax on the lease, rental, or subscription of a motor vehicle, refer to the Alternate Highway Use Tax Bulletin.

54-9 LEASE OR RENTAL OF MILL MACHINERY

The lease or rental of mill machinery or mill machinery parts or accessories to a manufacturing industry or plant is exempt from sales and use tax.

Note: For information regarding mill machinery or mill machinery parts or accessories, refer to SUTB 57.

54-10 EXTENSION OF LEASE PERIOD

When tangible personal property, the sale of which is subject to a maximum tax, is leased for a definite and stipulated period of time, the lease payments during the lease period are subject to the maximum tax. If the original lease contains provisions for extension, whether by action or inaction, the extended term of the lease is part of the original lease and the maximum tax applies to the entire lease including any extension under the terms of the original lease. If, however, the original lease does not contain provisions for extension at the option of the lessee, whether by action or inaction, but a new lease agreement is subsequently entered into, the maximum tax applies separately to the second lease and does not have the benefit of any sales tax payments made by reason of the first lease with respect to the maximum tax for the second lease.

54-11 ASSIGNMENT OF LEASE

A. Assignment of a Lease Contract and Creation of a Security Interest in the Leased Property

Where upon a recourse basis a lessor assigns a lease contract and gives a security interest in the leased property, that is designated as such but retains title to such property, the lessor remains liable for collecting and remitting sales and use tax on the gross receipts from the lease notwithstanding that the lessor does not receive rental payments directly from the lessee. However, if the assignee enforces the security agreement and acquires title to the leased property, the assignee becomes the lessor of such property and is liable for collecting and remitting sales and use tax on the gross receipts received from the lease or rental of the property.

B. Assignment of a Lease Contract Together with its Right, Title, and Interest in the Leased Property for Security Purposes

Where for security purposes and upon a recourse basis, a lessor assigns a lease contract together with its right, title, and interest in the leased property, but the property will revert to the lessor at the expiration of the lease, the lessor remains liable for collecting and remitting sales and use tax on

gross receipts derived from the lease or rental of the property notwithstanding that the lessor does not receive rental payments directly from the lessee.

C. Assignment of a Lease Contract and All Right, Title, and Interest in the Leased Property

When a lessor assigns a lease contract together with all right, title, and interest in the leased property, the assignment is not for security purposes and the assignor does not retain any ownership rights in the contract or the property. The assignee has no recourse against the assignor. In this situation, the assignee has assumed the position of the lessor. The assignee must be registered for sales and use tax purposes with this State and is liable for collecting and remitting the sales and use tax on the remaining gross receipts derived from the lease. The assignor shall obtain a Certificate of Exemption, or the required data elements, as applicable, from the assignee as authority for not charging sales and use tax on the transaction.

54-12 LEASE WITH OPTION TO PURCHASE

Sales and use tax is due on the gross receipts derived from or the total amount agreed to be paid for the lease or rental of tangible personal property under a lease agreement with an option to purchase. If the agreement provides that the lessee will pay a stipulated amount at the time the option is exercised, less a credit for a portion or all of the lease payments, sales and use tax is due on the actual amount paid.

Example: When the option is exercised, if the purchase price of the tangible personal property is $700 and the credit allowed for lease payments under the agreement is $200 on which the tax has been paid, additional sales and use tax is due on the $500 balance at the time the option is exercised.

54-13 SALE OF LEASED PROPERTY

When tangible personal property that has been leased is sold at retail, the retail sale is subject to the applicable rates of sales and use tax without regard to any sales or use tax collected and remitted to the Department on the gross receipts derived from the lease or rental of the property.

54-14 LEASED DEPARTMENTS

When a store or other business leases to other persons any of its departments from which retail sales of tangible personal property are made, the lessee of each leased department shall register with the Department and, unless the Secretary has agreed in writing otherwise, file separate sales and use tax returns. If the lessor maintains the lessee's books for the lessee and makes collections on account of the lessee's sales, the lessor may, as agent for the lessee, file the required separate returns for each lessee and pay to the Department the sales and use taxes due. However, the lessee shall not be relieved of his tax liability if the lessor fails to file the proper returns with the Department or fails to remit to the Department all sales and use taxes due by the lessee.

54-15 CONDITIONAL SALES CONTRACT

A conditional sales contract is an agreement that requires the following:

1. Transfer of title under a security agreement or deferred payment plan upon completion of required payments or the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars ($100); or

2. The transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars ($100) or 1% of the total required payments.

An agreement that meets the requirements of conditional sales contract does not constitute a lease or rental. Any applicable sales and use tax for a conditional sales contract is due upon delivery of the item to the purchaser.

54-16 BOWLING ALLEY AND SKATING RINK RENTAL FEES

An admission charge for the use of a skating rink or bowling alley is not subject to sales or use taxes. Retail sales or rentals of tangible personal property by such businesses, including skates and shoes, are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

54-17 GOLF DRIVING RANGE FEES

A charge by a golf driving range for the use of a range is not subject to sales and use tax. In such case, the person who pays the charge is generally entitled to the use of a golf club, basket of balls, and the driving range; thus, there is no sale or rental of tangible personal property. Sales or rentals of tangible personal property by such businesses are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

54-18 SOURCING THE LEASE OR RENTAL OF TANGIBLE PERSONAL PROPERTY

If a lease or rental agreement does not require recurring periodic payments, then the lease or rental is sourced in accordance with the general sourcing provisions provided in SUTB 4.

When a lease or rental agreement requires recurring periodic payments, the payments are sourced as follows:

1. For leased or rented tangible personal property, the first payment is sourced in accordance with the general sourcing principles set out in SUTB 4 and each subsequent payment is sourced to the primary location of the leased or rented property for the period covered by the payment. The term “primary location” means an address for the property that is provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This principle applies to all property except a motor vehicle, an aircraft, transportation equipment, and a utility company railway car.

2. For leased or rented property that is a motor vehicle or an aircraft but is not transportation equipment, all payments are sourced to the primary location of the leased or rented property for the period covered by the payment.

3. For leased or rented property that is transportation equipment, all payments are sourced in accordance with the general sourcing principles set out in SUTB 4.

4. For a railway car that is leased or rented by a utility company and would be transportation equipment if it were used in interstate commerce, all payments are sourced in accordance with the general sourcing principles set out in SUTB 4.

As used in this section, the term “transportation equipment” means any of the following used to carry persons or property in interstate commerce: a locomotive, a railway car, a commercial motor vehicle, or an aircraft. The term includes a container designed for use on the equipment and a component part of the equipment.

54-19 LICENSE TO USE

A license to use taxable tangible personal property, such as prewritten computer software, is subject to sales and use tax at the same rate that is applicable to the sale or purchase of such property.

SUTB 55 LOGGERS, COMMERCIAL

55-1 EXEMPTION FOR COMMERCIAL LOGGING BUSINESSES

A. Definitions

For purposes of this SUTB, the following terms and definitions apply:

1. **"Commercial logger"** – A person who for consideration harvests raw forest products for transport to first market. The forest products can be on lands owned by that person or lands where a person has acquired rights to harvest forest products. A commercial logger includes, but is not limited to, a contract-manufacturer, a subcontract-manufacturer, or a producer.

2. **"Contract-manufacturer"** – A person or firm holding a contract with a forest products manufacturer to harvest forest products owned by or to which rights have been acquired by the forest products manufacturer, including the trimming of branches and the cutting of timber to specified lengths or size for the forest products manufacturer.

3. **"Subcontract-manufacturer"** – A person or firm that subcontracts the cutting of forest products for a contract-manufacturer under the conditions described in SUTB 55-1A.2.

4. **"Producer"** – A person or firm or its contractor or subcontractor that harvests forest products from lands owned by or for which rights have been acquired by the producer for sale to forest products manufacturers or others.

B. Exemption

Purchases of the following by a person engaged in the commercial logging business are exempt from sales and use tax when purchased as provided in SUTB 5:

1. Logging machinery (machinery used to harvest raw forest products for transport to first market). *Examples of qualifying logging machinery are log skidders, log carts, tree shears, feller bunchers, grapple skidders, winches, chain saws, tractors, axes, and mallets when such items are used to harvest timber and transport harvested timber to the logging deck.*

2. Attachments and repair parts for logging machinery.

3. Lubricants applied to operate logging machinery.

4. Fuel used to operate logging machinery.

55-2 COMMERCIAL LOGGER EXEMPTION CERTIFICATE NUMBER

The Secretary is authorized to issue an exemption number to a person engaged in the commercial logging business that is not required to register with the Department for sales and use tax purposes.

A person that is engaged in the commercial logging business that is not required to register for sales and use tax purposes must complete and submit to the Department Form E-595EA, Application for Exemption Certificate Number for Qualified Purchases, to obtain the commercial logging exemption certificate number in order to make purchases exempt from sales and use tax. A person engaged in the commercial logging business that is already registered to remit sales and use tax should use the previously assigned sales and use tax account identification number to make purchases exempt from sales and use tax. Refer to SUTB 5 for information regarding purchasing items exempt from sales and use tax.

SUTB 56 MANUFACTURED HOMES AND MODULAR HOMES

56-1 MANUFACTURED HOMES

A. Definition

G.S. § 105-164.3 provides the following term and definition:

"Manufactured home" – A structure that is designed to be used as a dwelling and is manufactured in accordance with the specifications for manufactured homes issued by the United States Department of Housing and Urban Development.

B. Tax Imposed

1. Fifty percent of the sales price of each manufactured home sold at retail is subject to the general 4.75% State rate of sales and use tax, including all accessories attached to the manufactured home when it is delivered to the purchaser. A manufactured home sold at retail is not subject to any local or transit rates of sales and use tax.

The retail sale of a manufactured home occurs on the date title or possession of the manufactured home passes to the purchaser, typically the delivery date. The date a retail sales invoice, bill of sale, or similar document is signed for the sale or purchase of a manufactured home does not determine the rate of State sales or use tax applicable to the sale or purchase where such date is different from the date of transfer of title or possession.

2. A person that withdraws a manufactured home from inventory held for sale to fulfill a real property contract is a consumer and is liable for paying the applicable rates of sales and use tax, and any other applicable tax, on the purchase price of the items used to fulfill such real property contract, regardless of whether the land is purchased or rented.

Note: For information on real property contracts, refer to SUTB 72

C. Items Included in the Sales Price of a Manufactured Home

1. Any furniture, appliances, or accessories placed in or attached to a manufactured home by the manufacturer or the retailer are part of the sales price of the manufactured home when the manufactured home is delivered to a purchaser.

2. Charges by the retailer for anchor bolts, tie-downs, skirting, prefabricated steps, and central or window air-conditioning units that are to be attached to a manufactured home at the time of transfer of title or possession to a customer or at the time of installation of a manufactured home, are part of the sales price of the manufactured home regardless of whether the charges are separately stated on the invoice or similar billing document given to the purchaser at the time of sale.

3. Permit charges imposed on the retailer to deliver a manufactured home are part of the sales price of the manufactured home, regardless of whether the charges are separately stated on the invoice or similar billing document given to the purchaser at the time of sale.

4. Any charge made by a retailer to a customer for running gear upon which a manufactured home is delivered is part of the sales price of the manufactured home, regardless of whether the charge is separately stated on the invoice or similar billing document given to the purchaser at the time of sale. The return of running gear to a dealer for credit or refund of such charge does not alter the rate of sales and use tax applicable to the sale and the purchaser is not entitled to a credit or refund of the sales and use tax paid on the charge for the running gear returned to the dealer.

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5. Other charges by a retailer necessary to complete the retail sale of a manufactured home are part of the sales price of the manufactured home.

D. Items Sold Separate from Manufactured Homes

The sales price of furniture, appliances, or other items sold at retail to a purchaser after the sale of a manufactured home has been consummated is subject to the applicable rates of sales and use tax.

E. Purchases by Dealers and Consumers of Tangible Personal Property Used in the Installation of Manufactured Homes

Cement blocks that are used to prepare or build the foundation for or to level a manufactured home, the sewer pipe used to connect a manufactured home to the septic or sewer system, and wedges used for leveling a manufactured home do not come within the definition of "accessories attached at the time of delivery," therefore, purchases of these items by dealers or other users or consumers in this State to be used in the installation of a manufactured home are subject to the general State, applicable local, and applicable transit rates of sales or use tax.

Note: For information on real property contracts, refer to SUTB 72.

56-2 MODULAR HOMES

A. Definitions

G.S. § 105-164.3 provides the following terms and definitions:

1. **"Modular home"** – A factory-built structure that is designed to be used as a dwelling, is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, and bears a seal or label issued by the Department of Insurance pursuant to G.S. § 143-139.1.

2. **"Modular homebuilder"** – A person who furnishes for consideration a modular home to a purchaser that will occupy the modular home. The purchaser can be a person that will lease or rent the unit as real property.

B. Tax Imposed

1. Fifty percent of the sales price of each modular home sold at retail, including all accessories attached to the modular home when it is delivered to the purchaser, is subject to the general 4.75% State rate of sales and use tax. A modular home sold at retail is not subject to any local or transit rates of sales and use tax.

The retail sale of a modular home occurs when a modular home manufacturer sells a modular home to a modular homebuilder (even though the modular home may be used to fulfill a real property contract) or directly to the end user of the modular home. The date a retail sales invoice, bill of sale, or similar document is signed for the sale or purchase of a modular home does not determine the rate of State sales or use tax applicable to the sale or purchase where such date is different from the date of transfer of title or possession.

2. A person that withdraws a modular home from inventory held for sale to fulfill a real property contract is the consumer and is liable for paying the applicable rates of sales and use tax, and any other applicable tax, on the purchase price of any items used to fulfill the real property contract, regardless of whether the land is purchased or rented.

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C. Items Included in Sales Price of a Modular Home

1. The sales price of a modular home includes the total amount or consideration for which the modular home is sold including charges for delivery of the property and all accessories attached to the home at the time of delivery.

2. An invoice, bill of sale, or similar document issued by the modular home manufacturer for a sale at retail to a modular homebuilder or end user often contains carrier deposit fees, freight charges, engineering fees, and labeling fees imposed by the North Carolina Department of Insurance. All such fees and charges constitute a part of the sales price of the modular home sold at retail when title or possession of the modular home is transferred in this State, regardless of whether the fees or charges are separately stated on the invoice or similar billing document given to the purchaser at the time of sale.

3. Charges made by modular home manufacturers for deposits on carriers constitute part of the sales price on which sales or use tax is due. A purchaser is not entitled to a refund or credit of sales and use tax paid on the carrier deposit charge when the carrier is returned and a credit or refund is issued by the seller for all or part of the deposit charge.

4. Other charges by the modular home manufacturer or other seller necessary to complete the retail sale of a modular home, including accessories attached to the modular home when it is delivered to a modular homebuilder or end user, are part of the sales price subject to sales and use tax.

D. Administration

A modular homebuilder is not required to collect sales or use tax on charges to the purchaser of a modular home. A modular homebuilder should not indicate on a sales invoice, bill, or similar document issued to a purchaser that sales and use tax is due on the transaction. If a modular homebuilder presents a purchaser with a list of the costs or expenses associated with the sale of the modular home transaction, the amount of sales and use tax paid by the modular homebuilder can be shown as a cost or expense, but such itemization should in no way indicate that the modular homebuilder is charging and collecting sales and use tax on the transaction with the purchaser.

If a modular homebuilder makes a purchase of a modular home from a seller that does not collect the sales or use tax due, the modular homebuilder is liable for use tax on the purchase of the modular home. The modular homebuilder is required to accrue and remit the 4.75% State rate of use tax on 50% of the purchase price of the modular home, including all accessories attached to the modular home at the time of purchase, directly to the Department.

E. Add-ons to Modular Homes

For information on real property contracts, refer to SUTB 72. For information on repair, maintenance, and installation services to real property, refer to SUTB 75.

F. Modular Home Manufacturers

A modular home manufacturer that primarily fabricates and makes outright sales of modular homes is a manufacturer for sales and use tax purposes. A modular home manufacturer's purchases of ingredient or component parts and materials used to fabricate modular homes are not subject to sales and use tax. Purchases of mill machinery or mill machinery parts or accessories used in a modular home manufacturer's production process, as the term "production" is defined SUTB 57-1, are exempt from sales and use tax.

G. Credit for Modular Home Manufacturers

A person selling a modular home at retail is allowed a credit against the North Carolina sales and use tax due for sales or use tax due and paid to another state on any items incorporated into the modular home.

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SUTB 57 MANUFACTURING INDUSTRIES OR PLANTS

57-1 CLASSIFICATION OF ACTIVITIES

The following classifications are based on the three principal activities of a manufacturing industry or plant and shall be followed by manufacturers purchasing tangible personal property that is used or consumed during the different phases of the operation of an industrial plant:

1. Production as a phase of industrial or manufacturing operations shall mean all steps performed in processing and refining rooms, and in other quarters and departments of a plant, where conditioning, treating, or other operations are done on ingredient materials as an actual routine on the assembly or processing line turning out a finished product of manufacture for sale. It also includes:

a. The movement of raw materials or ingredients from an inventory or a stockpile located on the premises of the manufacturing facility to the assembly or processing line.

b. The movement of goods in process along the assembly or processing line including packaging prior to the good becoming a final product.

c. The movement of manufactured products from the assembly or processing line into shipping or storage areas and yards located on the premises of the manufacturing facility.

d. The work of experimentation and research performed on the manufactured products.

Purchases by a manufacturing industry or plant of machinery or parts or accessories for the machinery for use in “production,” as defined above, are classified as mill machinery or mill machinery parts or accessories. Purchases by a manufacturing industry or plant of research and development equipment and supplies for quality control or the improvement of its manufactured products or for development of products which it will manufacture are classified as mill machinery or mill machinery parts or accessories. Items that are not classified as mill machinery or mill machinery parts or accessories when purchased by manufacturing industries and plants for use in their research and development areas include such items as desks, calculators, computers used for administrative purposes, and chairs which are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Production does not include any activity connected with the movement of raw materials or ingredients into inventory nor does it include “distribution” or “administration” as defined in the subsections below. Sales to manufacturing industries and plants of machinery, parts, or accessories for such machinery, and other tangible personal property used in the movement of raw materials or ingredients into inventory or in “distribution” activities, as defined in the subsection below, or which are used for similar purposes are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

2. Distribution with reference to manufacturing industries and plants shall mean any activity connected with the movement of manufactured products within storage warehouses, shipping rooms, and other such finished product storage areas and the removal of such products therefrom for sale or shipment. Machinery and equipment used to prepare property for shipment in the shipping room, warehouse, or other distribution locations separate and apart from the production process, as the term “production” is defined in the subsection above, is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

3. Administration with reference to manufacturing industries and plants shall mean and include the administrative work of offices, promotion of sales, and collection of accounts. Sales of administrative equipment and supplies, such as office equipment, paper, pens, pencils, stamps, paper cutters, printer form, file cabinets, scissors, staplers, desk trays, and other miscellaneous tangible personal property generally sold for office use, furniture, and fixtures are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Note: For additional information on manufacturing, refer to *Duke Power Co. v. Clayton*, 274 N.C. 505, 164 S.E.2d 289 (1968).

57-2 MILL MACHINERY OR MILL MACHINERY PARTS OR ACCESSORIES

Sales of mill machinery or mill machinery parts or accessories to be used in the production process, as the term "production" is defined in SUTB 57-1, to any of the following are exempt from sales and use tax as provided in SUTB 5:

1. A manufacturing industry or plant. A manufacturing industry or plant does not include (i) a delicatessen, café, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of food prepared by it for consumption on or off its premises or (ii) a production company.

2. A contractor or subcontractor if the purchase is for use in the performance of a contract with a manufacturing industry or plant.

3. A subcontractor if the purchase is for use in the performance of a contract with a general contractor that has a contract with a manufacturing industry or plant.

For purposes of this exemption, the term "accessories" does not include electricity.

57-3 EXAMPLES OF MILL MACHINERY OR MILL MACHINERY PARTS OR ACCESSORIES

The following items are considered mill machinery or mill machinery parts or accessories, when purchased by a qualifying person as set out in SUTB 57-2, for use in the production process, as the term "production" is defined in SUTB 57-1. This is not an all-inclusive list.

1. Motors, pulleys, motor bases (but not foundations), gears, belts, chains and textile rope drives, line shafting with hangers and pulleys, and other types and makes of drive connecting motors to the driven machinery.

2. Controls for motors consisting of:

- **a.** Magnetic starters, push button stations, pressure and float switches, and other types of relays operating motor controllers.
- **b.** Compensators of auto transformer starters.
- **c.** Thermal relay types of motor starters.
- **d.** Drum controllers and resistors.
- **e.** Disconnecting switches when built as a part of magnetic starters.
- **f.** Oil switches.
- **g.** Synchronous motor controllers if a part of production machinery, but not otherwise.

3. Electrical equipment, including control panels, wiring and related conduit, affixed to mill machinery to furnish power to mill machinery.

4. Repair and renewal parts for motors and motor controllers considered production machinery.

5. Steam engines, gasoline engines, diesel engines, and motor generators.

6. Pumps for industrial processes, air compressors, air hoses and nozzles, and pipe for carrying compressed air from compressor to hose for cleaning machinery and equipment; pumps used to remove waste of a manufacturing process.

7. Moistening or humidifying equipment on or immediately adjacent to mill machinery when the function of the equipment is the conditioning of materials for processing. This includes piping located on or immediately adjacent to mill machinery that supports and supplies water to moistening or humidifying equipment, but does not include general piping at the plant used to supply water to moistening or humidifying equipment. General piping at the plant is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

8. The portion of the purchase price of general air conditioning systems allocated to conditioning materials for processing.

9. Boiler room machinery with flue cleaners, and brushes for boiler tubes, when the boilers are operated for power generation or supplementary thereto in connection with manufacturing processes; stokers, shovels, and other equipment used in boiler rooms for feeding fuels and water to power units; smoke stacks that are attached to and are a part of the boilers. Equipment as used here does not include storage places for fuels and water or reserve tanks, bins, or other similar items located either inside or outside power rooms or buildings. Storage tanks, bins, or other facilities for water, fuel, raw materials or manufactured products are not classified as mill machinery or mill machinery parts or accessories and are therefore subject to the general State, applicable local, and applicable transit rates of sales and use tax. However, tanks, bins, and other facilities in which mixing, blending, or other processing action takes place are classified as mill machinery or mill machinery parts or accessories when such items are used in the production phase of the manufacturing operation.

10. Conveyors, hoists, and hoist cables (but not track or other fixtures determined to be a part of and that lend support to the building or structure), roving trucks and other materials handling equipment, including forklifts, lift trucks, and similar items used at the plant for transporting materials from inventory to the production process, transporting materials during temporary interruptions in the production process, or moving the finished product from the manufacturing or processing line into shipping and storage areas or yards at the plant. Included for the purpose of this paragraph are work tables, with seats and other accessories thereto at which employees work on materials in process; racks, bins, canvas baskets, and similar equipment for handling goods in process; and roving cans. Conveyors, hoists, hoist cables, roving trucks, and other material handling equipment, including forklifts, lift trucks, and similar items that are for use in receiving and shipping areas are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

11. Hand tools designed for use on a particular machine, such as special wrenches supplied by makers of mill machinery for special machines; hammers, screwdrivers, blow torches, soldering irons, rubber mallets, and similar general-use tools and machines used in repair shops to repair mill machinery or along the production line to perform work necessary as a part of the manufacturing processes and all files for general and specific use in a mill or manufacturing industry or plant.

12. Metal-cutting and wood-cutting lathes and their accessories for use in any manufacturing industry or plant; band saws, circular saws, all hack saws and blades; shapers and accessories, jointers, planers; drill presses; welding machines; torches; and all other manufacturing machinery and accessories thereto; spinners' whisks, comber brushes, and other brushes, designed for use on particular machines in hosiery mills and cotton mills; polishing wheels, sanding machines, and drums, whether portable or stationary; sandpaper, emery cloth, rubbing tow, paint brushes and filler brushes, steel wool, rubbing waste or cloths, or other hand or machine devices for polishing or other finishing processes on a manufactured product; oils and lubricants for use in lubricating production machinery; wiping cloths, cleaning compounds, and paint for mill machinery or mill machinery parts or accessories; and chemicals or other materials used to clean ingredient or component parts of manufactured products but that do not enter into or become an ingredient or component part of property being manufactured.

13. Dyehouse thermometers, recording charts for mill machinery, hank scales and yarn scales; and tachometers and other testing devices used for checking performance or output of machinery.

14. Air compressors, steam hose, and air hose for cleaning mill machinery.

15. Cloth pencils and similar items used for marking cloth, lumber, or other ingredients in process.

16. Dynamite and other explosives used in mining and quarrying whether or not such mining or quarrying is carried on as a regular or continuous business within itself, or as a part of a manufacturing industry. Purchases of explosives used in excavation in connection with building or construction are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

17. Machinery and equipment used in packaging manufactured products as a part of the manufacturing process.

18. Gloves, boots, caps, hair and beard nets, smocks, aprons, frocks, lab-type coats, and other similar items of clothing that are worn by employees in production areas to protect the quality of and prevent contamination of the manufactured product. When these items are worn by employees in non-production areas or primarily to protect the employees rather than the product, they are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

19. Tanks used by a manufacturer in mixing of ingredients to maintain a uniform product.

20. Packaging machinery used to package manufactured product during the initial stage of production through the final steps of production. Machinery and equipment used in the shipping room, warehouse, or other locations separate and apart from the manufacturing process to prepare property for shipment is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

21. Tape dispensing machines for use in packaging manufactured products during the manufacturing process. Tape dispensing machines for use in distribution or shipping are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

22. Strapping machines for use in packaging manufactured products during the manufacturing process. Strapping machines for use in distribution, finished goods storage areas, or shipping are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

23. Tickets that accompany products through the production process to identify orders or to give instructions regarding the next step to be performed, but that do not become a part of the sale. Tags or labels that describe the product to which they are attached and which become a part of the sale are exempt from sales and use tax.

24. Printing plates used in printing presses to imprint containers or printing plates furnished to others who use them to imprint containers in which the manufacturers' products are packaged for shipment.

25. Printing presses for use in the manufacturing process in printing labels, cartons, or boxes for manufactured products.

26. Insulation materials for use in repairing or maintaining mill machinery or mill machinery parts or accessories. Insulation materials used in repairing or maintaining buildings or machinery and equipment that are not classified as mill machinery or mill machinery parts or accessories are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

27. Gas stacks used in the manufacturing process to vent gases for pressure control.

28. Chemicals for use in water for boilers to prevent corrosion, control scale and foaming, and to act as sludge containers.

29. Combustible soot removers that are added to fuel used in connection with the operation of a manufacturing facility.

30. Sandblast sand used to clean mill machinery or to finish or clean manufactured products for sale. Sandblast sand that enters into or becomes an ingredient or component part of products manufactured for sale is exempt from sales and use tax.

31. Welding rods used to repair mill machinery or mill machinery parts or accessories. Welding rods that become an ingredient or component part of tangible personal property manufactured for sale are exempt from sales and use tax.

32. Electric light bulbs that attach to items properly classified as mill machinery. Bulbs for electric fixtures that attach to buildings or structures to provide general lighting for the buildings or structures are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

33. Electric power drives for mill machinery.

34. Calcium chloride and salt used by ice manufacturers in the making of brine and purchases of ammonia and ammonia oils by ice manufacturers that are used to lower the temperature of the brine and other chemicals used in the brine to prevent corrosion.

35. Mill machinery for use in the purification of water for use in the manufacturing process. Purchases by such manufacturers of pumps and pipe to be used to pump the water from a river or other source to the purification plant are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

36. Chemicals to purify and clarify water to be used for manufacturing purposes.

37. Pollution abatement equipment. For the purposes of this SUTB, the term “pollution abatement equipment” means any equipment, or parts and accessories therefor, used for the purpose of eliminating, preventing, or reducing air and water pollutants emitted from or

as a result of the manufacturing process or for the purpose of treating, pretreating or modifying any potential solid, liquid or gaseous pollutants from the manufacturing process that, if released into the environment without such treatment, pretreatment or modification, might be harmful, detrimental, or offensive to human, plant, or animal life, or to property. The term pollution abatement equipment does not include buildings or structures housing such equipment or any equipment used within the interior of any building or structure primarily for the health, comfort, and safety of the employees.

38. Chemicals for use in air or stream pollution abatement equipment or production processes.

39. Forklifts used in the production process, as the term "production" is defined in SUTB 57-1.

40. Animals purchased from a producer by manufacturers, research laboratories, other businesses or individuals.

41. Animals and animal cages purchased by manufacturers for use in experimentation and research purposes for the improvement of its manufactured products or for the development of products that it will manufacture, unless otherwise exempt by statute. Purchases of animal cages by manufacturers for use to contain animals in holding areas or storage areas are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

42. Animals and animal cages purchased by research laboratories for use in performing research services for others provided the purchase meets both of the requirements set forth in SUTB 60-12.

43. Strapping, bagging, ties, and other packaging materials for use in the production line to package or hold materials that are not for sale but that are held for further processing in the same plant or at another plant.

44. Packaging materials to be used to package materials or hold materials in process that are transferred to a contract manufacturer for further processing.

45. Packaging materials used by a contract manufacturer to package or hold products that are returned to the manufacturer-customers or sent to other contract manufacturers for further processing.

46. Oils or lubricants for use in lubricating mill machinery or mill machinery parts or accessories.

47. Research and development equipment and supplies for any the following:

a. Quality control.
b. The improvement of the qualifying person's manufactured products.
c. The development of products that the qualifying person will manufacture.

57-4 ITEMS NOT MILL MACHINERY OR MILL MACHINERY PARTS OR ACCESSORIES

The following items are not considered mill machinery or mill machinery parts or accessories and are therefore subject to the general State, applicable local, and applicable transit rates of sales and use tax. This is not an all-inclusive list.

1. Generally, tangible personal property attached to or in any way a part of any building or structure of any kind whatsoever; freight elevators; plumbing and sprinkler systems; electric wiring and electric fixtures; electric lamps and tubes; and fuses and fuse links. Electrical

equipment or wiring and related conduit that is used for general distribution of power to or in a manufacturing industry or plant.

2. The part of the purchase price of a general air conditioning or humidifying system charged to general building heating or cooling or to moistening of air for the comfort and convenience of employees.

3. Ventilating fans in walls or roofs of buildings and portable or stand type fans for plant ventilation; make-up air systems used for the purpose of ventilating manufacturing industries and plants. However, exhaust fans or hoods that are a part of mill machinery and that remove fumes, vapors, or dust arising from the manufacturing operation that would damage the product in process or the mill machinery unless removed from the area would be classified as mill machinery or mill machinery parts or accessories.

4. All scales not used in the production process, as the term “production” is defined in SUTB 57-1.

5. Time clocks and cards and all signal systems operated therewith; watch clocks and watch clock stations; and all parts and supplies therefor.

6. Machinery and equipment used in warehouses, shipping rooms, or other locations separate and apart from the manufacturing process to prepare manufactured goods and other property for shipment.

7. Desks, chairs, calculators, and personal computers used for administrative purposes in research and development areas.

8. Machinery, parts and accessories, or other tangible personal property that are used in the movement of raw materials or ingredients into inventory or in distribution activities, as provided in SUTB 57-1, or that are used for other similar purposes.

9. Distribution equipment, except as provided in G.S. § 105-164.13(5o), in relation to a large fulfillment facility.

10. Synchronous motor controllers that are not a part of production machinery.

11. Protective clothing, such as gloves, safety shoes, and similar items, regardless of whether they are purchased and paid for by the employer or the employee.

12. Gloves, boots, caps, hair and beard nets, smocks, aprons, frocks, lab-type coats, and other similar items of clothing that are worn by employees in non-production areas or primarily to protect the employees rather than the product.

13. Forklifts, lift trucks, and similar items that are for use in receiving and shipping areas.

14. Tape dispensing machines for use in distribution or shipping rooms.

15. Strapping machines for use in distribution, finished goods storage areas, or shipping rooms.

16. Hang tags that are placed on manufactured products to advertise other products the manufacturer manufactures.

17. Stock control cards.

18. Insulation materials used in repairing or maintaining buildings or machinery and equipment that are not classified as mill machinery or mill machinery parts or accessories.

19. Scales used to weigh truckloads of tangible personal property delivered to a manufacturing or processing plant.

20. Elevators that become a part of the building or structure.

21. Office supplies, stencils, other taxable items for use in receiving or shipping areas and other raw materials or finished goods storage areas.

22. Paper stock for use in printing the person's own stationery, office forms, accounting forms, stock or production control records, or similar items for use.

23. Animal cages for use to contain animals in holding areas or storage areas.

24. Dynamite purchased by fertilizer plants for use in blasting mounds of fertilizer that have been stored for aging processes.

25. Taxable tangible personal property purchased by grain and peanut elevator operators for use or consumption in the operation of their business. Grain and peanut elevator operators are not manufacturers.

26. Chemicals, machinery, or machinery parts or accessories and equipment purchased by sewage treatment plants for use in their operation. Sewage treatment plants are not manufacturers.

57-5 BOTTLING PLANTS

A. Purchases Exempt from Sales and Use Tax

1. Purchases of bottles, bottle caps, crates, and cartons by bottling plants are exempt from sales and use tax if such items are purchased for use in packaging, shipment, or delivery of tangible personal property sold at retail or wholesale and such items constitute a part of the sale of such tangible personal property delivered to the customer.

2. Purchases of bottling machinery, bottling machinery parts and accessories, lubricants for bottling machinery, and cleaning compounds for bottles and bottling machinery are exempt from sales and use tax provided such purchases are used in the production process, as the term "production" is defined in SUTB 57-1.

3. Purchases of pallet loaders and pallet unloaders by a bottling plant or bottled drink manufacturers may be purchased exempt from sales and use tax provided such purchases are used between the beginning and ending steps of the production process, as the term "production" is defined in SUTB 57-1.

4. Purchases of case cleaners by a bottling plant or bottled drink manufacturers may be purchased exempt from sales and use tax provided such purchases are used in the production process, as the term "production" is defined in SUTB 57-1.

B. Deposits on Returnable Containers

Amounts charged as deposits on beverage containers that are returnable to the retailer for reuse when such charges are refundable or creditable to the purchaser are exempt from sales and use tax whether or not the deposits are separately charged.

57-6 CONCRETE MANUFACTURERS OR READY-MIXED CONCRETE PLANTS

A. Ready-Mix Concrete Mill Trucks

The purchase of a truck with a ready-mix concrete mill mounted upon the chassis at the time of the purchase that is operated off a powertrain from the truck transmission is exempt from sales and use tax but is subject to the highway use tax in accordance with Article 5A of Chapter 105 of the North Carolina General Statutes.

Sales of repair or replacement parts for a ready-mix concrete mill, regardless of whether the mill is freestanding or affixed to a motor vehicle, to a company that primarily sells ready-mix concrete is exempt from sales and use tax. Any repair parts for the motor vehicle to which the concrete mill is mounted are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

B. Exempt Purchases of Mill Machinery or Mill Machinery Parts or Accessories

Purchases by ready-mix concrete manufacturers of mill machinery or mill machinery parts or accessories thereto are exempt from sales and use tax provided the items are used in the production process, as the term “production” is defined in SUTB 57-1. For purposes of this exemption, the term “accessories” does not include electricity.

C. Purchases of Weigh Hoppers and Scales

Purchases of weigh hoppers by ready-mix concrete manufacturers and purchases of scales by other manufacturers are exempt from sales and use tax provided the items are used for weighing cement or other ingredients as part of the production process, as the term “production” is defined in SUTB 57-1.

Purchases by concrete manufacturers of scales for use in shipping and receiving areas are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

D. Purchases of Calcium Chloride

Purchases of calcium chloride by concrete manufacturers for use as an ingredient or component part of concrete manufactured for sale are exempt from sales and use tax.

Purchases of calcium chloride by real property contractors for use or consumption in the performance of real property contracts are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

57-7 DAIRIES AND CREAMERIES

A. Purchases Exempt from Sales and Use Tax

Purchases of the following tangible personal property by dairies, creameries and like businesses processing and manufacturing dairy products for sale are exempt from sales and use tax if such items are purchased for use in packaging, shipment, or delivery of tangible personal property that is sold either at wholesale or retail and such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer:

1. Butter boxes and cartons.
2. Cheese cartons.
3. Glass and other containers.
4. Ice cream cups and milk bottle crates.
5. Ice cream spoons, wood and fiber labels.

6. Milk bottles and jugs of all sizes and materials.
7. Milk bottle caps and hoods of all makes.
8. Sealing tape.
9. Twine.
10. Straws.
11. Wrappers, wrapping paper, and other tangible personal property used, consumed or furnished free in the packing, sale or distribution of milk and dairy products.

B. Mill Machinery or Mill Machinery Parts or Accessories

Purchases of the following items by dairies, creameries, and like businesses are exempt from sales and use tax, provided such purchases are used in the production process, as the term “production” is defined in SUTB 57-1:

1. Babcock testers electrically operated.
2. Boilers producing steam to be used in manufacturing or processing, together with fire boxes, grates, fire brick, gauges, steam pipes and other necessary boiler accessories.
3. Bottle cappers.
4. Brine pumps.
5. Butter molds.
6. Butter churns and workers.
7. Butter cutters, packers, and printers.
8. Cans for handling milk during processing or manufacturing.
9. Can steamers.
10. Circulating bar makers.
11. Chocolate bar makers.
12. Conveyors and conveyor chains.
13. Cooling machines and their fittings and attachments; cottage cheese vats for manufacturing but not storage.
14. Cream separators.
15. Cream savers, vats, and hoses.
16. Curd agitators and attachments.
17. Dry ice saws.
18. Electric fillers, cappers, and attachments.
19. Filling machines and attachments.
20. Filters and filter cartridges.
21. Heat exchangers.
22. Heaters and sterilizing machines.
23. Homogenizers.
24. Ice cream freezers.
25. Ice cream hardening cases.
26. Ice cream molds and pans.
27. Jalco testers.
28. Jug fillers and cappers mechanically operated.
29. Machines and cleaning compounds for washing and sterilizing bottles, cans, and other containers; cleaning compounds for cleaning production machinery.
30. Pasteurizers and attachments.
31. Pipe line filters.
32. Pipe and fittings for use on, or attached to, machinery.
33. Purity brine units.
34. Rapid flow frigid filters.
35. Receiving tanks and units.
36. Rinsers and sterilizers.
37. Roller conveyors.
38. Scales when attached to a machine.
39. Specialty brass filters and cappers, but not hand operated.

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40. Storage tanks and vats for milk, ice cream, and other dairy products.
41. Thermometers, charts, and gauges when attached to any part of a machine.
42. York freezers and all other machinery, special tools thereto, attachments, and accessories used in the manufacturing or processing of milk and dairy products whether or not specifically enumerated above; all repair and replacement parts for machinery, attachments, and accessories, and all engines, motors, pulleys, motor bases but not foundations, gears, belts, line shafting with hangers and pulleys and other types and makes of drives connecting motors to the driven machinery and all repair and renewal parts of the same.

C. Freezing or Cooling Units

Purchases by dairies, creameries, and like businesses of freezing or cooling units not classified as processing machinery or accessories are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Freezing or cooling units in which finished dairy products are stored pending distribution or dispensation to wholesale or retail customers do not qualify as processing machinery or accessories.

57-8 ELECTRIC POWER COMPANIES

A. Mill Machinery or Mill Machinery Parts or Accessories

Purchases of the following items by persons engaged in generating, producing, or processing electric power to be distributed to consumers are exempt from sales and use tax:

1. All production machinery and accessories thereto; all machinery controls located within a power plant or a plant substation; and control gates and control valves located at the dam site for regulating flow of water to turbines.

2. Control panel boards located within the powerhouse and their connecting wiring.

3. Bus bars conducting electric current from the generator to the powerhouse substation transformer.

4. Powerhouse pumping equipment for drainage.

5. All pumping equipment for transferring transformer oil from storage tank to powerhouse transformers or fuel oil to emergency generator motors.

6. Electric traveling cranes built into powerhouse structures for handling turbines, generators, and transformers in making installations or repairs.

7. Distribution and power transformer capacitors of 1½ KVA and larger; induction feeder voltage and constant current regulators; de-ion gaps and expulsion type cutouts for transformers; relays; oil switches; sectionalizing switches; lightning arresters; arcing horns and gaps; watt-hour and panel control meters, including smart meters, but not testing or laboratory equipment and meters. Current and potential transformers used in metering equipment are also included as machinery and accessories.

B. Purchases Subject to Sales and Use Tax

Purchases of the following items by electric power companies are subject to the general State, applicable local, and applicable transit rates of sales and use tax:

1. Materials for the construction, repair, or maintenance of powerhouses and powerhouse transformer stations.

2. Materials for dams, penstocks, and canals; pipes or ducts carrying water to turbines.

3. All lines, wiring, poles, bracing, cross-arms, insulators, or any other materials going into or constituting a part of a power line structure used for distribution of power or current.

4. All storage tanks, including those located in or used in connection with the powerhouse.

5. All tools and maintenance equipment used separate and apart from those items classified as mill machinery or mill machinery parts or accessories.

C. Rentals of Tangible Personal Property by Electric Power Companies to Other Persons

Charges for transformers and other tangible personal property under bona fide rental agreements to other persons by electric power companies are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

57-9 FOOD PROCESSORS

A. Food Processor

A food processor as referenced in this SUTB includes, but is not limited to, meat processors, flour and feed manufacturers, poultry processors, fish and other food canneries and grist mills.

Delicatessens, cafés, cafeterias, restaurants, and other similar retailers principally engaged in the retail sale of food they prepare for customers' consumption on or off their premises are not manufacturing industries or plants.

B. Mill Machinery or Mill Machinery Parts or Accessories

Purchases of the following items by a food processor are exempt from sales and use tax provided such purchases are used in the production process, as the term "production" is defined in SUTB 57-1:

1. Machinery, or parts and accessories attached to such machinery used to fabricate, process, or manufacture articles of tangible personal property.

2. Caustic soda for use in peeling fruits and vegetables.

3. Ammonia and other refrigerants for use in refrigeration machinery that is used to condition meat for processing.

4. Rubber fingers for use in plucking feathers from poultry.

5. Propylene glycol for use as a refrigerant in the manufacturing process.

C. Purchases Subject to Sales and Use Tax

Purchases of insecticides by flour and feed manufacturers for use in the control of grain weevils in grain storage areas are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

57-10 FURNITURE AND PLYWOOD MANUFACTURERS

A. Purchases for Resale

Purchases by furniture manufacturers of lumber, including plywood and veneers; hardware, such as screws, bolts, nails, tacks, mirrors, hinges, fasteners, and other similar tangible personal property; and paints, varnishes, bleaches, stains, lacquers, and other similar tangible personal property that enter into or become an ingredient or component part of the furniture manufacturers' manufactured products are exempt from sales and use tax. Purchases by furniture manufacturers of wax and rubbing oils to be applied to manufactured products are purchases of ingredient or component parts and therefore exempt from sales and use tax.

Paper tape, when purchased by veneer or plywood manufacturers that apply it to the manufactured products and do not remove it from the veneer or plywood panels before they are sold, is a component part of the finished product and is exempt from sales and use tax.

B. Purchases Exempt from Sales and Use Tax

Purchases of the following items by furniture and plywood manufacturers are exempt from sales and use tax provided such purchases are used in the production process, as the term “production” is defined in SUTB 57-1:

1. Paper tape that is applied to products manufactured for sale and subsequently removed from the manufactured products during the sanding and finishing processes.

2. Pumice stone, sandpaper, and similar items used on a manufactured product.

3. Machine or hand instruments used in applying finishing materials to a manufactured product.

4. Paint brushes, filler brushes, rubbing tow, cloths, waste and other similar materials used on a manufactured product.

5. Rags used to buff or polish furniture being manufactured for sale.

6. Paper or plastic that is sold as liner stock for use in lining paint spraying booths and chambers used in the manufacture of furniture.

C. Items Subject to Sales and Use Tax

Purchases of the following items by furniture and plywood manufacturers are subject to the general State, applicable local, and applicable transit rates of sales and use tax:

1. The total charge for the laundering of rags used to buff or polish items being manufactured for sale.

2. Lumber stackers for use in moving tangible personal property that is not used in the production process, as the term “production” is defined in SUTB 57-1.

57-11 HATCHERIES

Purchases of mill machinery or mill machinery parts or accessories by commercial hatcheries for use in the production of baby chicks are exempt from sales and use tax.

57-12 ICE MANUFACTURERS

Purchases of ice manufacturing machines and parts or accessories thereto by persons engaged in the business of manufacturing and selling ice at retail or wholesale are exempt from sales and use tax provided such purchases are used in the production process, as the term “production” is defined in SUTB 57-1.

Purchases of ice machines by grocery stores, restaurants, and motels for use in making ice are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Purchases of modular manufacturing units (e.g., ice houses) by a person who is not a manufacturing industry or plant where the unit is used to produce the ice dispensed and sold at retail are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

57-13 MACHINISTS, FOUNDRY OPERATORS, AND PATTERN MAKERS

A. Sales by Machinists, Foundry Operators, and Pattern Makers

Retail sales of molds, dies, castings, patterns, tools, machinery, parts, and any other tangible personal property fabricated in this State by machinists, foundry operators, and pattern makers, are subject to the general State, applicable local, and applicable transit rates of sales and use tax. The tax due is computed on the sales price of such property, including charges for any services that go into the fabrication, manufacture, or delivery thereof.

The following sales of tangible personal property to a manufacturing industry or plant are exempt from sales and use tax provided the tangible personal property is used in the production process, as the term “production” is defined in SUTB 57-1.

1. Sales to machinists, foundry operators, pattern makers, or others of molds, forms, patterns, or dies and any other property classified as mill machinery or mill machinery parts or accessories.

2. Sales to contractors and subcontractors of mill machinery or mill machinery parts or accessories for use by them in the performance of contracts with manufacturing industries and plants. Such mill machinery or mill machinery parts or accessories must be for use by a manufacturing industry or plant in the production process, as the term “production” is defined in SUTB 57-1, to qualify for the exemption. Such contractors and subcontractors should purchase the mill machinery or mill machinery parts or accessories as provided in SUTB 5.

B. Molds, Patterns, or Dies

1. Taxable Retail Sales

Retail sales by a manufacturing industry or plant of molds, patterns, or dies sourced to this State are subject to the general State, applicable local, and applicable transit rates of sales and use tax. A manufacturing industry or plant that makes retail sales of molds, patterns, or dies to users or consumers within and without this State, with right of possession and title thereto passing to such customers, are liable for collecting and remitting the general State, applicable local, and applicable transit rates of sales and use tax on such sales when the manufacturing industry or plant selling the molds, patterns, or dies retains them in their possession within this State for use in manufacturing tangible personal property for sale to such customers.

2. Retained by Seller

Retail sales by a manufacturing industry or plant of molds, patterns, or dies to manufacturer-customers within and without this State where the right of possession and title thereto passes to such manufacturer-customers are exempt from sales and use tax as provided in SUTB 5 when the manufacturing industry or plant selling the molds, patterns,

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or dies retains them in their possession within this State for use in manufacturing tangible personal property for sale to such customers.

Out-of-state manufacturing industries or plants making retail sales of molds, patterns, or dies to customers within this State are not required to collect and remit North Carolina sales or use taxes on such sales when the out-of-state manufacturing industry or plant retains the molds, patterns, or dies in their possession for their use outside this State in manufacturing tangible personal property for sale to such customers.

3. Sold for Resale

Sales of molds, patterns, or dies to manufacturing industries or plants for resale to its customers are exempt from sales and use tax when purchased as provided in SUTB 5. Manufacturing industries and plants are considered to be purchasing such items for resale only when title thereto and the right of possession thereof will pass to its customers and the manufacturer's books, records, and invoices show that such items are actually sold to its customers.

4. Record Keeping

Manufacturing industries and plants making retail sales of molds, patterns, or dies, with the right of possession and title thereto passing to its customers must separately state the charges therefor from any charges for other tangible personal property sold to such customers in their books and records and on the sales invoices given to the customers at the time of the sale.

57-14 MINES AND QUARRIES

A. Mines and Quarries

Quarries, in the generally accepted sense of the term, regularly operated for the production of stone, sand, clay, marble, granite, gravel, crushed stone, and similar products for commercial purposes are deemed to be manufacturing plants and industries.

Transportation of the extracted product is a part of the manufacturing or processing operation if the manufacturing or processing and the mining are performed on the same premises. The process of mining shall be considered completed when the extracted product leaves the excavation area and is ready for transportation elsewhere.

Contractors who operate mines or quarries primarily for the purpose of using the products extracted from the mines or quarries in fulfilling contracts are not considered manufacturers and their purchases of machinery or machinery parts or accessories are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

B. Purchases Exempt from Sales and Use Tax

Purchases of the following are exempt from sales and use tax when purchased by a quarry regularly operated for the production of stone, sand, clay, marble, granite, gravel, crushed stone, and similar products for commercial purposes and that are deemed to be manufacturing plants and industries:

1. Production machinery, and parts and accessories attached to such machinery that is used by quarry and mine operators in the production process, as the term “production” is defined in SUTB 57-1.

2. Machinery and piping used in the flotation process in mining operations.

3. Chemicals used during the flotation process.

4. Tangible personal property used in direct production or extractive processes inside the mine, including dynamite and other explosives.

5. Front-end loaders and repair parts therefor purchased by commercial quarry and mine operators for use in the direct extractive processes.

6. Front-end loaders and repair parts therefor purchased by quarry and mine operators for use in transporting the extracted product from the mine or quarry to the initial step in the process on the same premises as the mine or quarry.

7. Bulldozers purchased by mine operators for use only in the extraction processes in strip mining, including the removal of overburden from the products to be mined.

8. Irrigation pipe purchased by quarries for use in the production process, as the term "production" is defined in SUTB 57-1, to wash stone that they produce for sale.

9. Power shovels, drills, and similar equipment sold for use in mines or quarries in the extractive processes.

10. Locomotives or other power units and cars or conveyors that are pulled by these power units from the excavation process to the production processing plants, provided the excavation and processing plant are on the same premises.

C. Items Subject to Sales and Use Tax

Purchases of the following tangible personal property are subject to the general State, applicable local, and applicable transit rates of sales and use tax:

1. Front-end loaders and repair parts therefor purchased by quarry and mine operators for use in the receiving and distribution areas.

2. Bulldozers purchased by quarry and mine operators to be used for general purposes.

3. Mucking machines, pumps, and pipe used to remove water and muck from the mine.

4. Pipe used to ventilate a mine.

5. Power shovels, drills, and similar equipment that are not used in the mine and in the production processes in the mine or quarry.

6. Materials used in constructing tracks for cars and power units. Tracks are a structure.

7. Materials used in constructing power lines either inside or outside the excavation area. Power lines are a structure.

8. Caps, lights, gloves or other devices, regardless of whether paid for or owned by employees or employers.

9. First aid equipment and supplies for use in connection with the maintenance of a first aid station.

10. Safety supplies, such as dust masks, eye shields, goggles and respirators.

11. Fire extinguishers sold to quarry and mine operators. Fire extinguishers are safety equipment.

57-15 MODULAR HOME MANUFACTURERS

A. Purchases for Resale

A modular home manufacturer's purchases of ingredient or component materials used to fabricate modular homes are exempt from sales and use tax, as provided in SUTB 5.

B. Purchases Exempt from Sales and Use Tax

Purchases of mill machinery or mill machinery parts or accessories by a modular home manufacturer are exempt from sales and use tax provided such purchases are used in the production process, as the term "production" is defined in SUTB 57-1.

57-16 MONUMENT MANUFACTURERS – PURCHASES OF TOOLS AND SUPPLIES

Purchases by monument manufacturers of stencils, abrasives, and cutting tools and equipment used by such manufacturers in the cutting, shaping, and polishing process and the solvents used to remove the stencils from the monuments are exempt from sales and use tax provided such purchases are used in the production process, as the term "production" is defined in SUTB 57-1.

57-17 OTHER MILLS AND PROCESSORS

Purchases of machinery, and parts and accessories attached to such machinery, by millwork plants, photo finishers, printers, asphalt plants (but not asphalt contractors), wood preserving plants, brick manufacturers, cement, cinder and clinker block manufacturers, paper mills, tanneries, pottery makers, novelty manufacturers, and any other manufacturer for use in the production process, as the term "production" is defined in SUTB 57-1, to fabricate, process, or manufacture articles of tangible personal property for sale are exempt from sales and use tax.

57-18 REFRACTORY MANUFACTURERS

When refractory manufacturers enter into performance contracts to fabricate, furnish, and install or apply the necessary refractory materials for the repair of boilers (i.e., repair, maintenance, and installation services) operated by other manufacturers for power generation for use in the production process, as the term "production" is defined in SUTB 57-1, the purchase of the refractory materials used in the repair of boilers are exempt from sales and use tax.

57-19 SAWMILLS, LUMBER MILLS, AND WOOD PRODUCTS MANUFACTURERS

A. Purchases of Chemicals

Purchases of chemicals by lumber manufacturers to be applied to lumber at the end of the sawing operation to keep the lumber from molding are exempt from sales and use tax when the chemicals constitute an ingredient or component of the lumber that is sold.

B. Purchases Exempt from Sales and Use Tax

Purchases of the following items by sawmills, lumber mills, and wood products manufacturers are exempt from sales and use tax, provided such purchases are used in the production process, as the term "production" is defined in SUTB 57-1:

1. Purchases of tractors for use in transporting logs from a stockpile to the mill on the same premises.

2. Sawmills and power units therefor.

3. Saw bits and other repair parts for production machinery.

4. Wedges, cant hooks, log binders, log jacks, and log chains.

C. Items Subject to Sales and Use Tax

Purchases of the following tangible personal property by sawmill operators, lumber manufacturers, and wood products manufacturers are subject to the general State, applicable local, and applicable transit rates of sales and use tax:

1. Purchases of tractors by sawmills, lumber mills, and wood products manufacturers for use in unloading raw materials or in handling lumber in finished goods inventory or in distribution or shipping areas.

2. Bulldozers or other equipment purchased by sawmill operators for the purpose of opening or maintaining entries to timber lands.

3. Purchases of machinery or equipment by employees of wood products manufacturers or producers otherwise classified as manufacturing equipment or logging machinery.

4. Purchases of lumber stackers by manufacturers for use in moving tangible personal property outside of the production process, as the term “production” is defined in SUTB 57-1.

D. Logging

For information on commercial loggers, refer to SUTB 55.

57-20 STATE AGENCIES OPERATING MANUFACTURING PLANTS

The license tag plant, print plant, metal products plant, sewing plant, quick copy plant, upholstery plant, optical plant, woodworking plant, and the sign plant of the Section of Correction Enterprises of the Division of Adult Correction and Juvenile Justice (Correction Enterprises) engage in the business of manufacturing tangible personal property for sale and are classified as manufacturers for sales and use tax purposes. Their sales are subject to sales and use tax unless specifically exempt by statute. Purchases by State agencies for their own use are exempt from sales and use tax pursuant to G.S. §§ 105-164.13(40) and (52).

57-21 TEXTILE MILLS

A. Purchases for Resale

Purchases of the following tangible personal property by textile mills and similar manufacturing industries are exempt from sales and use tax if such materials are purchased for use in packaging, shipment, or delivery of tangible personal property that is sold either at wholesale or retail and such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer:

1. Box wraps, labels, printed toppers for polyethylene bags, and cardboard hosiery inserts upon which hosiery is placed.

2. Cotton knit tubing for use in the manufacturing process, including the dyeing process.

Purchases by textile mills and similar manufacturing industries of the following tangible personal property that enter into or become an ingredient or component part of the textile mills' manufactured products are exempt from sales and use tax:

1. Oil for use in conditioning nylon yarn.

2. Fabric conditioners and other chemicals.

B. Purchases Exempt from Sales and Use Tax

Purchases of the following items by textile mills and similar manufacturing industries are exempt from sales and use tax provided such purchases are used in the production process, as the term "production" is defined in SUTB 57-1:

1. Cotton knit tubing that is used in the production process but does not become a part of the sale of the manufactured product and is not delivered with it to the customer.

2. Special gloves by hosiery manufacturers for use by employees such as knitters and examiners to prevent picks and pulls on manufactured products and that are for the protection of the products and not for the protection of the employees.

3. Filter paper by textile manufacturers for use in filtering dye solution.

4. Color charts by manufacturers for use in quality control or in preparing new color shades for the dyeing process for their manufactured products.

5. Dye nets by manufacturers for use in the dyeing process are classified as accessories to the manufacturing process.

6. Folding machines by textile manufacturers for use in folding manufactured products in the production line.

7. Leases or rentals of button attaching equipment and other mill machinery by apparel manufacturers.

8. Gin stand and feeder for use in the ginning process by a person engaged in the business of ginning cotton for others.

9. Loom cleaners that remove lint from raw materials during the production process to prevent it from becoming entangled in the machine.

C. Items Subject to Sales and Use Tax

Purchases of air draft cleaners for general cleaning purposes by textile mills and similar manufacturing industries are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

57-22 WATER PURIFICATION PLANTS

A. Water Purification Plants are Manufacturing Plants

Public or private water purification plants are considered to be manufacturing plants for purposes of this SUTB when they purify and sell water. Their purchases of mill machinery or mill machinery parts or accessories for use directly in the purification processes are exempt from sales and use tax.

The exemption applies to pipe provided such pipe is used to transfer the water being purified during the initial stage of the purification process through the final stage of the purification process. Pipes used to distribute the purified water are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

B. Chemicals Used During Purification Processes

Chemicals that are introduced into the water during the purification processes are exempt from sales and use tax.

C. Exemption for Water

Water delivered by or through main lines or pipes for either commercial or domestic use or consumption is exempt from sales and use tax.

SUTB 58 MANUFACTURERS (GENERAL INFORMATION)

58-1 SALES BY A MANUFACTURER

With respect to sales by a manufacturer, the following applies:

1. Retail sales by a manufacturer of items sourced to this State are subject to the applicable rates of sales and use tax unless records maintained by the manufacturer establish otherwise.

2. Retail sales by a manufacturer of tangible personal property directly to users and consumers, including employees, are subject to the applicable rates of sales and use tax. Such sales include:

a. The sale to employees or other persons of bottled drinks by a bottling plant.

b. The sale to employees or other persons of food products, meals, and other prepared foods by an industrial plant or other business of any kind through a commissary, concession stand, cafeteria, lunch stand, or other similar places.

c. The sale to employees or other persons of fuel, hosiery, furniture, or any other kind of taxable tangible personal property.

3. Sales of tangible personal property by manufacturers for the purpose of resale are exempt from sales or use tax provided the transactions are supported by proper records.

4. Sales of tangible personal property by manufacturers that deliver the property to purchasers outside this State or that deliver the property to a common carrier or to the United States Postal Service for delivery to the purchaser at a point outside this State are not subject to sales or use tax in this State. Such sales must be supported by proper records.

5. Manufacturers who only make sales to registered merchants for resale or sales that are otherwise exempt from tax are not required to report such sales to the Department. However, manufacturers making taxable retail sales or purchases subject to use tax must register with the Department and file sales and use tax returns reflecting such taxable sales or purchases and pay the applicable tax due thereon.

6. A manufacturer making occasional and isolated sales of the manufacturer's worn out, obsolete, or surplus machinery, accessories and similar items not required to collect and remit sales or use tax on the sale. A manufacturer's purchase of worn out, obsolete, or surplus machinery, accessories and similar items from a person not engaged in the business of selling that type of property is not subject to sales and use tax.

For information on occasional and isolated sales, refer to SUTB 2-7.

7. An amount charged as a deposit on a beverage container that is returnable to the manufacturer for reuse when the amount is refundable or creditable to the purchaser, whether or not the deposit is separately charged, is exempt from sales and use tax.

58-2 EXEMPT SALES TO A MANUFACTURER

The following sales to manufacturers are exempt from sales and use tax:

1. The sale of products of forests and mines in their original or unmanufactured state when such sales are made by the producer in the capacity of producer.

2. The sale of cotton, tobacco, peanuts, or other farm products for further manufacturing or processing.

3. The sale of products of a farm sold in their original state by the producer of the products if the producer is not primarily a retail merchant.

4. The sale of manufactured products produced and sold by manufacturers or producers to other manufacturers, producers, or registered retailers or wholesale merchants, for the purpose of resale except as modified by G.S. § 105-164.3(239). This exemption does not extend to or include retail sales to users or consumers not for resale.

5. Sales of mill machinery or mill machinery parts or accessories to any of the following:

a. A manufacturing industry or plant. A manufacturing industry or plant does not include (i) a delicatessen, café, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of food prepared by it for consumption on or off its premises or (ii) a production company.

b. A contractor or subcontractor if the purchase is for use in the performance of a contract with a manufacturing industry or plant.

c. A subcontractor if the purchase is for use in the performance of a contract with a general contractor that has a contract with a manufacturing industry or plant.

For purposes of this exemption, the term “accessories” does not include electricity.

Note: For information with respect to a manufacturing industry or plant, refer to SUTB 57.

6. The sale of products of waters in their original or unmanufactured state when such sales are made by the producer in the capacity of producer. Fish and seafoods are likewise exempt when sold by the fisherman in that capacity.

7. The sale of tangible personal property that enters into or becomes an ingredient or component part of tangible personal property that is manufactured. This exemption does not apply to sales of electricity. Examples of such exempt items are nails, bolts, screws or other pieces of hardware, thread, cloth, paint, varnishes, bleaches, oils and other finishing materials, including chemicals that actually enter into manufactured products at some step between the initial and final steps of production, and labels and trademark fixtures attached to manufactured products.

8. The sale of certain packaging.

Note: For detailed information with respect to packaging, refer to SUTB 58-4.

9. Custom computer software. Custom computer software and the portion of prewritten computer software that is modified or enhanced if the modification or enhancement is designed and developed to the specifications of a specific purchaser and the charges for the modification or enhancement are separately stated on the invoice or similar billing document given to the purchaser at the time of sale.

10. Fuel, electricity, and piped natural gas for use in connection with the operation of a manufacturing facility. This exemption does not apply to the following:

a. Electricity used at a facility at which the primary activity is not manufacturing.

b. Fuel or piped natural gas that is used solely for comfort heating at a manufacturing facility where there is no use of fuel or piped natural gas in a manufacturing process.

For purposes of this exemption, a “facility” is a single building or structure, or a group of buildings or structures that are located on a single parcel of land or on contiguous parcels of land under common ownership and any other related real property contained on the parcel or parcels.

11. Repair, maintenance, and installation services for an item that is exempt from sales and use tax, including items that qualify as mill machinery or mill machinery parts or accessories.

Note: For information regarding repair, maintenance, and installation services, refer to SUTB 75.

12. Service contracts for an item that is exempt from sales and use tax, including items that qualify as mill machinery or mill machinery parts or accessories.

Note: For information regarding to service contracts, refer to SUTB 79.

58-3 USE TAX LIABILITY OF MANUFACTURERS

Purchases by manufacturers of items for storage, use, or consumption in this State from suppliers who do not collect North Carolina sales or use tax thereon are liable for payment of the applicable rates of use tax directly to the Department, unless such purchases are specifically exempt by statute. Freight, delivery, or other transportation charges by a retailer in any way connected with such taxable purchases are part of the purchase price subject to the same rate of use tax as the taxable purchases.

58-4 PACKAGING

A. Purchases by manufacturers, producers, and retailers of materials used for packaging, shipment or delivery of tangible personal property that is sold either at wholesale or retail and when such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer are exempt from sales and use tax. Packaging materials include, but are not limited to:

1. Wrapping paper, labels, wrapping twine, paper, cloth, plastic bags, cartons, packages and containers, cores, cones or spools, wooden boxes, baskets, coops and barrels, tape, sealing paper, steel strapping, paper cups, napkins, and drinking straws.

2. Bagging and ties or other packaging materials purchased by manufacturers for use in processing customers' animal feed are exempt from sales and use tax provided the customers resell the feed and such packaging materials become a part of the sale. If the manufacturers use bagging and ties or other packaging materials in processing customers' feed that the customers will use and not resell, such bagging, ties, and other packaging materials are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

3. Box wraps, labels, printed toppers for polyethylene bags, and cardboard hosiery inserts upon which hosiery is placed.

4. Instruction sheets, instruction booklets or pamphlets, direction folders, and similar items that give instructions as to the proper use of such property. However, this exemption shall not apply to sales of any tangible personal property that accompany products being sold

to advertise other products and do not give instructions as to the proper use of the products being sold.

5. A container that is used as packaging by the owner of the container or another person to enclose tangible personal property for delivery to a purchaser of the property and is required to be returned to its owner for reuse. The exemption applies to reusable containers such as barrels, drums, and other containers used for the aforementioned purposes. Enclosed containers are containers that enclose the products sold from all sides. Purchases of paint by manufacturers, producers, wholesalers and retailers for use in painting such containers also qualify.

6. Packaging materials that are purchased by a contract manufacturer and used to package products that it is manufacturing or processing for its manufacturer-customers to be sold by such manufacturer-customers in such packages or containers.

B. Purchases by manufacturers of packaging materials for use on the production line to package or hold materials that are not for sale but are held for further processing in the same plant or at another plant that do not become a part of the sale of the manufactured product that is delivered to the customer are classified as accessories to the manufacturing process and are exempt from sales and use tax. Purchases by manufacturers of packing materials used to package items or hold items in process that are transferred to a contract manufacturer for further processing even though such packing materials are not sold to the contract manufacturer are exempt from sales and use tax.

C. Purchases by manufacturers of packaging materials not used on the production line of the manufacturing process as provided in SUTB 57-1, that do not become a part of the sale of the manufactured product that is delivered to the customer are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

D. Purchases by contract manufacturers of packaging materials used to package products which the contract manufacturer is manufacturing or processing for its manufacturer-customers to be sold by such manufacturer-customers in such packaging materials are exempt from sales and use tax since the packaging material will become a part of the sale of the product by owner thereof. Packaging material used by the contract manufacturer to package or hold products which are returned to the manufacturer-customer or sent to another contract manufacturer for further processing are exempt from sales and use tax.

SUTB 59 MARKETPLACE FACILITATORS AND MARKETPLACE SELLERS

59-1 DEFINITIONS

G.S. § 105-164.3 provides the following terms and definitions:

1. **"Marketplace"** – A physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items, the delivery of or first use of which is sourced to this State.

2. **"Marketplace-facilitated sale"** – The sale of an item by a marketplace facilitator on behalf of a marketplace seller that occurs through a marketplace.

3. **"Marketplace facilitator"** – A person that, directly or indirectly and whether through one or more affiliates, does both of the following:

   a. Lists or otherwise makes available for sale a marketplace seller's items through a marketplace owned or operated by the marketplace facilitator.
   b. Does one or more of the following:

      (i) Collects the sales price or purchase price of a marketplace seller's items or otherwise processes payment.
      (ii) Makes payment processing services available to purchasers for the sale of a marketplace seller's items.

4. **"Marketplace seller"** – A person that sells or offers to sell items through a marketplace regardless of any of the following:

   a. Whether the person has a physical presence in this State.
   b. Whether the person is registered as a retailer in this State.
   c. Whether the person would have been required to collect and remit sales and use tax had the sales not been made through a marketplace.
   d. Whether the person would not have been required to collect and remit sales and use tax had the sales not been made through a marketplace.

Note: For information on accommodation facilitators, admission facilitators, or service contract facilitators refer to SUTBs 6, 7, and 79, respectively

59-2 LIABILITY FOR COLLECTING AND REMITTING TAX

A marketplace facilitator engaged in business in North Carolina is considered the retailer of each marketplace-facilitated sale it makes and is liable for collecting and remitting the sales and use tax on all such sales. A marketplace facilitator is required to comply with the same requirements and procedures as all other retailers. The remote marketplace facilitator threshold only applies to marketplace facilitators who are not otherwise engaged in business in North Carolina. A marketplace facilitator is required to collect and remit sales tax regardless of whether a marketplace seller for whom it makes a marketplace-facilitated sale meets any of the following conditions:

1. Has a physical presence in this State.
2. Is required to be registered to collect and remit sales and use tax in this State.
3. Would have been required to collect and remit sales and use tax in this State had the sale not been made through a marketplace.
4. Would not have been required to collect and remit sales and use tax in this State had the sale not been made through a marketplace.

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If a purchaser receives a refund on any portion of the sales price from a marketplace facilitator who collected and remitted the tax on the retail sale, the provisions of G.S. § 105-164.11A(a) apply.

59-3 MARKETPLACE FACILITATOR REPORTS TO MARKETPLACE SELLERS

A marketplace facilitator must provide or make available to each marketplace seller the gross sales and the number of separate transactions with respect to marketplace-facilitated sales sourced to this State and made on behalf of the marketplace seller. The information may be provided in any format and shall be provided or made available no later than 10 days after the end of each calendar month.

59-4 LIABILITY RELIEF FOR MARKETPLACE FACILITATORS

The Department shall not assess a marketplace facilitator for failure to collect the correct amount of tax due if the marketplace facilitator can demonstrate to the Secretary's satisfaction that all of the circumstances listed below apply:

1. The failure to collect the correct amount of tax was due to incorrect information given to the marketplace facilitator by the marketplace seller.
2. The marketplace facilitator did not receive specific written advice from the Secretary for the transaction at issue.

This section does not apply with regard to a marketplace-facilitated sale for which the marketplace facilitator is the marketplace seller or if the marketplace facilitator and the marketplace seller are affiliates. If a marketplace facilitator is not assessed for tax due under this section, the marketplace seller is liable for the tax due under this section provided the marketplace seller is engaged in business in this State.

59-5 RECOVERY OF TAX PAID

A marketplace facilitator may recover the sales or use tax originally paid to a marketplace seller when all the following apply:

1. The facilitator pays the tax to the marketplace seller on a marketplace-facilitated sale for which the facilitator is considered the retailer as provided in SUTB 59-2.
2. The tax is separately stated on an invoice or similar billing document given to the facilitator at the time of sale.

For additional information on restrictions and recovering the tax, refer to SUTB 73-3B.

59-6 CONSIGNMENT SALES

A consignor that is a marketplace facilitator is liable for collecting and remitting the sales and use tax on marketplace-facilitated sales.

59-7 BOAT BROKERS

A person who sells boats and meets the definition of a retailer must collect and remit the sales and use tax due on sales sourced to North Carolina. This includes a boat dealer or broker that meets the definition of a marketplace facilitator engaged in business in this State. *Example: A boat broker allows sellers to leave used boats for sale on the broker's lot and the broker collects the sales price of the boats for the sellers.*

59-8 AUCTIONEERS AND AUCTION SALES

A. Auctioneers and Tag Sale Operators as Marketplace Facilitators

An auctioneer or tag sale operator that is a marketplace facilitator is liable for collecting and remitting the sales and use tax on marketplace-facilitated sales. *Example: The person sells items at the owner's home or farm on behalf of the owner of the items, or the owner's estate, whether by auction or through the pricing of items.*

B. Auctioneer Services

An auctioneer that only calls bids and does not conduct other activities at the event is not a marketplace facilitator and is not required to collect and remit sales and use tax for the event. In this case, the auctioneer does not meet the definition of a marketplace facilitator because the auctioneer does not (i) make payment processing services available to purchasers for the sale of a marketplace seller's items, (ii) collect the sales price of a marketplace seller's items, or (iii) otherwise process payments.

C. Auctions for Going out of Business

1. Marketplace Facilitator Conducted Auction

A marketplace facilitator conducting a going out of business or bankruptcy auction for a customer is liable for collecting and remitting the sales and use tax on marketplace-facilitated sales.

2. Auctions Conducted by a Business that is not a Marketplace Facilitator

If a retail or wholesale business that normally does not conduct auction sales conducts an auction sale, for example, when it is going out of business, it must collect and remit sales and use tax on any retail sales of inventory that it held for resale. Sales of a business's fixtures and operating equipment by the business are not subject to sales and use tax because they are occasional and isolated sales by someone not engaged in the business of selling that type of property.

59-9 GRACE PERIOD FOR CERTAIN MARKETPLACE-FACILITATED SALES

The Department shall take no action to assess a person for any tax due for a filing period beginning on or after February 1, 2020, and ending prior to October 1, 2020, with respect to either of the following circumstances:

1. The person sells tangible personal property on behalf of the owner of the tangible personal property, or the owner's estate, whether by auction or through the pricing of items, and the sale was conducted at the owner's home or farm.
2. The person sells fixtures and equipment held for use in operating a retail or wholesale business on behalf of a business, whether by auction or through the pricing of items, and the sale is conducted at the business location.

This grace period does not apply to (i) a person that received specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable period, (ii) a person that collected tax and failed to remit it to the Department, or (iii) the retail sale of inventory that was held for resale.

59-10 EFFICIENT ADMINISTRATION

When the Secretary finds it necessary for the efficient administration of Article 5 of Chapter 105 of the North Carolina General Statutes with regard to any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they

obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these dealers, distributors, consignors, supervisors, employers, or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers, or persons as “marketplace facilitators” for the purpose of Article 5 of Chapter 105 of the North Carolina General Statutes and may treat the sales they make as “marketplace-facilitated sales” and the sellers as “marketplace sellers.”

SUTB 60 MISCELLANEOUS TOPICS

60-1 SALES TO EMPLOYEES

An employer engaged in business in this State shall collect and remit the sales and use tax due on the retail sale of an item to an employee. The tax due shall be computed at the applicable rates of sales and use tax. An employer required to collect sales or use tax shall register with the Department. The fact that an employer's sales are infrequent, comprise only a small fraction of the total business, or are to employees only, do not relieve an employer of these requirements.

60-2 PUBLIC RELATIONS FIRMS

A. Rendering Professional Services

Charges by a public relations firm to plan and conduct a public relations program that requires it to conduct research, opinion polls and surveys, compile data, perform analysis, and present a written, oral, or electronic report of its findings to its client, are not subject to sales or use tax.

The public relations firm shall pay the applicable rates of sales and use tax on the purchase price of any item sourced to this State and purchased for use in performing the aforementioned services or carrying out the goals or objectives of the plan or concept.

B. Making Retail Sales

Retail sales by public relations firms of taxable items are subject to sales or use tax unless exempt by statute. Taxable items sold by public relations firms include tangible personal property and certain digital property produced, fabricated, purchased, or acquired by the public relations firm and sold to its client and delivered to the client or to others on behalf of its client. Taxable items sold by public relations firms also include repair, maintenance, and installation services.

The sales price of an item includes fees charged for costs directly involved with the production of the item and charges specifically associated with the fabrication, manufacture, or delivery of the item, such as charges for commissions, supervision, research, transportation charges, postage, telephone and electronic messages, copying, models' fees, stage props, printing, printing plates, films, positives, negatives, transparencies, and color separations even though the firm may separately state such charges on the invoice or similar billing document given to the client at the time of sale and in the firm's records.

If the public relations firm performs repair, maintenance, and installation services that it sells to its client, the public relations firm is making a retail sale subject to sales and use tax on the sales price of the service.

Note: For information on repair, maintenance, and installation services, refer to SUTB 75.

60-3 ICE HANDLING SUPPLIES

Sales of ice picks, ice tongs, and other supplies to retailers and wholesale merchants for use in the delivery of ice to customers, but that do not become a part of the sale, are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

60-4 MARKING MACHINES

Sales of marking machines to retailers and wholesale merchants for use in imprinting price, size, or other information on tickets, tags, etc., are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

60-5 CERTAIN SALES BENEFITING ELEMENTARY OR SECONDARY SCHOOLS

A. Exempt Sales

Food, prepared food, soft drinks, candy, and other tangible personal property sold not for profit for or at an event that is sponsored by an elementary or secondary school when the net proceeds of the sales will be given or contributed to the school or to a nonprofit charitable organization, one of whose purposes is to serve as a conduit through which the net proceeds will flow to the school, is exempt from sales and use tax. For purposes of this exemption, the term “school” is an entity regulated under Chapter 115C of the General Statutes.

Items purchased for resale are exempt from sales and use tax when purchased as provided in SUTB 5.

B. Sales by Elementary and Secondary Schools

Sales by schools in school stores, student lounges, teachers’ lounges, football fields, or other areas associated with the school of pencils, paper, various school supplies, t-shirts, cups, soft drinks, and tangible personal property are exempt from sales and use tax when the net proceeds of the sales are retained by the school.

Example: A high school sells snacks at sporting events to raise funds for new band uniforms. The net proceeds from the concession sales are retained by the school to assist in purchasing new band uniforms. These sales are exempt from sales and use tax.

C. Sales by School Clubs and Groups

Sales at fundraising events by school clubs and groups such as the Senior Class, Band Boosters, Spanish Club, Math Club, and similar groups are exempt from sales and use tax when the net proceeds of the sales will be given or contributed to the school.

Example: The Senior Class sells T-shirts during the school year to sponsor the Senior Class picnic that will take place on the football field at the school following final exams and prior to graduation. The Senior Class will give the net proceeds of their T-shirt sales to the school to fund the picnic. The sales of the T- shirts by the Senior Class are exempt from sales and use tax.

D. Sales by Certain Nonprofit Charitable Organizations

Certain nonprofit charitable organizations may conduct sales at events sponsored by a school for the benefit of the school. Examples include, but are not limited to, the Parent Teacher Association (“PTA”), the National Honor Society, the Key Club, the Beta Club and other similar organizations. Sales by such organizations are exempt from sales and use tax provided the requirements of G.S. § 105-164.13(26b) are met. The organization must be the retailer, acquire the inventory, and make the sales on its own behalf, notwithstanding that the school may provide a space for the sales. Sales by such an organization on a continuous basis, such as the operation of a school store or concessions stand on the school’s premises, are exempt from sales and use tax provided the net proceeds of the sales are given or contributed to the school.

Example: The PTA operates a snack bar and sells soft drinks, candy, hot dogs, and hamburgers at the school’s sporting events. Pom-poms in the school’s colors are also available for purchase. The net proceeds from the sales are given to the school by the PTA and are exempt from sales and use tax.

E. Sales by For Profit Organizations

Sales by for profit organizations whose gross proceeds, net proceeds, or where commissions are given to a school are not exempt from sales and use tax.

When a school acts as an agent or solicitor for a retailer and receives a commission or fee for soliciting the sale, the sale is not exempt from sales and use tax.

Examples:

1. A *restaurant which is a for profit organization offers to contribute a percentage of its net proceeds from its sales each Tuesday night to the local high school for its literary activities. Although a percentage of the net proceeds is being given to the high school, the conditions for the sales and use tax exemption under G.S. § 105-164.13(26b) are not met. Therefore, the restaurant must collect and remit sales and use tax on its Tuesday night sales just as it does on the other sales it makes during the week.*

2. *An elementary school acts as an agent and sells cookie dough for a cookie dough company as a fundraising project. The fundraising sales agreement between the elementary school and the retailer provides the school will solicit the orders for the retailer and receive a commission fee from the retailer for each order. The fundraising sales are subject to the applicable rates of sales and use tax.*

60-6 WATER TREATMENT SYSTEMS AND SERVICES

A. Retail Sales of Water Treatment Systems

Retail sales of water treatment equipment, repair parts, chemicals, and other tangible personal property are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

B. Capital Improvement and Repair, Maintenance, and Installation Services

The initial installation or complete replacement of a water treatment system is a capital improvement to real property, and the real property contractor is liable for the general State, applicable local, and applicable transit rates of sales and use tax on the purchase price of an item used to fulfill the real property contract.

A single repair, maintenance, and installation service to a water treatment system is a retail sale subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Note: For information on repair, maintenance, and installation services, refer to SUTB 75. For information on real property contracts, refer to SUTB 72.

C. Service Contracts for Water Treatment Systems

The retail sale of a service contract for a water treatment system is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Note: For information on service contracts, refer to SUTB 79.

60-7 RIGHT-OF-WAY EQUIPMENT OR OTHER PRODUCTS

Sales of tractors and bush-cutting equipment or chemicals to power companies, railroad companies, counties, cities, contractors, and other persons for use in cutting and maintaining rights-of-way are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

60-8 WOOD CHIPPERS

The general State, applicable local, and applicable transit rates of sales and use tax apply to the sales price of wood chippers sold at retail unless the sale is exempt by statute.

Sales of wood chippers that meet all of the following are exempt from sales and use tax:

1. It is designed to be towed by a motor vehicle.

2. It is assigned a 17-digit vehicle identification number by the National Highway Transportation Safety Association.

3. It is sold to a person that purchases a motor vehicle in this State that is to be registered in another state and who uses the purchased motor vehicle to tow the wood chipper to the state in which the purchased motor vehicle is to be registered.

60-9 MOBILE OFFICES AND MOBILE CLASSROOMS

Retail sales of mobile offices and mobile classrooms are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Sales of mobile classrooms to local boards of education or to local boards of trustees of community colleges are exempt from sales and use tax.

60-10 FABRICATED ARTICLES

A. Taxability

The general State, applicable local, and applicable transit rates of sales and use tax apply to the sales price of fabricated articles of tangible personal property sold at retail and sourced to this State unless specifically exempt by statute. Examples of such items include, but are not limited to, aluminum awnings, venetian blinds, draperies, seat covers, slipcovers, storm doors, storm windows, and any other fabricated articles. When the retail sale is made by the person who fabricated the article from materials that the person furnished, either directly or indirectly, the total sales price, including the charge for labor performed and services rendered in producing such article, is subject to the general State, applicable local, and applicable transit rates of sales and use tax. All persons making such sales must register with the Department and collect and remit the sales and use tax due.

Note: For information regarding fabricated articles relative to a real property contract, refer to SUTB 72.

B. Fabrication Labor

When a person makes retail sales of fabricated articles in this State, and the person subcontracts the fabrication labor, the total sales price is taxable notwithstanding that the fabrication labor may be separately stated on the invoice or other billing document given to the purchaser at the time of sale.

60-11 MAJOR RECYCLING FACILITY

A. Definition

G.S. § 105-164.3 provides the following term and definition:

"Major recycling facility" – Defined in G.S. § 105-129.25.

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B. Exemptions for a Major Recycling Facility

Sales of the following to a major recycling facility are exempt from sales and use tax:

1. Lubricants and other additives for motor vehicles or machinery and equipment used at the facility.

2. Materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling process at the facility.

3. Electricity used at the facility.

C. Purchases Exempt from Sales and Use Tax

Purchases by a major recycling facility of the following for use in connection with the facility are exempt from sales and use tax:

1. Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.

2. Port and dock facilities.

3. Rail equipment.

4. Material handling equipment.

D. Refund of Certain Sales and Use Taxes

For information about incentive refunds for a major recycling facility, refer to SUTB 74-6.

60-12 CERTAIN RESEARCH AND DEVELOPMENT ITEMS

Sales of equipment, or an attachment or repair part for equipment, to a company primarily engaged at the establishment in research and development activities in the physical, engineering, and life sciences included in industry group 54171 of the North American Industry Classification System (NAICS) that meets both of the following requirements are exempt from sales and use tax:

1. The item is capitalized by the company for tax purposes under the Internal Revenue Code.

2. The item is used by the company at the establishment in the research and development of tangible personal property.

60-13 CERTAIN SOFTWARE PUBLISHING ITEMS

Sales of equipment, or an attachment or repair part for equipment, to a company primarily engaged at the establishment in software publishing activities included in industry group 5112 of the North American Industry Classification System (NAICS) that meets both of the following requirements are exempt from sales and use tax:

1. The item is capitalized by the company for tax purposes under the Internal Revenue Code.

2. The item is used by the company at the establishment in the research and development of tangible personal property.

60-14 CERTAIN INDUSTRIAL MACHINERY REFURBISHING ITEMS

Sales of equipment, or an attachment or repair part for equipment, to a company primarily engaged at the establishment in industrial machinery refurbishing activities included in industry group 811310 of the North American Industry Classification System (NAICS) that meets both of the following requirements are exempt from sales and use tax:

1. The item is capitalized by the company for tax purposes under the Internal Revenue Code.
2. The item is used by the company at the establishment in repairing or refurbishing tangible personal property.

60-15 CERTAIN WATERBORNE COMMERCE ITEMS

Sales of the following items to a company located at a ports facility for waterborne commerce are exempt from sales and use tax:

1. Machinery and equipment that is used at the facility to unload or to facilitate the unloading or processing of bulk cargo to make it suitable for delivery to and use by manufacturing facilities.

2. Parts, accessories, or attachments used to maintain, repair, replace, upgrade, improve, or otherwise modify such machinery and equipment.

60-16 SECONDARY METALS RECYCLER

A “secondary metals recycler” is defined as a person that gathers and obtains ferrous metals, nonferrous metals, and products that have served their original economic purpose and that converts them by processes, including sorting, cutting, classifying, cleaning, baling, wrapping, shredding, or shearing into a new or different product for sale consisting of prepared grades.

Sales of the following to a secondary metals recycler are exempt from sales and use tax:

1. Equipment or an attachment or repair part for equipment that meets all of the following requirements:

a. The item is capitalized by the person for tax purposes under the Internal Revenue Code.

b. The item is used by the person in the secondary metals recycling process.

c. The item is not a motor vehicle or an attachment or repair part for a motor vehicle.

2. Fuel, piped natural gas, or electricity for use at the person's facility at which the primary activity is secondary metals recycling.

60-17 CERTAIN PRECIOUS METAL EXTRACTION ITEMS

Sales of equipment, or an attachment or repair part for the equipment, to a company primarily engaged at the establishment in processing tangible personal property for the purpose of extracting precious metals, that meets both of the following requirements are exempt from sales and use tax:

1. The item is capitalized by the company for tax purposes under the Internal Revenue Code.

2. The item is used by the company in processing tangible personal property for the purpose of extracting precious metals to determine the value for potential purchase.

For purposes of this section, a “precious metal” is defined in G.S. § 66-406.

60-18 CERTAIN METAL WORK FABRICATION ITEMS

Sales of equipment, or an attachment or repair part for equipment, to a company that is engaged in the fabrication of metal work that meets all of the following are exempt from sales and use tax.

1. Has annual gross receipts, including the gross receipts of all "related persons," as defined in G.S. § 105-163.010, from the fabrication of metal work of at least eight million dollars ($8,000,000).

2. The item is capitalized by the company for tax purposes under the Internal Revenue Code.

3. The item is used by the company at the establishment in the fabrication or manufacture of metal products or used by the company to create equipment for the fabrication or manufacture of metal products.

60-19 CERTAIN STONE EQUIPMENT

Sales of equipment, or an attachment or repair part for equipment, which is used in cutting, shaping, polishing, and finishing rough cut slabs and blocks of natural and engineered stone and stone-like products and sold to a company primarily engaged in the business of providing made-to-order countertops, walls, or tubs is exempt from sales and use tax.

60-20 LARGE FULFILLMENT FACILITIES

A. Definition

G.S. § 105-164.3 provides the following term and definition:

"Large fulfillment facility" – A facility that satisfies both of the following conditions:

1. The facility is used primarily for receiving, inventorying, sorting, repackaging, and distributing finished retail products for the purpose of fulfilling customer orders.

2. The Secretary of Commerce has certified that an investment of private funds of at least one hundred million dollars ($100,000,000) has been or will be made in real and tangible personal property for the facility within five years after the date on which the first property investment is made and that the facility will achieve an employment level of at least 400 within five years after the date the facility is placed into service and maintain that minimum level of employment throughout its operation.

B. Exemption

Sales of equipment, or an accessory, an attachment, or a repair part for equipment, that meets all of the following requirements are exempt from sales and use tax:

1. Is sold to a large fulfillment facility or to a contractor or subcontractor if the purchase is for use in the performance of a contract with a large fulfillment facility.

2. Is used at the facility for any of the following purposes:

a. In the distribution process, which includes receiving, inventorying, sorting, repackaging, or distributing finished retail products.

b. Baling previously used packaging for resale, sanitizing required by federal law, or material handling.

3. Is not electricity.

C. Forfeiture of Exemption

If the required level of investment or employment is not timely made, achieved, or maintained, then the exemption is forfeited. If the exemption is forfeited due to a failure to timely make the required investment or to timely achieve the minimum required employment level, then the exemption is forfeited on all purchases. If the exemption is forfeited due to a failure to maintain the minimum required employment level once that level has been achieved, then the exemption is forfeited for those purchases occurring on or after the date the taxpayer fails to maintain the minimum required employment level. A taxpayer that forfeits the exemption is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the applicable State, applicable local, and applicable transit rates of sales and use tax from the date the taxes would otherwise have been due, plus applicable interest. Interest is computed from the date the sales or use tax would otherwise have been due. The past taxes and interest are due thirty (30) days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to penalties as provided in G.S. § 105-236.

60-21 ANIMALS

Sales of animals by a commercial animal breeder or producer are exempt from sales and use tax as a product of the farm sold in its original state by the producer of the product if the producer is not primarily a retail merchant.

60-22 ELECTROPLATING INDUSTRIES

A. Receipts derived by retailers from electroplating tangible personal property belonging to customers are subject to the general State, applicable local and applicable transit rates of sales and use tax. Retailers making purchases of metal or other tangible personal property for a taxable transaction that enters into or becomes a part of the customer's tangible personal property are exempt from sales and use tax as purchases for resale.

Note: For information on repair, maintenance, and installation services, refer to SUTB 75.

B. Electroplating services purchased for resale are exempt from sales and use tax. Metal and other tangible personal property that are transferred by such sales are likewise exempt from sales and use tax.

60-23 PUBLIC SCHOOL BOOKS

Sales of public school books on the adopted list, the selling price of which is fixed by State contract, are exempt from sales and use tax.

60-24 CERTAIN PACKAGING

Purchases by manufacturers, producers, and retailers of materials used for packaging, shipment or delivery of tangible personal property that is sold either at wholesale or retail, when such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer, are exempt from sales and use tax.

Note: For detailed information with respect to packaging, refer to SUTB 58-4.

60-25 DIAPERS AND INCONTINENCE UNDERPADS

A. Definitions

G.S. § 105-164.3 provides the following terms and definitions:

1. **"Diaper"** – An absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

2. **"Incontinence underpad"** – An absorbent product, not worn on the body, designed to protect furniture or other tangible personal property from soiling or damage due to human incontinence.

B. Exemption

Sales of diapers or incontinence underpads on prescription by an enrolled State Medicaid/Health Choice provider for use by beneficiaries of the State Medicaid program when the provider is reimbursed by the State Medicaid program or a "Medicaid managed care organization," as defined in 42 U.S.C. § 1396b(m) are exempt from sales and use tax.

60-26 GRAPHIC DESIGN FEES

Graphic design fees are part of the sales price of the property being sold. Graphic design fees in connection with the sale of taxable tangible personal property or certain digital property are part of the sales price subject to sales and use tax. Graphic design fees in connection with the sale of an item that is not subject to sales and use tax are not subject to sales and use tax.

60-27 COVID-19 TEST KITS

COVID-19 test kits are subject to sales and use tax.

60-28 VENUE RENTALS

A. Venue Rentals Only

If a person solely rents a venue without catering and does not enter into a separate rental agreement for tangible personal property or taxable services provided during the rental, the charge for the rental is not subject to sales and use tax. (*Example: A venue rental that includes tables, chairs, and a projector but does not enter into a rental agreement for such items.)*

For specific information on funeral related services, refer to SUTB 34-1.

Note: A venue, as provided in this subsection, is real property.

B. Venue Rentals with Food, Prepared Food, and Beverages

If a retailer rents a venue and provides, furnishes, prepares, or serves food, prepared food, and beverages during the venue rental, the retailer is providing catering and the fee or charge for the venue rental is subject to sales and use tax. The fee or charge is subjected to sales and use tax even if the retailer separately states the food, prepared food, and beverage charges from the venue rental. Refer to SUTB 32-8.

C. Items used by Provider of Venue Rentals

Purchases and leases of tangible personal property, certain digital property and taxable services by a provider of a venue are generally subject to sales and use tax, including items used to furnish the venue to its customers. Examples of taxable items commonly purchased or leased by providers of venues include:

1. Chairs
2. Linens
3. Tables
4. Dinnerware
5. Flatware
6. Flowers and flower vases

If a venue provider charges its customers for its use of these items when providing catering, as described in subsection B, such charges are also a part of the sales price of the catering and subject to sales and use tax. The fee or charge is subjected to sales and use tax even if the retailer separately states the charges for these items.

D. Venue Rental and Customer Hires Separate Caterer

A charge for a venue rental to a customer who hires a separate catering business to provide food, prepared food, and beverages is not subject to tax, as the venue provider is not the retailer of food, prepared food, and beverages.

E. Venue Rental Providers that Charge for Additional Services

Additional charges by a provider of a venue rental may be taxable if the services are related to the sale of tangible personal property.

Charges for services by a provider of a venue that are related to the sale of food, prepared food, beverages include services such as bar service fees, wine corkage fees, cake cutting, cleaning, and coordinator fees, are taxable when provided in conjunction with catering, as described in subsection B. Such charges are part of the sales price of the catering. However, these charges by a provider of a venue are generally not subject to sales and use tax when the customer hires a separate catering business to provide food, prepared food, and beverages, as described in subsection B.

Charges for services by a provider that are not related to the sale of tangible personal property, such as DJ services and security services, are generally not taxable when separately stated on an invoice or similar billing document.

Note: A venue, as provided in this subsection, is real property.

F. Venue Rentals that Include Accommodations

A single charge for an accommodation and the rental of a venue is subject to the applicable State, applicable local, and applicable transit rates of sales and use tax.

60-29 CONTINUING CARE RETIREMENT COMMUNITIES

A. Definitions

For purposes of this section, the following terms and definitions apply:

1. **"Alcoholic beverage"** – Defined in G.S § 18B-101.

2. **"Continuing care"** – Defined in G.S. § 58-64-1.

3. **"Provider"** – Defined in G.S. § 58-64-1.

4. **"Resident"** – Defined in G.S. § 58-64-1.

B. Exemption

Certain sales by a provider of continuing care to its resident are exempt from sales and use tax. Sales must meet two requirements in order to qualify for the exemption:

1. The sales must be made by a provider of continuing care directly to its resident; and

2. The sales must be of an item that is not an alcoholic beverage.

The exemption does not apply to sales of alcoholic beverages. In addition, exemption does not apply to sales by a provider of continuing care to a person that is not a resident of the facility.

C. Liability of Continuing Care Retirement Communities for Tax on Purchases

A provider of continuing care must pay sales and use tax on the purchase price of an item that is exempt from tax as described in SUTB 60-29B as if the provider is the user of the item. Specific guidance for different types of purchase can be found below:

1. Items Sold to Residents Other than Alcoholic Beverages

A provider of continuing care must pay sales or use tax on the purchase price of these items unless an exemption would apply to the sale if the provider purchased the item for its own use. As a result, a provider of continuing care *cannot* use the resale exemption to avoid payment of sales and use tax on these items.

If North Carolina law would allow a provider of continuing care to purchase these items for its own use exempt from tax, the provider may purchase the items exempt from sales and use tax. To purchase items exempt from tax, the provider must comply with the exemption certificate requirements found in SUTB 5-1.

2. Alcoholic Beverages for Resale

A provider of continuing care may purchase alcoholic beverages exempt from sales and use tax when purchased for resale to its residents or other persons. To purchase these items exempt from tax, the provider must comply with the exemption certificate requirements found in SUTB 5-1.

3. Items for Resale to Persons Other than Residents

A provider of continuing care may purchase items for resale to a person other than a resident exempt from sales and use tax. To purchase these items exempt from tax, the provider must comply with the exemption certificate requirements found in SUTB 5-1.

D. Examples

1. *A provider of continuing care ("PoCC") sells food and beverages to its residents. The PoCC purchases food and non-alcoholic beverage items, which it prepares into meals for residents. The PoCC sells these meals directly to its residents.*

The purchases by the PoCC are subject to the applicable rates of sales and use tax. If the purchases are of qualifying food, the PoCC must pay the 2% food rate of sales and use tax on the purchase price. All others food and beverage purchases are subject to the general state, and applicable local and transit rates of sales and use tax. The CCRC Exemption applies to the sale of meals by the PoCC to its residents.

2. *A PoCC sells food and beverages to its residents, visitors, and staff. The PoCC purchases food and non-alcoholic beverage items, which it prepares into meals for residents, visitors, and staff. The PoCC pays the applicable rates of sales or use tax on the purchase price of all of these items at the time of purchase. The PoCC then sells these meals directly to its residents, visitors, and staff. The PoCC collects the general state, and applicable local and transit rates of sales and use tax on the meals sold to visitors and staff.*

The PoCC correctly collected sales tax on the meals sold to visitors and staff. The PoCC may recover the sales tax paid on the purchase of the food and nonalcoholic beverages it sold to visitors and staff in accordance with SUTB 73-3 because the PoCC paid sales tax on the purchase price of the food and alcoholic beverages it resold to its visitors and staff. The PoCC must maintain the proper documentation supporting these transactions.

3. *A PoCC engages a third-party to sell food and beverages to its residents. The third-party purchases and prepares food and non-alcoholic beverage items into meals for residents. The third-party charges residents for the meals.*

Sales by the third-party to the residents of the PoCC are subject to the general state, applicable local and transit rates of sales and use tax. The third-party may purchase items resold exempt from sales and use tax. When making such purchases, the third-party must comply with the exemption administration requirements found in SUTB 5-1.

4. *A PoCC engages a third-party to prepare meals for the PoCC. The third-party purchases and prepares food and non-alcoholic beverage items into meals and provides them to residents. The third-party charges the PoCC for these meals.*

Sales by the third-party to the PoCC are subject to the general state, and applicable local and transit rates of sales and use tax. The third-party may purchase items resold exempt from sales and use tax. When making such purchases, the third-party must comply with the exemption administration requirements found in SUTB 5-1.

5. *A PoCC purchases corrective eyeglasses to sell to its residents. Corrective eyeglasses are prosthetic devices and are exempt from sales and use tax.*

The PoCC may purchase these items exempt from sales and use tax because the item would be exempt from sales and use tax when purchased by the PoCC for its own use. The sale to its resident is also exempt from sales and use tax.

6. *A PoCC sells repair, maintenance, and installation services to its residents including the replacement of light bulbs. The PoCC purchases lights bulbs from a vendor to replace resident light bulbs.*

The PoCC must pay the general state, and applicable local and transit rates of sales and use tax on the purchase price of the light bulbs because they would be taxable if purchased by the PoCC for its own use. The CCRC exemption applies to the sale of RMI services by the PoCC to its residents.

SUTB 61 MOTOR VEHICLES

61-1 RETAIL SALES, LEASES, AND SUBSCRIPTIONS OF MOTOR VEHICLES

A. Definition

G.S. § 105-164.3 provides the following term and definition:

"Motor vehicle" – A vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:

1. A moped.

2. Special mobile equipment.

3. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. §§ 20-51(10) or (11).

4. A farm tractor or other implement of husbandry.

5. A manufactured home, a mobile office, or a mobile classroom.

6. Road construction or road maintenance machinery or equipment.

Notes: A low speed vehicle and a mini-truck, as the terms are defined in G.S. § 20-4.01, are motor vehicles. A modified utility vehicle, an electric assisted bicycle, and an electric personal assistive mobility device, as the terms are defined in G.S. § 20-4.01, are not motor vehicles for purposes of the sales and use tax.

B. Retail Sales of Motor Vehicles

Retail sales of motor vehicles are exempt from sales and use tax and subject to the 3% highway use tax imposed under Article 5A of Chapter 105 of the North Carolina General Statutes with certain exceptions. The highway use tax is administered by the Division of Motor Vehicles and must be paid to the Commissioner of Motor Vehicles by the dealer, the purchaser, or other applicant for a certificate of title at the time of making application.

C. Lease, Rental, or Subscription of Motor Vehicles - Alternate Highway Use Tax

For information regarding the alternate highway use tax due on the lease, rental, or subscription of certain motor vehicles, refer to the Alternate Highway Use Tax Bulletin.

61-2 MOTOR VEHICLE SERVICE BUSINESSES

A. Repair of Motor Vehicles

Persons engaged in the business of repairing automobiles and other motor vehicles are liable for collecting and remitting the general State, applicable local, and applicable transit rates of sales and use tax on the sales price of any parts, accessories, or other tangible personal property that they sell at retail in connection with repairing motor vehicles. Any charges for labor to install parts, accessories, or similar property are part of the sales price subject to sales and use tax.

B. Repair, Maintenance, and Installation Services for Motor Vehicles

Charges by retailers for repair, maintenance, and installation services sourced to this State are subject to the general State, applicable local, and applicable transit rates of sales and use tax on

the sales price of or gross receipts derived from such services and generally include any tangible personal property or certain digital property that becomes a part of or is installed or applied to a purchaser's property.

Examples of services generally considered repair, maintenance, and installation services for motor vehicles include, but are not limited to:

1. Fluid exchanges: oil, engine coolant/antifreeze, refrigerant, brake, power steering, windshield washer, transmission, differential.

2. Fuel system: clean or inspect fuel injectors, visual inspection of fuel lines, adjust throttle, fuel treatment.

3. Electrical: battery test, charge, or jump service; apply protective coat to battery terminals; visually inspect wiring and wiring components; test fuse; clean battery terminals or receptacles.

4. Tires: rotate, mount, balance, align, patch or plug; measure or adjust pressure.

5. Suspension: inspect steering and suspension; grease joints or bearings; pack bearings.

6. Inspections: preventative maintenance, multi-points, brake system, visual (belts, hoses, wiring, brakes, engine components, air conditioning components, lines, windshield wipers, etc.).

7. Adjust or calibrate: belt tension, speedometer, tachometer, throttle, and set or adjust spark plug gap.

8. Exterior: wash, wax, or detail services; paint; remove scratches, dents, or dings; apply protective coatings (spray on bed liners, clear coat, waxes, moisture/rain protection); window tinting.

9. Interior: reupholster, clean (upholstery, carpet, windows), and apply protective coatings.

10. Troubleshoot a fluid leak or attempt to diagnose an unusual noise coming from a motor vehicle, whether or not the source of the leak or noise is found or remedied.

11. Restore: headlights, moldings, trims, etc.

12. Roadside service fees where the intent of the service call is to troubleshoot.

Note: For information regarding repair, maintenance, and installation services, refer to SUTB 75.

C. Painting and Refinishing Motor Vehicles

The gross receipts derived by a retailer for painting or refinishing a motor vehicle are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Sales of paint, primer, putty, and other tangible personal property that become a part of the purchaser's property may be purchased for resale as provided in SUTB 5. A retailer's purchase of tools, supplies, masking tape, sandpaper and belts, and any other tangible personal property for use in body repair, painting, or refinishing work are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

If, in addition to body repair, painting, or refinishing work, a retailer purchases tangible personal property for resale such as automobile fenders, doors, windshields, or other parts, the retailer must

collect and remit the general State, applicable local, and applicable transit rates of sales and use tax on the sales price of such tangible personal property.

D. Tools, Equipment, and Supplies Sold to Automotive Repair Shops for Use

Sales of tools, equipment, and supplies to automotive repair shops for use in conducting business are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

E. Storage of a Motor Vehicle

A charge for the storage of a motor vehicle, provided the charge is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale, is exempt from sales and use tax.

F. Towing Services

A charge for towing services, provided the charge is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale, is exempt from sales and use tax.

G. Sales of Lubricants

Retail sales of motor oils, transmission or differential oils or greases, or other such oils and greases by lubricating stations, service stations, garage operators, and other retailers are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

H. Road Service Fees

1. Road Service Fees in Connection with the Sale of Tangible Personal Property

Retailers, such as repair businesses and tire dealers, may charge road service fees or similar fees when they make service calls to the location requested by the purchaser. These fees may represent or include a charge for mileage to travel to and from the repair site or may represent a fuel surcharge.

A road service fee charged in connection with the sale of repair parts or other tangible personal property is considered to be part of the sales price of such property and is subject to the general State, applicable local, and applicable transit rates of sales and use tax, notwithstanding the road service fee is separately stated on the invoice or other billing document given to the purchaser at the time of sale.

Generally, a sale that takes place at the location of the purchaser of repair parts or other tangible personal property, including the road service fee, is sourced to the location (i.e., county) of the purchaser.

2. Road Service Fees in Connection with the Sale of Services

A road service fee charged by a retailer in connection with repair, maintenance, and installation services, which includes troubleshooting, is subject to the general State, applicable local, and applicable transit rates of sales and use tax. Road service fees charged in connection with towing, where no other taxable sale or service occurs, are exempt from sales and use tax.

Generally, a sale that takes place at the location of the purchaser of repair, maintenance, and installation services, including the road service fee, is sourced to the location (i.e., county) of the purchaser.

Note: For information regarding repair, maintenance, and installation services refer to SUTB 75.

I. Shop Supplies

1. Purchases of supplies by repair shops, tire dealers, retreaders, and similar types of retailers that are used or consumed in providing repair, maintenance, and installation services and that do not become a part of a motor vehicle are subject to the general State, applicable local, and applicable transit rates of sales and use tax at the time of purchase by the repair shop, dealer, etc. A retailer selling such items in addition to consuming the same items while providing repair, maintenance, and installation services, may purchase such items for resale exempt from sales and use tax as provided in SUTB 5. Sales and use tax is due by a retailer on the purchase price of property purchased under a Certificate of Exemption and subsequently withdrawn from inventory for use by the retailer in rendering repair, maintenance, and installation services.

Retail sales of shop supplies by retailers, such as repair shops, tire dealers, and retreaders, are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

2. Service businesses may charge a separate fee for shop supplies in servicing or repairing a customer's property. The charge may be a flat fee or a percentage of the parts and labor. The fee charged by a retailer for shop supplies in providing repair, maintenance, and installation services is part of the sales price subject to the general State, applicable local, and applicable transit rates of sales and use tax, notwithstanding that charges for such are separately stated on an invoice or similar billing document given to the purchaser at the time of sale.

Note: For information regarding repair, maintenance, and installation services, refer to SUTB 75.

61-3 VEHICLE WASH BUSINESSES

A. Definitions

For purposes of this section, the following terms and definitions apply:

1. **"Limited-service vehicle wash"** – The cleaning of a vehicle by mechanical means where the only activities performed by an employee include one or more of the following:

a. Receiving payment for the transaction.
b. Guiding the vehicle into the entrance or exit of a conveyor.
c. Applying low-pressure spray of chemicals to the vehicle prior to the cleaning of the vehicle.
d. Placing protective tape or covers on the vehicle prior to cleaning.

The term does not include any activity whereby an employee physically touches the vehicle for the purpose of cleaning or restoring the vehicle, enters or cleans any part of the interior of the vehicle, or performs an activity on the vehicle other than one of those listed in this subsection.

2. **"Self-service vehicle wash or vacuum"** – The cleaning of a vehicle by a customer without any cleaning or restoring activity performed by an employee.

B. Exempt Vehicle Washes

The sales price of or gross receipts derived from a self-service vehicle wash or vacuum (including drive-thru or coin-operated) and limited-service vehicle wash are exempt from sales and use tax. If a vehicle wash business makes retail sales of items through vending machines or otherwise, they must collect and remit the applicable sales and use tax due thereon.

1. Materials for Use at Exempt Vehicle Washes

Purchases of items used or consumed in the operation of a self-service vehicle wash or vacuum and limited-service vehicle wash are subject to the general State, applicable local, and applicable transit rates of sales and use tax at the time of purchase. This includes soap, wax, polish, glaze, and brushes.

2. Materials for Resale

Retail sales of soap, wax, polish, glaze, and other similar materials to a retailer for the purpose of resale are exempt from sales and use tax when purchased as provided in SUTB 5.

C. Other Vehicle Washes

The sales price of or the gross receipts derived from a vehicle wash that is not a self-service or limited-service vehicle wash are subject to the general State, applicable local, and applicable transit rates of sales and use tax. If a vehicle wash business makes retail sales of items through vending machines or otherwise, they must collect and remit sales and use tax thereon.

1. Materials for Use at Taxable Vehicle Washes

Any tangible personal property that becomes a part of or is applied to a purchaser's property such as soap, wax, polish, glaze, and other similar materials during a vehicle wash that is not a self-service or limited-service vehicle wash may be purchased for resale exempt from sales and use tax as provided in SUTB 5.

Any tangible personal property that does not become a part of or is not applied to a purchaser's property such as rags, sponges, buckets, and brushes is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

2. Materials for Resale

Retail sales of soap, wax, polish, glaze, and other similar materials to a retailer for the purpose of resale are exempt from sales and use tax when purchased as provided in SUTB 5.

D. Facilities Offering Taxable and Exempt Vehicle Washes

Provided the gross receipts derived from the vehicle washes are separately accounted for and designated in the books, records, computer system, or point of sale system, and there is evidence that both taxable and exempt vehicle washes occur at the location, the sales price of or the gross receipts derived from vehicle washes that are not limited-service or self-service vehicle washes are subject to sales and use tax and the sales price of or the gross receipts derived from the limited-service and self-service vehicle washes are exempt from sales and use tax.

Soap, wax, polish, glaze, and other similar materials purchased for use at a facility offering both taxable and exempt vehicles washes are subject to sales and use tax as provided in SUTBs 61-3B and 61-3C.

61-4 TIRES

A. Sales of Tires

Sales to users or consumers of new tires are subject to the general State, applicable local, and applicable transit rates of sales and use tax on the sales price without any deduction whatsoever on account of any trade-in credit or allowance. A scrap tire disposal tax is imposed on a tire retailer at a percentage rate of the sales price of each new tire sold at retail by the retailer. For information on the scrap tire disposal tax, refer to the Scrap Tire Disposal Tax Bulletin.

B. Sales of Secondhand Tires

Sales to users or consumers of secondhand tires that have been retreaded, also known as recapped or remolded, are subject to the general State, applicable local, and applicable transit rates of sales and use tax on the sales price without any deduction whatsoever on account of any trade-in credit or allowance. Sales to users or consumers of non-recapped or non-retreaded secondhand tires are also subject to the general State, applicable local, and applicable transit rates of sales and use tax.

C. Repairs to Tires and Materials Used

The sales price of or the gross receipts derived from charges for repair, maintenance, and installation services sold at retail for tires and tubes, such as applying shoes, patches, or plugs, are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Tangible personal property purchased by retailers that enters into or becomes a part of the tire or tube may be purchased by the retailer for resale exempt from sales and use tax as provided in SUTB 5.

Note: For information regarding repair, maintenance, and installation services, refer to SUTB 75.

D. Mounting and Balancing

The charge by a retailer for mounting and/or balancing tires that are owned by a customer is subject to the general State, applicable local, and applicable transit rates of sales and use tax. If a retailer sells tires and makes a charge to mount and/or balance the tires, the general State, applicable local, and applicable transit rates of sales and use tax is due on the sales price of the tires which includes the charge for mounting and/or balancing notwithstanding that the mounting and/or balancing charge is separately stated on the invoice or similar billing document given to the purchaser at the time of sale.

Note: For information regarding repair, maintenance, and installation services, refer to SUTB 75.

61-5 TIRE RETREADERS

A. Tire Retreading Services

The sales price of or the gross receipts derived from tire retreading services sold at retail are subject to the general State, applicable local, and applicable transit rates of sales and use tax, without any deduction for any trade-in credit or allowance. Tire retreaders that make such sales are retailers. A retailer or a wholesale merchant who does not collect the applicable sales and use tax from its customers remains liable for the tax due, unless the retailer or wholesale merchant maintains proper records to establish a sale is exempt from sales or use tax.

Note: For information regarding repair, maintenance, and installation services, refer to SUTB 75.

B. Sales by Tire Retreaders

The sales price of a retreaded tire is subject to the general State, and applicable local and transit rates of sales and use tax on the sales price of the retreaded tire, without any deduction for any trade-in credit or allowance.

The sales price of other items sold by a tire retreader including shoes, valves, dust caps, and repair, maintenance, and installation services are subject to the general State, and applicable local and transit rates of sales and use tax unless exempt by statute.

Tire retreaders that make sales of such items are retailers. Tangible personal property purchased by retailers for resale to their customers may be purchased exempt from sales and use tax as provided by SUTB 5.

C. Purchases by Tire Retreaders

1. A tire retreader may purchase exempt from sales and use tax tangible personal property that enters into or becomes an ingredient or component part of retreaded tires that are resold as provided in SUTB 5. Such items may include camelback or other rubber products, cement and rubber solvent, cord fabric, wheel weights, and other similar items.

2. Purchases by tire retreaders of mill machinery or mill machinery parts or accessories for use primarily in the retreading process, are exempt from sales and use tax, provided the mill machinery or mill machinery parts or accessories are for use by tire retreaders in the production process, as the term “production” is defined SUTB 57-1.

The following items sold to tire retreaders for use primarily in the retreading process are considered to be mill machinery or mill machinery parts or accessories exempt from sales and use tax. This is not an all-inclusive list.

a. Air compressors used exclusively in the retreading process.
b. Bagging and debagging equipment.
c. Boilers.
d. Buffing discs.
e. Buffing equipment.
f. Buffing rasps.
g. Casing balancers used exclusively in balancing casings to be retreaded.
h. Crayons for marking tires.
i. Curing tubes and rims.
j. Dust collectors.
k. Inspection spreaders used exclusively to inspect casings being retreaded.
l. Knives, stitchers, rollers, shears, awls, and splicing tools used to perform work on the ingredient material or the manufactured product.
m. Matrix loaders.
n. Mold cleaners.
o. Mold lube.
p. Molds and matrices.
q. Pre-condensing tanks for air lines used for applying cement, dusting buffed casings, and inflating curing tubes.
r. Rasp teeth.
s. Spinners used for applying cement used on casings being retreaded.
t. Sprayers used exclusively in the retreading process.
u. Steam traps and valves used in steam lines for curing molds.
v. Thermometers, pyrometers, and durometers used in testing mold heat and cure hardness of the rubber used in the retreading process.
w. Tire handling equipment used exclusively between the beginning and ending steps for the retreading process.
x. Tire trimmers.

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y. Tread builders used to apply tread rubber to casings being retreaded.
z. Wire brushes.

Note: For information regarding mill machinery or mill machinery parts and accessories, refer to SUTB 57.

3. Purchases by tire retreaders of other items used or consumed by them are subject to the general State, and applicable local and transit rates of sales and use tax. The following are examples of items that are subject to the general State, applicable local, and applicable transit rates of sales and use tax when sold to tire retreaders for use or consumption. This is not an all-inclusive list.

a. Administrative equipment such as office supplies, file cabinets, and other office equipment.
b. Advertising materials.
c. Balancing machinery used after the retreading process is completed.
d. Cleaning compounds for janitorial and sanitary purposes.
e. Equipment used to remove tires from the rim before the retreading process begins.
f. Gloves.
g. Inspection bags.
h. Motor vehicle jacks.
i. Tire tools not used between the beginning and end of the retreading process.
j. Uniforms for employees.

61-6 SERVICE CONTRACTS FOR MOTOR VEHICLES OR FOR MOTOR VEHICLE COMPONENTS, SYSTEMS, OR ACCESSORIES

A. Definitions

For purposes of this SUTB, the following terms and definitions apply:

1. **"Motor vehicle"** – A vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:

a. A moped.
b. Special mobile equipment.
c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. §§ 20-51(10) or (11).
d. A farm tractor or other implement of husbandry.
e. A manufactured home, a mobile office, or a mobile classroom.
f. Road construction or road maintenance machinery or equipment.

2. **"Motor vehicle dealer"** – Defined in G.S. § 20-286(11).

3. **"Motor vehicle service agreement company"** – A person other than a motor vehicle dealer that is an obligor of a service contract for a motor vehicle or for one or more components, systems, or accessories for a motor vehicle and who is not an insurer.

4. **"Motor vehicle service contract"** – A service contract for a motor vehicle or for one or more components, systems, or accessories for a motor vehicle when sold by a motor vehicle dealer, by a motor vehicle service agreement company, or by a motor vehicle dealer on behalf of a motor vehicle service agreement company.

5. **"Service contract"** – A contract where the obligor under the contract agrees to maintain, monitor, inspect, repair, or provide another service included in the definition of "repair, maintenance, and installation services" to certain digital property, tangible personal

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property, or real property for a period of time or some other defined measure. The term does not include a single service included in repair, maintenance, or installation services, but does include a contract where the obligor may provide a service included in the definition of “repair, maintenance, and installation services” as a condition of the contract. The term includes a service contract for a pool, fish tank, or similar aquatic feature and a home warranty. Examples include a warranty agreement other than a manufacturer's warranty or dealer's warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair agreement, or a similar agreement or contract.

B. Motor Vehicle Service Contracts Exempt from Sales and Use Tax

The sales price of or the gross receipts derived from the retail sale of a motor vehicle service contract is exempt from sales and use tax.

For a service contract to qualify as a motor vehicle service contract, such contract must meet one of the following requirements:

1. The service contract must be sold by a motor vehicle dealer for a motor vehicle or for one or more components, systems, or accessories for a motor vehicle.

2. The service contract must be sold by a motor vehicle service agreement company for a motor vehicle or for one or more components, systems, or accessories for a motor vehicle.

3. The service contract must be sold by a motor vehicle dealer on behalf of a motor vehicle service agreement company for a motor vehicle or for one or more components, systems, or accessories for a motor vehicle.

Example: A motor vehicle dealer engaged in business in North Carolina makes a retail sale to a North Carolina customer of a service contract sourced to this State for the powertrain and heating and air conditioning systems of a new motor vehicle. The sales price of the service contract is $3,200, in addition to the retail price of the motor vehicle. The service contract is a motor vehicle service contract and the sales price of $3,200 is not subject to sales and use tax.

A service contract for a motor vehicle or for one or more components, systems, or accessories for a motor vehicle that is not sold by a motor vehicle dealer, by a motor vehicle service agreement company, or by a motor vehicle dealer on behalf of a motor vehicle service agreement company, is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

C. Fulfilling a Motor Vehicle Service Contract

Items used to fulfill a motor vehicle service contract exempt from sales and use tax are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

D. Motor Vehicle Service Contracts

Examples of a motor vehicle service contract, provided it meets the requirements as stated in SUTB 61-6B, include, but are not limited to:

1. A contract indemnifying the motor vehicle service contract holder (purchaser of contract) against loss caused by a motor vehicle failure that is listed in the contract.

2. Repair or maintenance of a motor vehicle that is listed in the contract.

3. Maintain, monitor, inspect, repair, or replace tires, wheels, or rims on a motor vehicle.

4. Maintain, monitor, inspect, or repair chips or cracks in or the replacement of motor vehicle windshields.

5. Maintain, monitor, inspect, repair, or replace individual components including the following: engine, transmission, drive axles, battery, alternator, turbo/supercharger, fuel tank, suspension, electrical system components, airbag electronics, air conditioning, seals and gaskets, transfer unit, and amenities (audio system, DVD, internet, Bluetooth/phone, GPS).

6. Removal of dents, dings, or creases on a motor vehicle including the process of paintless dent removal without affecting the existing paint or finish and without replacing vehicle body panels, sanding, bonding, or painting.

7. Maintain, monitor, inspect, repair, or replace the electrical, emissions, fuel, cooling, steering, or braking system of a motor vehicle.

8. Lubrication of a motor vehicle.

9. Maintain, monitor, inspect, repair, or replace leather or other fabric.

10. Maintain, monitor, inspect, repair, or replace paint.

11. Maintain, monitor, inspect, repair, or replace a motor vehicle key or key fob.

E. Manufacturer's Warranty and Dealer's Warranty

For information on a manufacturer's warranty or dealer's warranty, refer to SUTB 79-12.

61-7 PARTS FROM JUNKED MOTOR VEHICLES

Retail sales of used parts from junked motor vehicles are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Retail sales of parts from dismantled articles that have been traded-in or repossessed lose their identity as repossessed articles and are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Retailers are liable for collecting and remitting the applicable tax on the sales price of such retail sales.

Note: For information regarding repossessions refer to SUTB 76.

61-8 FIRE TRUCKS AND EQUIPMENT

A. Fire Trucks Sold to Municipalities, Counties, Rural Fire Protection Districts, and Volunteer Fire Departments

Sales of fire trucks to municipalities, counties, rural fire protection districts, and volunteer fire departments organized under Chapter 69 of the North Carolina General Statutes are exempt from sales and use tax and subject to the 3% highway use tax unless exempt under Article 5A of Chapter 105 of the North Carolina General Statutes. The highway use tax is administered by the Division of Motor Vehicles. The highway use tax must be paid to the Commissioner of Motor Vehicles by the dealer, the purchaser, or other applicant for a certificate of title at the time of making application.

B. Privately Owned Fire Trucks

Retail sales of privately owned vehicles that have permanently attached firefighting equipment and that are used only for firefighting purposes are classified as special mobile equipment, as provided in SUTB 61-10. Such sales of special mobile equipment are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

C. Repair Parts for Fire Trucks

Retail sales of repair parts to municipalities, counties, rural fire protection districts, and industrial users for use in repairing fire trucks are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

D. Fire Fighting Equipment

Retail sales of axes, brooms, buckets, shovels, ropes, general purpose tools, gas masks, first aid kits, blankets, portable pumps, portable fire extinguishers, and similar items are considered to be other firefighting equipment rather than accessories to a fire truck. The general State, applicable local, and applicable transit rates of sales and use tax apply to the sales price of these items sold at retail notwithstanding such sales are made to the types of purchasers listed in SUTB 61-8C or that the items are sold with fire trucks.

61-9 RETAIL SALES OF TANGIBLE PERSONAL PROPERTY INSTALLED IN OR UPON MOTOR VEHICLES

A. Tangible Personal Property Installed In or Upon Motor Vehicles

Retailers engaged in the business of selling tangible personal property at retail that such retailers install in or upon motor vehicles, must collect and remit the general State, applicable local, and applicable transit rates of sales and use tax on the sales price of such items. Any charges for labor or services rendered to install or apply such items are part of the sales price subject to the general State, applicable local, and applicable transit rates of sales and use tax. Examples of tangible personal property installed in or upon motor vehicles includes: slide in pickup camper units, windshields, window glass, seat covers, floor mats, head liners, runners, channels, pig rings, felt, tacks, screws, thread, tape, windlass, welt cord, and similar items.

B. Special Equipment – Accessories Mounted on Motor Vehicles

Retailers engaged in the business of selling pulling devices, hole digging devices, aerial working devices, or other special accessories at retail that such persons mount upon a motor vehicle chassis or body must collect and remit the general State, applicable local, and applicable transit rates of sales and use tax on the sales price of such items. Any charges for labor or services rendered in installing or applying such items are part of the sales price subject to sales and use tax.

C. Ready-Mix Concrete Mills

Sales of repair or replacement parts for a ready-mix concrete mill to a company that primarily sells ready-mix concrete, regardless of whether the mill is freestanding or affixed to a motor vehicle, are exempt from sales and use tax.

61-10 SPECIAL MOBILE EQUIPMENT

“Special mobile equipment” is defined as any of the following:

1. A vehicle that has a permanently attached crane, mill, well-boring apparatus, ditch-digging apparatus, air compressor, electric welder, feed mixer, grinder, or other similar apparatus that is driven on the highway only to get to and from a nonhighway job and is not designed or used primarily for the transportation of persons or property.

2. A vehicle that has permanently attached special equipment and is used only for parade purposes.

3. A vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.

4. A vehicle that has permanently attached playground equipment and is used only for playground purposes.

Receipts derived from the retail sale, lease, or rental of special mobile equipment are subject to the general State, applicable local, and applicable transit rates of sales and use tax. The sales or use tax is imposed at the time the special mobile equipment is sold to the purchaser without regard to the manner in which it will subsequently be registered, licensed, or titled with the Division of Motor Vehicles. If the special mobile equipment is purchased for lease or rental, the equipment may be purchased for resale as provided in SUTB 5, and the general State, applicable local, and applicable transit rates of sales and use tax must be collected and remitted on the gross receipts derived from the lease or rental.

SUTB 62 NONPROFITS

62-1 SALES BY NONPROFIT ENTITIES

A. Retail Sales

Nonprofit entities that make retail sales must register with the Department and collect and remit the applicable sales and use tax due unless specifically exempt by statute. This includes retail sales by clubs, lodges, parent and teacher associations, scout councils, and similar organizations. For information on making purchases for resale, refer to SUTB 62-2.

B. Exempt Sales by Certain Nonprofit Entities

The sale at retail of the following items by a nonprofit entity are exempt from sales and use tax.

1. Sales of food, prepared food, soft drinks, candy, and other tangible personal property not for profit for or at an event that is sponsored by an elementary or secondary school when the net proceeds of the sales will be given or contributed to the school or to a nonprofit charitable organization, one of whose purposes is to serve as a conduit through which the net proceeds will flow to the school. For purposes of this exemption, the term “school” is an entity regulated under Chapter 115C of the North Carolina General Statutes.

2. Sales of food and prepared food within the school building during the regular school day. For purposes of this exemption, the term “school” is an entity regulated under Chapter 115C of the North Carolina General Statutes.

3. Sales by a nonprofit civic, charitable, educational, scientific, literary, or fraternal organization of items other than an admission charge to an entertainment activity when all of the following conditions are met:

a. The sales are conducted only upon an annual basis for the purpose of raising funds for the organization’s activities.

b. The proceeds of the sale are actually used for the organization’s activities.

c. The products sold are delivered to the purchaser within 60 days after the first solicitation of any sale made during the organization’s annual sales period.

d. Each annual sales period occurs at least 60 days after the beginning of the prior annual sales period.

e. Each annual sales period funds a distinct and different program from the other annual sales periods occurring during the year.

f. Each annual sales period sells products that are distinct and different from the products sold during the other annual sales periods occurring during the year.

4. Sales of food and prepared food by a church or religious organization not operated for profit when the proceeds of the sales are actually used for religious activities.

5. Sales of meals not for profit to elderly and incapacitated persons by charitable or religious organizations not operated for profit which are entitled to the refunds provided by G.S. § 105-164.14(b), when such meals are delivered to the purchasers at their places of abode.

C. Admission Charges to an Entertainment Activity

Unless specifically exempt by statute, the gross receipts derived from an admission charge to an entertainment activity are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Gross receipts derived from the following admissions charges to an entertainment activity are exempt from sales and use tax:

1. The gross receipts derived from an admission charge to an event sponsored solely by a nonprofit entity that is exempt from tax under Article 4 of Chapter 105 of the North Carolina General Statutes are exempt from sales and use tax if all of the following conditions are met:

a. The entire proceeds of the activity are used exclusively for the entity's nonprofit purposes.

b. The entity does not declare dividends, receive profits, or pay salary or other compensation to any members or individuals.

c. The entity does not compensate any person for participating in the event, performing in the event, placing in the event, or producing the event. For purposes of this exemption, the term "compensate" means any remuneration included in a person's "gross income" as defined in Section 61 of the Internal Revenue Code.

2. The gross receipts derived from an admission charge to an entertainment activity for an event that is sponsored by an elementary or secondary school. For purposes of this exemption, the term "school" is an entity regulated under Chapter 115C of the North Carolina General Statutes.

Note: For information regarding admission charges, refer to SUTB 7.

62-2 PURCHASES BY NONPROFIT ENTITIES

A. Purchases for Use or Consumption

Nonprofit entities are not exempt from paying sales and use tax. Purchases of taxable items by nonprofit entities for use or consumption are subject to sales and use tax. When a nonprofit entity makes taxable purchases from a retailer that charges North Carolina sales and use tax, the nonprofit entity must remit the sales and use tax to the retailer.

Purchases of building materials, supplies, fixtures, and equipment by real property contractors or other persons for use in the performance of real property contracts with nonprofit entities are subject to sales and use tax.

Any nonprofit entity making taxable purchases from a seller that does not collect North Carolina sales and use tax is required to register with the Department and file returns with remittance of the tax due on such purchases.

B. Purchases for Resale

A nonprofit entity that makes retail sales of taxable items must register with the Department and collect and remit the applicable rate of sales and use tax on its retail sales. A nonprofit entity that makes purchases of items for the purpose of resale may purchase such items exempt from sales and use tax as provided in SUTB 5.

A Certificate of Exemption may not be used by any nonprofit entity in making purchases of items to be used or consumed by such nonprofit entity. A nonprofit entity that makes purchases of items

under a Certificate of Exemption or the required data elements, as applicable, assumes the sales and use tax liability for such purchases. A two hundred fifty-dollar ($250) penalty may be assessed when a purchaser issues a Certificate of Exemption for an item that is purchased for use or consumption and not for resale.

62-3 DONATIONS TO NONPROFIT ENTITIES

Tangible personal property that is purchased by a retailer for resale or is manufactured or purchased by a wholesale merchant for resale and then withdrawn from inventory and donated by the retailer or wholesale merchant to either a nonprofit organization or a governmental entity, contributions to which are deductible as charitable contributions for federal income tax purposes, is exempt from sales and use tax.

62-4 SALES TO NONPROFIT ENTITIES

Nonprofit entities are not exempt from paying sales and use tax. Sales of taxable items to nonprofit entities are subject to sales and use tax, unless acquired for the purpose of resale as provided in SUTB 5. Similarly, sales of building materials, supplies, fixtures, and equipment to real property contractors or other persons for use in the performance of real property contracts with nonprofit entities are subject to sales and use tax.

A retailer is liable for collecting and remitting sales and use tax on a sale to a nonprofit entity, unless the nonprofit provides the retailer a Certificate of Exemption or the required data elements as provided in SUTB 5.

A nonprofit entity that makes purchases of items under a Certificate of Exemption or the required data elements, as applicable, assumes the sales and use tax liability for such purchases.

62-5 REFUNDS TO CERTAIN NONPROFIT ENTITIES

Note: For information on refunds for certain nonprofit entities, refer to SUTB 74-3.

SUTB 63 NURSERIES AND GREENHOUSES

63-1 SALES BY NURSERY AND GREENHOUSE OPERATORS

Retail sales of potted plants, shrubbery, and other similar items grown by nurseries or greenhouse operators ("Nursery Stock") are subject to the general State, applicable local, and applicable transit rates of sales and use tax unless exempt pursuant to SUTB 63-3 or other statutory exemption. (Refer to *Henderson v. Gill*, 229 N.C. 313, 49 S.E. 2d 754 (1948) for information.)

Retail sales of planters, hoses, nozzles and sprayers, rain barrels, sprinklers and timers, fertilizer, insect and weed control, garden tools, birdbaths, and other tangible personal property are subject to the applicable rates of sales and use tax unless exempt by statute.

63-2 NURSERY AND GREENHOUSE OPERATORS ARE PRODUCERS OF PRODUCTS OF THE FARM

A. A nursery or greenhouse operator is the producer of Nursery Stock in either of the following circumstances:

1. The operator owns the article and grows the article of Nursery Stock from seed, cutting, or other similar propagation; or

2. The operator purchases the article of Nursery Stock, does not sell the article during the season in which it was purchased, retains the article until at least the next season, and growth is added to the article by virtue of such retention.

B. The fact that a nursery or greenhouse operator may be selling tangible personal property primarily as a retailer, and not as a producer, does not preclude certain purchases of tangible personal property made by a nursery or greenhouse operator from being exempt from sales and use tax.

Note: For information regarding farmers, refer to SUTB 27.

63-3 FARM PRODUCTS SOLD BY PRODUCERS OR RETAILERS

A. Determining Primary Business

A producer must determine its primary business as follows:

1. Determine the producer's total gross sales of products of a farm produced by the producer.

2. Determine the producer's total gross sales from sales not included in subsection (1).

3. If the producer's gross sales determined in subsection (2) are greater than the gross sales determined in subsection (1), the producer is primarily a retail merchant.

4. Producers that have more than one location must determine if it is primarily a retail merchant for each location separately.

5. The total gross sales used to determine the classification as primarily a retail merchant shall include all sales without regard to any sales exempt from sales and use tax.

6. The classification shall remain in effect until the primary business determination has changed for a period of at least six months.

B. Producer Not Primarily a Retail Merchant

If a producer of farm products, or location if the producer has multiple locations, is not classified primarily as a retail merchant, sales of their produced products in the original state are exempt from tax. Retail sales of any farm products not in their original state and any other taxable merchandise acquired by purchase are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

If a producer of farm products, or location if the producer has multiple locations, is not classified primarily as a retail merchant, makes sales of farm products produced by them and products acquired by purchase for resell, separate records must be maintained of sales of products produced by them. Records of purchased products for resell, as well as sales thereof, must be kept and maintained in a manner that can be accurately and conveniently checked by the agents of the Secretary; otherwise, all sales are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

C. Producer Primarily a Retail Merchant

If a producer is classified primarily as a retail merchant, the producer is liable for collecting and remitting sales and use tax accordingly (i.e., all retail sales of both types of products are subject to the general State, applicable local, and applicable transit rates of sales and use tax, unless specifically exempt from tax.) Producers making taxable sales must register with the Department for the purpose of collecting and remitting the tax due.

SUTB 64 OWNERSHIP CHANGES

64-1 CHANGE IN OWNERSHIP OR ENTITY TYPE

A Certificate of Registration is not assignable and is valid only for the person in whose name it was issued. When a business is succeeded by a new business, the new business shall re-register and obtain a new Certificate of Registration. When a partnership dissolves and one or both of the former partners begin operating a business on an individual basis, each person operating a new business shall register individually to obtain their own Certificate of Registration. When a partnership or proprietorship is succeeded by a corporation, the corporation must register to obtain a new Certificate of Registration. The defunct business, partnership, proprietorship, or corporation shall submit Form NC-BN, Out-of-Business Notification, to the Department.

64-2 INVENTORY HELD FOR RESALE TRANSFERRED TO NEW BUSINESS

A. When a business acquires another business or converts to a new type of entity, such as through a change in ownership or entity type, and the inventory held for resale of the previous business is sold or transferred to the new business for resale, sales and use tax is not due on the transaction. The new business is liable for collecting and remitting the applicable rates of sales and use tax on its retail sales of items acquired from the previous business, including any articles repossessed by the previous business that would be exempt from tax under G.S. 105-164.13(16) if they had been resold by the previous business.

Note: For information regarding repossessions refer to SUTB 76.

B. When corporations merge pursuant to the provisions of G.S. § 55-11-01 and the inventory held for resale is transferred from the predecessor corporation to a surviving corporation for resale, sales and use tax is not due on such transactions. Furthermore, G.S. § 55-11-01 operates so that the exemption from sales and use tax and applicable to sales of articles repossessed by a predecessor corporation is applicable to the sale of such repossessed articles when they are sold by the surviving corporation.

Note: For information regarding repossessions refer to SUTB 76.

64-3 TRANSFEREE LIABILITY

The Secretary may not assert a transferee liability against the purchaser of a business for sales and use taxes incurred by anyone further removed along the chain of registration than the purchaser's immediate predecessor, unless the Department can trace its lien against specific property through the ensuing chain of title.

64-4 SELLING ACCOUNTS RECEIVABLE

When persons filing their sales and use tax returns on the cash basis of accounting sell their accounts receivable, they are liable for payment of sales and use tax on their taxable accounts receivable balance outstanding at the time they sell such accounts. When a corporation is formed to succeed a proprietorship or partnership and the accounts receivable are sold to the corporation, the proprietorship or partnership is liable for remitting the sales and use tax due on its outstanding taxable accounts receivable balance at the time the accounts are sold.

SUTB 65 PHOTOGRAPHERS AND VIDEOGRAPHERS

65-1 SALES BY PHOTOGRAPHERS AND VIDEOGRAPHERS

A. Photographers

The sale price of photographs, whether such photographs are tangible personal property or certain digital property, are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Sales of other tangible personal property by a photographer to users or consumers are also subject to the general State, applicable local, and applicable transit rates of sales and use tax.

The sales price of photographs includes sitting fees charged to a customer who ultimately purchases photographs, no matter that such charges may be paid prior to the purchase of the photographs, and all charges for developing or printing. A sitting fee charged to a customer who does not purchase any photographs is not subject to the general State, applicable local, and applicable transit rates of sales and use tax.

A purchased photograph includes a photograph transferred as tangible personal property or electronically. When transferred electronically, a purchased photograph includes a photograph provided by email, electronic storage device, access through a website owned by the photographer, access through a website owned by a third-party, or by other electronic means.

A copyright fee that entitles a purchaser the right to reproduce a photograph or digital image does not constitute part of the sales price of the photograph or digital image and is not subject to sales and use tax when the charge is separately stated on a customer's invoice or similar billing document given to the customer at the time of sale and in the retailer's records. (Refer to *Carolina Photography, Inc. v. Hinton*, 196 N.C. App. 337, 674 S.E. 2d 724, 209 N.C. App. Lexis 357 (2009)).

Note: For information on certain digital property and photographs transferred electronically, refer to SUTB 23.

B. Videographers

The sales price of videos, whether such videos are delivered on tangible personal property or are transferred electronically as a digital audiovisual work, are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Sales of other tangible personal property, including equipment and booth rentals, to users or consumers are also subject to the general State, applicable local, and applicable transit rates of sales and use tax.

When transferred electronically, the sale of a video includes a video provided by email, electronic storage device, access through a website owned by the videographer, access through a website owned by a third-party, or by other electronic means.

Note: For information on digital audiovisual works and certain digital property, refer to SUTB 23.

65-2 PURCHASES BY PHOTOGRAPHERS AND VIDEOGRAPHERS

A. Purchases for Resale

Sales to commercial or portrait photographers and videographers of materials that become an ingredient or component part of the finished product including mounts, frames, and paper are exempt from sales and use tax when purchased for resale as provided in SUTB 5.

B. Purchases of Materials for Use

Purchases of materials by a photographer and videographer for use or consumption are subject to sales and use tax.

C. Exempt Purchases

Purchases by commercial or portrait photographers of machinery or machinery parts or accessories including materials that are used in the manufacture of photographs are exempt from sales and use tax when the machinery or machinery parts or accessories are for use in the production process, as the term “production” is defined in SUTB 57-1.

65-3 PHOTO PROCESSORS OR PHOTO FINISHERS

Purchases of machinery, and parts and accessories attached to such machinery, by photo finishers or printers for use in the production process, as the term “production” is defined in SUTB 57-1, to fabricate, process, or manufacture articles of tangible personal property for sale are exempt from sales and use tax.

65-4 PHOTO TINTING

Charges for the tinting or coloring of photos delivered to a photographer or photo finisher by a customer are subject to the general State, applicable local, and applicable transit rates of sales and use tax regardless of whether the original photo is restored or maintained in the process or a new photo is produced. Photographers and photo finishers purchasing materials used in the tinting or coloring of photographs that will become part of the customer’s tangible personal property or part of the new photograph may purchase such items exempt from sales and use tax as provided in SUTB 5.

Note: For information regarding repair, maintenance, and installation services, refer to SUTB 75.

SUTB 66 PIPED NATURAL GAS

66-1 IMPOSITION AND REPORTING THE TAX

A. Tax Imposed

The gross receipts derived from sales of piped natural gas, including any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction, are subject to the combined general rate of sales and use tax, unless specifically exempt by statute or another provision applies.

B. Computation of Tax

The amount actually charged to customers for piped natural gas consumed during the billing period is the amount on which the sales tax is due notwithstanding that the customers may be under equal pay agreements.

C. Reporting the Tax

Gross receipts derived from the retail sale of piped natural gas must be reported on the accrual basis of accounting. A sale of piped natural gas is considered to accrue when the retailer bills its customer for the sale. Gross receipts must be reflected on Form E-500E, Combined General Rate Sales and Use Tax Return (Utility, Liquor, Gas, and Other), and the tax returns and payments are due to be filed on or before the due date.

D. Lessor of a Single-Family Dwelling, Residential Building, or Multiunit Apartment Complex

A lessor of a single-family dwelling, residential building, or multiunit apartment complex that has individually metered units for piped natural gas service in the lessor's name that charges the actual costs of providing piped natural gas service to each lessee pursuant to G.S. § 62-110(i) is not considered a retailer for sales and use tax purposes. A lessor who charges for piped natural gas service under this subsection is the consumer of the natural gas utility and is liable for payment of the sales and use tax to the natural gas supplier providing service to the leased premises. Refer to G.S. § 62-110(i) for the applicable provisions for the authorized charges.

66-2 GROSS RECEIPTS SUBJECT TO SALES AND USE TAX

The gross receipts derived from the sale of piped natural gas is the total amount or consideration for which piped natural gas is sold, including any charges for services that go into the production or delivery of the piped natural gas that are a part of the sale valued in money, whether paid in money or otherwise, including any amount for which credit is given to the purchaser by the seller without any deduction on account of the cost of the piped natural gas sold, the cost of materials used, labor or service costs, interest charged, losses, or any other expenses whatsoever. All charges for items provided in the production and delivery of piped natural gas to customers are a part of the gross receipts derived from the retail sale of piped natural gas upon which the tax is due, notwithstanding that some charges may be billed separately from the charge for the metered service.

The following are specific charges that are part of gross receipts derived from the sale of piped natural gas subject to sales and use tax:

1. Construction charges billed to new customers for extending facilities to these customers or a contribution in aid of construction charges.

2. Charges made to customers when the company first supplies piped natural gas under any applicable rate schedule.

3. Charges to the customer, whether or not the customer uses metered service.

4. Charges for reconnecting service to customers after service has been terminated for nonpayment.

5. Any separately stated charges for repair, maintenance, and installation services.

66-3 CHARGES OR FEES THAT ARE NOT PART OF GROSS RECEIPTS SUBJECT TO TAX

The following are specific items that are not part of gross receipts derived from the sale of piped natural gas subject to sales and use tax:

1. Return check charges for checks received by a retailer in payment of an account and returned by the bank because of insufficient funds.

2. Late payment charges billed on a balance that was not paid on the previous month's bill.

3. Energy audit amounts charged to customers for a comprehensive energy audit provided by a retailer.

4. Conservation discounts on piped natural gas service metered charges when the discounts reduce the amount the customer is billed for the charges.

5. Security deposit interest paid to customers on deposits.

66-4 EXEMPTIONS RELATED TO PIPED NATURAL GAS

The following are exempt from sales and use tax.

1. Sales of piped natural gas to a manufacturer for use in connection with the operation of a manufacturing facility. The exemption does not apply to piped natural gas that is used solely for comfort heating at a manufacturing facility where there is no use of piped natural gas in the production process, as the term "production" is defined SUTB 57-1.

   For purposes of the exemption, a "facility" is a single building or structure, or a group of buildings or structures that are located on a single parcel of land or on contiguous parcels of land under common ownership and any other related real property contained on the parcel or parcels where manufacturing activity occurs.

2. Sales of piped natural gas to a secondary metals recycler for use in recycling at its facility at which the primary activity is recycling.

3. Sales of piped natural gas to a qualifying or conditional farmer that is measured by a separate meter or another separate device, is used by the qualifying or conditional farmer primarily in farming operations, and is not used for preparing food, heating dwellings, and other household purposes. An item is used for farming operations if it is used for the planting, cultivating, harvesting, or curing of farm crops, in the production of dairy products, eggs, or animals, or in the boarding of horses.

   Gross receipts derived from the sale of piped natural gas to a qualifying or conditional farmer where the piped natural gas is measured through a single meter and used for both qualifying farming purposes and for preparing food, heating dwellings, or other household purposes are subject to the combined general rate of sales and use tax.

4. Sales of piped natural gas to a “small power production facility,” as defined in 16 U.S.C. § 796(17)(A), to generate electricity.

5. Sales of piped natural gas by a producer of piped natural gas in its original or unmanufactured state when such sales are made by the producer in the capacity of producer.

6. Sales of piped natural gas to commercial laundries or to pressing and dry-cleaning establishments used in the direct performance of the laundering or the pressing and cleaning service.

7. Sales of piped natural gas directly to the North Carolina Department of Transportation.

8. Sales of piped natural gas to the U.S. Government or any agencies or qualifying instrumentalities thereof.

SUTB 67 PORTABLE TOILETS

67-1 SALE, LEASE, OR RENTAL OF PORTABLE TOILETS

The gross receipts derived from the lease or rental of portable toilets sourced to this State are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Toilet tissue and any other supplies that go with the portable toilet and become a component part of the lease or rental of the portable toilet are not subject to sales and use tax when purchased by a lessor as they are purchased for resale. Lessors who purchase component parts of portable toilets should purchase such component parts as provided in SUTB 5.

Sales of portable toilets to lessors for the sole purpose of lease or rental are wholesale sales not subject to sales and use tax when the lessors purchase the portable toilets as provided in SUTB 5.

67-2 SERVICE CONTRACTS FOR PORTABLE TOILETS

A. Sales of Service Contracts

The sales price of or the gross receipts derived from a service contract for the maintenance or repair of a portable toilet sold at retail and sourced to this State is subject to the general State, applicable local, and applicable transit rates of sales and use tax. It does not matter if the service contract is offered with the lease of a portable toilet or if the service contract is for a portable toilet that is owned by another person or business.

Note: For information on service contracts, refer to SUTB 79.

B. Items Used Pursuant to a Taxable Service Contract – Portable Toilets

An item used to maintain or repair a portable toilet pursuant to a taxable service contract is exempt from sales and use tax if the purchaser of the service contract is not charged for the item (*For example, when smell reducing chemicals are placed in the holding tank but there is no charge to the purchaser of the service contract.*). For purposes of this exemption, the term “item” does not include a tool, equipment, supply, or similar tangible personal property used to complete the maintenance or repair that is not deemed to be a component or repair part of the portable toilet for which the service contract is sold. A retailer should purchase qualifying items exempt from sales and use tax as provided in SUTB 5.

67-3 REPAIR, MAINTENANCE, AND INSTALLATION SERVICES FOR PORTABLE TOILETS

Retail sales of repair, maintenance, or installation services for portable toilets are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Note: For information regarding repair, maintenance, and installation services, refer to SUTB 75.

SUTB 68 PRINTERS AND PUBLISHERS

68-1 COMMERCIAL PRINTERS AND PUBLISHERS

A. Sales by Commercial Printers and Publishers

All retail sales of items by commercial printers and publishers are subject to the general State, applicable local, and applicable transit rates of sales and use tax unless such sales are specifically exempt from statute. Retail sales of the following are subject to the general State, applicable local, and applicable transit rates of sales and use tax:

1. Subscriptions

Advertising circulars, catalogues, booklets, pamphlets, forms, tickets, letterheads, envelopes and similar items, books, magazines, periodicals, newspapers, and other publications. Tax accrues at the time the subscription is accepted for publications sold by subscription.

2. Postal Charges

The amount a printer charges its customers for postal cards or stamped envelopes that are printed and sold for use by the customer is subject to the general State and applicable local and transit rates of sales and use tax, except the face value of stamps or postage on the printed cards or envelopes is exempt from tax when separately stated on the invoice or similar billing document given to the customer at the time of the sale.

Charges by a printer for postage used by the printer to deliver items is part of the sales price subject to the applicable rates of sales and use tax even when separately stated on the invoice or similar billing document.

3. Plates and Dies

When, at the request of the customer, commercial printers purchase custom made printing plates and dies for use in the direct production of the printed matter and title to custom made printing plates and dies passes to the printer's customer, such items can be purchased exempt from sales and use tax as provided in SUTB 5. The printer is liable for collecting and remitting the general State, applicable local, and applicable transit rates of sales and use tax on the sales price of the printing plates and dies. The printer's sales invoices and records must show that the plates and dies are actually sold to the customer.

Note: For information on certain digital property, refer to SUTB 23.

B. Purchases by Commercial Printers and Publishers Exempt from Sales and Use Tax

Purchases by commercial printers and publishers of the following to be used by commercial printers and publishers in the production process, as the term "production" is defined in SUTB 57-1, may be purchased exempt from sales and use tax as provided in SUTB 5.

1. Machinery and equipment and parts therefor and accessories thereto for use directly in the production of newspapers, magazines, and other printed matter for sale.

2. Lithographic and gravure plates and dies retained by the printer or publisher. It is a printing trade practice that title to lithographic and gravure plates and dies be retained by the printer or publisher. Unless it is otherwise agreed in writing, these plates and dies are exempt from sales and use tax as items purchased by the printer or publisher for use.

3. Photo engravings, electrotypes, and lithographs for use in printing tangible personal property for sale.

4. Custom made plates and dies when title thereto does not pass to the printers' customers.

5. Tangible personal property such as wood and metal that is used to fabricate plates and dies for use in the production of printed matter for sale, when title to the plates and dies does not pass to the printers' customers. Machinery, equipment, film, and tangible personal property that are used or consumed by the printer in the direct production of such plates and dies also qualify.

6. Printing presses for use in the production process, as the term “production” is defined in SUTB 57-1, used in printing labels, cartons, or boxes for their manufactured products.

7. Cushion paper, cover paper, and tissue for use in building up the printing surface of the press.

8. Offset or direct relief duplicating machines and repair parts and accessories for such machines, including offset blankets and plates.

9. Positives and negatives for use in preparing plates for use in the printing process. Purchases of such items by non-commercial printers for use or consumption are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

10. Chemicals used to clean printing machinery or that enter into or become a component part of printed material for resale. Chemicals used for sanitation purposes are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

11. Metal for making type.

12. Computers used in the printing process. Computers used for administrative purposes are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

13. Mounting tape for use in the preparation of plates.

14. Printing machines when the machines are used to produce newspapers or other printed material for sale. Purchases of printing machines for use in printing customers' addresses and addressograph plates for use in the mailing and shipping process are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

15. Photographs to be reproduced in newspapers. These are classified as accessories to the manufacturing process.

Note: For information about mill machinery or mill machinery parts and accessories, refer to SUTB 57.

C. Exemptions Related to Commercial Printers and Publishers

The following are exempt from sales and use tax when purchased by commercial printers and publishers as provided in SUTB 5:

1. Wrapping paper, labels, bags, cartons, and other similar items when such items are used for packaging, shipment, or delivery of tangible personal property, sold either at wholesale or retail, and when such items constitute a part of the sale of such tangible personal property and are delivered with it to the customer.

2. Advertising supplements and any other printed matter ultimately to be distributed with or as part of a newspaper.

3. Paper, ink, and other tangible personal property to commercial printers and publishers for use as ingredients or component parts of free distribution periodicals, and sales by printers of free distribution periodicals to the publishers of these periodicals. As used in this exemption, the term “free distribution periodical” means a publication that:

a. Is continuously published on a periodic basis monthly or more frequently;
b. Is provided without charge to the recipient; and
c. Is distributed in any manner other than by mail.

4. Fuel and piped natural gas to commercial printers and publishers used in connection with the operation of a commercial printing or publishing facility. This exemption does not apply to fuel or piped natural gas used solely for comfort heating where there is no fuel or piped natural gas used in the production phase of the commercial printing or publishing process. This exemption includes bottled gas for use in heating paper as it is printed and for melting metal to be used in making type. For purposes of this exemption, a “facility” is a single building or structure, or a group of buildings or structures that are located on a single parcel of land or on contiguous parcels of land under common ownership and any other related real property contained on the parcel or parcels.

Note: For information on fuel and piped natural gas, refer to SUTBs 33 and 66, respectively.

5. Electricity used in connection with the operation of a commercial printing or publishing facility. This exemption does not apply to electricity used at a facility where the primary activity is not commercial printing or publishing. For purposes of this exemption, a “facility” is a single building or structure, or a group of buildings or structures that are located on a single parcel of land or on contiguous parcels of land under common ownership and any other related real property contained on the parcel or parcels. This exemption applies to electricity used both inside and outside of the facility, including electricity used for parking lot lighting at the facility.

6. Repair, maintenance, and installation services, which include services such as bookbinding for items for resale.

Note: For information on repair, maintenance, and installation services, refer to SUTB 75.

7. Chemicals that enter into or become an ingredient or component part of printed matter for resale.

8. Reproduction proofs to be used to produce negatives that are then used to produce plates for the printing of tangible personal property for sale.

9. Custom made printing plates and dies for resale, including tangible personal property such as wood and metal that becomes a component part of the printing plates. In such cases, the printer's sales invoices and records must show that title to the plates and dies pass to the customer.

10. Printed material sold by a retailer when the printed material is delivered by the retailer in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this State, and the purchaser does not subsequently use the printed material in this State. Printed material sold by a retailer to a purchaser inside or outside this State is exempt from sales or use tax when the printed

material is delivered directly to a mailing house, common carrier, or the United States Postal Service for delivery to a mailing house in this State that will preaddress and presort the material and deliver it to a common carrier or to the United States Postal Service for delivery to recipients outside this State designated by the purchaser.

a. Sales of printed material by a retailer located inside or outside this State that is delivered directly to the purchaser in this State for the original purpose of preparing and delivering the printed material to the United States Postal Service or a common carrier for delivery to prospective customers or other recipients outside this State are exempt from sales and use tax provided such purpose is consummated. A purchaser of such printed material for preparation and delivery to prospective customers and other recipients outside this State must furnish the retailer a written statement certifying that the printed material is being purchased for use in a mailing program that is in place at the time of purchase; otherwise, the retailer must collect and remit the sales and use tax on such sales. Sales of printed materials to a user or consumer in this State to be placed in the purchaser's inventory for use as needed are subject to sales or use taxes notwithstanding that all or a portion of the printed material may be delivered to the United States Postal Service or a common carrier for delivery to prospective customers or other recipients outside this State.

b. A retailer who sells printed material delivered to a common carrier or the United States Postal Service for delivery to the purchaser at a point inside this State who prepares the material to be mailed to prospective customers or other recipients without charge and transports the material outside this State to be delivered to the United States Postal Service or a common carrier or to a mailing house outside this State for delivery to designated recipients is liable for sales or use tax unless specifically exempt from sales and use tax.

c. Retailers in North Carolina who engage out-of-state printers, who do not collect North Carolina sales and use tax, to print and mail printed material to North Carolina designees owe use tax on the purchase price of the printed material.

68-2 CONSUMER OR CAPTIVE PRINTERS (I.E. IN-HOUSE PRINTERS)

Sales of printing equipment, supplies, paper, ink, and all other tangible personal property for use by consumer or captive printers (i.e., in-house printers) are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

68-3 NEWSPAPERS

A. Sales of Newspapers Subject to Tax

The following retail sales by newspaper publishers or other retailers located inside or outside North Carolina and engaged in business in North Carolina are subject to the general State, applicable local, and applicable transit rates of sales and use tax:

1. Over-the-counter sales of newspapers in North Carolina.

2. Sales of newspapers by subscription delivered through the mail to subscribers in North Carolina.

3. Newspapers sold in a digital format that are sourced to this State.

4. The total sales price of a newspaper sold through a coin-operated vending machine.

5. Sales of newspapers by street vendors and newspaper carriers making door-to-door deliveries.

6. Sales of newspaper gift subscriptions to purchasers located in North Carolina when delivery is made by electronic or U.S. mail to recipients located inside North Carolina.

Note: For information on certain digital property, refer to SUTB 23.

B. Subscriptions Subject to Use Tax

Sales of newspaper subscriptions sourced to North Carolina are subject to the general State, applicable local, and applicable transit rates of sales and use tax. The purchaser of a newspaper subscription sourced to North Carolina is liable for remitting use tax directly to the Department if the seller fails to collect sales or use tax on the purchase price of the subscription. For information about use tax, refer to SUTB 2-4.

A publisher located outside North Carolina who is not engaged in business in this State is not liable for collecting sales and use tax on subscription sales of newspapers delivered through the mail to subscribers located in North Carolina. However, the subscriber is liable for remitting the use tax directly to the Department on the purchase price of the newspaper subscription. For information on a retailer's obligation to collect tax, refer to SUTB 2-2.

C. Exempt Sales of Newspapers

The following retail sales by newspaper publishers or other retailers are exempt from North Carolina sales and use tax:

1. Sales by subscription of newspapers delivered through the mail to subscribers outside North Carolina.

2. Sales of gift subscriptions when delivery is made by mail to recipients located outside North Carolina.

3. Certain digital property, such as a newspaper, that is not sourced to this State.

Note: For information on certain digital property, refer to SUTB 23.

D. Advertising Space

Charges for advertising space in newspapers, magazines, and other publications are not subject to sales and use tax.

68-4 MAGAZINES

A. Retail sales of magazines, including magazines sold in a digital format that are sourced to this State, are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Note: For information on certain digital property, refer to SUTB 23.

B. Subscriptions Subject to Use Tax

The purchaser of a magazine subscription sourced to North Carolina is liable for remitting use tax directly to the Department if the seller fails to collect sales or use tax on the purchase price of the subscription. For additional information about use tax, refer to SUTB 2-4.

A publisher located outside North Carolina who is not engaged in business in this State is not liable for collecting sales and use tax on subscription sales of magazines delivered through the mail to subscribers located in North Carolina. However, the subscriber is liable for remitting the use tax directly to the Department on the purchase price of the magazine subscription. For information on a retailer's obligation to collect tax, refer to SUTB 2-2.

C. Exempt Sales of Magazines

Retail sales of magazines by subscription, delivered electronically or through the mail, which are sourced outside North Carolina are exempt from North Carolina sales and use tax.

D. Advertising Space

Charges for advertising space in newspapers, magazines, and other publications are not subject to sales and use tax.

68-5 DIRECT MAIL

A. Definitions

G.S. § 105-164.3 provides the following terms and definitions:

1. **"Advertising and promotional direct mail"** – Printed material that meets the definition of "direct mail" and the primary purpose of which is to attract public attention to an item, person, business, organization, or to attempt to sell, popularize, or secure financial support for an item, person, business, or organization.

2. **"Direct mail"** – Printed material delivered or distributed by the United States Postal Service or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. The term includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. The term does not include multiple items of printed material delivered to a single address.

3. **"Other direct mail"** – Any direct mail that is not advertising and promotional mail regardless of whether advertising and promotional direct mail is included in the same mailing.

B. Taxability

Retail sales of direct mail sourced to this State are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

C. Exemption for Delivery Charges

Delivery charges for delivery of direct mail are exempt from sales and use tax if the charges are separately stated on an invoice or similar billing document given to the purchaser at the time of sale. This exemption only applies to separately stated delivery charges for direct mail.

D. Sourcing Principles

1. Advertising and Promotional Direct Mail

Advertising and promotional direct mail is sourced as follows:

a. To the location where the direct mail is delivered if it is purchased pursuant to a direct pay permit, or if it is purchased with an exemption certificate claiming direct mail and bearing the direct mail permit number.

b. To the location where the direct mail is delivered if the purchaser provides the seller with information to show the jurisdictions to which the direct mail is to be delivered.

c. To the location from which the direct mail was shipped if SUTB 68-5D.1.a and SUTB 68-5D.1.b do not apply.

2. Other Direct Mail

Other direct mail is sourced as follows:

a. To the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

b. To the jurisdictions where the direct mail is delivered if it is purchased pursuant to a direct pay permit, or if it is purchased with an exemption certificate claiming direct mail and bearing the direct mail permit number.

3. Relief from Liability

In the absence of bad faith, a seller is relieved of:

a. All obligations to collect, pay, or remit any sales and use tax on any direct mail transaction where the purchaser issues a direct pay permit, or if it is purchased with an exemption certificate claiming direct mail and bearing the direct mail permit number.

b. Further obligation to collect any additional sales and use tax on the sale of advertising and promotional direct mail where the seller sourced the sale according to delivery information provided by the purchaser.

E. Direct Pay Permit

For information on a direct pay permit for direct mail, refer to SUTB 24.

68-6 BLUEPRINTS AND PHOTOCOPIES

A. Sales of blueprints, photocopies, and other items sourced to this State to users or consumers are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

B. Sales of blueprints, photographs, and other items sourced to this State to an architectural or engineering firm for use or consumption and not for resale are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

C. Architects are liable for sales and use tax on blueprints or plans when they reproduce plans or drawings and sell them at retail. No sales and use tax is due when plans and specifications are instruments of service and title thereto remains with the architects.

SUTB 69 PROFESSIONAL MOTORSPORTS RACING TEAMS AND MOTORSPORTS SANCTIONING BODIES

69-1 DEFINITIONS

For purposes of this SUTB, the following terms and definitions apply:

1. **"Motorsports event"** – Includes a motorsports race, a motorsports sponsor event, and motorsports testing.

2. **"Professional motorsports racing team"** – A racing team that satisfies all of the following conditions:

   a. The team is operated for profit.
   b. The team does not claim a deduction under Section 183 of the Internal Revenue Code.
   c. The team competes in at least sixty-six percent (66%) of the races sponsored in a race series in a single season by a motorsports sanctioning body.

69-2 EXEMPTIONS RELATED TO MOTORSPORTS

The following are exempt from sales and use tax:

1. The sale, lease, or rental of an engine to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series.

2. The gross receipts derived from an agreement to provide an engine to a professional motorsports racing team or related member of a team for use in competition in a sanctioned race series, where such agreement does not meet the definition of a "service contract" but may meet the definition of the term "lease or rental."

3. An engine or a part to build or rebuild an engine for the purpose of providing an engine under an agreement to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series.

4. The sales price of or gross receipts derived from a service contract on, or repair, maintenance, and installation services for, a transmission, an engine, rear-end gears, and any other tangible personal property that is purchased, leased, or rented to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series and that is exempt from tax or that is allowed a sales tax refund.

Note: These exemptions expire January 1, 2028.

69-3 REFUNDS OF AVIATION GASOLINE OR JET FUEL

A. Refund Authorized by G.S. § 105-164.14A

A professional motorsports racing team, a motorsports sanctioning body, or a related member of such a team or body is allowed an annual refund of the sales and use tax paid by it in this State on aviation gasoline or jet fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this refund, a "related member" is defined in G.S. § 105-130.7A.

Tax for which a refund is allowed pursuant to G.S. § 105-164.14A is not an overpayment of tax and does not accrue interest as provided in G.S. § 105-241.21.

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B. Due Date of Refund Claim

A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six (6) months after the State's fiscal year end. A refund requested after the due date is barred. A professional motorsports racing team, a motorsports sanctioning body, or a related member of such a team or body must use Form E-588A, Incentive Claim for Refund for Aviation Gasoline or Jet Fuel for Motorsports Combined General Rate Sales and Use Taxes, to request the refund from the Department.

Note: This refund provision is repealed effective for purchases made on or after January 1, 2029.

69-4 REFUNDS FOR PROFESSIONAL MOTORSPORTS RACING VEHICLE COMPONENTS

A. Refund Authorized by G.S. § 105-164.14A

A professional motorsports racing team or a related member of a team is allowed an annual refund of fifty percent (50%) of the sales and use tax paid by it in this State on tangible personal property, other than tires or accessories that comprise any part of a professional motorsports vehicle. Tax refunded is not an overpayment of tax and does not accrue interest.

B. Due Date of Refund Claim

A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six (6) months after the State's fiscal year end. A refund requested after the due date is barred. A professional motorsports racing team or a related member of a team must use Form E-585S, Incentive Claim for Refund State, County, and Transit Sales and Use Taxes, to request the refund from the Department.

Note: This refund provision is repealed effective for purchases made on or after January 1, 2028.

C. Accessories of a Professional Motorsports Vehicle

For purposes of this refund, accessories on which the tax has been paid but cannot be included in the claim for refund include:

1. Consumables.
2. Instrumentation (gauges, etc.).
3. Paint.
4. Telemetry.

SUTB 70 PROPERTY TRANSFERRED BETWEEN DIVISIONS

70-1 PROPERTY TRANSFERRED BETWEEN DIVISIONS

A business entity having divisions, both inside and outside of North Carolina, is liable for remitting sales and use tax on any purchases of items for use in North Carolina, including any property purchased outside North Carolina and imported into North Carolina for use in this State. An item received by the purchaser or on behalf of the purchaser in this State is subject to sales and use tax no matter that the item is designated for ultimate use outside this State. No tax is due on transfers of property by an out-of-state firm to its North Carolina divisions for their use if the property was originally purchased for use outside this State by the out-of-state firm and was, in fact, used by that firm outside this State for a substantial period of time.

SUTB 71 RAILROADS

71-1 RAILWAY CARS AND LOCOMOTIVES

The sales price of a railway car or locomotive sold at retail, including all accessories attached to the railway car or locomotive when it is delivered to the purchaser, is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

71-2 DIESEL FUEL EXEMPTION

Sales of diesel fuel to railroad companies for use in rolling stock other than motor vehicles are exempt from sales and use tax. The definitions in G.S. § 105-333 apply in this section.

71-3 INTERSTATE CARRIERS' LIABILITY FOR TAX ON PURCHASES

Interstate carriers are liable for payment of the applicable rates of sales and use tax on all purchases of items for storage, use, or consumption in this State unless specifically exempt by statute. The tax is to be paid to retailers inside or outside North Carolina who are liable for collecting and remitting the tax to the Department. Interstate carriers must report and pay use tax directly to the Department on purchases from retailers who do not charge the North Carolina sales and use tax. The fact that interstate carriers may be eligible for a refund of tax paid under the provisions of G.S. § 105-164.14(a) does not relieve them of liability for remitting sales or use tax on all taxable purchases of railway cars and locomotives, fuel, lubricants, repair parts, accessories, service contracts, and repair, maintenance, and installation services for a motor vehicle, railroad car, locomotive, or airplane the carrier operates.

71-4 REFUNDS WITH RESPECT TO RAILROADS

Refer to the following SUTBs for detailed information:

1. Refer to SUTB 74-1 for refunds to interstate carriers.

2. Refer to SUTB 74-8 for refunds for an eligible railroad intermodal facility.

3. Refer to SUTB 74-2 for refunds for utility companies for railway cars, locomotives, etc.

SUTB 72 REAL PROPERTY CONTRACTS

72-1 REAL PROPERTY CONTRACTS WITH RESPECT TO A CAPITAL IMPROVEMENT TO REAL PROPERTY

A real property contract is a contract between a real property contractor and another person to perform a capital improvement to real property. A transaction must meet the definition of a "capital improvement" to qualify as a real property contract. A person must substantiate that a transaction is a real property contract as provided in SUTB 72-5.

A capital improvement is one or more of the following:

1. New construction, reconstruction, or remodeling.

2. Performance of work that requires the issuance of a permit under the State Building Code, other than repair or replacement of electrical components, gas logs, water heater, and similar individual items that are not part of new construction, reconstruction, or remodeling.

3. Installation of a transmission, distribution, or other network asset on land owned by a service provider or on a right-of-way or easement in favor of a service provider, notwithstanding that any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction are included in the gross receipts derived from services subject to the combined general rate under G.S. § 105-164.4. For purposes of this subsection, the term "service provider" means a person, including a governmental entity, who provides any of the services listed in this subsection, and the term "governmental entity" means a State agency, the federal government, or a governmental entity listed in G.S. § 105-164.14(c). The services are:

a. Telecommunications service or ancillary service.
b. Video programming.
c. Electricity or piped natural gas.
d. Water or sewer service.

4. Installation of equipment or a fixture that is attached to real property and that meets one or more of the following conditions:

a. Is capitalized and depreciated under Generally Accepted Accounting Principles or International Financial Reporting Standards.
b. Is depreciated under the Internal Revenue Code.
c. Is expensed under Section 179 of the Internal Revenue Code.

5. Painting or wallpapering of real property, except where painting or wallpapering is incidental to the repair, maintenance, and installation services.

6. Replacement or installation of a septic tank system, siding, roof, plumbing, electrical, commercial refrigeration, irrigation, sprinkler, or other similar system. The term does not include the repair, replacement, or installation of electrical or plumbing components, water heaters, gutters, and similar individual items that are not part of new construction, reconstruction, or remodeling.

7. Replacement or installation of a heating or air conditioning unit or a heating, ventilation, or air conditioning system. The term does not include the repair, replacement, or installation of gas logs, water heaters, pool heaters, and similar individual items that are not part of new construction, reconstruction, or remodeling.

8. Replacement or installation of roads, driveways, parking lots, patios, decks, and sidewalks.

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9. Services performed to resolve an issue that was part of a real property contract if the services are performed within six months of completion of the real property contract or, for new construction, within twelve (12) months of the new structure being occupied for the first time.

10. Landscaping.

11. An addition or alteration to real property that is permanently affixed or installed to real property and is not an activity listed in the definition of "repair, maintenance, and installation services."

72-2 DEFINITIONS

G.S. § 105-164.3 provides the following terms and definitions:

1. **"Capital improvement"** – Refer to SUTB 72-1.

2. **"Freestanding appliance"** – A machine commonly thought of as an appliance operated by gas or electric current. Examples include a dishwasher, washing machine, clothes dryer, refrigerator, freezer, microwave, and range, regardless of whether the range is slide-in or drop-in.

3. **"Landscaping"** – A service that modifies the living elements of an area of land. Examples include the installation of trees, shrubs, or flowers on land; tree trimming; mowing; and the application of seed, mulch, pine straw, or fertilizer to an area of land. The term does not include services to trees, shrubs, flowers, or similar tangible personal property in pots or in buildings.

4. **"Mixed transaction contract"** – A contract that includes both a real property contract for a capital improvement and repair, maintenance, and installation services for real property that are not related to the capital improvement.

5. **"New construction"** – Construction of or site preparation for a permanent new building, structure, or fixture on land or an increase in the square footage of an existing building, structure, or fixture on land.

6. **"Real property"** – Any one or more of the following:

- **a.** Land.
- **b.** Building or structure on land.
- **c.** Permanent fixture on land.
- **d.** A manufactured home or a modular home on land.

7. **"Real property contract"** – A contract between a real property contractor and another person to perform a capital improvement to real property.

8. **"Real property contractor"** – A person that contracts to perform a real property contract in accordance with G.S. § 105-164.4H. The term includes a general contractor, a subcontractor, or a builder for sales and use tax purposes.

9. **"Reconstruction"** – Rebuild or construct again a prior existing permanent building, structure, or fixture on land and may include a change in the square footage from the prior existing building, structure, or fixture on land.

10. **"Remodeling"** – A transaction comprised of multiple services performed by one or more persons to restore, improve, alter, or update real property that may otherwise be subject to tax as repair, maintenance, and installation services if separately performed. The term includes a transaction where the internal structure or design of one or more rooms or areas within a room or building are substantially changed. The term does not include a single service that is included in repair, maintenance, and installation services. The term does not include a transaction where the true purpose is repair, maintenance, and installation services no matter that another service included in repair, maintenance, and installation services is performed that is incidental to the true purpose of the transaction; examples include repair of sheetrock that includes applying paint, replacement of cabinets that includes installation of caulk or molding, and the installation of hardwood floors that includes installation of shoe molding.

11. **"Renovation"** – Same meaning as the term remodeling.

12. **"Repair, maintenance, and installation services"** – The term includes the activities listed below and applies to tangible personal property, motor vehicles, certain digital property, and real property. The term does not include a service used to fulfill a real property contract taxed in accordance with G.S. § 105-164.4H.

    a. To keep or attempt to keep property or a motor vehicle in working order to avoid breakdown and prevent deterioration or repairs. Examples include to clean, wash, or polish property.
    b. To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property or a motor vehicle to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.
    c. To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore property or a motor vehicle to proper working order or good condition. The term includes activities that may lead to the issuance of an inspection report.
    d. To install, apply, connect, adjust, or set into position tangible personal property or certain digital property. The term includes floor refinishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like-kind item, such as replacing one or more windows, is repair, maintenance, and installation services. The term does not include an installation defined and substantiated as a capital improvement under G.S. § 105-164.4H(a1).
    e. To inspect or monitor property or install, apply, or connect tangible personal property or certain digital property on a motor vehicle or adjust a motor vehicle.

13. **"Retailer-contractor"** – A person that acts as a retailer when it makes a sale at retail and as a real property contractor when it performs a real property contract.

72-3 TAXATION OF REAL PROPERTY CONTRACTS

A. General

North Carolina does not impose sales and use tax on the gross receipts derived from a real property contract.

B. Erroneous Collections

A real property contractor shall not separately state any amount for tax on an invoice or other documentation issued to a purchaser for a real property contract. Any amount for tax separately

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stated on an invoice or other documentation given to a purchaser for a real property contract by a real property contractor is an erroneous collection and must be remitted to the Secretary.

C. Tax Due on Items Used by A Real Property Contractor

A real property contractor is the consumer of the tangible personal property or certain digital property that the real property contractor purchases, installs, or applies for others to fulfill a real property contract and that becomes part of real property or used to fulfill the contract. A retailer engaged in business in the State shall collect tax on the sales price of items sold at retail to a real property contractor unless a statutory exemption applies. Where a real property contractor purchases tangible personal property or certain digital property used in this State, or a service sourced to this State, and the tax due is not paid at the time of purchase, the real property contractor must remit the applicable tax directly to the Department unless otherwise provided in this SUTB.

A real property contractor must maintain records in the ordinary course of business to establish the applicable sales and use tax has been paid on items that the real property contractor purchases, installs, or applies for others to fulfill a real property contract.

72-4 CAPITAL IMPROVEMENT DETERMINATION

Information provided in this section may be used to assist with the determination as to whether a transaction for real property, other than those expressly listed in the definition for capital improvement, should be taxed as a real property contract. Services to real property are generally repair, maintenance, and installation services subject to sales and use tax unless a person substantiates otherwise. Refer to SUTB 72-5 for information regarding the issuance and receipt of Form E-589CI, Affidavit of Capital Improvement.

A. Remodeling

1. General

For sales and use tax purposes, remodeling is a transaction comprised of multiple services performed by one or more persons to restore, improve, alter, or update real property that may otherwise be subject to tax as repair, maintenance, and installation services if separately performed. The term includes a transaction where the internal structure or design of one or more rooms or areas within a room or building are substantially changed.

The term does not include a single service that is included in the definition of “repair, maintenance, and installation services” or a transaction where the true purpose is repair, maintenance, and installation services no matter that another service included in the definition of “repair, maintenance, and installation services” is performed that is incidental to the true purpose of the transaction; examples include repair of sheetrock that includes applying paint, replacement of cabinets that includes installation of caulk or molding, and the installation of hardwood floors that includes installation of shoe molding.

2. Services to Multiple Like-Kind Items

For purposes of remodeling, the repair or replacement of more than one like-kind item is considered a single service. For example, the replacement of multiple windows, doors, or plumbing fixtures is each considered a single service for purposes of determining if a transaction is remodeling.

3. Relationship of Multiple Services

For purposes of determining if multiple service transactions are remodeling, the services must be connected to one another. The connection must be in time and scope.

To be related in time, the services must be agreed to be performed and actually performed within a reasonable time of one another. This includes contracts or other agreements for the services to be performed and actual performance of the services.

To be related in scope, the services must be performed on the same part or parts of the real property. For example, if two single repair, maintenance, or installation services are performed on different parts of real property where the true purpose is to perform repair, maintenance, or installation services, then the services are not remodeling.

4. Examples

A homeowner decides to update the homeowner's kitchen. The activities to be performed include the following: installation of new kitchen cabinets including cabinet boxes, tile flooring, interior walls painted, and a new sink. Upon completion, the appearance of the room will be substantially different. The kitchen update consists of multiple services that would otherwise be subject to tax as repair, maintenance, and installation services if performed separately, therefore, the kitchen update meets the definition of "remodeling."

A property owner decides to hire another person to relocate the kitchen sink, range, refrigerator, and dishwasher within the same physical room. The service requires that electrical and plumbing systems be altered and, to some degree, relocated to other areas of the room. The internal structure or design of the room are to be substantially changed; therefore, the transaction meets the definition of "remodeling."

A homeowner decides to hire a plumber to repair a toilet in the master bathroom. The plumber completes the work immediately after being hired. Three months later, the homeowner decides to replace the countertops in the bathroom. The transactions are not remodeling because the two services performed in the bathroom were not connected in time. At the time the toilet was repaired, the homeowner did not have plans or a contract to perform the second service of replacing the countertops.

A property owner has a leaky toilet in the bathroom of an office building. In addition, the property owner notices a hole in the wall of a separate part of the office building. The property owner hires a plumber to fix the leaky toilet and a repairperson to patch the hole in the wall. The transactions are not remodeling because the two services performed at the office building are not connected in scope. These are two separate repair services that are unrelated to one another and the true purpose is to perform repair, maintenance or installation, the services are not remodeling.

A homeowner hires a contractor to update the shower in their master bathroom. The services to be performed include removing the old fiberglass shower enclosure. The contractor lays tiles on the walls and floor. In addition, a glass door is installed and plumbing fixtures are replaced. The contractor completes the work immediately after being hired. The bathroom update consists of multiple services that are connected in time and scope, therefore, the bathroom update meets the definition of "remodeling."

A homeowner hires a contractor to update the prefabricated shower in their master bathroom. The services to be performed include removing the old fiberglass shower enclosure and installing a new fiberglass shower enclosure with new shower fixtures. The person completes the work immediately after being hired. The bathroom update does not meet the definition of "remodeling" and is taxable as repair, maintenance, and installation services because the true purpose is the service of replacing the prefabricate fiberglass shower enclosure.

B. Permits

Permits are generally required under the State Building Code when structural changes are made that will affect load-bearing walls including work that will result in a new dwelling unit or will change the use or occupancy of a structure. Refer to the North Carolina State Building Code for the most up-to-date permit requirements.

Even if a permit is required under the State Building Code, the repair or replacement of electrical components, gas logs, a water heater, and similar individual items where the repair or replacement is not part of new construction, reconstruction, or remodeling is subject to sales and use tax and does not qualify as a real property contract.

Further, if a contractor obtains a permit that is not required by the State Building Code, the transaction is not a capital improvement unless it meets a different portion of the definition of "capital improvement."

C. Addition or Alteration to Real Property That Becomes Permanently Affixed or Installed to Real Property

Generally, tangible personal property becomes a part of real property when it is attached in a fixed or immovable manner, such that the tangible personal property becomes part of real property by being annexed to it. *(Example: a fence is built on land.)*

An activity listed in the definition of the term "repair, maintenance, and installation services" is not a real property contract, regardless of whether there is an addition or alteration to real property that is permanently affixed or installed to real property.

72-5 SUBSTANTIATION OF A REAL PROPERTY CONTRACT

A person may substantiate that a transaction is a real property contract or a mixed transaction in one of the following two ways:

1. By receipt of a Form E-589CI, Affidavit of Capital Improvement.
2. By records that establish the transaction is a real property contract.

If a person does not substantiate a transaction is a real property contract or a mixed transaction contract in accordance with this subsection, the transaction will be subject to tax as repair, maintenance, and installation services.

A. Affidavit of Capital Improvement - Form E-589CI

1. General Information

Form E-589CI, Affidavit of Capital Improvement, substantiates that a contract, or a portion of work to be performed to fulfill a contract, is to be taxed for sales and use tax purposes as a real property contract.

Form E-589CI is not an affidavit certifying the tax has been paid on building materials or other items purchased or used to fulfill a real property contract.

Form E-589CI is not to be used to purchase building materials or other items exempt from sales and use tax including materials used to fulfill a real property contract.

2. Use of Form E-589CI

a. Single Use (Section I)

A person must complete Section I - Single Use of Form E-589CI for a one time use to substantiate that a transaction is a real property contract for a single capital improvement to real property and subject to sales and use tax as a real property contract.

b. Blanket Use of Form E-589CI (Section II)

A real property contractor may complete Section II - Blanket Use of Form E-589CI and issue the form to another real property contractor (subcontractor) who is used exclusively to perform part, or all, of real property contracts with respect to capital improvements to real properties, where the parties have a recurring business relationship. A recurring business relationship occurs when a period of no more than twelve (12) months elapse between transactions between the two parties. A blanket use affidavit continues in force so long as the real property contractor (i.e., general contractor) named in Box C and the real property contractor (i.e., subcontractor) named in Box D, maintain a recurring business relationship or until the affidavit is withdrawn or other notification given by the issuer of the form.

3. Liability Regarding Form E-589CI

The receipt of a Form E-589CI, establishes that the person receiving the affidavit (i.e., the general contractor's subcontractor) should treat the transaction as a real property contract. *(Example: The subcontractor does not charge sales tax to the person who issued the affidavit. Rather, the subcontractor will pay sales and use tax to the vendor or remit the use tax to the Department on the purchase price of its purchases of taxable items used to fulfill the real property contract.)*

A person who receives an affidavit of capital improvement from another person within 90 days of the sale or within 120 days of a substantiation request by the Secretary, absent fraud or other egregious activities, is not liable for any additional tax on the gross receipts from the transaction if it is determined that the transaction is not a capital improvement.

A person that issues Form E-589CI is liable for any additional sales and use tax due on the transaction between the affiant and recipient if it is determined that the transaction is not a capital improvement, but rather the transaction is subject to sales and use tax as a retail sale. For misuse of Form E-589CI, the Secretary shall assess a penalty equal to two hundred fifty dollars ($250.00).

4. Differences between Form E-589CI, Affidavit of Capital Improvement, and Form-589P, Affidavit of Tax Paid by Real Property Contractor

Form E-589CI, Affidavit of Capital Improvement, is not an affidavit certifying the tax has been paid on items that become a part of real property in this State. Refer to SUTB 72-8 for information regarding liability for items that the real property contractor purchases, installs, or applies for others to fulfill a real property contract and that becomes part of real property, and Form-589P, Affidavit of Tax Paid by Real Property Contractor.

The following chart provides an overview of the key differences between the two affidavits:

	E-589CI	E-589P
When to Issue	Start of work	End of work
Purpose	Certifies transaction taxed as a real property contract	Certifies tax paid on materials that become a part of real property

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Tax Relief	Allows person to tax transaction as a real property contract	Satisfies recipient's use tax liability on materials
Person that Issues	A property owner, lessee, or real property contractor who hires other contractors	Real property contractor who purchases materials
Person that Receives	Real property contractor	A property owner, lessee, or general contractor, or other real property contractor that hired subcontractors

B. Records that Establish the Transaction is a Real Property Contract

In many cases, the only sufficient documentation to establish a transaction is a real property contract, or is a portion of a real property contract, is to have Form E-589CI on file for the transaction. (*Example: If a subcontractor is performing a single repair, maintenance, and installation service for another contractor that is a part of a larger remodel that qualifies as a capital improvement.*) The Department recommends any person performing a real property contract to document the transaction with Form E-589CI and not rely on other records that may not be clear to the Department of the nature of the transaction. However, there may be specific situations where records maintained by the person establish that a transaction is a real property contract.

A transaction explicitly listed as a capital improvement may be established as a real property contract using unambiguous records. The records must be kept for each transaction and must clearly and unquestionably establish the transaction is a real property contract. *(Example: The installation of an air conditioning system is explicitly listed in the definition as a capital improvement. A person installing a new air conditioning system may use records to establish the transaction is a real property contract. Records that would need to be maintained for this specific example include: the invoice issued to the customer at the time of sale that clearly states a new air conditioning system is being installed, a purchase invoice for the air conditioning system that correlates and corresponds to the air conditioning system being installed for the customer, as well as any permits required for the completion of the real property contract.)*

72-6 MIXED TRANSACTION CONTRACTS

A mixed transaction contract is a contract that includes both a real property contract for a capital improvement and repair, maintenance, and installation services for real property that are not related to the capital improvement. The taxation of a mixed transaction contract depends on the portion of the contract price allocated to taxable repair, maintenance, and installation services.

1. Determining the Allocated Sales Price of Taxable Repair, Maintenance, and Installation Services

A person must determine the allocated sales price of taxable repair, maintenance and installation services to tax a transaction as a mixed transaction contract. The allocated sales price must be based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. Repair, maintenance, and installation services that are performed as a part of a capital improvement are not taxable and should not be included in the allocated sales price as long as the person complies with the substantiation requirements found in SUTB 72-5.

Once a person determines the allocated sales price of taxable repair, maintenance, and installation services, the allocated sales price should be divided by the total contract price to determine the percentage of taxable repair, maintenance, and installation services.

2. Allocated Taxable Sales Price Equal to 25% or Less of Contract Price

If the allocated sales price of the taxable repair, maintenance, and installation services included in the contract is less than or equal to twenty five percent (25%) of the contract price, then the repair, maintenance, and installation services portion of the contract, and the items used to perform those services, are taxable as a real property contract. For a mixed transaction contract taxable as a real property contract that includes an allocated sales price of taxable repair, maintenance, and installation services less than or equal to twenty five percent (25%) of the contract price, the substantiation requirements in G.S. § 105-164.4H(a1) apply.

Example: A property owner and a contractor enter into an agreement for the contractor to install a new roof, install an HVAC unit, and repair a leaking toilet in a bathroom. The total agreed upon price of the services is twenty-nine thousand dollars ($29,000). The allocated sales price of the repair, maintenance, and installation services to repair the leaking toilet is two-hundred ninety dollars ($290), which is 1% of the total agreed upon price. The contractor receives a Form E-589CI, Affidavit of Capital Improvement, from the property owner.

The entire charge for the mixed transaction contract is a capital improvement and subject to sales and use tax as a real property contract. The contractor must pay sales and use tax on the purchase price of items used to fulfill the contract, including items used to repair the leaking toilet. None of the gross receipts derived from the contract are subject to sales and use tax.

3. Allocated Taxable Sales Price Greater than 25% of Contract Price

If the allocated sales price of the taxable repair, maintenance, and installation services included in the contract is greater than twenty five percent (25%) of the contract price, then sales and use tax applies to the sales price of or the gross receipts derived from the taxable repair, maintenance, and installation services portion of the contract. Any purchase of tangible personal property or certain digital property used to fulfill the real property contract is taxed as a real property contract where the real property contractor is the consumer of the item and must pay sales and use tax on the purchase price of the item.

Example: A property owner and a repairperson enter into an agreement for the repairperson to replace all windows in a home built in the 1920's. In addition, the property owner requests that the repairperson repaint a handrail inside the house. The total agreed upon price for all of the services is twenty-five thousand dollars ($25,000). The allocated sales price of the windows is twenty-four thousand dollars ($24,000), which is ninety-six percent (96%) of the total agreed upon amount.

The repairperson must collect sales tax on the allocated sales price of twenty-four thousand dollars ($24,000) for the replacement of the windows because the allocated sales price exceeds 25% of the contract price. The repairperson must pay sales and use tax on the purchase price of paint and other items used to paint the handrail.

72-7 RETAILER-CONTRACTORS

A retailer-contractor is a person that acts as a retailer when it makes a sale at retail and as a real property contractor when it performs a real property contract.

A retailer-contractor that purchases taxable items from a seller, part of which will be used in performing real property contracts and part of which will be sold at retail, may purchase those items exempt from sales and use tax as provided in SUTB 5.

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When the items are withdrawn from inventory and used by the retailer-contractor, the retailer-contractor is liable for and must accrue and pay use tax on the retailer-contractor's purchase price of the item.

Where the exact purchase price is unknown or cannot be determined by the retailer-contractor, it may determine and report its use tax liability based on GAAP inventory methods. The retailer-contractor must maintain records to substantiate the proper amount of use tax due on the purchase price of any items withdrawn from inventory and used to fulfill a real property contract. All items withdrawn from inventory by a retailer-contractor are subject to the applicable rates of sales and use tax unless the item is exempt from sales and use tax.

72-8 USE TAX LIABILITY OF OWNER, LESSEE, SUBCONTRACTOR, RETAILER-CONTRACTOR AND REAL PROPERTY CONTRACTOR

A. A real property contractor, retailer-contractor, subcontractor, lessee, and owner of real property are jointly and severally liable for sales and use tax on an item purchased that becomes a part of real property in the State, except as provided in SUTB 72-5.

The liability of a real property contractor, a retailer-contractor, a subcontractor, a lessee, or an owner who did not purchase the item is satisfied by receipt of an affidavit from the purchaser certifying that the tax has been paid. A real property contractor may use Form E-589P, Affidavit of Tax Paid by Real Property Contractor, when the contractor has paid sales and use tax on the materials it purchases and installs or affixes to real property as part of a real property contract. After completing Form E-589P, the real property contractor should provide the form to general contractors, owners, and lessees of real property. The form, or a similar affidavit, should be retained by the parties that did not purchase the building materials or item to satisfy their sales and use tax liability for the building materials or item, otherwise, they are subject to the sales and use tax on the building materials or item. In the alternative, receipt of a schedule identifying the purchase invoices along with copies of the invoices that document sales or use taxes were paid on such purchases will satisfy the requirement.

B. Differences between Form E-589P, Affidavit of Tax Paid by Real Property Contract and Form E-589CI, Affidavit of Capital Improvement

Form E-589P, Affidavit of Tax Paid by Real Property Contractor, does not substantiate that a contract, or a portion of work to be performed to fulfill a contract, is to be taxed for sales and use tax purposes as a real property contract. Refer to SUTB 72-5 for information regarding substantiation of a real property contract, and Form E-589CI, Affidavit of Capital Improvement.

The following chart provides an overview of the key differences between the two affidavits:

	E-589CI	E-589P
When to Issue	Start of work	End of work
Purpose	Certifies transaction taxed as a real property contract	Certifies tax paid on materials that become a part of real property
Tax Relief	Allows person to tax transaction as a real property contract	Satisfies recipient’s use tax liability on materials
Person that Issues	A property owner, lessee, or real property contractor who hires other contractors	Real property contractor who purchases materials
Person that Receives	Real property contractor	A property owner, lessee, or general contractor, or other real property contractor that hired subcontractors

72-9 SOURCING

Tangible personal property (e.g., building materials) used to fulfill a real property contract with respect to a capital improvement is generally sourced to the location where the purchaser takes possession of the property. Certain digital property used to fulfill a real property contract with respect to a capital improvement is sourced to the location where the purchaser takes possession or makes first use of the property. A real property contractor, or other person liable for the tax, may owe additional use tax for the State or the county where the tangible personal property or certain digital property is used to fulfill a real property contract with respect to a capital improvement if the rate of state or county tax in the State or that county is a higher rate than in the state or county where the real property contractor took possession of the property. For information regarding sourcing, refer to SUTB 4.

72-10 REAL PROPERTY CONTRACTS WITH A QUALIFYING OR CONDITIONAL FARMER OR WILDLIFE MANAGER

Certain qualifying items may be purchased by a contractor without payment of sales or use tax to fulfill a real property contract with a qualifying or conditional farmer or a wildlife manager. For information on purchases to fulfill a real property contract for qualifying or conditional farmers or wildlife managers, refer to SUTB 27.

72-11 CERTAIN INSTALLATION CHARGES EXEMPT FROM SALES AND USE TAX – REAL PROPERTY CONTRACTS

The following charges are exempt from sales and use tax:

1. Installation charges that are part of the sales price of tangible personal property purchased by a real property contractor to fulfill a real property contract for an item that is installed or applied to real property, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the real property contractor at the time of the sale. The exemption also applies to installation charges by a retailer-contractor when performing installation services for a real property contract. The exemption includes any labor costs provided by the real property contractor, including employees' wages or labor purchased from a third party that would otherwise be included in the definition of “purchase price.”

2. Installation charges that are part of the sales price of or gross receipts derived from repair, maintenance, and installation services or installation charges only purchased by a real property contractor to fulfill a real property contract, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the real property contractor at the time of the sale. The exemption also applies to installation charges by a retailer-contractor when performing a real property contract. The exemption includes any labor costs provided by the real property contractor, including employees' wages or labor purchased from a third party that would otherwise be included in the definition of “purchase price.”

With the correct application of the sales and use tax laws, there should be no charge for sales and use tax on the amount charged for a real property contract.

72-12 CONTRACTS AWARDED PRIOR TO THE ENACTMENT OF THE ¼% LOCAL SALES AND USE TAX

Under Article 46, One-Quarter Cent (¼¢) County Sales and Use Tax, of Chapter 105 of the North Carolina General Statutes, counties have authority to levy an additional one-quarter cent (¼¢) local sales and use tax upon the favorable vote by the residents of a county. The legislation provides that the additional ¼% local sales and use tax does not apply to items purchased for the purpose of fulfilling a real property contract entered into or awarded pursuant to any bid made before the

effective date of the tax imposed by a taxing county when such items would otherwise be subject to Article 46, One-Quarter Cent (¼¢) County Sales and Use Tax.

Items purchased for the purpose of fulfilling a real property contract on or after the effective date of the ¼% local sales and use tax levy by a real property contractor, a subcontractor, or retailer-contractor for a change order in conjunction with a real property contract entered into or awarded pursuant to any bid made before the effective date of the levy, or a real property contract entered into or pursuant to any bid made before the effective date of the levy, are not subject to the ¼% local sales and use tax, provided such contractors issue a properly completed Form E-589D, Affidavit to Exempt Contractors From the ¼% County Sales and Use Tax, to the retailers of said items. A properly completed Form E-589D may be executed in connection with each purchase and copies thereof must be maintained in the records of the retailer and the purchaser. A contractor must retain the original or a duplicate original of any real property contract in its files.

Refer to SUTB 1-3B.2 for a complete list of counties that have levied the additional ¼% local sales and use tax under Article 46 resulting in the total local sales and use tax amount of 2.25%.

72-13 CONTRACTS AWARDED PRIOR TO THE ENACTMENT OF THE LOCAL GOVERNMENT SALES AND USE TAX FOR PUBLIC TRANSPORTATION

A tax levied under Article 43, Local Government Sales and Use Taxes for Public Transportation, of Chapter 105 of the North Carolina General Statutes by a county or transportation authority does not apply to items purchased for the purpose of fulfilling a real property contract for a capital improvement entered into or awarded pursuant to any bid made before the effective date of the tax imposed by a taxing county when the items would otherwise be subject to the tax.

Items purchased for the purpose of fulfilling a real property contract on or after the effective date of the levy by a real property contractor, a subcontractor, or retailer-contractor for a change order in conjunction with a real property contract entered into or awarded pursuant to any bid made before the effective date of the levy, or a real property contract entered into or pursuant to any bid made before the effective date of the levy, are not subject to the 0.50% local transit tax provided such contractors issue a properly completed Form E-589F, Affidavit to Exempt Certain Purchases From the Additional 0.50% Transit Sales and Use Tax, to the sellers of said items. A real property contractor, a subcontractor, a retailer-contractor, or a retailer must retain a copy of each Form E-589F and other documentation to substantiate that the taxable items purchased or sold are not subject to the 0.50% local transit sales and use tax.

Refer to SUTB 1-3C for a complete list of counties that have levied an additional 0.50% local transit sales and use tax.

72-14 PURCHASES OF MILL MACHINERY OR MILL MACHINERY PARTS OR ACCESSORIES BY REAL PROPERTY CONTRACTORS, RETAILER-CONTRACTORS, AND SUBCONTRACTORS

Purchases by real property contractors, retailer-contractors, and subcontractors of qualifying mill machinery or mill machinery parts or accessories for use by them in the performance of a real property contract with a manufacturing industry or plant are exempt from sales and use tax, where applicable. Such mill machinery or mill machinery parts or accessories must be for use by a manufacturing industry or plant in the production process, as the term “production” is defined SUTB 57-1 to qualify. If a real property contractor subcontracts any part of the real property contract, purchases by the subcontractors of qualifying mill machinery or mill machinery parts and accessories are exempt from sales and use tax.

A real property contractor, retailer-contractor, or subcontractor must maintain records from the manufacturer that establishes the purchase of exempt mill machinery or mill machinery parts or accessories qualify for the exemption.

Note: For information on mill machinery or mill machinery parts and accessories, refer to SUTB 57.

72-15 FREESTANDING APPLIANCES

A sale of a freestanding appliance is a retail sale. The sales price of the freestanding appliance, including any installation charges, are subject to the general State, applicable local, and applicable transit rates of sales and use tax. However, if a real property contractor purchases a freestanding appliance to fulfill a real property contract installation charges that are separately stated and identified as such on the invoice or other documentation given to the real property contractor at the time of the sale are exempt from tax.

72-16 ASPHALT PLANTS, CONCRETE PLANTS, AND WEIGH HOPPERS SOLD TO REAL PROPERTY CONTRACTORS AND RETAILER-CONTRACTORS

Sales of asphalt plants, concrete plants, weigh hoppers or other equipment to real property contractors, retailer-contractors, subcontractors or other consumers that primarily produce concrete or asphalt for use in fulfilling their contracts are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Sales of repair or replacement parts for a ready-mix concrete mill to a company that primarily sells ready-mix concrete, regardless of whether the mill is freestanding or affixed to a motor vehicle, are exempt from sales and use tax.

72-17 SAND, DIRT, AND STONE SOLD AT RETAIL

Retail sales of sand, dirt, and stone are subject to the general State, applicable local, and applicable transit rates of sales and use tax unless one or more of the following occur:

1. The sand, dirt, and stone is sold in its original or unmanufactured state by the producer in its capacity as a producer.

2. The sale is supported by a properly completed Certificate of Exemption, or the required data elements, as applicable.

72-18 SANDBLAST SAND SOLD TO REAL PROPERTY CONTRACTORS, RETAILER-CONTRACTORS, SUBCONTRACTORS, AND OTHER CONSUMERS

Retail sales of sandblast sand to consumers, including real property contractors, retailer-contractors, subcontractors for use in their contracts, are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

72-19 SOLAR PHOTOVOLTAIC (PV) SYSTEMS

The installation of a solar photovoltaic (PV) system requiring a permit under the State Building Code qualifies as a capital improvement. The repair, replacement, or installation of a single component of a solar PV system is subject to tax as repair, maintenance, and installation services.

Note: For information on repair, maintenance, and installation services, refer to SUTB 75.

72-20 AUDIO SYSTEMS

A. Central Wired Audio Systems

The installation or complete replacement of a central wired audio system is a capital improvement. A central wired audio system is an electrical system that consists of speakers in multiple rooms which are connected by speaker wire that is installed within the walls, ceilings, or floors of real

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property. The repair, replacement, or installation of a component of a central wired audio system that is not part of new construction, reconstruction, or remodeling is not a capital improvement.

B. Wireless Audio Systems

The installation or replacement of a wireless audio system is not a capital improvement and the wireless audio system and any installation charges are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

72-21 CHART OF SERVICES TO REAL PROPERTY

For purposes of this chart, the following apply:

- Substantiation requirements provided in SUTB 72-5 must be met for items listed as a capital improvement to qualify as a capital improvement.
- Where a transaction falls within the definition of a "mixed transaction contract," SUTB 72-6 applies to the application of the sales and use tax.
- The sales price or gross receipts of items listed as repair, maintenance, and installation services are subject to sales and use tax unless one of the following applies:
  - an exemption.
  - the services are performed to resolve an issue that was part of a real property contract and the services are performed within the following time periods:
    - New Construction - 12 months of the new structure being occupied for the first time.
    - Other Capital Improvements - six months of completion of the real property contract.
  - a permit under the State Building Code is required and the transaction is not a repair or replacement of electrical components, gas logs, water heater, and similar items.
  - the services are performed as part of new construction, reconstruction, or remodeling and the person complies with the substantiation requirements found in SUTB 72-5.
  - the service is the installation of equipment or fixture that is attached to real property and that meets one of the following conditions:
    - is capitalized and depreciated under Generally Accepted Accounting Principles or International Financial Reporting Standards,
    - is depreciated under the Internal Revenue Code, or
    - is expensed under Section 179 of the Internal Revenue Code.
- Services to leased or rented property are taxed in the same manner as services to property owned by a person.

Disclaimer: This list is not specific tax advice. The application of sales and use tax may differ based on the facts and circumstances of a particular transaction.

Transactions by Category	Capital Improvement	Repair, Maintenance, and Installation Services
Air Cleaners		
Complete replacement of a central air cleaner unit or system (excludes self-contained air cleaners)	X	
Repair, maintain, or replace a component part: collector plates, electronic plates, filters, power boxes, return, air ducts, and sails		Taxable

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Transactions by Category	Capital Improvement	Repair, Maintenance, and Installation Services
Air Conditioners Other than Central Air Conditioning Systems *(see also – Central Air Conditioning)*		
Complete replacement of through-the-wall mounted air conditioner unit or system	X	
Repair or maintain through-the-wall mounted air conditioner		Taxable
Repair, maintain, or replace a component part: air flow controls, air handlers, blowers, casings, copper tubing, fan, motors, filters, grilles		Taxable
Complete replacement of a window air conditioner		Taxable
The addition, replacement, or change in the design where a permit is required under the NC State Building Code	X	
Bathrooms *(see also – Electrical, Plumbing, and Walls)*		
A replacement or a repair of: cabinet, sink/vanity, toilet, tub, exhaust fan, shower, tub/shower enclosure, mirror, lighting fixture, faucet, shower head, various knobs, or other items or fixtures		Taxable
Remodel that meets the definition of “remodeling”. See SUTB 72-4A.	X	
Brickwork & Masonry		
Complete replacement of: stairs/steps, walls, fireplace, exterior surfaces	X	
Repointing		Taxable
Sandblasting or power washing real property, where the purpose is to clean the property		Exempt
Replacing damaged bricks		Taxable
Crack repair		Taxable
Installation or replacement of brick driveways, roads, sidewalks, patios, decks, or parking lots	X	
Repair or maintain a brick patio or deck		Taxable
Repair or maintain a brick driveway, road, sidewalk, or parking lot		Exempt
Central Air Conditioning		
Installation or replacement of central air conditioning unit or system	X	
Installation or replacement of entire ductwork system	X	
Repair, maintain, or replace a component part(s): blowers, coils, condenser coils, control devices, ductwork sections, excess moisture drains, fans, filters, refrigerant, refrigerant tubes		Taxable
Central Wired Audio Sound System		
Installation of central wired audio sound system	X	
Repair or maintain system		Taxable
Replace entire system	X	

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Transactions by Category	Capital Improvement	Repair, Maintenance, and Installation Services
Installation of components for existing real property (sales of audio components that do not become part of real property are sales of tangible personal property including for new construction)		Taxable
Certain Capitalized Equipment or Fixtures		
Installation of equipment or fixture that is attached to real property and that meets one or more of the following conditions: is capitalized and depreciated under GAAP or International Financial Reporting Standards, is depreciated under the Internal Revenue Code, or is expensed under Section 179 of the Internal Revenue Code.	X	
Repair or maintain capitalized equipment or fixtures		Taxable
Repair, maintain, install, or replace component part(s) of capitalized equipment or fixtures		Taxable
Chimneys & Fireplaces		
Complete replacement (reconstruction) of chimneys	X	
Addition of flue or liner (metal or foam)		Taxable
Chimney cleaning/sweeping		Exempt
Installation of spark arrestors to existing chimney		Taxable
Repair, maintain, install, or replace flue or liner		Taxable
Sealing of flashings (not associated with roof replacement)		Taxable
Repair, maintain, or replace a component part: caps, damaged brick or stone, flashings, loose mortar, pots, rain and draft deflectors, ash pits, cold air inlets, dampers, damper controls, fireboxes, firebricks, fire chambers, headers, hearths, mantels, smoke chambers, smoke shelves, warm air outlets		Taxable
Cleaning Real Property		
Carpet cleaning (including stain removal); does not include area rugs, etc.		Exempt
Dryer vent cleaning		Exempt
Cleaning of ductwork (remove mold, dust, other pollutants, etc.)		Exempt
Fish tank, pool, and other similar aquatic feature cleaning		Taxable
Gutter cleaning or removal of debris from gutters		Exempt
Mold remediation services (*see appropriate section for any underlying work performed other than removal of mold only)		Exempt*
Custodial, janitorial, and maid services, provided such are not part of the gross receipts derived from the rental of an accommodation charged by the facilitator or retailer		Exempt

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Transactions by Category	Capital Improvement	Repair, Maintenance, and Installation Services
Power wash real property (buildings, structures, concrete patios, driveways, decks, sidewalks, parking lots, etc.), but does not include power washing a pool		Exempt
Window washing		Exempt
Commercial Refrigeration Equipment		
Installation or replacement of commercial refrigeration systems	X	
Repair or maintain commercial refrigeration systems		Taxable
Repair, maintain, install, or replace component parts or portion of commercial refrigeration systems		Taxable
Concrete & Stonework		
Complete replacement of: stairs/steps, walls, block walls, exterior surfaces, or parking lot	X	
Crack repair		Taxable
Installation or complete replacement of a new driveway, sidewalk, or patio	X	
Replacement of footings and foundations	X	
Repair or partial replacement of footings and foundations		Taxable
Repair of a driveway, sidewalk, parking lot, or road		Exempt
Repair of a patio, chimney, stairs/steps, walls, fireplace		Taxable
Repair, maintain, or partial replacements of steps		Taxable
Decks *(see also – Patios)*		
Installation, replacement, or expansion of decks	X	
Repair, maintain, or replace a component part of decks: floor of deck, deck boards, railings, etc.		Taxable
Waterproofing, staining, painting, or varnishing decks	X	
Cleaning or power washing decks		Exempt
Docks		
Docks (floating): construction or reconstruction		Taxable
Installation of a boat lift on an existing dock (absent a requirement to obtain a permit issued under the NC State Building Code)		Taxable
Doors		
Installation or replacement of interior, exterior, storm, garage, and other doors with or without related hardware (may or may not include replacement of door frames) including other installations where the item being installed may replace a similar existing item		Taxable
Varnishing, staining, or painting doors	X	
Varnishing, staining, or painting a door where such is incidental to the installation or replacement of a door and is not part of new construction or remodeling		Taxable

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Transactions by Category	Capital Improvement	Repair, Maintenance, and Installation Services
Installation of the following in an existing door: closers, openers, moldings, kick plates, mail slots, peepholes, thresholds, weather stripping		Taxable
Repair, maintain, install, or replace: doors, door frames, casings, closers, doorknobs, glass panes, handles, head jambs, hinges, jambs, locks, latches, locksets, panels, saddles, screens, stiles, stops, thresholds, top rails, weather stripping		Taxable
Lubricate, adjust, tighten, etc.		Taxable
Drainage for Water on Real Property		
Installation or replacement of culvert (ditch, driveway, etc.)	X	
French drain	X	
Storm drainage system	X	
Hydro jetting drains		Taxable
Driveways, Parking Lots, Roads, and Sidewalks		
Installation or complete replacement of roads, driveways, parking lots, and sidewalks (asphalt, concrete, crushed stone, paver, etc.)	X	
Services on roads (including resurfacing, patching holes, repairing guardrails), driveways, parking lots, and sidewalks, including power washing		Exempt
Parking lot islands landscaping	X	
Re-striping (line painting) parking lots and other road surfaces		Exempt
Installation or replacement of guardrails	X	
Electrical		
Complete rewiring of real property	X	
Install and replace light bulbs in or on real property		Taxable
Replacement of existing lighting system with LED fixtures (where new wiring must be pulled and a permit obtained under the NC State Building Code is required)	X	
Replacement of existing lighting fixtures with LED fixtures only (no matter a permit is obtained under the NC State Building Code) provided new wiring is not pulled and installed for the lighting system		Taxable
Repair, maintain, install telephone wiring, speaker wire, computer cable, or coaxial cable, but does not include installation of underground utilities		Taxable
Existing real property: Repair, maintain, install, or replace electrical components, circuit breakers, outlets, receptacles, switches, fluorescent fixture parts (ballasts, starters, tubes), fuses, light bulbs, floor outlets, fluorescent fixtures, lighting fixtures, street light bulbs, metal raceways, multi-outlet strips, wall boxes, wall fixtures		Taxable

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Transactions by Category	Capital Improvement	Repair, Maintenance, and Installation Services
The addition, replacement, or change in the design of electrical wiring where a permit is required under the NC State Building Code	X	
Repair, maintain, install, or replace landscape lights, lamp posts, etc.		Taxable
Generator installation or replacement (whole residence, commercial backup)	X	
Generator – repair, maintenance		Taxable
Exterior		
Complete replacement of entire existing siding	X	
Reconstruction of: porches, decks, garages, homes, pole barns	X	
Water wells – Deepen existing wells or drill/bore new wells	X	
Excavation, site preparation, debris removal, land clearing, and grading	X	
Repair, maintain, install, or replace gutter and downspout systems or component parts for existing real property		Taxable
Install canvas awnings to existing real property		Taxable
Repair, replacement, or maintenance of: canvas awnings; fence pickets, posts, rails, or sections; flashings; gates; shingles (partial); siding (partial); patios; roof decks; or water well pumps		Taxable
Installation and repair of artificial turf		Taxable
Floors and Flooring		
Complete or partial replacement of floorings such as carpet, carpet padding, linoleum, vinyl tile, ceramic tile, wood, terrazzo, marble, concrete, raised, and other installations where the item being installed may replace a similar existing item (no matter that the flooring material installed differs from the original flooring material)		Taxable
Patching carpet		Taxable
Waterproofing, staining, varnishing, or painting floors where such is not incidental to refinishing floors	X	
Refinishing existing floors, including waterproofing, staining, varnishing, or painting where such is incidental to refinishing existing floors		Taxable
Repair, maintenance, or partial replacement of floorings (includes carpet stretching)		Taxable
Funeral-related services		
Monument engraving		Exempt

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Transactions by Category	Capital Improvement	Repair, Maintenance, and Installation Services
Interment charges (provided the charges are separately stated on the sales invoice or other document given to the purchaser at the time of the sale)		Exempt
Grave opening and closing charges (provided separately stated on the sales invoice or other document given to the purchaser at the time of the sale)		Exempt
New construction of a tomb structure	X	
Heating Unit or System		
Installation or complete replacement of heating unit or system (excluding free-standing)	X	
Installation or complete replacement of permanent electric heating units or systems (boilers, electric furnaces, gas furnaces, heat pump units, oil furnaces, radiant heat systems, warm air duct systems)	X	
An addition, replacement, or change in the design of a heating system where a permit is required under the NC State Building Code	X	
Repair, maintain, or replace baseboard heaters, components, wall heaters, window unit		Taxable
Repair, maintain, or replace a component part of a hearing unit or system: air handler, air tubes, air vent valves, angle boots, automatic air vents, blowers, boiler tubes, burner guns, burner heads, circulators, circulating pumps, coils, cold air returns, condensers, coils, controls, dampers, drain cocks, drain valves, draft hoods, duct sections, elbows, endcaps, expansion tanks, elements, expansion tanks, feed lines, filters, floor diffusers, fuel lines, furnace controls, fuses, gauges, low-voltage terminals, main valves or shutoffs, motors, pilot gas lines, pipe, pipe sections, plenums, plenum takeoffs, pressure controls, pressure regulators, radiators (including bleeding), refractory firepots, relays, relief valves, return lines, return mains, returns, safety control valves, sequencers, side stack takeoffs, starting collars, strainer pumps, supply lines, supply stack heads, thermostats, thermocouples, transformers, vent pipes, vents, water supply lines, or wet returns		Taxable
Gas logs installation in existing real property		Taxable
Repair, maintain, or replace gas logs or parts thereof		Taxable
Heating – Wood Burning Furnace, Boiler, Stove *(see also – Chimneys & Fireplaces)*		
Installation or complete replacement of wood burning furnaces, boilers, or stoves (Including strengthening floors and fireproofing walls and floors)	X	

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Transactions by Category	Capital Improvement	Repair, Maintenance, and Installation Services
Repair or maintain a wood burning furnace, boiler, or stove		Taxable
Hot Water Heaters		
Repair, maintain, install, or replace a hot water heater		Taxable
Repair, maintain, or replace a component part: anode rods, burners, casing covers, connectors, drain pipes, drain valves, draft diverters, flue baffles, flue bodies, flue collars, glass inner tanks, heating elements, inlet-outlet pipes, outlet pipes, tank linings, temperature control knobs, temperature pressure relief valves, thermocouples, thermostats		Taxable
Replacement of a traditional water heater with tankless water heater		Taxable
Humidifiers		
Repair, maintain, install, or replace a humidifier or a component part including evaporator pads, fans, or motors		Taxable
Inspections and Fees		
State, county, and local inspections for real property		Exempt
An inspection to a system that is a capital improvement under G.S. 105-164.3(31)f. provided the inspection is to fulfill a safety requirement and the charge for the inspection is separately stated on the invoice or other documentation given to the purchaser at the time of the sale. The systems include the following systems: septic tank, siding, roof, plumbing, electrical, commercial refrigeration, irrigation, or sprinkler.		Exempt
An inspection performed where the results are included in a report for the sale or financing of real property		Exempt
An inspection of the structural integrity of real property, provided the charge for the inspection is separately stated on the invoice or other documentation given to the purchaser at the time of the sale		Exempt
Inspect real property, other than for safety purposes or for the sale or financing of real property		Taxable
Inspect or recharge fire extinguishers in real property		Taxable
Building permits for real properties, where the activity is repair, maintenance, and installation services		Taxable
Building permits for a capital improvement		Exempt
Kitchens *(see also – Electrical, Plumbing, Flooring, and Walls)*		
Painting, varnishing, or staining cabinets generally	X	
Painting, varnishing, or staining cabinets, where the painting is incidental to the replacement of cabinets		Taxable
Reface cabinets		Taxable

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Transactions by Category	Capital Improvement	Repair, Maintenance, and Installation Services
Appliances (free-standing) – Install, repair, or maintain (sales of free-standing appliances are sales of tangible personal property)	Taxable (See SUTB 72-15 for purchases by a real property contractor)	
Repair, maintain, install, or replace: cabinets, cabinet doors, countertops, dishwashers, ducted or ductless hoods, exhaust fans, faucets, freezers, garbage disposals, ovens, ranges, refrigerators, sinks, and other installations where the item being installed may replace a similar existing item		Taxable
Landscaping and Yard Care *(see also – Driveways, Parking Lots, Roads, and Sidewalks)*		
Invisible fence – install, replace, maintain, repair		Taxable
Installation or complete replacement of: fences (permanent), flagstone walks, patio block walks, other types of walks, fountains (except free-standing), sprinkler systems	X	
Repair, maintain, install, or replace irrigation components		Taxable
Repair, maintain, install, or replace landscape lights		Taxable
Plant, maintain, install, or replace lawns (includes sod), flowers (perennials and annuals), shrubs, and trees	X	
Repair, maintain, or install free-standing fountains		Taxable
Repair, maintain, or install temporary or moveable ponds		Taxable
Apply fertilizers, herbicides, and pesticides	X	
Mow lawns, aerate, reseed, over seed, sod bare spots	X	
Soil testing or analysis		Taxable
Prune or fertilize trees or shrubs	X	
Removal without replacement of trees or shrubs	X	
Repair fences and gates		Taxable
Repair, maintain, install, or replace component parts in underground lawn sprinkler systems: centrifugal pumps, remote control valves, sprinkler controllers, pump controllers, sections or piping, sprinkler heads		Taxable
Repair, maintain, install, or replace fence fabric		Taxable
Install or replace landscaping timbers, planter boxes, and landscaping fabric or raised beds.		Taxable
Miscellaneous		
Generally – Install an item where the item replaces a similar existing item, unless such is defined and substantiated as a capital improvement. This includes installation of one or more like-kind items.		Taxable
Attic ladder – repair, maintain, install, or replace		Taxable

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Transactions by Category	Capital Improvement	Repair, Maintenance, and Installation Services
Central vacuum system – installation or replacement of entire system	X	
Central vacuum system – repair, maintain, install, or replace a component part		Taxable
Construction sites – temporary heat, electric, plumbing (provided such are not free-standing)	X	
Custom closets – repair, maintain, install, or replace		Taxable
Demolition of a building or structure	X	
Debris removal from construction sites	X	Exempt
Dog station install, replace, repair, maintain		Taxable
Epoxy coatings – apply on real property	X	
Elevators – Installation or complete replacement	X	
Escalator – Installation or complete replacement	X	
Elevators and escalators – repair, maintain, install, or replace a component part		Taxable
Fire sprinkler system connected to water supply systems – installation or complete replacement	X	
Fire sprinkler system connected to water supply systems – repair, maintain, install, or replace component parts		Taxable
Fire or smoke detectors – install, replace, repair, maintain		Taxable
Replace, maintain, or repair gas pumps/dispensers		Taxable
Install a plastic vapor barrier		Taxable
Fire, water, and wind damage (*Depends on the particular services performed. See appropriate section for the actual services performed)	X*	Taxable*
Cleaning of tangible property including where the service is related to fire, water, and wind damage		Taxable
Hurricane shutters – repair, maintain, install, or replace for existing real property		Taxable
Insulation – repair, maintain, or install – generally		Taxable
Installation or replacement of: attic fans (portable), independent smoke, heat, or carbon monoxide detectors, mailboxes (installed on wall or post), flagpole		Taxable
Mailbox – repair, maintain, install, replace		Taxable
Playset – repair, maintain, install, or replace		Taxable
Satellite dishes – repair, maintain, install, or replace		Taxable
Reconstruction of damaged real property (other than a single repair, maintenance, and installation service)	X	
Construction of storage shed on-site attached to foundation	X	

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Transactions by Category	Capital Improvement	Repair, Maintenance, and Installation Services
Installation of pre-fabricated storage shed placed on skids, ground, or otherwise not attached to a permanent foundation (sales of pre-fabricated storage sheds are sales of tangible personal property)	Taxable (See SUTB 72-11 for purchases by a real property contractor)	
Storage tanks – repair, maintain, install, or replace (other than install or replace septic tanks)		Taxable
Trash can installation to real property		Taxable
Vaults – that are enclosed with walls or other material and become part of a building or structure	X	
Water fountain for human consumption		Taxable
Moving Services		
Service for hire to transport or relocate a person's existing belongings to or from any destination		Exempt
Painting or Wallpapering		
Painting real property generally (cabinets, decks, doors, floors, shutters, porches, walls, etc.)	X	
Painting that is incidental to repair, maintenance, and installation services		Taxable
Wallpapering real property	X	
Patios		
Installation or complete replacement of: blacktop patios, concrete patios, flagstone patios, block patios, brick patios, wood patios	X	
Waterproofing, staining, or painting existing patios, new patios, or replacement patios	X	
Repair or patch holes or cracks		Taxable
Replace sections of concrete patios		Taxable
Replacement of blocks and flagstones		Taxable
Pest Related Services		
Application of pesticides to real property including service contracts where the purpose and obligation of the contract is to apply pesticide to real property		Exempt
Heat treatment to remove bed bugs		Exempt
Removal of pests, wildlife, and other animals from real property		Exempt
Remove and install insulation impregnated with an insecticide (i.e., a product must have EPA Pesticide Registration Number)		Taxable
Removal of water from crawlspace (does not include installation of moisture control barrier in crawlspace)		Exempt
Remove and replace existing insulation and apply pesticide to real property for the treatment of pests		Exempt
Install moisture (vapor) control barrier in existing crawlspace		Taxable
Painting Real Property		
Exterior painting of buildings and structures		Exempt

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Transactions by Category	Capital Improvement	Repair, Maintenance, and Installation Services
Existing signs attached to real property		Exempt
Painting signage on real property		Exempt
Painting fire hydrants		Exempt
Painting water towers		Exempt
Painting interior rooms and walls		Exempt
Painting that is incidental to repair, maintenance, and installation services		Taxable
Plumbing - Piping		
New additions (expansions) to piping system where a permit is required under the NC State Building Code (includes a change in the design of plumbing that adjusts the size or capacity)	X	
Backflow testing (safety requirement to prevent contamination), other than to maintain the backflow		Exempt
Repair or maintain backflow		Taxable
Excavation required for installation or complete replacement of piping systems	X	
Repair of pipes or fittings		Taxable
Plumbing - Piping (Cont'd)		
Repair, maintain, install water softeners and well pumps		Taxable
Water wells – install, replace, or drill deeper	X	
Repair, maintain, or replace: air chambers, cabinets, relief valves, shutoff valves, storage tanks (other than replace septic tank), traps		Taxable
Thawing frozen pipes		Taxable
Installation of whole-house water filtration system (unless permit under the NC State Building Code required)		Taxable
Installation of under sink water filtration system		Taxable
Unclog main drain pipes, water lines, and various plumbing fixtures, including snaking and hydro jetting		Taxable
Stop water leaks		Taxable
Plumbing - Fixtures		
Replacement of plumbing fixtures including sinks, toilets, tubs, showers, and fittings.		Taxable

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Transactions by Category	Capital Improvement	Repair, Maintenance, and Installation Services
Repair, maintain, or replace a component part. Examples include: automatic diverters, aerators, bottom cages cartridges, couplings, diverter assemblies, ears, escutcheons, faucets, faucet heads, float arms/balls, guide arms, handles, handle assemblies, hose assemblies, hose guides, inlet valves and seals, lift wires, locknuts, packing nuts, plungers, red flats, retainer clips, seats, shower bases, shower heads, spouts, stems, stop tubes, tank balls, tank drains, toilet seals, toilet seats, traps, trip sleeves, tubes, valve seats, washers		Taxable
Unclog fixtures or drains		Taxable
Removal Services		
Asbestos removal		Exempt
Removal of waste, trash, debris, grease, snow, and other similar items from real property.		Exempt
Dehumidification of real property		Exempt
Extraction of water from real property		Exempt
Haul away debris		Exempt
Household and commercial trash collection services		Exempt
Other removal services generally for real property		Exempt
Roofs and Roofing Materials		
Installation of complete roofing systems	X	
Complete replacement of roofing systems	X	
Application of roof coating to existing roofs		Taxable
Repair, maintain, or partially replace all types of roofing systems		Taxable
Repair, maintain, install, or replace roofing materials (asphalt, shingle, slate, tile, built-up, metal, single ply)		Taxable
Sealing roof vents		Taxable
Repair, maintain, install, or replace the following items or accessories: copings, cornices, drip edges, electric heating tape, expansion joints, flashings (all types), gravel stops and fascia, heating cables, louvers and screens, metal or composition valleys, metal ornaments, metal stacks, rain and draft deflectors, shingles (all types), skylights and scuttles, snow guards, and snow slides		Taxable
Security Systems		
Repair, maintain, install, or replace security system for existing real property		Taxable
Repair, maintain, install, or replace a component part or an accessory of any security system		Taxable
Septic, Septage, and Sewer Systems		
Excavation for installation	X	

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Transactions by Category	Capital Improvement	Repair, Maintenance, and Installation Services
Clean or pump out septic tank or grease trap		Exempt
Replacement or installation of a septic tank or septic tank system	X	
Repair, maintain, or replace a component part: distribution boxes, dry wells, grease traps, leach fields, lines, pump, seepage pits		Taxable
Removal of septage from portable toilets		Taxable
Removal of septage from boats, aircraft, trains, and motor vehicles		Exempt
Signage		
Traffic signs (single sign and pole)		Taxable
Painting lettering or signage on a building, structure, or fixture on land	X	
Repair, maintain, install, or replace signage (other than painting)		Taxable
Stairs		
Eliminate squeaks		Taxable
Tighten loose balusters		Taxable
Repair, maintain, or replace: balusters, handrails, newels, risers, termite damage, treads, wet and dry rot, stair boards		Taxable
Sump Pumps		
Dig sump pump holes	X	
Repair, maintain, or install permanent sump pumps for existing real property		Taxable
Replace or install portable sump pumps for existing real property		Taxable
Repair, maintain, or replace (in permanent or portable sump pumps): floats, electrical cords, motors, piping and connectors, pump suction heads, shutoff switches		Taxable
Swimming Pools		
Installation of in-ground swimming pool, including excavation work completed in connection with the installation	X	
Clean in-ground swimming pool walls or liner, vacuum in-ground pool to remove leaves or other debris		Taxable
Replacement of liner for in-ground swimming pool		Taxable
Replaster or retile in-ground swimming pool		Taxable
Repair, maintain, or replace the heater for in-ground swimming pool		Taxable
Installation or replacement of above ground swimming pool including pumps, filters, heater for above ground swimming pool		Taxable

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Transactions by Category	Capital Improvement	Repair, Maintenance, and Installation Services
Repair or maintenance of above ground swimming pool, including: clean, liner, pump, and heaters		Taxable
Utilities		
Electrical distribution wire or cable - installation	X	
Fiber optic cable for distribution of video programming - installation	X	
Piped natural gas distribution infrastructure and underground system - installation	X	
Telephone distribution wire and cable - installation	X	
Repair, maintain, or install utility component parts other than for tangible personal property – generally (other than noted below)		Taxable
Repair, maintain, or install utility component parts, provided such are for a transmission, distribution, or other network asset contained on utility-owned land, right-of-way, or easement		Exempt
Ventilation		
Installation or complete replacement of permanent: attic fans, exhaust fans, gable vents, roof vents, soffit vents, wind turbines	X	
Installation or replacement of portable attic or other type portable fans		Taxable
Repair, maintain, or replace a component part of an attic exhaust fan or dryer vent: bearings, blades, motors, shutters		Taxable
Walls		
Fixing nail pops		Taxable
Patching cracks (other than as part of a painting service) including where painting is incidental to a taxable repair, maintenance, and installation service		Taxable
Painting walls (including murals), except where painting is incidental to a taxable repair, maintenance, and installation service	X	
Removal of a wall	X	
Installing wallpaper except where wallpaper is incidental to a taxable repair, maintenance, and installation service	X	
Waterproofing walls (excludes items deemed painted materials)		Taxable
Regrouting ceramic tile		Taxable
Repair dents, split wallboard tape, termite damage, wet or dry rot		Taxable
Replace or repair ceramic features, damaged ceramic tiles, existing baseboards, existing molding, existing trim, wallboard panels, wood panels		Taxable
Stop water leaks		Taxable
Windows		

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Transactions by Category	Capital Improvement	Repair, Maintenance, and Installation Services
Single or complete replacement of windows (frame/sash)		Taxable
Installation or complete replacement of permanent combination storm windows		Taxable
Repair, maintain, install, or replace permanent window shutters for existing property		Taxable
Apply putty, window film, or coating to windows		Taxable
Caulk windows (interior/exterior)		Taxable
Eliminate sticking, lubricate sashes		Taxable
Install or replace drapery rods/hardware, shades, valances, venetian blinds, window quilts, and other window treatments (window treatments are generally sales of tangible personal property)		Taxable
Repair, maintain, or install: glass, windows, window frames, window sills		Taxable
Repair, maintain, or install: aprons, balances, frames, hardware (latches/handles/ locks, etc.), inside stops, parting strips, pocket covers, sash balances, sash cords, sash stiles, sash weights, sash weight pulleys, side casings, side jambs, stools, storm window panes or screens, window frames, window panes (glass or plastic), window sills, yoke or head jambs		Taxable

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SUTB 73 REFUNDS, CREDITS, AND RECOVERY OF TAX PAID

73-1 PROCEDURE FOR OBTAINING A REFUND - GENERAL

A. Request Initiated by Taxpayer

A taxpayer may request a refund of an overpayment made by the taxpayer by taking one of the actions shown below within the statute of limitations for obtaining a refund. A taxpayer may not request a refund of an overpayment based on a "contingent event" as defined in G.S. § 105-241.6(b)(5) until the event is finalized and an accurate and definite request for refund of an overpayment may be determined. The actions are:

1. Filing an amended return reflecting an overpayment due the taxpayer.

2. Filing a claim for refund. The claim must identify the taxpayer, the type and amount of tax overpaid, the filing period to which the overpayment applies, and the basis for the claim. The taxpayer's statement of the basis of the claim does not limit the taxpayer from changing the basis.

B. Action on Request

When a taxpayer files an amended return or a claim for refund, the Department must take one of the actions shown below within six months after the date the amended return or claim for refund is filed. If the Department does not take one of these actions within this time limit, the inaction is considered a proposed denial of the requested refund.

1. Send the taxpayer a refund of the amount shown due on the amended return or claim for refund.

2. Adjust the amount of the requested refund by increasing or decreasing the amount shown due on the amended return or claim for refund and send the taxpayer a refund of the adjusted amount. If the adjusted amount is less than the amount shown due on the amended return or claim for refund, the adjusted refund must include a reason for the adjustment. The adjusted refund is considered a notice of proposed denial for the amount of the requested refund that is not included in the adjusted refund.

3. Deny the refund and send the taxpayer a notice of proposed denial.

4. Send the taxpayer a letter requesting additional information concerning the requested refund. If a taxpayer does not respond to a request for information, the Department may deny the refund and send the taxpayer a notice of proposed denial. If a taxpayer provides the requested information, the Department must take one of the actions shown below within the later of the following:

a. The remainder of the six-month period.
b. 30 days after receiving the information.
c. A time period mutually agreed upon by the Department and the taxpayer.

C. Restrictions

The Department may not refund any of the following:

1. Until a taxpayer files a final return for a tax period, an amount paid before the final return is filed.

2. An overpayment setoff under Chapter 105A, the Setoff Debt Collection Act, or under another setoff debt collection program authorized by law.

3. A tax overpayment of less than three dollars ($3.00), unless the taxpayer files a written claim for the refund.

D. Action on Request Regarding Statute of Limitations

When the taxpayer files an amended return or a claim for refund which the Department determines to be outside the statute of limitations, the Department must deny the refund and send the taxpayer a notice of denial.

E. Effect of Denial or Refund

A proposed denial of a refund and a denial of a refund by the Secretary are presumed to be correct. A refund does not absolve a taxpayer of a tax liability that may in fact exist. The Secretary may propose an assessment for any deficiency as provided in Article 9 of the North Carolina General Statutes.

73-2 EXCESSIVE AND ERRONEOUS COLLECTIONS

A. Refunds for Remittance of Overcollections to Secretary

When tax is collected for any period on a taxable sale in excess of the total amount that should have been collected or is collected on an exempt or nontaxable sale, the total amount collected must be remitted to the Secretary. If the Secretary determines that the seller overcollected the sales tax on a transaction, the Secretary shall take only one of the actions shown below. G.S. § 105-164.11 shall be construed with the provisions of Article 5 of Chapter 105 of the North Carolina General Statutes and given effect so as to result in the payment to the Secretary of the total amount collected as tax if it is in excess of the amount that should have been collected.

1. If the Secretary determines that the seller overcollected tax on a transaction, the Secretary may allow a refund of the tax. The seller must issue a refund or credit to the customer and provide documentation thereof to the Department before receiving a refund or credit from the Department. The Secretary shall not refund the overcollected tax to the seller if the seller has elected to offset a use tax liability on a related transaction with the overcollected sales tax under SUTB 73-2A.2.

2. If the Secretary determines that a seller who overcollected sales tax on a transaction is instead liable for a use tax on a related transaction, the Secretary may allow the seller to offset the use tax liability with the overcollected sales tax. The Secretary shall not allow an offset if the seller has elected to receive a refund of the overcollected tax under SUTB 73-2A.1. The decision by a seller to receive an offset of tax liability rather than a refund of the overcollected tax does not affect the liability of the seller to the purchaser for the overcollected tax.

3. If neither SUTB 73-2A.1 nor SUTB 73-2A.2 applies, the Secretary shall retain the total amount collected on the transaction.

B. Refunds for Remittance of Overcollections to Seller

When taxes are paid to a seller in error, the customer should request a refund or credit from the seller who in turn may request a refund or credit from the Department. Before receiving a refund from the Department, the seller must issue a refund or credit to the customer and provide documentation thereof to the Department. A customer that requests a refund or credit from a seller should retain copies of such requests and make them available for review by the Department.

A cause of action against the seller for overcollected sales and use tax does not accrue until a purchaser has provided written notice to a seller and the seller has had sixty (60) days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request.

In connection with a purchaser's request of a refund from a seller of overcollected sales or use tax, a seller shall be presumed to have a reasonable business practice if in the collection of sales and use taxes the seller uses either a provider or a system, including a proprietary system, that is certified by the State and the seller has remitted to the State all taxes collected less any deductions, credits, or collection allowances.

Where a person recovers tax under SUTB 73-3, a refund or credit under this subsection is not allowed by the Secretary.

C. Form for Submitting Claim

Unless otherwise provided in these SUTBs, a claim for refund of an overpayment of sales and use tax should be submitted on Form E-588, Business Claim for Refund State, County and Transit Sales and Use Taxes. The basis of the claim for the requested refund must be stated in the Basis for Claim section of the refund claim form. If applicable, Form E-536R, Schedule of County Sales and Use Taxes for Claims for Refund, should also be submitted. After a claim is verified and approved, a refund voucher is issued and forwarded to the taxpayer.

D. Documentation Required

When submitting refund claims for excessive or erroneous collections of tax, supporting data to be submitted includes copies of invoices or schedules reflecting the purchaser's name, invoice numbers, description of the property purchased, amount of tax collected, copies of credit memos, and the front and back of cancelled refund checks issued to the purchaser. If applicable, copies of executed Certificates of Exemption and Form E-536R, Schedule of County Sales and Use Taxes for Claims for Refund, should also be submitted.

When submitting refund claims for excessive or erroneous payments of tax on purchases for use, supporting documentation to be submitted includes copies of invoices or schedules reflecting retailer's name, invoice numbers, description of the property purchased, and the amount of tax paid.

E. Taking Credit on Returns

A taxpayer may elect to take credit for an overpayment of sales and use tax paid on Form E-500, Sales and Use Tax Return, without submitting a Form E-588, Business Claim for Refund State, County and Transit Sales and Use Taxes. The "Less any Credit" line of the sales and use tax return is the designated line on which to enter the amount of credit claimed. Unless otherwise provided in these SUTBs, a taxpayer's receipts or purchases for the current month should not be reduced by the amount of sales or purchases corresponding with the amount of the tax credit. The same documentary evidence required to support a claim for refund must be submitted with the return on which a credit is taken. If the sales and use tax return is filed online, the documentary evidence required to support the credit must be submitted with Form E-RA, Required Attachments for Sales and Use Tax Electronic Filing.

Note: For information on credits for sales and use tax paid to another taxing jurisdiction (i.e., another state or another local taxing jurisdiction), refer to SUTB 2-8.

F. Statute of Limitations

Refunds are allowed for an overpayment of taxes provided a request for refund is made within three years after the due date of the return set by statute or within two years after payment of the tax, whichever is later. There are no provisions in the revenue laws for refunding overpayments of tax after the statute of limitations except where a waiver of the statute of limitations or a contingent event exist as provided in G.S. § 105-241.6.

73-3 RECOVERY OF TAX PAID

A. Retailers

A retailer who pays sales and use tax on an item that is separately stated on an invoice or similar billing document given to the retailer at the time of sale and subsequently resells the item at retail, without the item being used by the retailer, may recover the sales or use tax originally paid to a seller as provided in this subsection. A retailer entitled to recover tax under this subsection may reduce taxable receipts by the taxable amount of the purchase price of the item resold for the period in which the retail sale occurs.

A recovery of tax allowed under this subsection is not an overpayment of tax and, where such recovery is taken, a refund of the tax originally paid may not be requested from the seller pursuant to SUTB 73-2. Any amount for sales and use tax recovered under this subsection in excess of sales and use tax due for a reporting period is not subject to refund. Any tax recovered under this subsection may be carried forward to a subsequent reporting period and taken as an adjustment to taxable receipts. The records of the retailer must clearly reflect the sales and use tax originally paid on the item resold and support the adjustment to taxable receipts for the period in which the adjustment is made.

B. Marketplace Facilitators

A marketplace facilitator may recover the sales or use tax originally paid to a marketplace seller when all the following apply:

1. The facilitator pays the tax to the marketplace seller on a marketplace-facilitated sale for which the facilitator is considered the retailer as provided in SUTB 59-2.

2. The tax is separately stated on an invoice or similar billing document given to the facilitator at the time of sale.

A marketplace facilitator entitled to recover tax under this subsection may reduce taxable receipts by the taxable amount of the marketplace-facilitated sale that is taxed by the marketplace seller for the period in which the retail sale occurs. A recovery of tax allowed under this subsection is not an overpayment of tax and, where the recovery is taken, a refund of the tax originally paid may not be requested from the seller pursuant to SUTB 73-2. Any amount for tax recovered under this subsection in excess of tax due for a reporting period under this Article is not subject to refund. Any tax recovered under this subsection may be carried forward to a subsequent reporting period and taken as an adjustment to taxable receipts. The records of the retailer must clearly reflect and support the adjustment to taxable receipts for the period in which the adjustment is made.

73-4 CREDIT ALLOWED DURING AUDIT FOR TAX PAID ON ITEMS RESOLD

The Department has authorized the use of Form E-599R, Certification of Sales and Use Tax Paid on Items Resold, when a taxpayer undergoing a sales and use tax audit discovers that tax was paid to suppliers on items resold. A taxpayer must follow the form instructions and attach the invoice or similar billing document given to the taxpayer at the time of sale or provide this information electronically.

The auditor will verify the amount of credit. If the total credit from Form E-599R is greater than the additional tax due, any excess shall be carried forward to a subsequent reporting period and taken as an adjustment to taxable receipts. A refund is not permitted for the excess credit from Form E-599R. The records of the taxpayer must clearly reflect and support the adjustment to taxable receipts for the period in which the adjustment is made.

73-5 REFUND OF TAX PAID ON A RESCINDED SALE OR CANCELLED SERVICE

A retailer is allowed a refund of sales tax remitted on a rescinded sale or cancelled service as provided in SUTB 77-1.

73-6 REFUND OF TAX PAID ON THE CANCELLATION OF A SERVICE CONTRACT

When a service contract is cancelled and the purchaser receives a refund, in whole or in part, of the sales price paid for the service contract, the purchaser may receive a refund of the pro rata amount of the sales and use tax paid based on the taxable amount of the sales price refunded as provided in SUTB 79-8.

73-7 REFUND OF TAX PAID FOR A BAD DEBT

Refer to SUTB 88 for information on deducting amounts charged off and certain refund provisions.

73-8 PENALTY FOR SUBMITTING A FALSE CLAIM

Felony penalties may be imposed for willful attempts to evade or defeat taxes imposed and on persons who willfully aid, assist, procure, counsel, or advise the preparation, presentation, or filing of claims that they know to be false or fraudulent.

73-9 SPECIFIC REFUNDS

Refer to SUTB 74 for information on certain specific refunds authorized and on economic incentive refunds.

SUTB 74 REFUNDS - SPECIFIC

74-1 REFUNDS TO INTERSTATE CARRIERS

A. Refund Authorized by G.S. § 105-164.14(a)

1. General

An interstate carrier is a person who is engaged in transporting persons or property in interstate commerce for compensation. An interstate carrier is allowed a quarterly refund of a portion of the North Carolina State and local sales and use taxes paid on purchases of railway cars, locomotives, fuel, lubricants, repair parts, accessories, service contracts, and repair, maintenance, and installation services for a motor vehicle, railroad car, locomotive, or airplane operated by the interstate carrier. Taxes for which a refund is allowed in this section are not an overpayment of tax and do not accrue interest.

2. Railroad Companies

The repair of railroad cars of a foreign line and operated by an applicant shall be included in total purchases by the applicant for refund regardless of the fact that the operating company may bill the owner for repairs performed on such railroad cars. Repairs to the applicant's railroad cars operating on foreign lines shall be excluded from total purchases since such cars are not being operated by the applicant for refund, regardless of the fact that the foreign company may bill the applicant for repair parts used to maintain the applicant's railroad cars when in operation over foreign lines. The applicant shall also exclude from total purchases fuel, lubricants, repair parts, accessories, service contracts, and repair, maintenance, and installation services for which the applicant is billed by the operating company when its railroad cars are traveling over foreign lines because there is no record kept of the miles the applicant’s railroad cars may travel over foreign lines. However, the railroad car miles that foreign cars travel over the lines of the applicant and operated by the applicant shall be taken into consideration in establishing the number of miles of operation in this State and the total number of miles of operation within and without this State for the calendar quarter.

Locomotives are not ordinarily interchanged in the same manner as railroad cars; however, if locomotives are operated in the same manner as railroad cars, the provisions of this section will also be applicable to the operation of locomotives.

3. Motor Carriers

The Federal Motor Carrier Safety Administration does not require carriers under its jurisdiction to keep records according to its standard classification of accounting. Instead, carriers may keep records according to generally accepted accounting principles (GAAP). Qualified carriers who keep records under one of the foregoing systems are eligible for a refund of sales and use tax under G.S. § 105-164.14(a). Interstate carriers are classified by the Federal Motor Carrier Safety Administration as common or contract carriers. The operating revenue criteria for the classes of motor carriers are shown below.

Motor carriers refers to trucking companies and bus companies. Common and contract motor carriers of property subject to the Motor Carrier Safety Improvement Act of 1999 are grouped into the following three classes:

Class I.	Motor carriers that have annual operating revenues of $10 million or more.
Class II.	Motor carriers that have annual operating revenues of at least $3 million but less than $10 million.

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Class III. Motor carriers that have annual operating revenues of less than $3 million.

Common and contract motor carriers of passengers subject to the Motor Carrier Safety Improvement Act of 1999 are grouped into the following two classes:

Class I. Motor carriers that have average annual gross transportation operating revenues of $5 million or more from passenger motor carrier operations.

Class II. Motor carriers that have average annual gross transportation operating revenues of less than $5 million from passenger motor carrier operations.

B. Refund Request Procedures

1. Form E-581, Interstate Carrier Claim for Refund State, County, and Transit Sales and Use Taxes

A claim for refund of sales and use tax paid by an interstate carrier on qualifying purchases is to be filed on Form E-581. Applicants are required to include on line 4 of Form E-581 all qualifying purchases of railway cars, locomotives, fuel, lubricants, repair parts, accessories, service contracts, and repair, maintenance, and installation services for a motor vehicle, railroad car, locomotive, or airplane the carrier operates that are taxable in North Carolina. Any sales or use tax paid to state or local taxing authorities must be excluded from total purchases shown on line 4 of the Form E-581.

2. Form E-581A, Interstate Carrier Claim for Refund Combined General Rate Sales and Use Taxes

A claim for refund of sales and use tax paid by an interstate carrier on purchases of aviation gasoline and jet fuel subject to the North Carolina combined general rate of sales and use tax must be filed on Form E-581A. Applicants are required to include on line 4 of Form E-581A the total combined general rate of sales and use tax paid on all purchases of aviation gasoline and jet fuel.

3. Filing Due Dates

An interstate carrier claim for refund shall be filed quarterly. A claim is due within sixty (60) days from the close of each calendar quarter ending in March, June, September, and December of each year covering the purchases or acquisitions during the preceding quarter. An interstate carrier claim for refund must be filed within three years after the due date. A refund claim filed more than three (3) years after the due date is barred.

4. Computation of Refund

The Secretary shall compute the amount to be refunded as follows:

a. The Secretary shall determine the mileage ratio. The numerator of the mileage ratio is the number of miles the applicant operated all motor vehicles, railroad cars, locomotives, and airplanes in North Carolina during the refund period. The denominator of the mileage ratio is the number of miles the applicant operated all motor vehicles, railroad cars, locomotives, and airplanes both inside and outside North Carolina during the refund period. For purposes of calculating the ratio of miles operated in North Carolina, airplane miles are not considered miles in this State if the airplane flies over North Carolina but does not take off or land in this State.

b. The applicant shall multiply the mileage ratio by the purchase price of qualifying purchases inside and outside the State excluding any sales or use tax paid and then multiply the resulting product by the tax rate that would have applied to the tangible personal property or services if they had all been purchased in this State. The applicant should only include railway cars, locomotives, fuel, lubricants, repair parts, accessories, service contracts, and repair, maintenance, and installation services for a motor vehicle, railroad car, locomotive, or airplane the carrier operates, acquired, and the tax was paid thereon during the quarter covered by the claim. If an applicant includes any railway cars and locomotives, fuel, lubricants, repair parts, accessories, service contracts, or repair, maintenance, and installation services for a motor vehicle, railroad car, locomotive, or airplane the carrier operates, acquired, or the tax paid thereon during a different quarter than for the claim submitted, the claim will be disallowed.

c. The secretary shall refund each applicant the excess of the amount of sales and use tax the applicant paid in this State during the refund period on tangible personal property and services over the applicant's proportional liability for the refund period.

5. Amended Refund Claim

Any person qualified to receive an interstate carrier refund, that pays sales tax to a supplier or use tax directly to the Secretary as a result of an assessment made by the Secretary on sales or purchases of railway cars and locomotives, fuel, lubricants, repair parts, accessories, service contracts, or repair, maintenance, and installation services for a motor vehicle, railroad car, locomotive, or airplane the carrier operates that was made during a noncurrent quarter, may apply for a refund of such taxes by filing an amended claim for refund of taxes within the time prescribed for each quarter during which such purchases were made. The amended claim must show the information required by SUTB 74-1C. Records must be maintained in such manner as to enable a representative of the Secretary to accurately verify such claim.

C. Information to be Furnished

An applicant for refund is required to furnish the following information and any documentation required by the Secretary:

1. A list identifying the railway cars, locomotives, fuel, lubricants, repair parts, accessories, service contracts, and repair, maintenance, and installation services purchased by the applicant inside or outside this State during the refund period.

2. The purchase price of the taxable tangible personal property and services listed in SUTB 74-1C.1. For purposes of this subsection, the term "taxable" is based on the imposition of tax on the tangible personal property and services in North Carolina.

3. The sales and use taxes paid in this State on the listed tangible personal property and services.

4. The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period. Airplane miles are not in this State if the airplane does not depart or land in this State.

5. Any other information required by the Secretary.

D. Nonrefundable Taxes

The refund provisions allowed under G.S. § 105-164.14(a) are not applicable to the following taxes:

1. Sales and use tax incurred by employees on purchases of food, lodging, or other taxable travel expenses paid by employees and reimbursed by the interstate carrier. These expenses are personal to the employee since the contract for food, shelter, and travel is between the employee and the provider and payment of the tax is by the employee individually and personally. The interstate carrier has incurred and paid no sales tax liability; instead, it has chosen to reimburse a personal expense of the employee.

2. Sales and use tax paid on the purchase of electricity, telecommunications and ancillary services, and video programming.

3. Sales or use taxes paid on purchases of "alcoholic beverages" as defined in G.S. § 18B-101.

4. Local occupancy taxes paid to certain counties and cities in this State.

5. Local prepared food and beverage taxes paid to various local governments in this State.

6. Highway use taxes or alternate highway use taxes paid on the purchase, vehicle subscriptions, lease, or rental of motor vehicles.

7. Scrap tire disposal tax paid on purchases of new tires.

8. White goods disposal tax paid on purchases of new white goods.

9. Dry cleaning solvent tax paid on dry cleaning solvent purchased by a dry-cleaning facility.

10. Sales and use tax paid on purchases of piped natural gas.

11. Sales or use tax paid on purchases of prepaid meal plans.

12. Solid waste disposal tax.

13. 911 Service Charge for prepaid wireless telecommunications service.

14. Sales or use tax paid on purchases of certain digital property.

15. Transportation commerce tax.

16. Other states' sales and use taxes paid to those states.

E. Eligible Tangible Personal Property and Services

Sales and use tax on the following tangible personal property and services may be included in the claim for refund. This is not an all-inclusive list.

1. Antennas.
2. Antifreeze.
3. Bedding for motor vehicle sleeping compartments.
4. Charts for tachographs.
5. Decals for motor vehicles.
6. Emergency flares and reflectors.
7. Fire extinguishers.

8. Freon or nitrogen used in refrigerating and cooling motor vehicles.
9. Fuel.
10. Furniture pads.
11. Lifeboats and oxygen masks.
12. Load jacks and chains.
13. Mobile CB radios.
14. Motor vehicle seat cushions.
15. One hundred percent of tire recapping or retreading services.
16. Paint for decals.
17. Polyethylene liners (used to waterproof trailers).
18. Pouches for registration cards and permits.
19. Radios.
20. Railway cars and locomotives.
21. Ramp equipment (aircraft steps used to embark or disembark aircraft).
22. Repair labor.
23. Repair, maintenance, and installation services.
24. Road service charges.
25. Ropes and chains to tie down cargo (adapted for use on motor vehicles; otherwise not allowed).
26. Signs (metal signs attached to trucks).
27. Tarpaulins.
28. Tire chains.
29. Tire and tubes.
30. Welding rods for repair of motor vehicles.
31. Windshield solvents.
32. Zipped covers for grills.

F. Non-Eligible Items

Sales and use tax on the following items may not be included in the claim for refund. This is not an all-inclusive list.

1. Drivers' gloves.
2. Drivers' uniforms.
3. Food trays (airplanes).
4. Forklift tires and parts.
5. Gauges for testing equipment.
6. Hand trucks.
7. Pallets.
8. Pillows (airplanes).
9. Security seals.
10. Tire volume discounts.
11. Tools.
12. Shop supplies.
13. Trip logs.
14. Wax and washing supplies.

74-2 REFUNDS FOR UTILITY COMPANIES FOR RAILWAY CARS, LOCOMOTIVES, ETC.

A. Refund Authorized by G.S. § 105-164.14(a2)

A utility company is allowed a semiannual refund of a portion of the North Carolina State and local sales and use tax paid on purchases of railway cars, locomotives, and accessories for a railway car or locomotive purchased in North Carolina that the utility company operates. Taxes for which a refund is allowed in this section are not an overpayment of tax and do not accrue interest.

B. Refund Request Procedures

1. Form E-588C, Utility Company Claim for Refund State, County, and Transit Sales and Use Taxes

A claim for refund of sales and use tax paid by a utility company on qualifying purchases is to be filed on Form E-588C.

2. Filing Due Date

A claim for refund of sales and use tax paid by a utility company is due to be filed semiannually. A claim for refund of tax paid during the first six months of a calendar year is due to be filed by October 15th of the same year. A claim for refund of tax paid during the last six months of a calendar year is due to be filed by April 15th of the following year. A refund claim filed more than three (3) years after the due date is barred.

3. Computation of Refund

a. The Secretary shall determine the ratio of the number of miles the utility operated its railway cars and locomotives in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period.

b. The Secretary shall determine the utility's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the railway cars, locomotives, and accessories purchased during the refund period and then multiplying the resulting product by the tax rate that would have applied to the tangible personal property if it had all been purchased in this State.

c. The Secretary shall refund to each applicant the excess of the amount of sales and use tax the applicant paid in this State during the refund period on the tangible personal property over the applicant's proportional liability for the refund period.

C. Information to be Furnished

An applicant is required to furnish the following information and any proof of the information required by the Secretary:

1. A list identifying the railway cars, locomotives, and accessories purchased by the applicant inside or outside North Carolina during the refund period.

2. The purchase price of the railway cars, locomotives, and accessories.

3. The sales and use tax paid in North Carolina on the listed tangible personal property.

4. The number of miles the applicant's railway cars and locomotives were operated both inside and outside North Carolina during the refund period.

5. Any other information required by the Secretary.

74-3 REFUNDS FOR NONPROFIT ENTITIES AND HOSPITAL DRUGS

A. Refund Authorized by G.S. § 105-164.14(b)

1. Nonprofit Entities

Qualifying nonprofit entities identified in SUTB 74-3D are allowed a semiannual refund of certain sales and use tax paid by them in this State on direct purchases of items for use in carrying on their nonprofit work. Sales and use tax liability indirectly incurred by a nonprofit entity through reimbursement to an authorized person of the entity for the purchase of tangible personal property and services for use in carrying on the work of the nonprofit entity is considered a direct purchase by the nonprofit entity. For purposes of this section, an authorized person is a person designated by a nonprofit entity, within its records, to purchase tangible personal property and services on behalf of the nonprofit entity. Sales and use tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or annexed 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 is considered a sales and use tax liability incurred on direct purchases by the nonprofit entity. The provisions of this section apply to out-of-state nonprofit entities to the extent the out-of-state nonprofit entity pays North Carolina sales or use taxes on purchases for use in carrying on their nonprofit activities within or without this State. Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest.

In order to receive a determination from the Department as to whether an organization is a qualifying nonprofit that is allowed a refund, the entity must furnish the Department its Federal Employer Identification Number (EIN), a copy of the entity's determination letter [Section 501(c)(3) letter] issued by the Internal Revenue Service, and the organization's National Taxonomy of Exempt Entities (NTEE) Code. If the organization is not incorporated or is not classified as a Section 501(c)(3) organization, it should furnish a copy of its bylaws, constitution, or other organizational documents. A nonprofit entity may file a claim for refund pending the Department's determination of the organization's eligibility to receive refunds.

2. Hospital Drugs

Hospitals not specifically identified in SUTB 74-3D are entitled to semiannual refunds of sales and use taxes paid by them on over-the-counter drugs purchased for use in carrying out their work.

B. Refund Request Procedures

1. Form E-585, Nonprofit and Governmental Entity Claim for Refund State, County, and Transit Sales and Use Taxes

A claim for refund of sales and use tax paid by a nonprofit entity on qualifying purchases is to be filed on Form E-585. A request for a refund must be in writing and must include any information and documentation required by the Secretary. Any local and transit sales or use taxes and taxes paid on purchases of qualifying food included in the claim must be separately stated on the claim for refund. In cases where more than one county's sales and use tax has been paid, Form E-536R, Schedule of County Sales and Use Taxes for Claims for Refund, must be attached to the claim for refund showing the amount of each county's applicable local and applicable transit rates of sales and use tax and the total amount of tax paid on purchases of qualifying food.

2. Filing Due Date

A claim for a refund of sales and use tax paid is due to be filed semiannually. A claim for refund of tax paid during the first six months of a calendar year is due to be filed October 15th of the same year. A claim for a refund for the last six months of a calendar year is due to be filed by April 15th of the following year. A refund claim filed more than three (3) years after the due date is barred.

C. Records Required to Substantiate Refunds

1. All refund claims must be substantiated by proper documentary proof and only those taxes actually paid by the applicant during the period covered by the refund claim may be included in the claim. Any local and transit sales or use taxes and any taxes paid on purchases of qualifying food included in the claim must be separately stated on the claim for refund. In cases where more than one county's sales and use tax has been paid, Form E-536R, Schedule of County Sales and Use Taxes for Claims for Refund, must be attached to the claim for refund showing the amount of each county's applicable local and applicable transit rates of sales and use tax and the total amount of tax paid on purchases of qualifying food.

2. Invoices or copies of invoices showing the items purchased, the purchase price thereof, the date of purchase, the amount of sales and use tax paid thereon, and a record reflecting the date of payment will constitute proper documentary proof for (1) direct purchases for use by a nonprofit entity and (2) sales and use tax liability indirectly incurred by a nonprofit entity through reimbursement to an authorized person of the entity for the purchase of tangible personal property and services for use in carrying on the work of the nonprofit entity.

3. Certified Statements Required

To substantiate a refund claim for sales and use taxes paid on purchases of building materials, supplies, fixtures, and equipment by its real property contractor or other person ("contractor"), the applicant must secure from such contractor certified statements setting forth specific required information. A certified statement is a statement that is signed by the contractor/owner, a corporate officer, or an employee of the contractor who is authorized to provide the information. The certified statement must include all of the following information:

a. The date the property was purchased.

b. The type of property purchased.

c. The name of the retailer from whom the purchase was made and the invoice number of the purchase.

d. The purchase price of property purchased and the amount of sales and use tax paid thereon.

e. The project for which the property was used.

f. If the property was purchased in this State, a copy of the sales receipt and the statement must include the county in which it was delivered.

g. If the property was not purchased in this State, the county in North Carolina in which the property was used must be included.

In the event the contractor makes several purchases from the same retailer, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the general State, applicable local, and applicable transit rates of sales and use taxes paid thereon. If items are withdrawn from a contractor's warehouse stock, the certified statement must also include the purchase price of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of the general State, applicable local, and applicable transit rates of sales and use tax paid thereon by the contractor. Similar certified statements by the contractor's subcontractors must be obtained by the general contractor and furnished to the applicant. Any payment of applicable local and applicable transit sales and use taxes included in the contractor's certified statements must be shown separately from the State sales and use taxes paid. The contractor's certified statements must not contain sales and use taxes paid on purchases of tangible personal property purchased by such contractors for use in performing the contract which does not annex to, affix to, or in some manner become a part of the building or structure that is owned or leased by the nonprofit entity and is being erected, altered, or repaired for use by the applicant. *(Examples of property on which sales and use tax has been paid by the contractor and which shall not be included in the contractor's certified statement are: scaffolding, forms for concrete, fuel for the operation of machinery and equipment, tools, equipment, equipment repair parts, and equipment rentals.)*

D. Nonprofit Entities Allowed a Refund

The following nonprofit entities are entitled to the semiannual refunds of sales and use tax paid by them on their purchases of tangible personal property and services used in carrying on their nonprofit work.

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

2. An organization that is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code, other than an organization that is properly classified in any of the following major group areas of the National Taxonomy of Exempt Entities:

- **a.** Community Improvement and Capacity Building.
- **b.** Public and Societal Benefit.
- **c.** Mutual and Membership Benefit.

3. Volunteer fire departments and volunteer emergency medical services squads that are one or more of the following:

- **a.** Exempt from income tax under the Internal Revenue Code.
- **b.** Financially accountable to a "city" as defined in G.S. § 160A-1, a county, or a group of cities and counties.

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

- **a.** The owner of the LLC is an organization that is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code.

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

c. The LLC is not an organization that would be properly classified in any of the following major group areas of the National Taxonomy of Exempt Entities listed below:

(1) Community Improvement and Capacity Building.
(2) Public and Societal Benefit.
(3) Mutual and Membership Benefit.

5. Qualified retirement facilities whose property is excluded from property tax under G.S. § 105-278.6A.

6. 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 subsection, a nonprofit organization includes an entity exempt from taxation as a disregarded entity of the nonprofit organization.

E. Organizations Not Refundable as a Nonprofit Entity

An entity that is owned and controlled by the United States or an entity that is owned or controlled by the State and that is not listed in SUTB 74-3D is not allowed a refund for sales and use tax paid directly or indirectly on purchases as a nonprofit entity.

F. Nonrefundable Taxes

The refund provisions allowed under G.S. § 105-164.14(b) are not applicable to the following taxes:

1. Sales and use tax remitted on taxable sales made by nonprofit entities.

2. Sales and use tax incurred by employees on purchases of food, lodging, or other taxable travel expenses paid by employees and reimbursed by the nonprofit entity. These expenses are personal to the employee since the contract for food, shelter, and travel is between the employee and the provider and payment of the tax is by the employee individually and personally. The nonprofit entity has incurred and paid no sales and use tax liability; instead, it has chosen to reimburse a personal expense of the employee.

3. Sales and use tax paid on the purchase of electricity, telecommunications and ancillary services, and video programming.

4. Sales and use tax paid on purchases of “alcoholic beverages” as defined in G.S. § 18B-101.

5. Local occupancy taxes paid to certain counties and cities in this State.

6. Local prepared food and beverage taxes paid to various local governments in this State.

7. Highway use tax or alternate highway use tax paid on the purchase, vehicle subscription, lease, or rental of motor vehicles.

8. Scrap tire disposal tax paid on purchases of new tires.

9. White goods disposal tax paid on purchases of new white goods.

10. Dry cleaning solvent tax paid on dry cleaning solvent purchased by a dry-cleaning facility.

11. Sales and use tax paid on purchases of piped natural gas.

12. Sales and use tax paid on purchases of prepaid meal plans.

13. Solid waste disposal tax.

14. 911 Service charge for prepaid wireless telecommunications service.

15. Transportation commerce tax.

16. Other states' sales and use taxes paid to those states.

G. Maximum Refund Amount Allowed

The State aggregate annual refund amount allowed an entity for the State's fiscal year may not exceed thirty-one million seven hundred thousand dollars ($31,700,000).

The local aggregate annual refund amount allowed an entity for the State's fiscal year may not exceed thirteen million three hundred thousand dollars ($13,300,000).

74-4 REFUNDS TO CERTAIN GOVERNMENTAL ENTITIES

A. Refund Authorized by G.S. § 105-164.14(c)

1. General

Certain North Carolina governmental entities are entitled to an annual refund of sales and use tax paid by them on their direct purchases of items, unless otherwise stated in the below subsection with regard to nonrefundable taxes. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity.

Taxes for which a refund is allowed under this section are not an overpayment of tax and does not accrue interest.

2. Federal Government

The Federal Government is also entitled to annual refunds of sales and use tax paid by its contractors on purchases of materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure that is owned or leased by the Federal Government and is being erected, altered, or repaired for use by the Federal Government.

B. Refund Authorized by G.S. § 105-467(b)

A local school administrative unit and a joint agency created by interlocal agreement among local school administrative units pursuant to G.S. § 160A-462 to jointly purchase food service-related materials, supplies, and equipment on their behalf are eligible for annual refunds of local and any applicable transit sales and use taxes paid on direct purchases of tangible personal property and services, other than piped natural gas, video programming, a prepaid meal plan, electricity, telecommunications service and ancillary service. The refunds authorized apply only to the 2.00% local sales and use tax on food exempt from State tax, and the applicable local and applicable

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transit sales and use tax; the general State sales and use tax is not refundable for local school administrative units and joint agencies described in this section.

C. Refund Request Procedures

1. Form E-585, Nonprofit and Governmental Entity Claim for Refund State, County, and Transit Sales and Use Taxes

A claim for refund of sales and use tax paid on qualifying purchases is to be filed on Form E-585. A request for a refund must be in writing and must include any information and documentation required by the Secretary. Any local and transit sales or use taxes and taxes paid on purchases of qualifying food included in the claim must be separately stated on the claim for refund. In cases where more than one county's sales and use tax has been paid, Form E-536R, Schedule of County Sales and Use Taxes for Claims for Refund, must be attached to the claim for refund showing the amount of each county's applicable local and applicable transit tax separately and the total amount of tax paid on purchases of qualifying food.

2. Filing Due Date

A claim for refund of sales and use tax paid is due to be filed on a fiscal year basis within six months of the close of the governmental entity's fiscal year. A refund claim filed more than three years after the due date is barred.

D. Records Required to Substantiate Refunds

1. All refund claims must be substantiated by proper documentary proof and only those taxes actually paid by the applicant during the period covered by the refund claim may be included in the claim. Any local and transit sales or use taxes and any taxes paid on purchases of qualifying food included in the claim must be separately stated on the claim for refund. In cases where more than one county's sales and use tax has been paid, Form E-536R, Schedule of County Sales and Use Taxes for Claims for Refund, must be attached to the claim for refund showing the amount of each county's applicable local and applicable transit tax separately and the total amount of tax paid on purchases of qualifying food.

2. As to taxes paid by the applicant on direct purchases for use, invoices or copies of invoices showing the property purchased, the purchase price thereof, the date of purchase, the amount of the general State, applicable local, and applicable transit sales and use tax paid thereon, and a record reflecting the date of payment constitutes proper documentary proof for direct purchases by a governmental entity.

3. Certified Statements Required

To substantiate a refund claim for sales and use taxes paid on purchases of building materials, supplies, fixtures, and equipment by its real property contractor or other person ("contractor"), the applicant must secure from such contractor certified statements setting forth specific required information. A certified statement is a statement that is signed by the contractor/owner, a corporate officer, or an employee of the contractor who is authorized to provide the information. The certified statement must include all of the following information:

a. The date the property was purchased.

b. The type of property purchased.

c. The name of the retailer from whom the purchase was made and the invoice number of the purchase.

d. The purchase price of property purchased and the amount of sales and use tax paid thereon.

e. The project for which the property was used.

f. If the property was purchased in this State, a copy of the sales receipt and the statement must include the county in which it was delivered.

g. If the property was not purchased in this State, the county in North Carolina in which the property was used must be included.

Only building materials, supplies, fixtures, and equipment that become a part of or annexed to a building or structure the governmental entity owns or leases and uses to conduct its governmental activities are eligible for a refund.

In the event the contractor makes several purchases from the same retailer, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the general State, applicable local, and applicable transit rates of sales and use taxes paid thereon. Such certified statement must also include the purchase price of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of the general State, applicable local, and applicable transit rates of sales and use tax paid thereon by the contractor. Similar certified statements by the contractor's subcontractors must be obtained by the general contractor and furnished to the applicant. Any payment of applicable local and applicable transit sales and use taxes included in the contractor's certified statements must be shown separately from the State sales and use taxes paid. The contractor's certified statements must not contain sales and use taxes paid on purchases of tangible personal property purchased by such contractors for use in performing the contract which does not annex to, affix to, or in some manner become a part of the building or structure that is owned or leased by the State agency and is being erected, altered, or repaired for use by the applicant. *(Examples of property on which sales and use tax has been paid by the contractor and which shall not be included in the contractor's certified statement are: scaffolding, forms for concrete, fuel for the operation of machinery and equipment, tools, equipment, equipment repair parts, and equipment rentals.)*

E. Nonrefundable Taxes

The refund provisions provided in this section are not applicable to the following taxes:

1. Sales and use tax remitted on taxable sales made by governmental entities.

2. Sales and use tax incurred by employees on purchases of food, lodging, or other taxable travel expenses paid by employees and reimbursed by the institution. These expenses are personal to the employee since the contract for food, shelter, and travel is between the employee and the provider and payment of the tax is by the employee individually and personally. The institution has incurred and paid no sales tax liability; instead, it has chosen to reimburse a personal expense of the employee.

3. Sales and use tax paid on the purchase of electricity, telecommunications and ancillary services, and video programming.

4. Sales and use tax paid on purchases of an "alcoholic beverage" as defined in G.S. § 18B-101.

5. Local occupancy tax paid to certain counties and cities in this State.

6. Local prepared food and beverage tax paid to certain counties and cities in this State.

7. Highway use tax or alternate highway use tax paid on the purchase, vehicle subscription, lease, or rental of motor vehicles.

8. Scrap tire disposal tax paid on purchases of new tires.

9. White goods disposal tax paid on purchases of new white goods.

10. Dry cleaning solvent tax paid on dry cleaning solvent purchased by a dry-cleaning facility.

11. Sales and use tax paid on purchases of piped natural gas.

12. Sales and use tax paid on purchases of prepaid meal plans.

13. Solid waste disposal tax.

14. 911 Service Charge for prepaid wireless telecommunications service.

15. Transportation commerce tax.

16. Other states' sales and use tax paid to those states.

F. Certain Governmental Entities Eligible for Annual Refund

The following North Carolina governmental agencies are allowed an annual refund of sales and use taxes:

1. A county.

2. A "city" as defined in G.S. § 160A-1.

3. A "consolidated city-county" as defined in G.S. § 160B-2.

4. A metropolitan sewerage district or a metropolitan water district in this State.

5. A water and sewer authority created under Chapter 162A of the North Carolina General Statutes.

6. A lake authority created by a board of county commissioners pursuant to an act of the North Carolina General Assembly.

7. A sanitary district.

8. A regional solid waste management authority created pursuant to G.S. § 153A-421.

9. An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the North Carolina General Statutes.

10. A district health department, or a public health authority created pursuant to Part 1A of Article 2 of Chapter 130A of the North Carolina General Statutes.

11. A regional council of governments created pursuant to G.S. § 160A-470.

12. A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the North Carolina General Statutes.

13. A regional planning commission created pursuant to G.S. § 153A-391.

14. A regional sports authority created pursuant to G.S. § 160A-479.

15. A public transportation authority created pursuant to Article 25 of Chapter 160A of the North Carolina General Statutes.

16. A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the North Carolina General Statutes.

17. A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the North Carolina General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the North Carolina General Statutes.

18. A local airport authority that was created pursuant to a local act of the General Assembly.

19. A joint agency created by interlocal agreement pursuant to G.S. § 160A-462 to (i) provide fire protection, emergency services, or police protection or (ii) operate a public broadcasting television station.

20. A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property or services that are eligible for refund under G.S. § 105-164.14(c) acquired by it through the expenditure of contract and grant funds.

21. The University of North Carolina Healthcare System.

22. A regional natural gas district created pursuant to Article 28 of Chapter 160A of the North Carolina General Statutes.

23. A special district created under Article 43 of Chapter 105 of the North Carolina General Statutes.

24. A public library created pursuant to an act of the General Assembly or established pursuant to G.S. § 153A-270.

25. A soil and water conservation district organized under Chapter 139 of the North Carolina General Statutes.

26. A district confinement facility created pursuant to G.S. § 153A-219, including a local act modifying G.S. § 153A-219.

G. Organizations Not Refundable

1. Community colleges organized under Chapter 115 D are not entitled to refunds under the provisions for certain governmental entities. The Department of Community Colleges is a North Carolina State Agency and the provisions for North Carolina State Agencies as provided in SUTB 74-5 apply.

2. Alcoholic beverage control boards, drainage districts, and housing authorities.

74-5 REFUNDS TO NORTH CAROLINA STATE AGENCIES

A. Refund Authorized by G.S. § 105-164.14(e)

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Certain North Carolina State agencies are entitled to a quarterly refund of local and transit sales and use taxes paid indirectly by the State agency on building materials, supplies, fixtures, and equipment that become a part of or annexed to a building or structure that is owned or leased by the State agency and is being erected, altered, or repaired for use by the State agency. Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest. The Secretary shall credit the local sales and use tax refunds directly to the General Fund.

B. Refund Request Procedures

1. Form E-585E, State Agency Claim for Refund County and Transit Sales and Use Taxes

A claim for refund of local and transit sales and use taxes paid indirectly on qualifying purchases by a State agency is to be filed on Form E-585E. Any local and transit sales or use taxes included in the claim must be separately stated on the claim for refund. In cases where more than one county's sales and use tax has been paid, Form E-536R, Schedule of County Sales and Use Taxes for Claims for Refund, must be attached to the claim for refund showing the amount of each county's applicable local and applicable transit tax separately.

2. Filing Due Date

A quarterly claim for refund is due to be filed within 15 days after the end of the calendar quarter. A refund claim filed more than three (3) years after the due date is barred.

C. Records Required to Substantiate Refunds

A person who pays local and transit sales and use taxes on building materials or other tangible personal property for a State building project shall give the State agency for whose project the property was purchased a signed statement containing all of the following information:

1. The date the property was purchased.
2. The type of property purchased.
3. The project for which the property was used.
4. If the property was purchased in this State, the county in which the property was purchased.
5. If the property was not purchased in this State, the county in which the property was used.
6. The amount of sales and use taxes paid.

If the property was purchased in this State, the person shall attach a copy of the sales receipt to the statement. A State agency to whom a statement is submitted shall verify the accuracy of the statement.

D. Nonrefundable Taxes

The refund provisions provided in this section are not applicable to the following taxes:

1. Sales and use tax remitted on taxable sales made by governmental entities.

2. Sales and use tax incurred by employees on purchases of food, lodging, or other taxable travel expenses paid by employees and reimbursed by the institution. These expenses are personal to the employee since the contract for food, shelter, and travel is between the employee and the provider and payment of the tax is by the employee individually and personally. The institution has incurred and paid no sales tax liability; instead, it has chosen to reimburse a personal expense of the employee.

3. Sales and use tax paid on the purchase of electricity, telecommunications and ancillary services, and video programming.

4. Sales and use tax paid on purchases of an “alcoholic beverage” as defined in G.S. § 18B-101.

5. Local occupancy tax paid to certain counties and cities in this State.

6. Local prepared food and beverage tax paid to various local governments in this State.

7. Highway use tax or alternate highway use tax paid on the purchase, vehicle subscription, lease, or rental of motor vehicles.

8. Scrap tire disposal tax paid on purchases of new tires.

9. White goods disposal tax paid on purchases of new white goods.

10. Dry cleaning solvent tax paid on dry cleaning solvent purchased by a dry-cleaning facility.

11. Sales and use tax paid on purchases of piped natural gas.

12. Sales and use tax paid on purchases of prepaid meal plans.

13. Solid waste disposal tax.

14. 911 Service Charge for prepaid wireless telecommunications service.

15. Sales and use tax paid on purchases of certain digital property.

16. Transportation commerce tax.

17. Other states’ sales and use tax paid to those states.

E. State Agency Refund Provisions Do Not Apply

The provisions for refunds that are allowed for North Carolina State Agencies do not apply to the following:

1. An “occupational licensing board,” as defined in G.S. § 93B-1.

2. An entity listed in SUTB 74-4F.

3. Individual community colleges. The Department of Community Colleges is a North Carolina State Agency and the provisions for North Carolina State Agencies as provided in this section apply.

4. Alcoholic beverage control boards, drainage districts, and housing authorities.

74-6 REFUNDS TO MAJOR RECYCLING FACILITIES

A. Refund Authorized by G.S. § 105-164.14A(a)(2)

The owner of a major recycling facility is allowed an annual refund of sales and use tax paid by it on building materials, building supplies, fixtures, and equipment that become a part of the real property of the major recycling facility. Liability incurred indirectly by the owner for sales and use tax on building materials, building supplies, fixtures, and equipment that become a part of the real

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property of the major recycling facility is considered tax paid by the owner. Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest. A "major recycling facility" is defined in G.S. § 105-129.25.

Note: For information on major recycling facilities, refer to SUTB 60-11.

B. Refund Request Procedures

1. Form E-585S, Incentive Claim for Refund State, County, and Transit Sales and Use Taxes

A claim for refund of sales and use tax paid on qualifying purchases is to be filed on Form E-585S. A request for a refund must be in writing and must include any information and documentation required by the Secretary. Any local and transit sales or use taxes included in the claim must be separately stated on the claim for refund. In cases where more than one county's sales and use tax has been paid, Form E-536R, Schedule of County Sales and Use Taxes for Claims for Refund, must be attached to the claim for refund showing the amount of each county's applicable local and applicable transit tax separately.

2. Filing Due Date

A claim for refund is due to be filed within six (6) months of the end of the State's fiscal year. Refunds applied for after the due date are barred.

C. Records Required to Substantiate Refunds

1. All refund claims must be substantiated by proper documentary proof and only those taxes actually paid by the applicant during the period covered by the refund claim may be included in the claim. Any local and transit sales or use taxes included in the claim must be separately stated on the claim for refund. In cases where more than one county's sales and use tax has been paid, Form E-536R, Schedule of County Sales and Use Taxes for Claims for Refund, must be attached to the claim for refund showing the amount of each county's applicable local and applicable transit tax separately.

2. As to taxes paid by the owner of a major recycling facility on purchases for use, other than those made by contractors performing work for the applicant, invoices or copies of invoices showing the property purchased, the purchase price thereof, the date of purchase, the amount of the general State, applicable local, and applicable transit sales and use tax paid thereon, and a record reflecting the date of payment will constitute proper documentary proof.

3. Certified Statements Required

To substantiate a refund claim for sales and use taxes paid on purchases of building materials, supplies, fixtures, and equipment by its real property contractor or other person ("contractor"), the applicant must secure from such contractor certified statements setting forth specific required information. A certified statement is a statement that is signed by the contractor/owner, a corporate officer, or an employee of the contractor who is authorized to provide the information. The certified statement must include all of the following information:

a. The date the property was purchased.

b. The type of property purchased.

c. The name of the retailer from whom the purchase was made and the invoice number of the purchase.

d. The purchase price of property purchased and the amount of sales and use tax paid thereon.

e. The project for which the property was used.

f. If the property was purchased in this State, a copy of the sales receipt and the statement must include the county in which it was delivered.

g. If the property was not purchased in this State, the county in North Carolina in which the property was used must be included.

Only building materials, building supplies, fixtures, and equipment that become part of the real property of the major recycling facility are eligible for a refund.

In the event the contractor makes several purchases from the same retailer, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the general State, applicable local, and applicable transit rates of sales and use taxes paid thereon. Such certified statement must also include the purchase price of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of the general State, applicable local, and applicable transit rates of sales and use tax paid thereon by the contractor. Similar certified statements by the contractor's subcontractors must be obtained by the general contractor and furnished to the applicant. Any payment of applicable local and applicable transit sales and use taxes included in the contractor's certified statements must be shown separately from the State sales and use taxes paid. The contractor's certified statements must not contain sales and use taxes paid on purchases of tangible personal property purchased by such contractors for use in performing the contract which does not annex to, affix to, or in some manner become a part of the building or structure that is owned or leased by the recycling facility and is being erected, altered, or repaired for use by the applicant. *(Examples of property on which sales and use tax has been paid by the contractor and which shall not be included in the contractor's certified statement are: scaffolding, forms for concrete, fuel for the operation of machinery and equipment, tools, equipment, equipment repair parts, and equipment rentals.)*

74-7 REFUNDS FOR A PROFESSIONAL MOTORSPORTS RACING TEAM OR MOTORSPORTS SANCTIONING BODY

For information regarding refunds for a professional motorsports racing team, a motorsports sanctioning body, or a related member of such team or body, refer to SUTB 69.

74-8 REFUNDS FOR ELIGIBLE RAILROAD INTERMODAL FACILITY

A. Refund Authorized by G.S. § 105-164.14A(a)(7)

The owner or lessee of an eligible railroad intermodal facility is allowed a refund of sales and use tax paid by the owner or lessee on building materials, building supplies, fixtures, and equipment that become a part of the real property of the facility. Liability incurred indirectly by the owner or lessee of the facility for sales and use tax on building materials, building supplies, fixtures, and equipment that become a part of the real property of the facility is considered tax paid by the owner or lessee. Taxes for which a refund is allowed under this section are not an overpayment of tax and does not accrue interest.

B. Refund Request Procedures

1. Form E-585S, Incentive Claim for Refund State, County, and Transit Sales and Use Taxes

A claim for refund of sales and use tax paid on qualifying purchases is to be filed on Form E-585S. A request for a refund must be in writing and must include any information and documentation required by the Secretary. Any local and transit sales or use taxes included in the claim must be separately stated on the claim for refund. In cases where more than one county's sales and use tax has been paid, Form E-536R, Schedule of County Sales and Use Taxes for Claims for Refund, must be attached to the claim for refund showing the amount of each county's applicable local and applicable transit tax separately.

2. Filing Due Date

A claim for refund is due to be filed within six (6) months of the State's prior fiscal year. Refunds applied for after the due date are barred.

C. Expiration

This refund provision is repealed for purchases made on or after January 1, 2038.

D. Records Required to Substantiate Refunds

1. All refund claims must be substantiated by proper documentary proof and only those taxes paid by the applicant during the period covered by the refund claim may be included in the claim. Any local and transit sales or use taxes included in the claim must be separately stated on the claim for refund. In cases where more than one county's sales and use tax has been paid, Form E-536R, Schedule of County Sales and Use Taxes for Claims for Refund, must be attached to the claim for refund showing the amount of each county's applicable local and applicable transit tax separately.

2. As to taxes paid by the applicant on purchases for use, other than those made by contractors performing work for the applicant, invoices or copies of invoices showing the property purchased, the purchase price thereof, the date of purchase, the amount of the general State, applicable local, and applicable transit sales and use tax paid thereon, and a record reflecting the date of payment constitutes proper documentary proof for direct purchases by an eligible railroad intermodal facility.

3. Certified Statements Required

To substantiate a refund claim for sales and use taxes paid on purchases of building materials, building supplies, fixtures, and equipment by its real property contractor or other person ("contractor"), the applicant must secure from such contractor certified statements setting forth specific required information. A certified statement is a statement that is signed by the contractor/owner, a corporate officer, or an employee of the contractor who is authorized to provide the information. The certified statement must include all of the following information:

a. The date the property was purchased.
b. The type of property purchased.
c. The name of the retailer from whom the purchase was made and the invoice number of the purchase.
d. The purchase price of property purchased and the amount of sales and use tax paid thereon.
e. The project for which the property was used.

f. If the property was purchased in this State, a copy of the sales receipt and the statement must include the county in which it was delivered.

g. If the property was not purchased in this State, the county in North Carolina in which the property was used must be included.

Only building materials, building supplies, fixtures, and equipment that become part of the real property of the facility are eligible for a refund.

In the event the contractor makes several purchases from the same retailer, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the general State, applicable local, and applicable transit rates of sales and use taxes paid thereon. Such certified statement must also include the purchase price of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of the general State, applicable local, and applicable transit rates of sales and use tax paid thereon by the contractor. Similar certified statements by the contractor's subcontractors must be obtained by the general contractor and furnished to the applicant. Any payment of applicable local and applicable transit sales and use taxes included in the contractor's certified statements must be shown separately from the State sales and use taxes paid. The contractor's certified statements must not contain sales and use taxes paid on purchases of tangible personal property purchased by such contractors for use in performing the contract which does not annex to, affix to, or in some manner become a part of the building or structure that is owned or leased by the eligible railroad intermodal facility and is being erected, altered, or repaired for use by the applicant. *(Examples of property on which sales and use tax has been paid by the contractor and which shall not be included in the contractor's certified statement are: scaffolding, forms for concrete, fuel for the operation of machinery and equipment, tools, equipment, equipment repair parts, and equipment rentals.)*

74-9 REFUNDS FOR TRANSFORMATIVE PROJECTS

A. Refund Authorized by G.S. § 105-164.14A(a)(8)

An owner or lessee of a business that is the recipient of a grant under the Job Development Investment Grant Program on or before June 30, 2019 for a "transformative project" as defined in G.S. § 143B-437.51(9a) is allowed a refund of the sales and use tax paid by it on building materials, building supplies, fixtures, and equipment that become a part of the real property of the facility. Liability incurred indirectly by the owner for sales and use tax on building materials, building supplies, fixtures, and equipment that become a part of the real property of the facility is considered tax paid by the owner.

B. Refund Request Procedures

1. Form NC-19, Claim for Refund of Taxes

A claim for refund of sales and use tax paid on qualifying purchases is to be filed on Form NC-19. A request for a refund must be in writing and must include any information and documentation required by the Secretary. In the Basis of Claim section, applicant should indicate transformative project refund and provide a breakdown of the total amounts for each of the general State, applicable local, and applicable transit rates of sales and use tax. If all local and transit taxes were paid for only one county enter the name of the county in the Basis of Claim section. If local and transit taxes are paid for more than one county, complete and attach Form E-536R, Schedule of County Sales and Use Taxes for Claims for Refund, to identify the applicable rates and individual counties to which tax was paid for the period that is entered and corresponds with the period noted on Form NC-19.

2. Filing Due Date

A claim for refund is due to be filed within six (6) months of the end of the State's fiscal year. Refunds applied for after the due date are barred.

C. Records Required to Substantiate Refunds

1. All refund claims must be substantiated by proper documentary proof and only those taxes actually paid by the applicant during the period covered by the refund claim may be included in the claim. Any local and transit sales or use taxes included in the claim must be separately stated on the claim for refund. If local and transit taxes are paid for more than one county, complete and attach Form E-536R, Schedule of County Sales and Use Taxes for Claims for Refund, to identify the applicable rates and individual counties to which tax was paid for the period that is entered and corresponds with the period noted on Form NC-19.

2. As to taxes paid by applicant on purchases for use, other than those made by contractors performing work for the applicant, invoices or copies of invoices showing the property purchased, the purchase price thereof, the date of purchase, the amount of the general State, applicable local, and applicable transit sales and use tax paid thereon, and a record reflecting the date of payment will constitute proper documentary proof.

3. Certified Statements Required

To substantiate a refund claim for sales and use taxes paid on purchases of building materials, building supplies, fixtures, and equipment by its real property contractor or other person ("contractor"), the applicant must secure from such contractor certified statements setting forth specific required information. A certified statement is a statement that is signed by the contractor/owner, a corporate officer, or an employee of the contractor who is authorized to provide the information. The certified statement must include all of the following information:

a. The date the property was purchased.

b. The type of property purchased.

c. The name of the retailer from whom the purchase was made and the invoice number of the purchase.

d. The purchase price of property purchased and the amount of sales and use tax paid thereon.

e. The project for which the property was used.

f. If the property was purchased in this State, a copy of the sales receipt and the statement must include the county in which it was delivered.

g. If the property was not purchased in this State, the county in North Carolina in which the property was used must be included.

Only building materials, building supplies, fixtures, and equipment that become part of the real property of the facility are eligible for a refund.

In the event the contractor makes several purchases from the same retailer, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the general State, applicable local, and applicable transit rates

of sales and use taxes paid thereon. Such certified statement must also include the purchase price of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of the general State, applicable local, and applicable transit rates of sales and use tax paid thereon by the contractor. Similar certified statements by the contractor's subcontractors must be obtained by the general contractor and furnished to the applicant. Any payment of applicable local and applicable transit sales and use taxes included in the contractor's certified statements must be shown separately from the State sales and use taxes paid. The contractor's certified statements must not contain sales and use taxes paid on purchases of tangible personal property purchased by such contractors or other persons for use in performing the contract which does not annex to, affix to, or in some manner become a part of the building or structure that is owned or leased by the business and is being erected, altered, or repaired for use by the applicant. *(Examples of property on which sales and use tax has been paid by the contractor and which shall not be included in the contractor's certified statement are: scaffolding, forms for concrete, fuel for the operation of machinery and equipment, tools, equipment, equipment repair parts, and equipment rentals.)*

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SUTB 75 REPAIR, MAINTENANCE, AND INSTALLATION SERVICES

75-1 DEFINITIONS

G.S. § 105-164.3 provides the following terms and definitions:

1. **"Certain digital property"** – Specified digital products and additional digital goods. The term does not include an information service or an educational service.

2. **"Clothing"** – All human wearing apparel suitable for general use.

3. **"Motor vehicle"** – A vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:

   a. A moped.
   b. Special mobile equipment.
   c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. §§ 20-51(10) or (11).
   d. A farm tractor or other implement of husbandry.
   e. A manufactured home, a mobile office, or a mobile classroom.
   f. Road construction or road maintenance machinery or equipment.

4. **"Property management contract"** – Refer to SUTB 75-6 for detailed information.

5. **"Real property"** – Any one or more of the following:

   a. Land.
   b. Building or structure on land.
   c. Permanent fixture on land.
   d. A manufactured home or a modular home on land.

6. **"Real property contract"** – A contract between a real property contractor and another person to perform a capital improvement to real property.

7. **"Real property management services"** – Refer to SUTB 75-6 for detailed information.

8. **"Real property manager"** – Refer to SUTB 75-6 for detailed information.

9. **"Repair, maintenance, and installation services"** – Refer to SUTB 75-2 for detailed information.

10. **"Retailer"** – A retailer includes the following persons:

    a. A person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of items sourced to this State. When the Secretary finds it necessary for the efficient administration of Article 5 of Chapter 105 of the North Carolina General Statutes to regard any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these dealers, distributors, consignors, supervisors, employers, or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers, or persons as retailers for the purpose of Article 5 of Chapter 105 of the North Carolina General Statutes.

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b. A person, other than a real property contractor, engaged in business of delivering, erecting, installing, or applying tangible personal property or certain digital property for use in this State.

c. A person engaged in business of making a remote sale, if one of the conditions listed in SUTB 2-2B is met.

d. A person required to collect the State tax levied under Article 5 of Chapter 105 of the North Carolina General Statutes or the local taxes levied under Subchapter VIII of Chapter 105 of the North Carolina General Statutes and under Chapter 1096 of the 1967 Session Laws.

e. A marketplace facilitator that is subject to the requirements of G.S. § 105-164.4J or a facilitator that is required to collect and remit the tax under Article 5 of Chapter 105 of the North Carolina General Statutes.

11. **"Sales price"** – The total amount or consideration for which an item is sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.

a. The term includes all of the following:

(1) The retailer's cost of the item sold.

(2) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer.

(3) Charges by the retailer for any services necessary to complete the sale.

(4) Delivery charges.

(5) Installation charges.

(6) Credit for trade-in. The amount of any credit for trade-in is not a reduction of the sales price.

(7) The amount of any discounts that are reimbursable by a third party and can be determined at the time of sale through any of the following:

(i) Presentation by the consumer of a coupon or other documentation.

(ii) Identification of the consumer as a member of a group eligible for a discount.

(iii) The invoice the retailer gives the consumer.

b. The term does not include any of the following:

(1) Discounts that are not reimbursable by a third party, are allowed by the retailer, and are taken by a consumer on a sale.

(2) Interest, financing, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale, or a similar document given to the consumer.

(3) Any taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer.

12. **"Tangible personal property"** – Personal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses. The term includes electricity, water, gas, steam, and prewritten computer software.

75-2 TAXABILITY OF REPAIR, MAINTENANCE, AND INSTALLATION SERVICES

The sales price of or the gross receipts derived from repair, maintenance, and installation services to real property, tangible personal property, motor vehicles, or certain digital property sold at retail and sourced to this State are subject to the general State, applicable local, and applicable transit

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rates of sales and use tax unless exempt by statute. This generally includes any tangible personal property or certain digital property that becomes a part of or is applied to a purchaser's property. If the tax due is not paid at the time of purchase, the consumer use tax is applicable, at the same rate, to the purchase price of the repair, maintenance, and installation services sourced to the State.

The term "repair, maintenance, and installation services" includes the activities listed below and applies to tangible personal property, motor vehicles, certain digital property, and real property. The term does not include a service used to fulfill a real property contract as provided in SUTB 72. The included activities are:

1. To keep or attempt to keep property or a motor vehicle in working order to avoid breakdown and prevent deterioration or repairs. Examples include to clean, wash, or polish property.

2. To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property or a motor vehicle to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.

3. To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore property or a motor vehicle to proper working order or good condition. The term includes activities that may lead to the issuance of an inspection report.

4. To install, apply, connect, adjust, or set into position tangible personal property or certain digital property. The term includes floor refinishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like-kind item, such as replacing one or more windows, is repair, maintenance, and installation services. The term does not include an installation defined and substantiated as a capital improvement as provided in SUTB 72.

5. To inspect or monitor property or install, apply, or connect tangible personal property or certain digital property on a motor vehicle or adjust a motor vehicle.

Note: Refer to SUTB 75-6 for details regarding the taxability of a property management contract with respect to repair, maintenance, and installation services.

75-3 EXEMPTIONS RELATED TO REPAIR, MAINTENANCE, AND INSTALLATION SERVICES

A. The sales price of or the gross receipts derived from the following repair, maintenance, and installation services are exempt from sales and use tax. Property and services used to fulfill the following exempt repair, maintenance, and installation services are exempt from sales and use tax.

1. The sales price of or the gross receipts derived from repair, maintenance, and installation services for the following:

a. A qualified aircraft.
b. A qualified jet engine.

2. The sales price of or the gross receipts derived from repair, maintenance, and installation services for an item that is exempt from sales and use tax under Article 5 of Chapter 105 of the North Carolina General Statutes.

This exemption for repair, maintenance, and installation services does not apply to the following items:

a. Water for a pool, fish tank, or similar aquatic feature.

b. A motor vehicle, except as provided in SUTB 75-3A.6 and fees under SUTB 75-3.B.1.

3. Repair, maintenance, and installation services purchased for resale.

4. Certain installation charges purchased by real property contractors as provided in SUTB 72-11.

5. Repair, maintenance, and installation services purchased or used to fulfill a taxable service contract if the purchaser of the contract is not charged for the service.

6. Repair, maintenance, and installation services to maintain or repair tangible personal property or a motor vehicle pursuant to a manufacturer's warranty or a dealer's warranty. For purposes of this exemption, the following definitions apply:

a. Dealer's warranty – An explicit warranty the seller of an item extends to the purchaser of the item as part of the purchase price of the item.

b. Manufacturer's warranty – An explicit warranty the manufacturer of an item extends to the purchaser of the item as part of the purchase price of the item.

7. The amount of repair, maintenance, and installation services for a boat or an aircraft for which the purchaser elects for the seller to collect and remit the tax due under G.S. § 105-164.27A(a3).

8. Sales to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series of repair, maintenance, and installation services for a transmission, an engine, rear-end gears, and any tangible personal property that is purchased, leased, or rented and that is exempt from tax under G.S. § 105-164.13(65) or that is allowed a sales tax refund under G.S. § 105-164.14A(a)(5). This exemption expires January 1, 2028.

9. Sales of certain repair, maintenance, and installation services to a qualifying or conditional farmer for a qualifying item used by the farmer primarily in farming operations.

B. The sales price of or the gross receipts derived from the following repair, maintenance, and installation services are exempt from sales and use tax. Items used to fulfill the following exempt repair, maintenance, and installation services are generally subject to the applicable rates of sales and use tax, notwithstanding the items become part of or are applied to a purchaser's property and delivered with the property to the purchaser.

1. A motor vehicle emissions and safety inspection fee imposed pursuant to G.S. § 20-183.7, provided the fee is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale.

2. A service performed for a person by a "related member," as defined in G.S. § 105-130.7A.

3. Cleaning of real property. *(Examples of cleaning of real property include the following services when performed on real property: custodial services, window washing, mold remediation services, carpet cleaning, disinfecting services, removal of debris from gutters, removal of dust and other pollutants from ductwork, and power washing.)* This exemption does not apply to the following:

a. Where the cleaning service constitutes a part of the gross receipts derived from the rental of an accommodation subject to sales and use tax.

b. Cleaning a pool, fish tank, or other similar aquatic feature.

4. A service on roads, driveways, parking lots, and sidewalks.

5. Removal of waste, trash, debris, grease, snow, and other similar tangible personal property from property, other than a motor vehicle. This exemption applies to a household or a commercial trash collection and removal service and to the removal of septage from property, including motor vehicles. This exemption does not include removal of septage from portable toilets.

6. The following inspections:

a. An inspection performed where the results are included in a report for the sale or financing of real property.

b. An inspection of the structural integrity of real property, provided the charge for the inspection is separately stated on the invoice or other documentation given to the purchaser at the time of the sale.

c. An inspection to a system that is defined as a "capital improvement" in SUTB 72, provided the inspection is to fulfill a safety requirement and provided the charge for the inspection is separately stated on the invoice or other documentation given to the purchaser at the time of the sale.

7. Alteration and repair of clothing including embroidery. This exemption does not apply to the following:

a. Where the service constitutes a part of the gross receipts derived from the rental of clothing subject to sales and use tax.

b. The alteration and repair of belts and shoes.

Note: For detailed information on the alteration and repair of clothing, refer to SUTB 53-2.

8. Pest control service. For purposes of this exemption, the term "pest control service" means the application of pesticides to real property.

9. Moving service. For purposes of this exemption, the term "moving service" means a service for hire to transport or relocate a person's existing belongings to or from any destination.

10. Self-service vehicle wash or vacuum and limited-service vehicle wash.

Note: For information on vehicle washes, refer to SUTB 61-3.

11. Services performed on a transmission, distribution, or other network asset on land owned by a service provider or on a right-of-way or an easement in favor of a service provider. This exemption does not apply to charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction and are included in the gross receipts derived from items subject to the combined general rate under G.S. § 105-164.4. For purposes of this subsection, the term "service provider" means a person, including a governmental entity, who provides any of the services listed in this subsection, and the term "governmental entity" means a State agency, the federal government, or a governmental entity listed in G.S. § 105-164.14(c). The services are:

a. Telecommunications service or ancillary service.

b. Video programming.
c. Electricity or piped natural gas.
d. Water or sewer service.

12. Funeral-related service, including a service for the burial of remains. This exemption does not apply to the sale of tangible personal property such as caskets, headstones, and monuments.

13. A service performed on an animal, such as hoof shoeing and microchipping a pet.

14. A security or similar monitoring contract for real property. This exemption does not apply to charges for repair, maintenance and installation services to repair security, alarm, and other similar monitoring systems for real property.

15. A contract to provide a certified operator for a wastewater system.

75-4 EXAMPLES OF TAXABLE REPAIR, MAINTENANCE, AND INSTALLATION SERVICES FOR TANGIBLE PERSONAL PROPERTY, A MOTOR VEHICLE, OR CERTAIN DIGITAL PROPERTY

1. Performance of a service or tune-up on the following: motor vehicle; lawnmower, trimmer, edger, leaf blower, pressure washer, generator, chainsaw, tiller, auger, or other similar small engine; boat; aircraft; ATV or dirt bike; moped; golf cart; or bicycle.

2. Calibrate any of the following: watch, scale, gun or scope, medical equipment, Lasik surgery equipment, thermometer, instruments (musical or otherwise), battery, meter, or camera.

3. Clean jewelry, copy machine, printer, or motor vehicle.

4. Remove dents, dings, and scratches from tangible personal property or a motor vehicle.

5. Restore or reupholster furniture.

6. Patch or mend tires or any type of inflatable.

7. Sharpen blades.

8. Polish jewelry or silver.

9. Tinting or coloring tangible or digital photographs.

10. Troubleshoot a fluid leak or attempt to identify an unusual noise coming from a motor vehicle or other tangible personal property, whether or not the source of the leak or noise is located, determined, or resolved.

11. Troubleshoot prewritten computer software to determine how to restore to proper working order. Repair laptops, cell phones, remove viruses/malware, conduct diagnostic tests, or adjust computer settings. Refer to SUTB 19 for information on services for computers.

12. Reupholster boats and other tangible personal property.

13. Reloading bullets and shells.

14. Laminating services.

15. Book binding services.

16. Electroplating. Refer to SUTB 60-21 for additional information.

17. Recharging a fire extinguisher.

18. Re-string or re-grip tennis rackets, golf clubs, or musical instruments.

19. Tune pianos or other musical instruments.

20. Painting tangible personal property.

21. Window tinting for motor vehicles.

22. Calligraphy services.

23. Embroidery services to items other than clothing.

75-5 REPAIR, MAINTENANCE, AND INSTALLATION SERVICES FOR REAL PROPERTY

A. Generally, services to real property are taxable retail sales of repair, maintenance, and installation services unless a person can substantiate that a transaction is a real property contract or an exempt property management contract as provided in SUTB 75-6.

Note: For information on real property contracts, refer to SUTB 72.

B. Mixed Transaction Contract

A mixed transaction contract is a contract that includes both a real property contract for a capital improvement and repair, maintenance, and installation services for real property that are not related to the capital improvement. For information on mixed transaction contracts, refer to SUTB 72-6.

C. Examples of Repair, Maintenance, and Installation Services for Real Property

SUTB 72-21 provides an extensive list of services to real property and general guidance as to whether the transaction is a repair, maintenance, and installation service for real property. A few examples include:

1. HVAC repair for an air conditioning or heating unit that is not working properly.
2. Rekey locks for real property by a locksmith.
3. Repair of a water pump motor.
4. Repair to correct a jammed garage door.
5. Electrical repair due to a light switch or receptacle not working properly.
6. Plumbing services to unclog a drain.
7. Plumbing services to identify and repair a leak in a pipe.
8. Services by a roofing company to identify and repair a roof leak.
9. Replace damaged exterior bricks.
10. Replace or repair a storm door or garage door.
11. Repair or replace countertops.
12. Replace or reface kitchen cabinet doors.
13. Repair or replace a water heater.
14. Repair of a liner for a swimming pool.
15. Repair or replace a single light fixture.
16. Repair or replace a plumbing fixture (i.e., toilet or sink).
17. Replacement of plate glass window.
18. Floor refinishing.
19. Installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar or existing item.
20. Installation or replacement of a wireless audio system.

75-6 PROPERTY MANAGEMENT CONTRACTS

A. Definitions

G.S. § 105-164.3 provides the following terms and definitions:

1. **"Property management contract"** – A written contract obligating a person to provide five or more real property management services.

2. **"Real property management services"** – Any of the following activities:

   a. Hiring and supervising employees for the real property.
   b. Providing a person to manage the real property.
   c. Receiving and applying revenues received from property owners or tenants of the real property.
   d. Providing repair, maintenance, and installation services to comply with obligations of a homeowners' association or a landlord under a lease, rental, or management agreement.
   e. Arranging for a third party to provide repair, maintenance, and installation services.
   f. Incurring and paying expenses for the management, repair, and maintenance of the real property.
   g. Handling administrative affairs for the real property.

3. **"Real property manager"** – A person that provides real property management services pursuant to a property management contract.

B. Taxability

The sales price of or gross receipts derived from taxable repair, maintenance, and installation services provided and billed on a monthly or other periodic basis and provided by a real property manager under a property management contract are subject to the general State, applicable local, and applicable transit rates of sales and use tax in the following circumstances:

1. Repair, maintenance, installation services are provided by the real property manager for an additional charge.

2. The real property manager arranges for a third party to provide the repair, maintenance, and installation services and the real property manager imposes an additional contract amount or charge for the arranging of these services.

3. More than twenty-five percent (25%) of the time spent managing the real property for a billing or invoice period is attributable to the following taxable repair, maintenance, and installation services:

   a. To keep or attempt to keep property in working order to avoid breakdown and prevent deterioration or repairs. *(Examples include: to clean, wash, or polish property.)*

   b. To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.

   c. To install, apply, connect, adjust, or set into position tangible personal property or certain digital property. The term includes floor refinishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like-kind item, such as replacing one or more

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windows, is repair, maintenance, and installation services. The term does not include an installation defined and substantiated as a capital improvement for sales and use tax purposes.

C. Calculating Time Spent Managing the Real Property and Tax Application

The real property manager must determine an allocated sales price for the taxable repair, maintenance, and installation services portion of the property management contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. Sales and use tax applies to the allocated sales price when the portion of time attributable to repair, maintenance, and installation services not excluded under SUTB 75-6D exceeds twenty-five percent (25%) of the time spent managing the real property for a billing or invoice period. The charges for the taxable repair, maintenance, and installation services must be separately stated on the invoice or similar billing document given to the customer at the time of the sale.

D. Exclusions

Sales and use tax does not apply to the following repair, maintenance, and installation services provided by the real property manager pursuant to a property management contract:

1. To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore the real property to working order or good condition.

2. To inspect or monitor the real property, including the normal operation of all systems that are part of the real property.

E. Substantiation

Generally, the sales price of or the gross receipts derived from repair, maintenance, and installation services are subject to tax unless a person substantiates the following: the services are not taxable as real property management services provided under a property management contract; twenty-five percent (25%) or less of the time spent managing the real property for a billing or invoice period is attributable to taxable repair, maintenance, and installation services; the repair, maintenance, and installation services are excluded from tax pursuant to SUTB 75-6D; or the repair, maintenance and installation services are not subject to sales and use tax.

Time spent managing the real property for a billing or invoice period includes all time spent managing the real property. This includes time spent on repair, maintenance, and installation services that are excluded from tax when provided by the real property manager pursuant to a property management contract:

Substantiation of the time spent managing the real property by a real property manager must be based on a reasonable approximation of the real property management services provided and supported by the person's business records kept in the ordinary course of business. The substantiation must be contemporaneously provided for each billing or invoice period and maintained in the business records. Failure of a real property manager to maintain substantiation of the time spent managing the real property may subject all or a portion of the property management contract to sales and use tax.

75-7 MIXED TRANSACTION CONTRACTS

A mixed transaction contract is a contract that includes both a real property contract for a capital improvement and repair, maintenance, and installation services for real property that are not related to the capital improvement. For information on mixed transaction contracts, refer to SUTB 72-6.

75-8 ITEMS PURCHASED TO PERFORM REPAIR, MAINTENANCE, AND INSTALLATION SERVICES

A. Unless otherwise provided in SUTB 75-3B, items that become part of or are applied to a purchaser's property may be purchased exempt from sales and use tax as a purchase for resale as provided in SUTB 5.

B. Items such as tools, equipment, or supplies used or consumed that do not become part of or applied to a purchaser's property are subject to sales and use tax.

75-9 SHOE POLISHING SERVICES

The sales price of or the gross receipts derived from charges by a retailer of shoe polishing services are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Any tangible personal property that becomes a part of or is applied to a purchaser's property such as polish may be purchased exempt from sales and use tax as a purchase for resale as provided in SUTB 5.

The retailer is liable for payment of sales or use tax at the general State, applicable local, and applicable transit rates of sales and use tax on purchases of any tangible personal property that does not become a part of or applied to a purchaser's property such as rags, sponges, and brushes.

75-10 WATCH, CLOCK, AND JEWELRY REPAIR PERSONS

A. Repair Services

The sales price of or the gross receipts derived from repair charges sold at retail for watch, clock, jewelry, or other items by a watch, clock, or jewelry repair person or other retailer are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Watches and jewelry are clothing accessories and therefore do not meet the definition of "clothing."

Purchases of tangible personal property to repair a watch, clock, jewelry, or other item, and that will become a part of the customer's repaired item, may be purchased exempt from sales and use tax as a purchase for resale as provided in SUTB 5.

B. Engraving Services

1. A charge to engrave tangible personal property is part of the sales price of the property and subject to the general State, applicable local, and applicable transit rates of sales and use tax, provided such charge to engrave is made at the time of the sale of the property.

2. A charge to engrave tangible personal property owned by a customer is not subject to sales and use tax provided a retailer retains a record that establishes the tangible personal property engraved is owned by the customer and was not purchased at the time the engraving is purchased.

C. Cleaning Services

The sales price of, the gross receipts derived from, or any charge for cleaning services sold at retail to clean or restore a watch, clock, jewelry, or other item by a watch, clock, or jewelry repair person or other retailer is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

75-11 SOURCING – REPAIR, MAINTENANCE, AND INSTALLATION SERVICES

Repair, maintenance, and installation services are sourced in accordance with the sourcing principles set forth in SUTB 4. Repair, maintenance, and installation services are generally sourced to the location where the customer can potentially make first use of the property on which the seller performed the repair, maintenance, and installation service. In general, this is the location of the real property or where the tangible personal property or certain digital property is delivered to the purchaser. The location where the seller performs the service is not determinative of where the service is sourced, although, it may be that the service is performed at the same location that the customer can potentially make first use of the property.

Examples:

1. *A resident of this State takes a lawnmower to a repair shop in State B to have the engine serviced and the blade sharpened. When the lawnmower is ready, the owner picks it up at the repair shop. The repair service is sourced to the repair shop location in State B since the owner first has possession of the repaired item at that location.*

2. *Same facts as in Example 1 above except that the repair shop delivers the repaired lawnmower to the owner's residence in this State. In this case, the service is sourced to the residence in NC since that is the location where the lawnmower is returned to the owner of the lawnmower.*

SUTB 76 REPOSSESSIONS

76-1 REPOSSESSIONS

A. The sale of an article repossessed by a retailer is exempt from tax provided tax was paid on the gross sales price of the article when it was originally sold by the retailer, unless otherwise provided in this SUTB.

B. Retailers shall not deduct from their gross taxable sales the unpaid amounts on repossessed merchandise.

C. Listed below is the tax liability in connection with the following three types of operating agreements between retailers and the assignees of sales contracts:

1. No Recourse Endorsement

In the case of a no recourse endorsement by the retailer to the financial institution, the retailer has no liability as a result of debtor default; and if the retailer reacquires the property that is the collateral for the contract, the retailer has actually purchased the property. In such a case it is not property repossessed by the retailer and it would be subject to sales and use tax when sold at retail by the retailer.

2. Limited Recourse Endorsement

In the case of the limited recourse or dealer participation endorsement by the retailer to the financial institution, the retailer has liability to the financial institution as a result of debtor default. Generally, in the event of debtor default under this type of endorsement, the property is taken back by the financial institution and, as stipulated in the contract, is redelivered to the retailer within a specified period of time after the maturity date of the oldest unpaid delivery installment. The retailer is obligated for payment of the next unpaid balance upon delivery of the property to him by the financial institution. In such cases, the property is deemed to be articles repossessed by the retailer and thus is exempt from tax when sold by the retailer at retail provided sales tax was paid on the gross sales price of the initial sale. Otherwise, the sale of any repossessed article is subject to the applicable rates of sales and use tax.

3. Full Recourse Endorsement

In the case of the full recourse endorsement by the retailer to the financial institution, the retailer has liability for any unpaid balance in the event the debtor defaults in payment. In this type of endorsement, the financial institution only needs to make demand of the retailer that he repurchase the contract for the unpaid balance and, if need be, the property is repossessed by the retailer and, therefore, it qualifies as property repossessed by the retailer and is exempt from tax when sold at retail provided sales tax was paid on the gross sales price of the initial sale. Otherwise, the sale of any repossessed article is subject to the applicable rates of sales and use tax.

76-2 FINANCE COMPANIES

If a finance company repossesses tangible personal property and sells the tangible personal property or places the tangible personal property on display for sale as an adjunct to the principal business of the finance company, such finance company must register with the Department and collect and remit the applicable rates of sales and use tax on its retail sales.

SUTB 77 RESCINDED SALE OR CANCELLED SERVICE AND RESTOCKING FEES

77-1 REFUND OF TAX PAID ON A RESCINDED SALE OR CANCELLED SERVICE

A. A retailer is allowed a refund of sales tax remitted on a rescinded sale or cancelled service. A sale is rescinded when the purchaser returns an item to the retailer and receives a refund, in whole or in part, of the sales price paid, including a refund of the pro rata amount of the sales tax based on the taxable amount of the sales price refunded. A service is cancelled when the service is terminated and the purchaser receives a refund, in whole or in part, of the sales price paid, including a refund of the pro rata amount of the sales tax paid based on the taxable amount of the sales price refunded.

A retailer entitled to a refund may reduce taxable receipts by the taxable amount of the refund for the period in which the refund occurs or may request a refund of an overpayment, provided the tax has been refunded to the purchaser.

Note: For information on the refund of tax paid on the cancellation of a service contract, refer to SUTB 79-8.

B. Form for Submitting Claim

Unless otherwise provided in the SUTBs, a claim for refund or a request for a refund of an overpayment of sales and use tax should be submitted on Form E-588, Business Claim for Refund State, County and Transit Sales and Use Taxes. The basis of the claim for the requested refund must be stated in the Basis for Claim section of the refund claim form. If applicable Form E-536R, Schedule of County Sales and Use Taxes for Claims for Refund, should also be submitted.

C. Information to be Furnished

When submitting refund claims requesting a refund of an overpayment of sales and use tax, supporting data to be submitted includes copies of invoices or schedules reflecting the purchaser's name, invoice numbers, description of the property purchased, amount of tax collected, and copies of credit memos and the front and back of cancelled refund checks issued to the purchaser. If applicable, copies of executed Certificates of Exemption and Form E-536R, Schedule of County Sales and Use Tax for Claims for Refund, should also be submitted.

D. Statute of Limitations

A refund is allowed for an overpayment of tax provided a request for refund is made within three years after the due date of the return set by statute or within two years after payment of the tax, whichever is later. There are no provisions in the revenue laws for refunding overpayments of tax after the statute of limitations except as provided in G.S. § 105-241.6.

77-2 RESTOCKING FEE

A restocking fee that is not part of the original sales price of an item is not subject to sales and use tax when charged at the time of the return of the item.

77-3 OTHER REFUND INFORMATION

Refer to SUTB 73 for information on other refunds.

SUTB 78 SALES TAX BASE EXPANSION PROTECTION ACT

78-1 SALES TAX BASE EXPANSION PROTECTION ACT

The Sales Tax Base Expansion Protection Act, G.S. § 105-244.3, provides for the following:

A. Grace Period

The Department shall take no action to assess any tax due for a filing period beginning on or after March 1, 2016, and ending prior to January 1, 2019, if one or more of the conditions in SUTB 78-1B apply and the retailer did not receive specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable periods. Except as otherwise provided in this SUTB, the grace period also applies to use tax liability imposed on a purchaser under G.S. § 105-164.6.

B. Conditions

The conditions are as follows:

1. A retailer failed to charge sales tax due on separately stated installation charges that are part of the sales price of tangible personal property or certain digital property sold at retail for a filing period beginning on or after March 1, 2016, and ending before January 1, 2019.

2. A person failed to properly classify themselves as a retailer in retail trade for the filing period beginning on or after March 1, 2016, and ending before January 1, 2017, and did not charge sales tax on all retail transactions but rather treated some transactions as real property contracts in error for sales and use tax purposes. This does not prohibit the Secretary from assessing use tax on purchases used to fulfill a transaction erroneously treated as a real property contract.

3. A person treated a transaction as a real property contract in error and did not collect sales tax on the transaction as a retail sale for a filing period beginning on or after March 1, 2016, and ending before January 1, 2019. This does not prohibit the Secretary from assessing use tax on purchases used to fulfill a transaction erroneously treated as a real property contract.

4. A person failed to collect sales tax on the sales price of a service contract for one or more components, systems, or accessories for a motor vehicle for a filing period beginning on or after March 1, 2016, and ending before January 1, 2017, where the contract was sold by a motor vehicle dealer, a motor vehicle service agreement company, or a motor vehicle dealer on behalf of a motor vehicle service agreement company.

5. A person failed to collect sales tax on the retail sale of a service contract for tangible personal property that becomes a part of or is affixed to real property for a filing period beginning on or after March 1, 2016, and ending before January 1, 2019.

6. A person failed to collect sales tax on the retail sale of a service contract for a pool, a fish tank, or similar aquatic feature on or after January 1, 2017, and prior to January 1, 2019, provided the person paid tax on any purchases used to fulfill the service contract.

7. A person failed to collect sales tax on the sales price of or the gross receipts derived from the retail sale of a home warranty on or after January 1, 2017, and prior to January 1, 2019, provided the warranty includes coverage for real property.

8. A person failed to collect sales tax on the taxable portion of a mixed service contract that exceeds 10% for a transaction on or after January 1, 2017, and prior to January 1, 2019.

This subsection does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed service contract.

9. A person failed to collect sales tax on the taxable portion of a mixed transaction contract that exceeds 25% for a transaction on or after January 1, 2017, and prior to January 1, 2019. This subsection does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed transaction contract.

10. A person failed to collect sales tax on the taxable portion of a bundled transaction that included a contract for two or more services, one of which was subject to tax and one of which was not subject to tax, for a transaction on or after March 1, 2016 and prior to January 1, 2017.

11. A person treats a transaction as a real property contract for remodeling instead of the retail sale of repair, maintenance, and installation services sold at retail prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill the transaction.

12. A person failed to collect sales tax on repair, maintenance, and installation services for tangible personal property or a motor vehicle for a filing period beginning on or after March 1, 2016 and ending prior to January 1, 2019. A person failed to collect sales tax on repair, maintenance, and installation services for certain digital property for a filing period beginning on or after January 1, 2017 and ending prior to January 1, 2019.

C. Limitations

The Sales Tax Base Expansion Protection Act does not prohibit the following assessments:

1. The assessment of tax collected by a person and not remitted to the Department.

2. The assessment of tax due on an amount included in the definition of “sales price” where a retailer failed to charge or remit the tax, except as allowed under this SUTB.

SUTB 79 SERVICE CONTRACTS AND WARRANTIES

79-1 DEFINITIONS

A. G.S. § 105-164.3 provides the following terms and definitions:

1. **"Mixed service contract"** – A service contract for real property that includes two or more services, one of which is subject to sales and use tax and one of which is not subject to sales and use tax.

2. **"Property management contract"** – Refer to SUTB 75-6 for detailed information.

3. **"Service contract"** – A contract where the obligor under the contract agrees to maintain, monitor, inspect, repair, or provide another service included in the definition of "repair, maintenance, and installation services" to certain digital property, tangible personal property, or real property for a period of time or some other defined measure. The term does not include a single service included in repair, maintenance, or installation services, but does include a contract where the obligor may provide a service included in the definition of "repair, maintenance, and installation services" as a condition of the contract. The term includes a service contract for a pool, fish tank, or similar aquatic feature and a home warranty. Examples include a warranty agreement other than a manufacturer's warranty or dealer's warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair agreement, or a similar agreement or contract.

4. **"Service contract facilitator"** – A person who contracts with the obligor of the service contract to market the service contract and accepts payment from the purchaser for the service contract.

B. For purposes of this SUTB, the following terms and definitions apply:

1. **"Obligor"** – A person who is legally, or contractually, obliged to provide the services for the service contract to the purchaser.

2. **"Maintain"** – To keep in an existing state.

3. **"Monitor"** – To watch, keep track of, or check usually for a special purpose.

4. **"Inspect"** – To view closely in critical appraisal.

5. **"A period of time or some other defined measure"** – The phrase includes, but is not limited to:

a. Hour(s), day(s), month(s), year(s), etc.
b. Predetermined units of which the number declines with use in a known amount.
c. Predetermined dollar amount of which the value declines with use in a known amount.
d. Quantity (i.e., copies).
e. Distance [meter(s), feet, mile(s), etc.].
f. Weight.
g. Volume [cup(s), quart(s), gallon(s), cubic capacity, etc.].

79-2 IMPOSITION AND LIABILITY FOR COLLECTING AND REMITTING TAX

A. Tax Imposed

The sales price of or the gross receipts derived from a service contract or the renewal of a service contract sold at retail and sourced to this State is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

B. Liability for Collecting and Remitting Tax

The retailer of a service contract is required to collect and remit the sales and use tax due at the time of the retail sale of a service contract and is liable for payment of the tax to the Department.

The retailer of a service contract is the applicable person listed below:

1. When a service contract is sold at retail to a purchaser by the obligor under the contract, the obligor is the retailer.

2. When a service contract is sold at retail to a purchaser by a service contract facilitator on behalf of the obligor under the contract, the service contract facilitator is the retailer unless the provisions of SUTB 79-2B.3 apply.

3. When a service contract is sold at retail to a purchaser by a service contract facilitator on behalf of the obligor under the contract and there is an agreement between the service contract facilitator and the obligor that states the obligor will be liable for the payment of the sales and use tax, the obligor is the retailer. The service contract facilitator must send the retailer the sales and use tax due on the sales price of or gross receipts derived from the service contract no later than 10 days after the end of each calendar month. A service contract facilitator that does not send the retailer the sales and use tax due on the sales price or gross receipts derived from the service contract is liable for the amount of sales and use tax the service contract facilitator fails to send. A service contract facilitator is not liable for sales and use tax sent to a retailer but not remitted by the retailer to the Secretary. Sales and use tax payments received by a retailer from a service contract facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a sales and use tax payment from a service contract facilitator must remit the amount received to the Secretary. A retailer is not liable for sales and use tax due but not received from a service contract facilitator. The requirements imposed by G.S. § 105-164.4I on a retailer and a service contract facilitator are considered terms of the agreement between the retailer and the service contract facilitator.

C. Service Contracts for a Pool, Fish Tank, or Similar Aquatic Feature and a Home Warranty

A service contract for a pool, fish tank, or similar aquatic feature and a home warranty is subject to sales and use tax.

79-3 EXEMPTIONS RELATED TO SERVICE CONTRACTS

A. The sales price of or the gross receipts derived from a service contract for the following items is exempt from sales and use tax. Items used to fulfill the following exempt service contracts are exempt from sales and use tax. This is not an all-inclusive list.

1. An item exempt from sales and use tax. This exemption does not apply to water for a pool, fish tank, or similar aquatic feature or to a motor vehicle.

2. Logging machinery used by a person engaged in commercial logging business to harvest raw forest products for transport to first market.

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3. Telephone company central office equipment, switchboard equipment, private branch exchange equipment, and certain terminal equipment to a telephone company regularly engaged in providing telecommunications service to subscribers on a commercial basis.

4. Broadcasting equipment used by a radio or a television company licensed by the Federal Communications Commission.

5. Broadcasting equipment used by a cable service provider.

6. Items that come within the exemptions set forth in G.S. § 105-164.13 for State agencies.

7. A service contract purchased by the United States Government.

8. Farm machinery used by a qualifying farmer or conditional farmer in the planting, cultivating, harvesting, or curing of farm crops, in the production of dairy products, eggs, or animals, or in the boarding of horses.

9. Laundry and dry-cleaning machinery used by a commercial laundry.

10. Boats purchased by a commercial fishing operator that meets statutory requirements.

11. Durable medical equipment and mobility enhancing equipment sold on prescription.

12. Prosthetic devices for human use.

13. Custom computer software and certain other software that is exempt from sales and use tax.

14. A transmission, an engine, rear-end gears, and any tangible personal property purchased, leased, or rented by a professional motorsports racing team or a related member of a team for which the team or related member qualifies for an exemption from sales and use tax under G.S. § 105-164.13(65) or G.S. § 105-164.13(65a) or a sales tax refund under G.S. § 105-164.14A(a)(5). This exemption expires January 1, 2028.

B. The sales price of or the gross receipts derived from a service contract for the following is exempt from sales and use tax. Items used to fulfill the following exempt service contracts are generally subject to the applicable rates of sales and use tax, notwithstanding the items become part of or are applied to a purchaser's property and delivered with the property to the purchaser. A transaction listed in this subdivision must meet the definition of "service contract" as provided in SUTB 79-1A.

1. A motor vehicle (i.e., motor vehicle service contract).

2. A service performed for a person by a "related member," as defined in G.S. § 105-130.7A.

3. Cleaning of real property. Examples of cleaning of real property include the following services when performed on real property: custodial services, window washing, mold remediation services, carpet cleaning, disinfecting services, removal of debris from gutters, removal of dust and other pollutants from ductwork, and power washing. This exemption does not apply to the following:

a. Where the service constitutes a part of the gross receipts derived from the rental of an accommodation subject to sales and use tax.

b. Cleaning a pool, fish tank, or other similar aquatic feature.

4. A service on roads, driveways, parking lots, and sidewalks.

5. Removal of waste, trash, debris, grease, snow, and other similar tangible personal property from property, other than a motor vehicle. The exemption applies to a household or a commercial trash collection and removal service and to the removal of septage from property, including motor vehicles. This exemption does not include removal of septage from portable toilets. The removal of septage from portable toilets pursuant to a service contract is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

6. Alteration and repair of clothing. This exemption does not apply to the following:

a. Where the service constitutes a part of the gross receipts derived from the rental of clothing subject to sales and use tax.

b. The alteration and repair of belts and shoes.

7. Pest control service. For purposes of this exemption, the term "pest control service" means the application of pesticides to real property.

8. Moving service. For purposes of this exemption, the term "moving service" means a service for hire to transport or relocate a person's existing belongings to or from any destination.

9. Self-service vehicle wash or vacuum and limited-service vehicle wash.

Note: For information on vehicle washes, refer to SUTB 61-3.

10. Services performed on a transmission, distribution, or other network asset on land owned by a service provider or on a right-of-way or an easement in favor of a service provider. This exemption does not apply to charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction and are included in the gross receipts derived from items subject to the combined general rate under G.S. § 105-164.4. For purposes of this subsection, the term "service provider" means a person, including a governmental entity, who provides any of the services listed in this subsection, and the term "governmental entity" means a State agency, the federal government, or a governmental entity listed in G.S. § 105-164.14(c). The services are:

a. Telecommunications service or ancillary service.
b. Video programming.
c. Electricity or piped natural gas.
d. Water or sewer service.

11. A qualified aircraft. (Parts and accessories for use in the repair and maintenance of a qualified aircraft are exempt from sales and use tax.)

12. A qualified jet engine. (Parts and accessories for use in the repair and maintenance of a qualified jet engine are exempt from sales and use tax.)

13. Funeral related service, including a service for the burial of remains. This exemption does not apply to the sale of tangible personal property, such as caskets, headstones, and monuments.

14. A service performed on an animal, such as hoof shoeing and microchipping a pet.

15. A security or similar monitoring contract for real property. This exemption does not apply to charges for repair, maintenance, and installation services to repair security, alarm, and other similar monitoring systems for real property.

16. A contract to provide a certified operator for a wastewater system.

C. An item, including repair, maintenance, and installation services, purchased or used to fulfill a taxable service contract is exempt from sales and use tax if the purchaser of the contract is not charged for the item. This exemption does not apply to the purchase of tangible personal property or certain digital property used to fulfill a service contract for real property where the charge being covered would otherwise be subject to tax as a real property contract. The term "item" does not include a tool, equipment, supply, or similar tangible personal property that is not a component or repair part of the tangible personal property, real property, or certain digital property for which a service contract is sold to a purchaser.

79-4 MOTOR VEHICLE SERVICE CONTRACTS

The sales price of or the gross receipts derived from a motor vehicle service contract is exempt from sales and use tax. Refer to SUTB 61-6 for information regarding a motor vehicle service contract.

79-5 PROPERTY MANAGEMENT CONTRACTS

Refer to SUTB 75-6 for detailed information.

79-6 ITEMS PURCHASED TO FULFILL A SERVICE CONTRACT

A. Purchases to Fulfill a Taxable Service Contract

The application of sales and use tax to the purchase price of an item (e.g., component or repair part), including any repair, maintenance, and installation services, purchased and used to fulfill a taxable service contract depends on whether the retailer charges the purchaser of the service contract for such item. For purposes of this subsection, the term "item" does not include a tool, equipment, supply, or similar tangible personal property that is not a component or repair part of the tangible personal property, real property, or certain digital property for which a service contract is sold to a purchaser.

If the retailer does not charge for the item (e.g., component or repair part) purchased or used to fulfill a taxable service contract, such purchase is exempt from sales and use tax.

If the retailer charges the purchaser of the service contract for the item (e.g., component or repair part) sales and use tax is due on the sales price of the item (e.g., component or repair part) charged to the purchaser of the service contract.

A person purchasing an item to fulfill a taxable service contract, may purchase such item exempt from sales and use tax as provided in SUTB 5. This subsection does not apply to the purchase of tangible personal property or certain digital property used to fulfill a service contract for real property where the charge being covered would otherwise be subject to tax as a real property contract.

B. Purchases to Fulfill an Exempt Service Contract

Unless otherwise provided in SUTB 79-3B, items purchased and used to fulfill an exempt service contract are exempt from sales and use tax and may be purchased for resale as provided in SUTB 5.

C. Purchases to Fulfill a Manufacturer's Warranty or Dealer's Warranty

Refer to SUTB 79-12 for information regarding items purchased to fulfill a manufacturer's warranty or dealer's warranty.

D. Purchases that are not a Component or Repair Part

Items such as tools, equipment, supplies or other similar property used or consumed that are not a component or repair part are subject to sales and use tax.

79-7 DEDUCTIBLES OR SIMILAR FEES

When a deductible or similar fee, as set forth in a taxable service contract, is charged in conjunction with maintenance or repairs completed under the service contract and such fee is part of the sales price of a replacement or repair part, or repair, maintenance, and installation services, the fee is subject to sales and use tax. If the fee is unrelated to the sales price of the replacement or repair part, or repair, maintenance, and installation services, the fee is not subject to sales and use tax.

79-8 REFUND OF TAX PAID ON THE CANCELLATION OF A SERVICE CONTRACT

When a service contract is cancelled and a purchaser receives a refund, in whole or in part, of the sales price paid for the service contract, the purchaser may receive a refund of the pro rata amount of the sales and use tax paid on the service contract based on the taxable amount of the sales price refunded as provided in this section.

A. Refund from Retailer

If the purchaser receives a refund on any portion of the sales price of a service contract purchased from the retailer required to remit the sales and use tax on the retail sale of the service contract, then the provisions provided in SUTB 77 for a rescinded sale or cancelled service apply.

B. Refund from the Department

If the purchaser receives a refund on any portion of the sales price for a service contract from a person other than the retailer required to remit the sales and use tax on the retail sale of the service contract, then the amount refunded to the purchaser by the person does not have to include the sales and use tax on the taxable amount of the refund. If the amount refunded to the purchaser by the person does not include the sales and use tax paid on the portion of the sales price of the service contract refunded, then the purchaser may apply to the Department for a refund of the pro rata amount of the sales and use tax paid based on the taxable amount of the service contract refunded to the purchaser.

The application for a refund by a purchaser must be made on Form E-588SC, Claim for Refund State, County, and Transit Sales and Use Taxes for Certain Cancelled Service Contracts, supported by documentation on the taxable amount of the service contract refunded to the purchaser from the person who refunded that amount, and filed within 30 days after the purchaser receives the refund. The date the purchaser receives a refund is considered the date of the postmark on the envelope in which the refund is received, the date of an electronic transfer, or the date of the check, whichever is later. An application for a refund filed by the purchaser after the due date is barred. Sales and use taxes for which a refund is allowed directly to the purchaser for sales and use tax paid on a service contract are not an overpayment of tax and do not accrue interest.

79-9 MIXED SERVICE CONTRACT

A mixed service contract is a service contract for real property that includes two or more services, one of which is subject to sales and use tax and one of which is not subject to sales and use tax. The sales price of or gross receipts derived from a mixed service contract are 100% subject to the general State, applicable local, and applicable transit rates of sales and use tax unless one of the following applies:

1. The person determines an allocated price for the taxable portion of the service contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. In this circumstance, the general State, applicable local, and applicable transit rates of sales and use tax apply to the allocated price of the taxable portion of the service contract.

2. The allocated price of the taxable portion of the service contract does not exceed 10% of the sales price of the contract. In this circumstance, no sales and use tax applies to the price of the contract.

79-10 BASIS OF REPORTING

A retailer who sells or derives gross receipts from a service contract must report those sales on an accrual basis of accounting, notwithstanding that the retailer reports tax on the cash basis for other sales at retail. The tax on the sales price of or the gross receipts derived from a service contract is due at the time of the retail sale, notwithstanding any portion that may be financed. If the sales price of or the gross receipts derived from the service contract is financed in whole or in part, the financed amount of the sales price of or the gross receipts derived from the service contract included in each payment is exempt from sales tax if the amount is separately stated in the contract and on the billing statement or other similar billing document provided to the purchaser at the time of the sale.

79-11 SOURCING – SERVICE CONTRACTS

A. General Sourcing

The retail sale of a service contract by the retailer or on behalf of a retailer at a location in this State is sourced to the location where the purchaser of the service contract can potentially make first use of the service. The general sourcing principles provided in SUTB 4-1 apply to the sales price of a service contract, unless otherwise provided in SUTB 79-11B.

B. Computer Software Renewal of a Service Contract

The gross receipts derived from the renewal of a service contract for prewritten software is generally sourced pursuant to SUTB 4-7. However, sourcing the renewal to an address where the purchaser received the underlying prewritten software does not constitute bad faith provided the seller has not received information from the purchaser that indicates a change in the location of the underlying software.

79-12 MANUFACTURER AND DEALER WARRANTIES, AND RECALLS

A. Manufacturer's Warranty

A manufacturer’s warranty is an explicit warranty the manufacturer of an item extends to the purchaser of the item as part of the purchase price of the item. If the item is defective, the warranty allows the purchaser to return the item and receive either a replacement for the defective item or a repair of the defective item.

Purchases by a manufacturer of a replacement item, a repair part, or repair, maintenance, and installation services to maintain or repair tangible personal property or a motor vehicle pursuant to a manufacturer's warranty is exempt from sales and use tax and may be purchased as provided in SUTB 5. This exemption also applies when the manufacturer contracts with a dealer or another person to make the repairs on behalf of the manufacturer pursuant to a manufacturer’s warranty and that dealer or person purchases the replacement item, repair part, or repair, maintenance, and installation services.

If the manufacturer does not charge the purchaser for the replacement item, repair parts, or any repair, maintenance, and installation services, no sales and use tax is due on the cost of the replacement item, parts, or services. If the manufacturer charges the purchaser for the replacement item, repair parts, or any repair, maintenance, and installation services, sales and use tax is due on the sales price of the item, parts, or services.

Note: For information regarding repair, maintenance, and installation services, refer to SUTB 75.

B. Dealer's Warranty

A dealer's warranty is an explicit warranty the seller of an item extends to the purchaser of the item as part of the purchase price of the item. If the item is defective, the warranty allows the purchaser to return the item and receive either a replacement for the defective item or the repair of the defective item. This type of warranty normally occurs when there is no manufacturer's warranty.

Purchases by a dealer of a replacement item, a repair part, or repair, maintenance, and installation services to maintain or repair tangible personal property or a motor vehicle pursuant to a dealer's warranty is exempt from sales and use tax and may be purchased as provided in SUTB 5. This exemption applies when the dealer contracts with another person to make the repairs on behalf of the dealer pursuant to a dealer's warranty and that person purchases the replacement item, repair part, or repair, maintenance, and installation services.

If the dealer does not charge the purchaser for the replacement item, repair parts, or any repair, maintenance, and installation services, no sales and use tax is due on the cost of the replacement item, parts, or services. If the dealer charges the purchaser for the replacement item, repair parts, or any repair, maintenance, and installation services, sales and use tax is due on the sales price of the item, parts, or services.

Note: For information regarding repair, maintenance, and installation services, refer to SUTB 75.

C. Manufacturer Recall

A manufacturer recall is an action by a manufacturer of an item or a component part of an item to replace the item or component part for all customers who have purchased the item due to a defect or other problem notwithstanding that a manufacturer's warranty has expired. A recall is generally made due to health or safety reasons.

The same principles that apply to a manufacturer's warranty apply to a manufacturer recall. If a charge is made for the replacement item or part, sales or use tax is due on the amount paid for the replacement item or part. If no charge is made for the replacement item or part, no sales and use tax is due on the cost of the replacement item or part. This application applies when the manufacturer makes the repairs or contracts with another person to make the repairs on behalf of the manufacturer. These principles apply for both mandatory and voluntary recalls.

SUTB 80 TELECOMMUNICATIONS SERVICE, ANCILLARY SERVICE, PREPAID TELEPHONE CALLING SERVICE, AND OTHER RELATED TOPICS

80-1 DEFINITIONS

A. The North Carolina General Statutes provide the following terms and definitions:

1. **"Ancillary service"** – A service associated with or incidental to the provision of a telecommunications service. The term includes detailed communications billing, directory assistance, vertical service, and voice mail service. A vertical service is a service, such as call forwarding, caller ID, three-way calling, and conference bridging, that allows a customer to identify a caller or manage multiple calls and call connections.

2. **"Call-by-call basis"** – A method of charging for a telecommunications service whereby the price of the service is measured by individual calls.

3. **"Call center"** – A business that is primarily engaged in providing support services to customers by telephone to support products or services of the business. A business is primarily engaged in providing support services by telephone if at least 60% of its calls are incoming.

4. **"Combined general rate"** – The State's general rate of tax set in G.S. § 105-164.4(a) plus the sum of the rates of the local sales and use taxes authorized by Subchapter VIII of Chapter 105 of the North Carolina General Statutes for every county in this State.

5. **"Mobile telecommunications service"** – A radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves and includes all of the following:

a. Both one-way and two-way radio communication services.

b. A mobile service that provides a regularly interacting group of base, mobile, portable, and associated control and relay stations for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation.

c. Any service for which a federal license is required in a personal communications service.

6. **"Place of primary use"** – The street address representative of where the use of a customer's telecommunications service primarily occurs. The street address must be the customer's residential street address or primary business street address. For mobile telecommunications service, the street address must be within the licensed service area of the service provider. If the customer who contracted with the telecommunications provider for the telecommunications service is not the end user of the service, the end user is considered the customer for the purpose of determining the place of primary use.

7. **"Postpaid calling service"** – A telecommunications service that is charged on a call-by-call basis and is obtained by making payment at the time of the call either through the use of a credit or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the requirements of a prepaid telephone calling service, except the exclusive use requirement.

8. **"Prepaid calling service"** – A right that meets all of the following requirements:

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a. Authorizes the exclusive purchase of telecommunications service.
b. Must be paid for in advance.
c. Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.
d. Is sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis.

9. **"Prepaid telephone calling service"** – A prepaid calling service or prepaid wireless calling service.

10. **"Prepaid wireless calling service"** – A right that meets all of the following requirements:

a. Authorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services.

b. Must be paid for in advance.

c. Is sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis.

11. **"Private telecommunications service"** – Telecommunications service that entitles a subscriber of the service to exclusive or priority use of a communications channel or group of channels.

12. **"Telecommunications service"** – The electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as voice-over Internet protocol or the Federal Communications Commission classifies it as enhanced or value added. The term does not include the following:

a. An information service.

b. The sale, installation, maintenance, or repair of tangible personal property.

c. Directory advertising and other advertising.

d. Billing and collection services provided to a third party.

e. Internet access service.

f. Radio and television audio and video programming service, regardless of the medium of delivery, and the transmission, conveyance, or routing of the service by the programming service provider. The term includes cable service and audio and video programming service provided by a mobile telecommunications service provider.

g. Ancillary service.

h. Certain digital property.

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B. The Streamlined Agreement provides the following terms and definitions:

1. **"Air-to-ground radiotelephone service"** – A "radio service," as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

2. **"Coin-operated telephone service"** – A telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate.

3. **"Communications channel"** – A physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

4. **"Customer"** – The person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services. Customer does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

5. **"Customer channel termination point"** – The location where the customer either inputs or receives the communications.

6. **"End user"** – The person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

7. **"Home service provider"** – The facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunication services.

8. **"Pay telephone service"** – A telecommunications service provided through any pay telephone.

9. **"Service address"** – The service address is:

a. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

b. If the location in SUTB 80-1B.9.a is not known, "service address" means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

c. If the locations in SUTB 80-1B.9.a and SUTB 80-1B.9.b are not known, "service address" means the location of the customer's place of primary use.

10. **"Value-added non-voice data service"** – A service that otherwise meets the definition of "telecommunications service" in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

80-2 TELECOMMUNICATIONS SERVICE AND ANCILLARY SERVICE

A. Tax Imposed

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The gross receipts derived from providing telecommunications service and ancillary service in this State, including any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction, are subject to the combined general rate of sales and use tax. A person who provides telecommunications service or ancillary service is considered a retailer for sales and use tax purposes.

Gross receipts derived from telecommunications service or ancillary service include, but are not limited to:

1. Receipts from flat rate service, service provided on a call-by-call basis, a postpaid calling service, mobile telecommunications service, and private telecommunications service.

2. Charges for directory assistance, directory listing that is not yellow page classified listing, call forwarding, call waiting, three-way calling, caller ID, voice mail, and other similar services.

3. Customer access line charges billed to subscribers for access to the intrastate or interstate inter-exchange network.

4. Charges billed to a pay telephone provider that uses the telecommunications service to provide pay telephone service.

5. Charges for reconnecting services to customers after services have been terminated for nonpayment and charges for disconnecting services.

6. Allowable surcharges imposed to recoup assessments for the Universal Service Fund.

7. Paging service, both one-way and two-way.

8. Installation charges by the retailer to provide telecommunication services or ancillary service.

B. Exclusions

Gross receipts derived from the following are not subject to sales and use tax as telecommunications service and ancillary service; however, the sales price or gross receipts derived from such sales may be subject to sales and use tax under another imposition:

1. Radio and television audio and video programming service, regardless of the medium of delivery, and the transmission, conveyance, or routing of the service by the programming service provider. The term includes cable service and audio and video programming service provided by a mobile telecommunications service provider.

2. Directory advertising, yellow-page classified listings, and other advertising.

3. An information service is a service that generates, acquires, stores, processes, or retrieves data and information and delivers it electronically to or allows electronic access by a consumer whose primary purpose for using the service is to obtain the processed data or information. For additional information refer to SUTB 48.

4. Internet access service, electronic mail service, electronic bulletin board service, or similar on-line services.

5. Billing and collection services provided to a third party.

6. Charges for bad checks or late payments.

C. Exemptions

Gross receipts derived from the following are not subject to sales and use tax as telecommunications service and ancillary service as a result of a specific exemption; however, the sales price or gross receipts derived from such sales may be subject to sales and use tax under another imposition:

1. 911 service charges remitted to the 911 Fund.

2. Receipts of a pay telephone provider from the sale of pay telephone service.

3. Charges for telephone service made by a hotel, motel, or another entity whose gross receipts are taxable as a rental of an accommodation when the charges are incidental to the occupancy of the entity's accommodations.

4. Charges for telecommunication services that are a component part of or integrated into telecommunication services that are resold. This exemption does not apply to service purchased by a pay telephone provider who uses the service to provide pay telephone service. Examples of services that are resold include carrier charges for access to an intrastate or interstate interexchange network, interconnection charges paid by a provider of mobile telecommunications service, and charges for the sale of unbundled network elements.

5. Telecommunications service that is resold as part of a prepaid telephone calling service.

6. Telecommunications service purchased or provided by a State agency or to a unit of local government for the State Network or another data network owned or leased by the State or a unit of local government.

7. Sales of telecommunications service to the United States Government or any agency thereof. In order to be a sale to the United States Government, the Government or agency involved must make the purchase of the services and pay directly to the retailer the purchase price of the services. Telecommunication service providers shall obtain a purchase requisition one time from each agency for their records.

D. Sourcing

1. General Sourcing Principles – Telecommunications and Ancillary Service

The following general sourcing principles apply to telecommunications services unless the service falls under one of the exceptions set out in SUTB 80-2D.2. Ancillary service is provided in this State if the telecommunications service to which it is ancillary is provided in this State.

a. **Flat Rate** – A telecommunications service that is not sold on a call-by-call basis is sourced to North Carolina if the place of primary use is in this State.

b. **General Call-by-Call** – A telecommunications service that is sold on a call-by-call basis and is not a postpaid calling service is sourced to North Carolina in the following circumstances:

(1) The call both originates and terminates in the State.

(2) The call either originates or terminates in the State and the telecommunications equipment from which the call originates or

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terminates and to which the call is charged is located in the State. This applies regardless of where the call is billed or paid.

c. **Postpaid** – A postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system or, if the system used to transport the signal is not the seller's system, by information the seller receives from its service provider.

2. Exceptions

The following telecommunications services and products are sourced in accordance with the principles set out in this subsection:

a. **Mobile** – Mobile telecommunications service is sourced to the place of primary use, unless the service is prepaid wireless calling service or is air-to-ground radiotelephone service. Air-to-ground radiotelephone service is a postpaid calling service that is offered by an aircraft common carrier to passengers on its aircraft and enables a telephone call to be made from the aircraft. This sourcing principle applies to a service or product provided as an adjunct to mobile telecommunications service if the charge for the service or product is included within the term charges for mobile telecommunications services under the Federal Mobile Telecommunications Sourcing Act.

b. **Prepaid** – Prepaid telephone calling service is sourced in accordance with G.S. § 105-164.4B.

c. **Private –** Gross receipts from private telecommunications service is sourced as follows:

(1) If all the customer's channel termination points are located in this State, the service is sourced to this State.

(2) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel termination points, the charge for each channel termination point located in this State is sourced to this State.

(3) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel mileage, the following applies:

(i) A charge for a channel segment between two channel termination points located in this State is sourced to this State.

(ii) Fifty percent of a charge for a channel segment between a channel termination point located in this State and a channel termination point located in another state is sourced to this State.

(4) If all the customer's channel termination points are not located in this State and the service is not billed on the basis of channel termination points or channel mileage, a percentage of the charge for the service is sourced to this State. The percentage is determined by dividing the number of channel termination points in this State by the total number of channel termination points.

3. Mobile Telecommunications Sourcing Act

The definitions and provisions of the federal Mobile Telecommunications Sourcing Act apply to the sourcing and taxation of mobile telecommunications services.

E. Basis of Reporting

Telecommunications service and ancillary service providers must report receipts from sales of telecommunications service and ancillary service on an accrual basis. The sale of the services is considered to occur when the retailer bills the customer for the sale. Such receipts must be reported on Form E-500E, Combined General Rate Sales and Use Tax Return (Utility, Liquor, Gas, and Other). Telecommunications service and ancillary service providers are required to file returns and remit sales and use tax as provided in SUTB 3.

F. Bundled Transaction

When a taxable telecommunications service or ancillary service is bundled with a product that is not taxable or that is taxed at a different rate, and the transaction meets the definition of a "bundled transaction," the following apply:

1. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

2. If the price is attributable to products that are subject to tax at different rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standard the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

3. The provisions of this section shall apply unless otherwise provided by federal law.

Note: For information regarding bundled transactions, refer to SUTB 16.

G. Sale of Telecommunications Equipment by Telecommunication Providers

Telecommunications providers and other retailers that are engaged in the business of selling or leasing telecommunications equipment are liable for collecting and remitting the general State, applicable local, and applicable transit rates of sales and use tax on the sales price of or gross receipts derived from such sales or leases.

80-3 PREPAID TELEPHONE CALLING SERVICE

A. Tax Imposed

The general State, applicable local, and applicable transit rates of sales and use tax apply to the gross receipts derived from the sale or recharge of a prepaid telephone calling service. The tax applies regardless of whether tangible personal property, such as a card or a telephone, is transferred. The tax applies to a service that is sold in conjunction with prepaid wireless calling service. Prepaid telephone calling services are taxed at the point of sale instead of the place of use. A prepaid telephone calling service is not subject to tax as a telecommunications service.

Note: The 911 Service Charge for prepaid wireless telecommunications service applies to the sale of prepaid telephone calling service. For information regarding the 911 Service Charge, refer to the 911 Service Charge for Prepaid Wireless Telecommunications Bulletin.

B. Sourcing – Prepaid Telephone Calling Service

Prepaid telephone calling services are taxable at the point of sale instead of at the point of use and are sourced in the same manner as sales of tangible personal property as provided in SUTB 4. Provided however, in the case of a sale of prepaid wireless calling service, the rule provided in Section 310, Subsection (A)(5) of the Streamlined Agreement, shall include as an option the location associated with the mobile telephone number.

80-4 TELEPHONE COMPANIES

A. Sales to a Telephone Company of Central Office Equipment, Switchboard Equipment, Private Branch Exchange Equipment, and Other Terminal Equipment

Sales to a telephone company regularly engaged in providing telephone service to subscribers on a commercial basis of central office equipment, switchboard equipment, private branch exchange equipment, terminal equipment other than public pay telephone terminal equipment, and parts and accessories attached thereto are exempt from sales and use tax. For purposes of determining the items that may be properly included in the terms central office equipment, switchboard equipment, private branch exchange equipment, and terminal equipment, reference is made to Accounts 2210, 2211, 2212, 2220, 2230, 2231, 2232, 2310, 2311, 2341, and 2362 of Title 47 – Telecommunication, Chapter 1, Part 32, Uniform System of Accounts For Telecommunications Companies, of the Code of Federal Regulations, that are hereby incorporated by reference. This section has no application to future changes in the Federal Communications Commission's rules and regulations until such changes are reviewed by the Secretary to determine the application of sales and use tax to the tangible personal property affected by such changes.

1. Computer Software

Computer software used to provide ancillary service, cable service, Internet access service, telecommunications service, or video programming is exempt from sales and use tax when purchased by a person that provides cable service, telecommunications service, or video programming as provided in SUTB 5.

2. Accounts 2210, 2211, 2212, 2220, 2230, 2231 and 2232; Central Office Equipment

These accounts include switchboards and other equipment, instruments, and apparatus necessary to the functions of central offices. Sales to and purchases by the above-referred to a telephone company of the items included in Central Office Equipment Accounts, irrespective of whether the items are classified in the Uniform System of Accounts as capital expenditures or as maintenance expense, are exempt from sales and use tax. Examples of items contained in Central Office Equipment Accounts 2210, 2211, 2212, 2220, 2230, 2231, and 2232 that are taxable at the general State, applicable local, and applicable transit rates of sales and use tax are:

a. Aisle-lighting equipment attached to buildings.

b. Minor building alterations when tangible personal property not properly termed central office equipment is affixed or attached to or in any manner becomes a part of a building or structure.

c. Cable, other than that connecting central office units to each other or to distributing frames.

d. Covers for transmission power apparatus.

e. Desks and tables, unless equipped with central office equipment when purchased.

f. Foundations for engines and other equipment when part of a building.

g. Loading coils used outside central office, loud speaker equipment, operators' chairs.

h. Platforms, rolling ladders, tarpaulins, ticket holders, toll ticket carriers.

i. Water stills for battery service.

j. Tools and portable testing equipment, regardless of where used.

3. Account 2124; General Purpose Computers

This account includes computers and peripheral devices designed to perform general administrative information processing activities; therefore, these computers and peripheral devices are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Administrative information processing includes, but is not limited to, activities such as the preparation of financial, statistical, or other business analytical reports; preparation of payroll, customer bills, and cash management reports, and other records and reports not specifically designed for testing, diagnosis, maintenance, or control of the telecommunications network facilities.

4. Account 2311; Station Apparatus

This account includes private branch exchange equipment in addition to station apparatus. Equipment that is properly included in the term “private branch exchange equipment,” whether classified by the Uniform System of Accounts as capital expenditures or as maintenance expense, is exempt from sales and use tax; however, all other equipment in this account is subject to the general State, applicable local, and applicable transit rates of sales and use tax. Examples of items contained in Account 2311 that are taxable at the general State, applicable local, and applicable transit rates of sales and use tax are desk sets, handsets, wall sets, mobile telephone equipment, backboards, battery boxes, booths, coil collectors, station wiring, protectors, arresters, ground rods, clamps, wire, and similar associated equipment.

5. Account 2341; Large Private Branch Exchange

This account contains equipment and apparatus necessary to the operation of the above named exchange. Equipment and apparatus contained in this account that are properly included in the term “private branch exchange equipment,” whether classified under the Uniform System of Accounts as capital expenditures or as maintenance expense, are exempt from sales and use tax; however, any tangible personal property that is station apparatus is not included. Examples of items included in Account 2341 that are taxable at the general State, applicable local, and applicable transit rates of sales and use tax are operators' chairs and equipment.

6. Account 2362; Other Terminal Equipment

This account includes the original purchase price of other non-CPE (customer premises equipment) terminal equipment not specifically provided for elsewhere and includes items such as specialized communications equipment provided to meet the needs of the

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disabled, over-voltage protection equipment, and multiplexing equipment to deliver multiple channels to customers. Sales of equipment in this account and parts and accessories attached to the equipment are exempt from sales and use tax when used in providing telephone service to subscribers on a commercial basis.

B. Sales to Telephone Companies Subject to the General State, Applicable Local, and Applicable Transit Rates of Sales and Use Tax

All sales of tangible personal property to telephone companies that is not properly included in the terms "central office equipment," "switchboard equipment," "private branch exchange equipment," or "terminal equipment" other than public pay telephone terminal equipment used in providing telephone services to their subscribers, as explained in this section, are subject to the general State, applicable local, and applicable transit rates of sales and use tax. This includes all canned or prewritten computer programs to be used for administrative purposes unless specifically exempt by statute; all equipment, materials, supplies and apparatus to be used for distribution purposes; all building materials, supplies, fixtures and equipment of every kind and description annexed to or in any manner becoming a part of a building or structure; apparatus or equipment chargeable to other accounts pursuant to the instructions set out in the notes appearing under Accounts 2210, 2211, 2212, 2220, 2230, 2231, 2232, 2310, 2311, 2341, and 2362 in Title 47 - Telecommunication, Chapter 1, Part 32, Uniform System of Accounts For Telecommunications Companies, of the Code of Federal Regulations that are hereby incorporated by reference including subsequent amendments and revisions. These rules and regulations are available on the Code of Federal Regulations Website.

80-5 CELLULAR TELEPHONE COMPANIES

Certain sales to cellular telephone companies, that are licensed by the Federal Communications Commission and that provide their customers, on a commercial basis, access to local telecommunications company lines to make and receive telephonic quality communications by use of radio frequencies are exempt from sales and use tax. Sales to cellular telephone companies of microwave transmitters and receivers, antennas, radio channel units, and central office telecommunications equipment, switchboard or private branch exchange equipment, and prewritten computer programs used in providing telecommunications services to subscribers are exempt from sales and use tax. Sales to cellular telephone companies of towers to support antennas used to transmit and receive signals of microwave radios used in providing such telephonic quality communications are exempt from sales and use tax. Sales to cellular telephone companies of antenna cable used in transmitting the radio signals from the microwave antenna to the microwave transmitter or receiver are exempt from sales and use tax. Sales to cellular telephone companies of central office equipment, switchboard equipment, private branch exchange equipment, terminal equipment other than public pay telephone terminal equipment, and parts and accessories attached to the equipment are exempt from sales and use tax.

80-6 DIRECT PAY PERMIT FOR CALL CENTERS FOR TELECOMMUNICATIONS SERVICE AND ANCILLARY SERVICE

For information regarding a direct pay permit for telecommunications service and ancillary service, refer to SUTB 24-5.

80-7 TANGIBLE PERSONAL PROPERTY SOLD BELOW COST WITH A SERVICE CONTRACT (CELLULAR TELEPHONES AND OTHER SIMILAR PROPERTY)

A. Conditional Contract Defined

A conditional contract is a contract in which all of the following conditions are met:

1. A seller transfers an item of tangible personal property to a consumer on the condition that the consumer enter into an agreement to purchase services on an ongoing basis for a minimum period of at least six months.

2. The agreement requires the consumer to pay a cancellation fee to the seller if the consumer cancels the contract for services within the minimum period.

3. For the item transferred, the seller charges the consumer a price that, after any price reduction the seller gives the consumer, is below the purchase price the seller paid for the item. The seller's purchase price is presumed to be no greater than the price the seller paid, as shown on the seller's purchase invoice, for the same item within 12 months before the seller entered into the conditional contract.

B. Tax Due

If the seller transfers an item of tangible personal property as a part of a conditional contract, a sale has occurred, and the sales price of the item is presumed to be the retail price at which the item would sell in the absence of the conditional contract. Sales tax at the general State, applicable local, and applicable transit rates of tax is due at the time of the transfer on the following:

1. Any part of the presumed sales price the consumer pays at that time, if the service in the contract is taxable at the combined general rate.

2. The presumed sales price, if the service in the contract is not taxable at the combined general rate.

3. The percentage of the presumed sales price that is equal to the percentage of the service in the contract that is not taxable at the combined general rate, if any part of the service in the contract is not taxable at the combined general rate.

SUTB 81 THIRD PARTY DROP SHIPMENTS, TRANSFERS, AND PERFORMANCE OF SERVICES

81-1 DROP SHIPMENTS, TRANSFERS, AND SERVICES SUBJECT TO SALES AND USE TAX

Retailers or wholesale merchants located in-state or out-of-state engaged in business in North Carolina that make retail sales of taxable items to out-of-state users or consumers where the item is sourced to the purchaser's locations in North Carolina are subject to the applicable rates of sales and use tax.

81-2 CUSTOMERS LIABLE FOR USE TAX

A North Carolina wholesale merchant is not required to collect North Carolina sales tax on its sales to an out-of-state retailer or an out-of-state wholesale merchant properly registered in another taxing jurisdiction when it drop ships taxable tangible personal property to the out-of-state retailer's or out-of-state wholesale merchant's customers in North Carolina. The out-of-state retailer's or out-of-state wholesale merchant's customers in North Carolina are liable for reporting the applicable rates of use tax on these purchases.

This position is based on the decision by the North Carolina Court of Appeals in the case *VSA, Inc. v. Faulkner*, 126 N.C. App. 421, 485 S.E.2d 348 (1997). The facts in the case were as follows:

1. Taxpayer was a North Carolina wholesaler.

2. Taxpayer was properly registered for North Carolina sales and use tax purposes.

3. Taxpayer sold its products to vendees located in another state.

4. Taxpayer's vendees were not engaged in business in North Carolina.

5. Taxpayer's vendees were properly registered in their taxing jurisdictions.

6. Taxpayer's vendees resold the products to North Carolina customers.

7. Taxpayer delivered the products to its vendees' customers in North Carolina.

SUTB 82 USED PROPERTY

82-1 USED PROPERTY

Retail sales of used tangible personal property that the retailer acquired by any means other than by repossession are subject to the applicable rate of sales and use tax. In cases where a retailer reacquires property that is collateral for a nonrecourse endorsement by the retailer to a financing institution, the retailer has actually repurchased the property. In such case, it is not property repossessed by the retailer and the sales price of such property is subject to the applicable rate of sales and use tax when sold at retail. Used or secondhand property accepted in lieu of commissions is deemed to have been purchased. The original stock in trade of a retailer is not limited to newly manufactured articles; therefore, the fact that tangible personal property is secondhand or used does not exempt sales of such property from sales and use tax.

82-2 SALES OF USED PARTS REMOVED FROM JUNKED PROPERTY

Retail sales of used parts that have been removed from junked tangible personal property, including motor vehicles, by retailers are subject to the general State, applicable local, and applicable transit rates of sales and use tax. When repossessed articles are dismantled and the parts therefrom are sold at retail by such businesses, the parts have lost their identity as repossessed articles and are subject to sales and use tax.

Note: For information regarding repossessions refer to SUTB 76.

82-3 USED PROPERTY SOLD FOR REPAIR CHARGES

Taxable tangible personal property sold to satisfy repair or storage charges because the owner fails to reclaim it within a stipulated period of time when the retailer is engaged in the business of selling similar items, is subject to sales and use tax.

82-4 SALES OF REPAIR PARTS FOR RECONDITIONING USED PROPERTY

A. Sales of repair parts to retailers or wholesale merchants for use in reconditioning used property for sale to other retailers or wholesale merchants for resale are exempt from sales and use tax when the parts become a part of the reconditioned used property and are purchased as provided in SUTB 5.

B. Sales of repair parts to retailers or wholesalers to be attached to tangible personal property which has been repossessed by the retailer or wholesaler where the used tangible personal property will be sold, leased or rented and tax was paid on the original sales price of the tangible personal property are classified as wholesale sales exempt from sales or use tax when the parts become a part of the used tangible personal property sold and are purchased as provided in SUTB 5.

Note: For information regarding repossessions refer to SUTB 76.

SUTB 83 VENDING MACHINES

83-1 SALES OF VENDING MACHINES

Sales of vending machines to any person for use are subject to the general State, applicable local, and applicable transit rates of sales and use tax. The lease or rental of vending machines to users are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Sales of vending machines to a person for leasing purposes or for the purpose of resale are not subject to the tax when purchased as provided in SUTB 5.

83-2 SALES THROUGH VENDING MACHINES

A. Vending Machines

Any person that makes sales of tangible personal property through vending machines is required to register with the Department and pay sales and use tax on the sales price of the items sold.

B. Coin-Operated Vending Machine Exemption

Fifty percent (50%) of the sales price of tangible personal property sold through a coin-operated vending machine is exempt from sales and use tax. This exemption does not apply to tobacco and newspapers.

C. Reporting the Tax

Vending machine operators are permitted to separate their receipts that are taxed on 100% of the sales price from their receipts that are taxed on 50% of their sales price and, after calculating the taxable amounts of each and adding the two taxable amounts together, may divide the total taxable amount by 100% plus the combined percentage of the general State, applicable local, and applicable transit rates of sales and use tax to arrive at taxable sales reportable on their sales and use tax return. Records must be kept to support such sales. (*For example, if the general State, applicable local, and applicable transit rate is 6.75% in the county where the vending machine is located, the vending machine operator may divide the total taxable amount by 106.75% to arrive at the taxable sales to be reported on the sales and use tax return.*)

SUTB 84 VETERINARIANS

84-1 DEFINITIONS

G.S. § 105-164.3 provides the following terms and definitions:

1. **"Drug"** – A compound, substance, or preparation or a component of one of these that meets any of the following descriptions and is not food, a dietary supplement, or an alcoholic beverage:

   a. Is recognized in the United States Pharmacopoeia, Homeopathic Pharmacopoeia of the United States, or National Formulary.

   b. Is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

   c. Is intended to affect the structure or function of the body.

2. **"Over-the-counter-drug"** – A drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The label includes either of the following:

   a. A Drug Facts panel.

   b. A statement of its active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

3. **"Prescription"** – An order, formula, or recipe issued orally, in writing, electronically, or by another means of transmission by a physician, dentist, veterinarian, or another person licensed to prescribe drugs.

84-2 SALES BY VETERINARIANS

A. Sales of Drugs

The retail sale of the following drugs, including their packaging materials and any instructions or information about the drugs included in the package with the drugs, are exempt from sales and use tax. This exemption does not apply to pet food or feed for animals.

1. Drugs required by federal law to be dispensed only on prescription.

2. Over-the-counter drugs sold on prescription. This exemption does not apply to purchases of over-the-counter drugs by hospitals and other medical facilities for use and treatment of patients.

3. Insulin.

Drugs not sold on prescription are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Insulin is exempt from sales and use tax whether or not sold on prescription.

B. Sales of Products Other than Drugs

1. Retail Sales

A veterinarian that, as a regular part of the practice, maintains an inventory of tangible personal property that is not exempt by statute must collect and remit the general State,

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applicable local, and applicable transit rates of sales and use tax thereon. Such items may include items used for the treatment of fleas or ticks, soap, pet food, collars, toys, and identification tags.

2. Prescription Pet Foods, Vitamins, and Joint Supplements

Generally, dietary pet food, vitamins, and joint supplements are not drugs or over-the-counter drugs, notwithstanding that they may be prescribed by a veterinarian in the treatment of a patient, and are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

3. Animal Blood

Retail sales of animal blood are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

C. Sales of Remedies, Vaccines, and Medications to a Qualifying or Conditional Farmer

Sales by a veterinarian of remedies, vaccines, and medications to a qualifying or conditional farmer for use in farming operations in the treatment of animals held or produced for commercial purposes are exempt from sales and use tax. The terms “remedies,” “vaccines,” and “medications” also include tonics for internal use, vitamins, ointments, liniments, antiseptics, and other medicinal substances having preventive and curative properties in the prevention, treatment, or cure of disease in animals. The exemption does not apply to purchases for pets.

Animals include swine, cattle, horses, mules, sheep, chickens, turkeys, and other similar domestic animals, bees, fowl, and fish held or produced for commercial purposes.

Note: For more information on qualifying or conditional farmers, refer to SUTB 27.

84-3 PURCHASES BY VETERINARIANS FOR USE

A. Use of Drugs

A veterinarian is considered to be the user or consumer of drugs that are purchased for use in administering treatment to patients. Therefore, purchases by a veterinarian for such use, unless otherwise exempt from tax by statute, are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Purchases of drugs required by federal law to be dispensed only on prescription by a physician, veterinarian, or person licensed to prescribe for use in the treatment of patients are exempt from sales and use tax. Purchases of over-the-counter drugs purchased by a physician, veterinarian, or person licensed to prescribe for use in the treatment of patients are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Insulin is exempt from sales and use tax whether or not sold on prescription.

B. Use of Products Other Than Drugs

1. Prescription Pet Foods, Vitamins, and Joint Supplements

Generally, dietary pet food, vitamins, and joint supplements are not drugs, notwithstanding that they may be prescribed by a veterinarian in the treatment of a patient. A veterinarian is liable for the general State, applicable local, and applicable transit rates of sales and use tax thereon when such items are used by the veterinarian.

2. Other Items

A veterinarian may, as a regular part of the practice, use items from inventory where the veterinarian is liable for the general State, applicable local, and applicable transit rates of sales and use tax thereon. Such items may include pet food, food for animals, items used in the treatment of fleas and ticks, soap, collars, toys, and identification tags.

3. Purchases of Medical Supplies, Instruments, Equipment, and Animal Blood

Purchases by a veterinarian of medical supplies, instruments, equipment, and animal blood used for testing, diagnosis, prevention, treatment, or cure of diseases in animals and pets are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Medical supplies include cotton, gauze, adhesive tape, bandages, and other dressings. Medical instruments and equipment include knives, needles, scissors, microscopes, X-ray machines, and other laboratory equipment. Although some instruments and equipment may be classified as durable medical equipment which is exempt from sales and use tax when sold on prescription, they are not acquired by veterinarians pursuant to a prescription and the exemption does not apply.

C. Services for a Qualifying or Conditional Farmer

A qualifying item listed below purchased to fulfill a service for a qualifying or conditional farmer is exempt from sales and use tax to the same extent as if purchased directly by the qualifying or conditional farmer.

1. Remedies, vaccines, and medications including all medicines in the generally accepted sense of the term, tonics for internal use, vitamins, ointments, liniments, antiseptics, anesthetics, and other medicinal substances having preventive and curative properties in the prevention, treatment, or cure of disease in animals.

2. Litter materials.

3. Feed for animals including bulk sales of bread and dietary supplements such as minerals, oyster shells, salt, bone, meal, or other similar preparations or compounds that are fed directly to, or to be mixed with feed for animals for normal growth, maintenance, lactation, or reproduction, but does not include sand or grit.

4. Rodenticides that include any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents.

5. Insecticides that include any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects.

6. Herbicides that include any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

7. Fungicides that include any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi or plant disease.

8. Pesticides that include any substance used to kill rats, mites, insects, and bacteria.

9. Defoliants for use on cotton or other crops.

10. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.

11. Semen.

A person that purchases one of the items allowed under this subsection without payment of sales or use tax must provide a Certificate of Exemption to the retailer and insert the name of the qualifying farmer or conditional farmer, the qualifying or conditional farmer's address, and the six-digit exemption certificate number issued to the holder of such certificate on Line L Other (explain) under section number five of the form. A qualifying farmer exemption certificate number issued by the Department begins with the numeral seven and a conditional farmer exemption certificate number issued by the Department begins with the numeral eight.

A person that purchases an item exempt from tax pursuant to this subsection must maintain records to substantiate that an item is used to provide a service for a qualifying or conditional farmer.

Note: For more information on qualifying or conditional farmers, refer to SUTB 27.

84-4 VETERINARIANS – BUNDLED TRANSACTIONS

If certain taxable and exempt medical products are sold together for one non-itemized price, the transaction may be considered a bundled transaction and subject to specific taxability rules.

Note: For information on bundled transactions, refer to SUTB 16.

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SUTB 85 VIDEO PROGRAMMING, SATELLITE DIGITAL AUDIO RADIO SERVICE, AND OTHER RELATED ITEMS

85-1 DEFINITIONS

G.S. § 105-164.3 provides the following terms and definitions:

1. **"Cable service"** – The one-way transmission to subscribers of video programming or other programming service and any subscriber interaction required to select or use the service.

2. **"Combined general rate"** – The State's general rate of tax set in G.S. § 105-164.4(a) plus the sum of the rates of the local sales and use taxes authorized by Subchapter VIII of Chapter 105 of North Carolina General Statutes for every county in this State.

3. **"Direct-to-home satellite service"** – Programming transmitted or broadcast by satellite directly to the subscribers' premises without the use of ground equipment or distribution equipment, except equipment at the subscribers' premises or the uplink process to the satellite.

4. **"Production company"** – A person engaged in the business of making original motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes.

5. **"Satellite digital audio radio service"** – A radio communication service in which audio programming is digitally transmitted by satellite to an earth-based receiver, whether directly or via a repeater station.

6. **"Video programming"** – Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery.

85-2 TAX IMPOSED

A. Video Programming

The gross receipts derived from providing video programming to a subscriber in this State, including any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction, are subject to the combined general rate of sales and use tax. A person engaged in the business of providing video programming is considered a retailer and must register with the Department and collect and remit the combined general rate of sales tax on its sales.

B. Satellite Digital Audio Radio Service

The gross receipts derived from providing satellite digital audio radio service are subject to the general State, applicable local, and applicable transit rates of sales and use tax. A person engaged in the business of providing satellite digital audio radio service is a retailer and must register with the Department and collect and remit sales tax on its sales.

85-3 APPLICATION OF TAX TO VIDEO PROGRAMMING

A. Examples of services or charges considered to be part of the gross receipts derived from providing video programming subject to the combined general rate of sales and use tax include, but are not limited to:

1. Cable service.

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2. Direct-to-home satellite service.
3. Basic cable/satellite service.
4. Deluxe cable/satellite service.
5. Premium cable/satellite service.
6. Pay-per-view cable/satellite service.
7. Repair, maintenance, and installation services.
8. Contribution in aid of construction.

Installation charges by a retailer that are part of the sales price of providing video programming are subject to the combined general rate of sales and use tax.

B. Examples of charges subject to the general State, applicable local, and applicable transit rates of sales and use tax include, but are not limited to:

1. Converter rentals.
2. VOIP equipment sales and rentals.
3. Internet equipment sales and rentals.
4. Service contracts.

C. Examples of charges that are not subject to the combined general rate or to the applicable sales and use tax rates when separately stated on the invoice or similar billing document given to the purchaser at the time of sale include, but are not limited to:

1. Franchise fees.
2. Advertising.
3. Commission income.
4. Late fees.
5. Returned check charges.
6. Tower/satellite rental income.
7. Program launch support.

D. Bundled Transactions – Video Programming

A retailer that bundles a taxable service (such as video programming) with a non-taxable service (such as Internet access service) or a service with tangible personal property for a single charge must collect tax on the gross receipts applicable to the taxable service or tangible personal property. Tax is due on the allocated price of the taxable component of the bundled transaction based on a reasonable allocation of revenue to that component.

Note: For information on bundled transactions, refer to SUTB 16.

85-4 SALES BY RADIO AND TELEVISION COMPANIES

Receipts of radio and television companies for the broadcasting or telecasting of programs, except as provided in SUTBs 85-2 and 85-3, are not subject to sales and use tax.

85-5 MOVIE THEATRES

Gross receipts of movie theatres derived from admission charges are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Movie theaters making taxable sales of food or other tangible personal property, through concession stands or otherwise, must collect and remit the applicable rates of sales and use tax on such sales.

Note: For information on admission charges, refer to SUTB 7.

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85-6 SALES TO CABLE SERVICE PROVIDERS

A. Sales to a cable service provider of broadcasting equipment and parts and accessories attached to the equipment are exempt from sales and use tax. Examples of exempt broadcasting equipment include towers and antenna. Broadcasting equipment does not include cable for purposes of the exemption.

A cable service provider is a cable television company that:

1. Receives payment or other consideration from its subscribers for cable service;
2. Uses broadcasting equipment, parts and accessories attached to the equipment, and a tower to receive and prepare signals for transmission over its cable systems; and
3. Is regulated and supervised by the Federal Communications Commission.

B. Lease or rental of films, motion picture films, transcriptions, and recordings to a cable service provider operating under a certificate from the Federal Communications Commission, are exempt from sales and use tax.

C. Taxable tangible personal property purchased by cable service providers, other than towers, antennas, and other broadcasting equipment and parts and accessories attached to the equipment, is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

D. Computer software sold to a cable service provider to provide ancillary service, cable service, Internet access service, telecommunications service, or video programming is exempt from sales and use tax.

85-7 SALES TO COMMERCIAL RADIO AND TELEVISION COMPANIES

A. Sales to commercial radio and television companies that operate under the regulation and supervision of the Federal Communications Commission of towers, broadcasting equipment, and parts and accessories attached to the equipment, are exempt from sales and use tax.

B. Sales to a television company licensed by the Federal Communications Commission of broadcasting equipment and parts and accessories attached to the equipment are exempt from sales and use tax. Items such as supplies, chemicals, paper, and other photographic developing equipment that are not broadcasting equipment or parts or accessories attached to broadcasting equipment are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

C. Taxable items purchased by such radio and television companies other than towers, antennas, and broadcasting equipment or parts and accessories attached to the equipment are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

D. Computer software sold to a person who provides cable service, telecommunications service, or video programming that is used to provide ancillary service, cable service, Internet access service, telecommunications service, or video programming is exempt from sales and use tax.

85-8 SALES TO PRODUCTION COMPANIES

A. Sales to a production company of film that becomes an ingredient or component part of release prints that are actually produced and sold, leased, or rented to its customers are exempt from sales and use tax. Also, chemicals that are used to develop release prints that are for sale, lease, or rental are exempt from sales and use tax.

B. Sales to production companies of cameras, film, and props or building materials used in the construction of sets that are used in the actual filming of movies for sale, lease, or rental are subject

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to the general State, applicable local, and applicable transit rates of sales and use tax. Sales of chemicals and equipment used to develop and edit film that is used to produce release prints are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

C. Sales to production companies of machinery and equipment and other property for use in receiving tangible personal property, certain digital property and other activities, such as raw materials storage, finished goods storage, distribution or administration, are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

85-9 SALE, LEASE, OR RENTAL OF FILMS, VIDEOTAPE CASSETTES, AND OTHER EQUIPMENT

A. The gross receipts derived from the lease or rental of motion picture film, prerecorded videotape cassettes, or prerecorded compact discs to theatres or similar businesses for exhibition to the public and the gross receipts derived from the lease or rental of such film, prerecorded videotape cassettes, or prerecorded compact discs to schools, churches, hospitals, prisons, and similar institutions and organizations for exhibition to students, congregations, patients, and inmates are exempt from sales or use tax. The gross receipts derived from the lease or rental of motion picture film, prerecorded videotape cassettes, or prerecorded compact discs to businesses, individuals, organizations, and other lessees for any use other than for public exhibition are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

B. Projection equipment, screens, advertising materials, and other tangible personal property that are leased, rented, or sold at retail for use in showing film, videotape cassettes, prerecorded compact discs, or certain digital property regardless of whether the film, videotape, prerecorded compact discs, or certain digital property is privately or publicly exhibited, are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

85-10 AUDIOVISUAL MASTER TAPES

A. Sales of audiovisual masters made or used by a production company in making visual and audio images for first generation reproduction are exempt from sales and use tax. For purposes of this exemption, an audiovisual master is an audio or video film, tape, or disk or another audio or video storage device from which all other copies are made.

B. Purchases of tangible personal property that physically becomes a part of an audiovisual master made or used by a production company and any charges for services that go into the fabrication, production, or delivery of an audiovisual master are exempt from sales and use tax. Purchases of tangible personal property for use in various stages of the production of an audiovisual master, but that do not physically become a part of the master, are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Sales of audiovisual masters by anyone other than a production company are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

SUTB 86 WAREHOUSE AND STORAGE

86-1 MOVING SERVICE

Sales of or the gross receipts derived from a moving service are not subject to sales and use tax. For the purpose of this SUTB, the term “moving service” means a service for hire to transport or relocate a person's existing belongings to or from any destination.

86-2 SELF-STORAGE UNITS AT STORAGE FACILITY

The gross receipts derived from self-storage units at a storage facility are not subject to sales and use tax.

86-3 PORTABLE STORAGE CONTAINERS

The gross receipts derived from the lease or rental of portable storage containers that are left at customer’s premises to be used as storage are subject to the general State, applicable local, and applicable transit rates of sales and use tax. The tax is levied on the gross receipts that include, but are not limited to, charges for delivery, set-up, pick-up, and other charges by the retailer for any service necessary to complete the sale.

86-4 STORAGE OF A MOTOR VEHICLE

Storage of a motor vehicle, provided the charge is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale, is exempt from sales and use tax.

86-5 WAREHOUSE PERSONS SERVICES

The gross receipts derived from services rendered by warehouse persons in moving, storing, packing, and shipping tangible personal property belonging to other persons are not subject to sales and use tax.

Crating, boxing, packaging, and packing materials purchased by warehouse persons to be used by them in moving, storing, packing, or shipping tangible personal property are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

86-6 SALES OF SECONDHAND FURNITURE BY WAREHOUSE PERSONS

Except as provided in the paragraph below, retail sales by warehouse persons of secondhand furniture or other similar tangible personal property to which the warehouse persons have acquired title are subject to the general State, applicable local, and applicable transit rates of sales and use tax. Warehouse persons making such sales must register with the Department and collect and remit the sales and use tax due on such sales.

Sales made at auction by warehouse persons to satisfy their liens existing on account of any moving, storing, or other service charge are occasional or isolated sales and are not subject to sales and use tax, provided the warehouse persons are not engaged in the business of making sales.

SUTB 87 WASTEWATER DISPERSAL PRODUCTS

87-1 EXEMPTION FROM SALES AND USE TAX

A wastewater dispersal product is a product approved by the North Carolina Department of Health and Human Services ("DHHS") for dispersing wastewater effluent within the subsurface dispersal field in a ground absorption system.

Sales of wastewater dispersal products approved by the DHHS under Article 11 of Chapter 130A of the North Carolina General Statutes are exempt from sales and use tax.

87-2 PRODUCT LIST

DHHS has a published list of all approved wastewater dispersal products on its website. DHHS must notify the Department of all wastewater dispersal product approvals and revocations within 60 days of approval or revocation. Upon receipt of notification from DHHS, the Department publishes the DHHS list of all wastewater dispersal product approvals and revocations.

87-3 DOCUMENTATION FOR EXEMPTION

A retailer engaged in business in the State that makes a retail sale of a DHHS approved wastewater dispersal product that is sourced to the State must maintain adequate documentation to substantiate that the product is on the DHHS approved list at the time of the sale. Similarly, a purchaser of a DHHS approved wastewater dispersal product must maintain adequate documentation to substantiate that the product is on the DHHS approved list at the time of purchase.

A purchaser is not required to provide a Certificate of Exemption to purchase an approved wastewater dispersal product that is exempt from sales and use tax.

87-4 TAX DUE ON WASTEWATER DISPERSAL ITEMS NOT APPROVED

A wastewater dispersal item that does not qualify as a wastewater dispersal product is subject to the general State, applicable local, and applicable transit rates of sales and use tax.

A retailer engaged in business in the State that makes a retail sale sourced to the State of a product not on the DHHS approved product list should collect and remit the general State, applicable local, and applicable transit rates of sales and use tax on the sale.

Absent a valid existing approval from DHHS for a wastewater dispersal product and provided sales tax is not collected on the wastewater dispersal item at the time of purchase, the purchaser is liable for payment of use tax on the purchase price of the item.

SUTB 88 WORTHLESS ACCOUNTS (BAD DEBTS)

88-1 REPORTING

A. In reporting sales and use taxes on an accrual basis, accounts of purchasers representing taxable sales on which the sales and use tax has been paid may be determined to be worthless and will actually be charged off for income tax purposes as bad debts. For purposes of this exemption, a worthless account of a purchaser is a bad debt as allowed under Section 166 of the Internal Revenue Code. The amount calculated must be adjusted to exclude finance charges or interest, sales and use taxes charged on the sales or purchase price, amounts that cannot be collected on property that remains in the possession of the retailer until the full purchase price is paid, expenses incurred in attempting to collect a debt, and repossessed property.

B. Deducting Amounts Charged off from Gross Taxable Sales

The amount charged off representing taxable retail sales may, during corresponding periods, be deducted from gross taxable sales provided the retailer maintains records disclosing separately the portion of bad debts representing taxable sales and the portions representing nontaxable sales. The amount of any deduction taken that is attributable to bad debts shall not include accrued interest.

88-2 WHEN BAD DEBTS ARE DEDUCTIBLE

In order for a worthless account to be charged off for income tax purposes, the account must be written off as uncollectible on the applicant's books and records and the applicant must bear the risk of loss. If the charge-off is not made until the income tax return is filed, the bad debt should generally be deducted within one month of the date the income tax return reflecting the bad debt is filed. If the charge-off is made during the income tax year, the deduction of the bad debt should be taken for the period in which the charge-off occurs. A taxpayer is required to make the deduction for sales and use tax purposes within three (3) years of charging off an account for income tax purposes. If a taxpayer fails to deduct a bad debt for sales and use tax purposes within three (3) years of the date the bad debt is deducted for income tax purposes, the deduction from taxable gross receipts is not allowable.

A taxpayer who is not required to file income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is charged off in its books and records as uncollectible and would otherwise be eligible for a bad debt deduction for income tax purposes if the taxpayer were required to file income tax returns. In this instance, the taxpayer is required to make the deduction for sales and use tax purposes within three (3) years of the date the account is recognized and finally expensed as a bad debt in its books and records.

Note: For additional information regarding a taxpayer bearing the risk of loss for bad debts, refer to *Home Depot U.S.A., Inc. v. N.C. Dep't of Revenue*, 2015 NCBC 100.

88-3 REFUND PROVISIONS – BAD DEBTS

A. When the amount of the bad debt deduction exceeds the amount of taxable sales, resulting in a credit balance of tax on the sales and use tax return, a refund claim may be filed within the statute of limitations for filing refund claims. The claim for refund must be filed within three (3) years of the date the bad debt becomes eligible for deduction from gross retail sales on the sales and use tax return.

B. Form for Submitting Claim

Unless otherwise provided in these SUTBs, a claim for refund of an overpayment of sales and use tax must be submitted on Form E-588, Business Claim for Refund State, County and Transit Sales

and Use Taxes. The basis of the claim for the requested refund must be stated in the Basis for Claim section of the refund claim form. If applicable, Form E-536R, Schedule of County Sales and Use Taxes for Claims for Refund, should also be submitted. After a claim is verified and approved, a refund voucher is issued and forwarded to the taxpayer.

C. Documentation Required

The records of the retailer must clearly reflect and support the claim for refund or adjustment to taxable receipts for the period in which the refund or adjustment occurs. When submitting a refund claim, supporting data to be submitted includes copies of invoices or schedules reflecting the purchaser's name, invoice numbers, description of the property purchased, amount of tax collected, and documentation showing the purchaser's account has been written off as uncollectible on the taxpayer's books and records including the date the bad debt becomes eligible for deduction from gross retail sales on the sales and use tax return (i.e. the date the purchaser's account was written off as uncollectable). If applicable, Form E-536R, Schedule of County Sales and Use Taxes for Claims for Refund, should also be submitted.

88-4 BAD DEBT COLLECTION

If a deduction is taken for a bad debt and the debt is subsequently collected, in whole or in part, the tax on the amount of debt collected must be paid and reported on the sales and use tax return filed for the period in which the collection occurs. For purposes of reporting collection of the bad debt subsequent to having charged off and deducted such bad debt, any payments on the debt shall be applied first proportionally to the taxable price of the item and sales tax thereon, and secondly to interest, service charges, and any other charges.

88-5 CERTIFIED SERVICE PROVIDER™ INFORMATION

Effective with the entry of North Carolina as a member state to the Streamlined Agreement, a Certified Service Provider™ (CSP™) who enters into a contract with the Governing Board of the Streamlined Agreement to offer services to collect and remit sales and use taxes on behalf of a person may claim any bad debt deduction that would ordinarily be claimed by the person. The terms of the contract between the Governing Board and a CSP™ will establish the procedures for credits by the CSP™ to a person for allowable bad debt taken by the CSP™.