



Sales and Use Tax Division
North Carolina Department of Revenue
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**IMPORTANT NOTICE: TRANSITION ISSUES RELATIVE TO SALES AND USE TAX LAW
CHANGES WITH RESPECT TO REAL PROPERTY CONTRACTS; REPAIR,
MAINTENANCE, AND INSTALLATION SERVICES
TO REAL PROPERTY, AND OTHER ITEMS**

This notice addresses transition issues relative to changes to the sales and use tax laws as a result of legislation enacted during the 2016 General Assembly Session. Generally, the changes are effective January 1, 2017 and apply to sales made on or after that date. For additional guidance on the application of the sales and use tax laws effective January 1, 2017 to real property contracts and repair, maintenance, and installation services to real property, refer to [Directive SD-16-3: Real Property Contracts](#) and [Directive SD-16-4: Repair, Maintenance, and Installation Services](#), respectively, published November 15, 2016 and available on the Department's website, www.dornnc.com.

Retail Transactions Prior to January 1, 2017

The following transition issues are to provide guidance for specific retail sales or purchases made prior to January 1, 2017 where questions may arise as a result of changes to the sales and use tax laws effective January 1, 2017 and applicable to sales made on or after that date. For purposes of the transition issues in this section, "Seller" refers to a person who meets the definition of "retail trade," "retailer-contractor," or "retailer," as the terms are defined and applicable on or after March 1, 2016 and prior to January 1, 2017. These transition issues are not all-inclusive.

- A Seller who makes/enters into a retail sale with a customer prior to January 1, 2017, should collect and is liable for sales or use tax on the sales price of or gross receipts derived from the retail sale based on the sales and use tax laws in effect prior to January 1, 2017.
- Same facts as set out above, *except the performance of the work does not begin or is not scheduled to begin until on or after January 1, 2017 and the activity qualifies as a real property contract with respect to a capital improvement on or after January 1, 2017*. In such instance, the Seller may elect to refund or credit the amount of sales or use tax originally charged on the retail sale to the customer. Per N.C. Gen. Stat. § 105-164.11(a), the Secretary may allow a refund only if the Seller gives the purchaser credit for or a refund of the collected tax. In the alternative, the Seller may offset its use tax liability on a related transaction by any sales or use tax collected on the retail sale and the Seller may elect to refund or credit only the difference between the use tax due and the sales tax collected/charged to the customer, and request a refund of the difference from the Secretary or take a credit on Form E-500, Sales and Use Tax Return.

Certain Lump-Sum or Unit-Price Contracts

[Form E-589K, Affidavit for a Purchase or Transaction for Certain Lump-Sum or Unit-Price Contracts \(March 1, 2016 - December 31, 2016\)](#), is to be executed only for a purchase or transaction to fulfill a ***lump-sum or unit-price contract entered into or awarded on or after March 1, 2016 and prior to January 1, 2017, or entered into or awarded pursuant to a bid made on or after March 1, 2016 and prior to January 1, 2017*** ("Qualifying Contract").

The effective date of a tax change for tangible personal property, digital property, or taxable services applies to amounts received for items provided on or after the effective date, except amounts received for items provided under a lump-sum or unit-price contract entered into or awarded before the effective date or entered into or awarded pursuant to a bid made before the effective date. N. C. Gen. Stat. § 105-164.15A(a)(2). Thus, where all or a portion of the work pursuant to a Qualifying Contract is performed on or after January 1, 2017, a purchase or transaction to fulfill a Qualifying Contract may continue to be taxed in accordance with the sales and use tax laws applicable to a real property contract in effect on or after March 1, 2016 and prior to January 1, 2017. A Qualifying Contract is subject to sales and use tax as a real property contract, no matter that the transaction may meet the definition of a single repair, maintenance, or installation service to real property on or after January 1, 2017.

A real property contractor or a retailer-contractor who acts as a real property contractor on certain transactions who issues Form E-589K to another person must retain a copy of the form and other records to substantiate that sales and use tax applies to a purchase or transaction on or after January 1, 2017 to fulfill a Qualifying Contract based on the sales and use tax laws in effect on or after March 1, 2016 and prior to January 1, 2017. Additionally, a person who receives Form E-589K from a real property contractor or a retailer-contractor who acts as a real property contractor for a purchase or transaction between the parties to fulfill a Qualifying Contract must retain a copy of the form and other applicable records to substantiate that the purchase or transaction on or after January 1, 2017 is to fulfill a Qualifying Contract and sales and use tax is applicable to such purchase or transaction based on the sales and use tax laws in effect on or after March 1, 2016 and prior to January 1, 2017.

Where a retailer-contractor, acts as a contractor or subcontractor for a Qualifying Contract, withdraws tangible personal property from inventory on or after January 1, 2017 and installs or applies the tangible personal property to real property to fulfill a Qualifying Contract, such person must accrue and remit use tax on the retailer-contractor's purchase price of the tangible personal property, unless an exemption for tangible personal property in effect prior to January 1, 2017 applies to the tangible personal property to fulfill a Qualifying Contract.

Effective January 1, 2017 for sales on or after such date, "[t]he liability of a retailer-contractor, a subcontractor, an owner, or lessee who did not purchase the property or service is satisfied by receipt of an affidavit from the purchaser certifying that the tax has been paid." N.C. Gen. Stat. § 105-164.4H(b1). Additionally, N.C. Gen. Stat. § 105-164.6(b) provides "[t]he tax imposed by this section is payable by the person who purchases, leases, or rents tangible personal property or digital property or who purchases a service. *If the property purchased becomes a part of a building or other structure in the State and the purchaser is a contractor or subcontractor, the contractor, the subcontractor, and the owner of the building are jointly and severally liable for the tax. The liability of a contractor, a subcontractor, or an owner who did not purchase the property is satisfied by receipt of an affidavit from the purchaser certifying the tax has been paid.*" [Emphasis added.]

Tax Paid on Certain Purchases Prior to January 1, 2017

Contractors who have an inventory of parts, supplies, other tangible personal property, or digital property that becomes a part of or is applied to a purchaser's property where sales or use tax is properly paid prior to January 1, 2017 and where such items will be transferred as part of taxable repair, maintenance, and installation services to real property on or after January 1, 2017, are *not allowed to take a credit against the sales tax due on the sales price of or the gross receipts derived from the taxable repair, maintenance, and installation services* for any sales or use tax originally due and paid at the time of purchase of such parts, supplies, other tangible personal property, or digital property that becomes a part of or is applied to a purchaser's property. There is no statutory provision that allows contractors to take a credit for sales or use tax due and paid at the time of purchase. Additionally, the 2016 General Assembly did not provide legislative relief for purposes of any tax due and paid by such at the time of purchase.

Example: On November 5, 2016, a contractor purchases parts from a North Carolina retailer for \$1,400.00, pays the applicable sales tax due of \$94.50 to the retailer, and then places the parts into inventory. On January 18, 2017, the contractor performs taxable repair, maintenance, and installation services for a customer for \$4,800.00, collects the

applicable sales tax due of \$324.00, and the parts from the contractor's inventory previously purchased on November 5, 2016 are transferred to the contractor's customer. The contractor is not allowed to take a credit for the \$94.50 of sales tax paid to the retailer for parts placed in inventory against the \$324.00 of sales tax due on the taxable repair, maintenance, and installation services.

Purchase Certain Items Exempt from Sales or Use Tax

A person, who is a real property contractor prior to January 1, 2017 and who as a result of the changes in the sales and use tax laws effective January 1, 2017, is a retailer-contractor or retailer who makes retail sales of repair, maintenance, and installation services to real property subject to tax per N.C. Gen. Stat. § 105-164.4(a)(16) on or after January 1, 2017 may purchase tangible personal property, digital property, or services without payment of sales or use tax prior to January 1, 2017, provided at the time of purchase it is known that such items or services will be part of the sales price of or gross receipts derived from repair, maintenance, and installation services sold at retail on or after January 1, 2017.

To purchase such items without payment of sales or use tax a person must issue [Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption](#), to the seller at the time of purchase. Alternatively, the data elements required by N.C. Gen. Stat. § 105-164.28(a) may be provided to a seller by a purchaser to substantiate a purchase for resale.

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).

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.