



**Sales and Use Tax Division
North Carolina Department of Revenue
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IMPORTANT NOTICE: REAL PROPERTY CONTRACTS

Effective January 1, 2015, the general 4.75% State and applicable local and transit rates of sales and use tax apply to the sales price of tangible personal property sold to a real property contractor for use by the real property contractor in erecting structures, building on, or otherwise improving, altering, or repairing real property. These sales are taxed in accordance with N.C. Gen. Stat. §§ 105-164.4(a)(13) and 105-164.4H. The new statutory provisions apply to sales made on or after January 1, 2015 and contracts entered into on or after that date. This notice is intended to explain the application of sales and use tax to tangible personal property used to perform real property contracts for sales made on or after January 1, 2015 and contracts entered into on or after that date.

A taxpayer that operates as a retailer prior to January 1, 2015 and that makes retail sales of tangible personal property that is installed or applied to real property and that furnishes the labor to install or apply the tangible personal property sold at retail that becomes a part of real property will be required to adopt the new application of sales and use tax to such transactions on or after January 1, 2015 as discussed herein. For example, a business that contracts to sell and install wall-to-wall carpet or cabinets to real property on or after January 1, 2015 should not charge sales tax on such transactions to consumers, but rather should pay the general 4.75% State and applicable local and transit rates of sales and use tax on the purchase price of such tangible personal property used to perform real property contracts.

Definitions

N.C. Gen. Stat. § 105-164.3 as amended provides the following definitions:

- (33a) ***Real property contractor.*** – A person that contracts to perform construction, reconstruction, installation, repair, or any other service with respect to real property and to furnish tangible personal property to be installed or applied to real property in connection with the contract and the labor to install or apply the tangible personal property that becomes part of real property. The term includes a general contractor, a subcontractor, or a builder for purposes of N.C. Gen. Stat. § 105-164.4H.
- (35a) ***Retailer-contractor.*** – A person that acts as a retailer when it sells tangible personal property at retail and as a real property contractor when it performs real property contracts.

Applicability

N.C. Gen. Stat. § 105-164.4H(a) provides a real property contractor is the consumer of the tangible personal property that the real property contractor installs or applies for others and that becomes part of real property. A retailer engaged in business in the State shall collect the general 4.75% State and applicable local and transit rates of sales and use tax on the sales price of the tangible personal property sourced to this State and sold at retail to a real property contractor unless a statutory exemption in N.C. Gen. Stat. §§ 105-164.13 or 105-164.13E applies to the sales transaction. Where a taxpayer is a real property contractor who does not meet the definition of a retailer-contractor purchases tangible personal property for storage, use, or consumption in this State and the tax due is not paid at the time of purchase, the taxpayer must report and pay the general 4.75% State and applicable local and transit rates of sales and use tax on the purchase price of such tangible personal property.

Retailer-Contractor Acting as a Real Property Contractor

N.C. Gen. Stat. § 105-164.4H(b) provides, “[a] retailer-contractor that purchases tangible personal property to be installed or affixed to real property may purchase items exempt from tax under a certificate of exemption pursuant to G.S. 105-164.28 provided the retailer-contractor also purchases inventory items from the seller for resale.” When the tangible personal property purchased for resale without payment of tax is withdrawn from inventory by a retailer-contractor and installed or affixed to real property, use tax must be accrued and paid on the retailer-contractor's purchase price of the tangible personal property at the general 4.75% State and applicable local and transit rates of sales and use tax unless a preferential rate of tax applies to such property. Tangible personal property that the retailer-contractor withdraws from inventory for use that does not become part of real property is also subject to the the general 4.75% State and applicable local and transit rates of sales and use tax.

If a retailer-contractor subcontracts any part of the real property contract, the sales and use tax is payable by the subcontractor on the subcontractor's purchase of the tangible personal property that is installed or affixed to real property in fulfilling the contract. The retailer-contractor, the subcontractor, and the owner of the real property are jointly and severally liable for the sales and use tax. The liability of a retailer-contractor, a subcontractor, or an owner who did not purchase the property is satisfied by receipt of an affidavit from the purchaser certifying that the sales and use tax has been paid.

Erroneous Collection if Separately Stated

N.C. Gen. Stat. § 105-164.4H(c) provides, “[a]n invoice or other documentation issued to a consumer at the time of the sale by a real property contractor shall not separately state any amount for tax. Any amount for [sales or use] tax separately stated on an invoice or other documentation given to a consumer by a real property contractor is an erroneous collection and must be remitted to the Secretary, and the provisions of G.S. 105-164.11(a)(2) do not apply.”

A seller who collected and remitted sales and use tax in accordance with an interpretation of the law by the Secretary in the form of a rule, bulletin, or directive published before the effective date of N.C. Gen. Stat. § 105-164.4H, which is January 1, 2015, is not liable to a purchaser for any overcollected sales and use tax that was collected in accordance with the rule, bulletin, or directive.

Tax Rates

The total general State and applicable local and transit rates of sales and use tax is 6.75% in seventy-two counties, 7.00% in Alexander, Buncombe, Cabarrus, Catawba, Cumberland, Davidson, Duplin, Edgecombe, Greene, Halifax, Harnett, Haywood, Hertford, Lee, Martin, Montgomery, New Hanover, Onslow, Pitt, Randolph, Robeson, Rowan, Sampson, Surry and Wilkes Counties, 7.25% in Mecklenburg County, and 7.50% in Durham and Orange Counties.

Assistance

Questions regarding this notice should be directed to the Taxpayer Assistance and Collection Center at telephone number 1-877-252-3052 (toll-free). Additional information will be published by the Department in the near future concerning items sold to real property contractors and items used by retailer-contractors in erecting structures, building on, or otherwise improving, altering, or repairing real property.

Disclaimer:

This Important Notice is based on legislation that is in effect as of January 1, 2015. To the extent that there is any change in statute or regulation, or a new case law subsequent to January 1, 2015, 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 regarding sales and use tax or highway use tax issued prior to the date of this notice conflicts with this Important Notice, the provisions contained in this Important Notice supersede.