SUTB 6  ACCOMMODATIONS

6-1 DEFINITIONS

For the purposes of this SUTB, G.S. § 105-164.4F 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. “Facilitator” – A person who is not a rental agent and who contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer for the accommodation.

3. “Rental agent” – The term includes a “real estate broker,” as defined in G.S. § 93A-2.

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.

B. Responsibility for Collecting and Remitting Tax

All persons engaged in the business of providing accommodations are retailers and must register with the Department and collect and remit sales and use tax unless an exemption from sales and use tax applies.

C. Facilitator Transactions

The sales price of the rental of an accommodation marketed by a facilitator includes charges designated as facilitation fees and any other charges necessary to complete the rental. A facilitator must report to the retailer with whom it has a contract the sales price a consumer pays to the facilitator for an accommodation rental marketed by the facilitator. A retailer must notify a facilitator when an accommodation rental marketed by the facilitator is completed, and the facilitator must send the retailer the portion of the sales price the facilitator owes the retailer and the sales tax due on the sales price no later than ten (10) days after the end of each calendar month. A facilitator that does not send the retailer the sales tax due on the sales price is liable for the amount of sales tax the facilitator fails to send. A 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 a facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a sales tax payment from a facilitator must remit the amount received to the Secretary. A retailer is not liable for sales tax due but not received from a facilitator. The requirements imposed by this subsection on a retailer and a facilitator are considered terms of the contract between the retailer and the facilitator.

D. Rental Agent’s Responsibility

A person that, by written contract, agrees to be the rental agent for the provider of an accommodation is a retailer and is liable for the general State, applicable local, and applicable transit rates of sales tax on the gross receipts derived from the rental of an accommodation. The liability of a rental agent for the sales tax imposed relieves the provider of the accommodation from the liability.
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, facilitator, or rental agent 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. Laundry services where the lessor of the accommodation is the retailer of such services and they are not provided by an outside laundry/dry cleaning establishment.
8. Linen fees.
10. Peace of mind fees (similar to insurance but provided by hotel or rental agency rather than third-party carrier).
11. Pet fees (incurred by guests who have pets traveling with them).
12. Reservation fees (also referred to as a handling, processing, or administrative fee).
15. Transfer fees (for changing to a different room, unit, or date).
16. Tentative reservation fees (for priority reservation the following year).
17. Charges for cribs and roll-away beds.
18. Charges for microwave ovens and refrigerators.
19. 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, the following:

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 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.
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, the following:

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

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 the following:

1. Rentals of a private residence, cottage, or similar accommodation by a person that is engaged in business of renting accommodations.

2. Rentals of a private residence, cottage, or similar accommodation listed with a real estate broker or agent.

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

Retail sales to a provider of an accommodation of any supplies, equipment, or fixtures including, but not limited to, linens, bathroom supplies, cleaning supplies, and furniture are subject to 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 72-3. 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 SPECIFIC TRANSACTION

A. 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 84.

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.