

## **IMPORTANT NOTICE: SALES AND USE TAX BULLETINS UPDATED & ADDITIONAL INFORMATION ABOUT THE PENALTY FOR MISUSE OF AN EXEMPTION CERTIFICATE**

The Sales and Use Tax Division (“Division”) has published the updated 2024 Sales and Use Tax Bulletins (“SUTBs”). The updated SUTBs are based on the law in effect as of January 1, 2024, and supersede all prior Sales and Use Tax Bulletins. You can find the SUTBs at: [ncdor.gov/documents/sales-and-use-tax-bulletins](https://ncdor.gov/documents/sales-and-use-tax-bulletins).

The Division updated the SUTBs to include laws enacted during 2023 and to provide additional guidance on existing laws. The updates include new or updated guidance addressing the following topics:

### **Services to Real Property**

The Division updated the bulletins to provide additional guidance addressing services to real property. In addition, guidance originally published in Sales and Use Tax Directive 18-1 was updated and incorporated into the SUTBs. These updates include:

- **Chart of Common Services** – Added SUTB 72-21 to provide a chart of common services to real property. The chart identifies whether a service is generally a capital improvement or a repair, maintenance, or installation service. A similar chart was previously published in Sales and Use Tax Directive 18-1.
- **Remodeling** – Updated SUTB 72-4A. to provide additional guidance addressing whether a transaction is remodeling.
- **Mixed Transaction Contract** – Updated SUTB 72-6 to improve guidance addressing mixed transaction contracts.
- **Use Tax Liability** – Updated SUTB 72-8 to improve guidance addressing the joint and several liability use tax liability of a real property contractor, retailer-contractor, subcontractor, lessee, and owner of real property.
- **Freestanding Appliances** – Updated SUTB 72-15 to improve guidance addressing real property contractors who purchase freestanding appliances.

### **Misuse of an Exemption Certificate**

N.C. Gen. Stat. § 105-236(5a) imposes a two-hundred and fifty-dollar (\$250.00) penalty for misuse of an exemption certificate. This penalty is imposed on the person issuing the exemption certificate. North Carolina does not impose a penalty on a seller that accepts a completed exemption certificate in compliance with N.C. Gen. Stat. § 105-164.28.

The Department recently amended an administrative rule to clarify the frequency at which the penalty applies to the person issuing the certificate. 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.

A third-party alert incorrectly stated the rule change imposes penalty on sellers accepting exemption certificates from purchasers. The Department does not interpret the rule or statute to impose the misuse of an exemption certificate penalty on a seller for accepting an exemption certificate. As stated above, North Carolina does not impose a penalty on a seller that accepts a completed exemption certificate in compliance with N.C. Gen. Stat. § 105-164.28.

In order to eliminate any confusion, the Division added language in SUTB 5-1A. to make clear that the penalty for misuse of an exemption certificate is imposed on the person issuing the exemption certificate. The section now provides: “The penalty for misuse of an exemption certificate applies to the person issuing the certificate, not a seller who accepts the certificate.”

### **Other Updates**

The Division made additional updates in the SUTBs that include:

- **Measure of Sales Tax Due** – Added SUTB 3-1G to address surcharges. In addition, the Division added 3-1H. to consolidate guidance on a single charge for taxable and non-taxable or exempt items.
- **Record Keeping** – Updated SUTB 3-3A to specifically identify more of the records required to be kept by a retailer, wholesale merchant, facilitator, real property contractor, or consumer consistent with 17 NCAC 7B .4801.
- **Qualified Aircraft** – Updated SUTBs 9-1, 9-3, 50-1, 50-3, 75-3A, and 79-3B to reflect statutory changes to the definition of “Qualified Aircraft.”
- **Extended Sunset Dates** – Updated SUTBs 12-2, 50-3, 69-2, 69-3B, 69-4B, 75-3A, and 79-3A. to reflect extended sunset dates for certain exemptions and refunds.
- **Exemption for Watergoing Vessel Transporting Freight** – Updated SUTB 15-2 to reflect statutory changes to the exemption.
- **Exemption for Qualifying and Conditional Farmers** – Updated SUTB 27-4 to reflect statutory changes to the exemption that allow the purchase of compost used primarily in farming operations.
- **Prepared Food** – Updated SUTB 32-3 to reflect clarifying statutory changes related to prepared food.
- **Sales of Seafood** – Updated SUTB 32-5 to address the rate of tax that applies to sales of seafood.
- **Food at Summer Camps** – Updated SUTB 32-11 to define summer camps and similar camps.

- **Service Charge Imposed on Food, Beverages, or Prepared Food** – Updated SUTB 32-18 to provide examples and address the treatment of these service charges imposed on food, beverages, or prepared food consistent with 17 NCAC 07B .2213.
- **Ice** – Added SUTB 32-19 to address sales of ice and related items.
- **Breast Pumps and Related Items** – Added SUTB 40-4 to provide guidance on the exemption for breast pumps and related items.
- **Medical Supplies** – Added a list of common supplies sold to doctors in SUTB 44-1. In addition, added SUTB 44-3 to address reagents.
- **Marketplace Facilitators** – Added SUTB 59-8 to reflect statutory changes for Marketplace Facilitators. In addition, added SUTB 73-3B to reflect statutory changes that allow the recovery of certain tax paid by marketplace facilitators to marketplace sellers.
- **Continuing Care Retirement Communities** – Added SUTB 60-29 to reflect a new exemption.
- **Nonprofit Annual Sales** – Updated SUTB 62-1B to reflect statutory changes to the annual sales exemption for certain non-profits.
- **Nursery and Greenhouse Operators and Farmers** – Updated SUTBs 63-1 through 63-3 to provide additional guidance for nursery operators and whether tax applies to their sales. In addition, the section clarifies how to determine whether a producer is selling primarily as a retail merchant.
- **Commercial Printers and Publishers** – Updated SUTB 68-1A to address certain postal charges.
- **1% Privilege Tax on Certain Machinery and Equipment** – Removed references to the 1% Certain Machinery and Equipment Privilege Tax which was repealed July 1, 2018.
- **Calligraphy Services** – Added calligraphy services to the examples of taxable repair, maintenance, and installation Services for Tangible Personal Property found in SUTB 75-4.

### **Additional Resources**

You can find additional information about North Carolina Sales and Use Tax at [ncdor.gov/taxes-forms/sales-and-use-tax](https://ncdor.gov/taxes-forms/sales-and-use-tax). If you have additional question, you may call the Department toll-free at 1-877-252-3052 (8:00 am until 4:30 pm EST, Monday through Friday).