



**Sales and Use Tax Division
North Carolina Department of Revenue
Post Office Box 25000
Raleigh, North Carolina 27640-0001
www.dornnc.com**

**IMPORTANT NOTICE: ERRONEOUS COLLECTION OF
SALES TAX ON A REAL PROPERTY CONTRACT**

Session Laws 2016-94 enacted by the 2016 General Assembly included a provision that amended the language in N.C. Gen. Stat. § 105-164.4H(c) regarding the provisions of N.C. Gen. Stat. § 105-164.11(a)(2), retroactive to January 1, 2015. As amended, the provisions of N.C. Gen. Stat. § 105-164.11(a)(2) may apply to an erroneous collection of sales tax by a real property contractor or a retailer-contractor on the gross receipts of a real property contract.

N.C. Gen. Stat. § 105-164.11(a)(2) provides, in part, “[i]f the Secretary determines that a [real property contractor or retailer-contractor] who overcollected sales tax on a transaction is instead liable for a use tax on a related transaction, the Secretary may allow the [real property contractor or retailer-contractor] to offset the use tax liability with the overcollected sales tax.” The Secretary shall not allow an offset if the real property contractor or retailer-contractor has elected to receive a refund of the overcollected tax from the Department as permitted under N.C. Gen. Stat. § 105-164.11(a)(1) that requires the real property contractor or retailer-contractor to give the purchaser credit for or a refund of tax collected in error before requesting a refund from the Department.

A real property contractor or retailer-contractor, that collected and remitted sales tax on the gross receipts of a real property contract on or after January 1, 2015 in error and that also paid sales or use tax on the purchase price of tangible personal property transferred to the real property contractor’s or retailer-contractor’s customer as part of a real property contract, may be due a refund. A real property contractor or retailer-contractor who paid use tax directly to the Department on the purchase price of tangible personal property used to fulfill the real property contract and who wishes to receive credit against the use tax due for a portion of the sales tax collected on the related transaction in error, should submit a claim for refund to the Department on Form E-588, Business Claim for Refund State, County and Transit Sales and Use Taxes, and include documentation to substantiate the refund request.

A real property contractor or retailer-contractor who paid sales and use tax directly to a seller on the purchase price of tangible personal property used in fulfilling the real property contract and who also collected sales tax on the gross receipts derived from the real property contract, may either 1) request a refund of the tax paid to the seller that collected and remitted the tax to the Department or 2) refund or credit the sales tax collected in error to its customers and the provisions of N.C. Gen. Stat. § 105-164.11(a)(1) apply.

Assistance

General questions regarding this notice should be directed to the Taxpayer Assistance and Collection Center at telephone number 1-877-252-3052 (toll-free). Additionally, Sales and Use Tax Directive SD-15-1, Real Property Contracts, is updated simultaneously with the issuance of this important notice to incorporate and give notice of the change in the law.

To the extent there is any change in the rate or amount of tax, change to a statute or regulation, or new case law subsequent to the date of this notice, the provisions in this important notice may be superseded or voided. To the extent that any provisions in any other notice, directive, technical bulletin, or published guidance issued prior to the date of this notice conflicts with this important notice, the provisions contained in this important notice supersede.