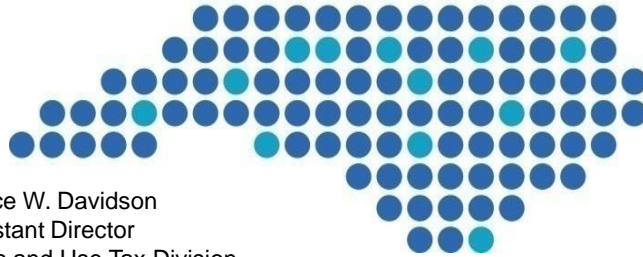




2018 Tax Compliance Summit Sales and Use Tax



Janice W. Davidson
Assistant Director
Sales and Use Tax Division
Janice.Davidson@ncdor.gov



Disclaimer

- Presentation is for general information only.
- Presentation content should not be interpreted as specific tax advice for a specific tax situation.
- Some questions may require additional facts before a response may be given.
- Some questions may require responses from other Departmental employees or employees in other agencies.
- The presentation does not take into consideration draft or future legislation.

- Sales and Use Tax Expansion
- Services to Real Property
- Repair, Maintenance, and Installation Services
- Real Property Contract
- Mixed Transaction Contract
- State Agencies
- Exemption for Certain Schools and Nonprofits
- Resources

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- Repeal of Exemption for Installation Charges
- Tax Imposed on Certain Services
- South Dakota v. Wayfair

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Services to Real Property*

Generally, gross receipts from services to real property are taxable as Repair, Maintenance, and Installation Services, unless the person substantiates that the transaction is subject to sales and use tax as:

- A real property contract.
 - (e.g. obtains Form E-589CI, or maintains other records that establish it is a real property contract).
- Certain mixed transactions.
- Exempt
 - (e.g. RMI for resale where Form E-595E, Certificate of Exemption, is on file, or a service that is exempt from sales and use taxes).



*Effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date unless amendments increase a sales or use tax liability, then effective August 11, 2017.

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Excerpt from SD-18-1

North Carolina Department of Revenue



DIRECTIVE

Subject: Repair, Maintenance, and Installation Services for Real Property and Real Property Contracts
Tax: Sales and Use Tax
Law: N.C. Gen. Stat. §§ 105-164.3(33d), 105-164.4(a)(16), and 105-164.4H
Issued By: Sales and Use Tax Division
Date: April 18, 2018
Number: SD-18-1

This directive is issued under the authority granted the Secretary of Revenue pursuant to N.C. Gen. Stat. § 105-264 to address a number of issues relative to the application of sales and use tax for services to real property. The issues addressed herein are primarily based on law changes effective retroactively to January 1, 2017, for sales and purchases occurring on or after such date, unless an amendment increased a sales or use tax liability, then the change was effective August 11, 2017.

General Application

N.C. Gen. Stat § 105-164.4H(a1) provides that generally, services to real property are retail sales of or the gross receipts derived from repair, maintenance, and installation services and subject to sales and use tax, unless a person substantiates

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Excerpt from Directive SD-18-1

Issued April 18, 2018

Disclaimer: This list is not specific tax advice. The application of sales and use tax may differ based on the facts and circumstances of a particular transaction. This list is not an all-inclusive list and may be updated in the future by the Department.

Transactions by Category	<u>Capital Improvement</u> Gross Receipts are Exempt from Sales and Use Tax Provided the Substantiation Requirements are Met	<u>Repair, Maintenance, and Installation Services</u> Sales Price or Gross Receipts are Taxable Unless Exemption Applies to the Gross Sales Price or Gross Receipts
Central Air Conditioning		
Installation or replacement of central air conditioning unit or system	X	
Installation or replacement of entire ductwork system	X	
Repair, maintain, or replace a component part(s): blowers, coils, condenser coils, control devices, ductwork sections, excess moisture drains, fans, filters, refrigerant, refrigerant tubes		Taxable
Central Wired Audio Sound System		

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Repair, Maintenance and Installation Services (RMI)*

RMI applies to:

- Tangible personal property
- A motor vehicle
- Digital property
- Real property
- The term *does not include* services used to fulfill a real property contract taxed in accordance with N.C. Gen. Stat. 105-164.4H



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RMI as Defined Includes*:

- To keep or attempt to keep property or a motor vehicle in working order to avoid breakdown and prevent deterioration or repairs. Examples include to clean, wash, or polish property.
- To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property or a motor vehicle to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.
- To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore property or a motor vehicle to proper working order or good condition. **The term includes activities that may lead to the issuance of an inspection report.**
- To install, apply, connect, adjust, or set into position tangible personal property, digital property, or a motor vehicle. **The term includes floor finishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like-kind item, such as replacing one or more windows, is a single repair, maintenance, and installation service.** The term does not include an installation defined as a capital improvement under G.S. 105-164.3(2c)d.
- To inspect or monitor property or a motor vehicle, but does not include security or similar monitoring services for real property.

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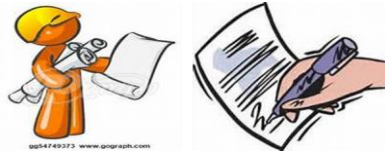
RMI Exemptions*

- **An item exempt from sales and use tax.**
- **The following inspections:**
 - An inspection performed where the results are included in a report for the sale or financing of real property.
 - An inspection of the structural integrity of real property, provided the charge for the inspection is separately stated.
 - An inspection to a system that is a capital improvement under G.S.105-164.3(2c)f, provided the inspection is to fulfill a safety requirement and provided the charge for the inspection is separately stated.
- Services performed for a person by a related member as defined by N.C. Gen. Stat. § 105-130.7A.
- **Cleaning of real property, except . . . for a pool, fish tank, or other similar aquatic feature.**
- Pest control service.
- Motor vehicle emissions and safety inspection fee.
- Removal of waste, trash, and debris except . . . portable toilets.
- Moving services.
- **Services performed on an animal such as microchipping a pet, hoof shoeing.**

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A contract between a real property contractor and another person to perform a capital improvement to real property.



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NCDOR Capital Improvement* Definition

One or more of the following:

New Construction - Construction of or site preparation for a permanent new building, structure, or fixture on land or an increase in the square footage of an existing building, structure, or fixture on land.

Reconstruction - Rebuild or construct again a prior existing permanent building, structure, or fixture on land and may include a change in the square footage from the prior existing building, structure, or fixture on land.

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Capital Improvement* Definition (cont'd)

Remodeling - A transaction comprised of **multiple services** performed by one or more persons **to restore, improve, alter, or update real property** that may otherwise be subject to tax as RMI services if separately performed.

- Includes a transaction where the **internal structure or design** of one or more rooms or areas within a room or building are substantially **changed**.
- Does not include a single RMI service.
- Does not include a transaction where the true purpose is a RMI service no matter that another RMI service is performed that is incidental to the true purpose of the transaction.
 - Repair of sheetrock that includes applying paint.
 - Replacement of cabinets that includes installation of caulk or molding.
 - Installation of hardwood floors that includes installation of shoe molding

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Capital Improvement* Definition (cont'd)

Performance of work that requires the issuance of a **permit under the State Building Code, other than repair or replacement of electrical components, gas logs, water heater, and similar individual items that are not part of new construction, reconstruction, or remodeling.**

- Underlined items are taxable as RMI services!!!

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Capital Improvement* Definition (cont'd)

- Installation of utilities on utility owned land, right of way, or easement, notwithstanding that charges for such may be included in the gross receipts derived from services subject to the combined general rate under G.S. 105-164.4.
- Installation of equipment or fixture that is attached to real property and that meets one or more of the following conditions:
 - Is capitalized and depreciated under Generally Accepted Accounting Principles or International Financial Reporting Standards.
 - Is depreciated under the Code.
 - Is expensed under Section 179 of the Code.

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Capital Improvement* Definition (cont'd)

- Painting or wallpapering of real property, except where painting or wallpapering is incidental to the RMI service.
- Replacement or installation of a septic tank system, siding, roof, plumbing, electrical, commercial refrigeration, irrigation, sprinkler or other similar system.
 - Does not include the repair, replacement, or installation of electrical or plumbing components, water heaters, gutters, and similar individual items that are not part of new construction, reconstruction, or remodeling.
- Replacement or installation of a heating or air conditioning unit or a heating, ventilation, and air conditioning system.
 - Does not include the repair, replacement, or installation of gas logs, water heaters, pool heaters, and similar individual items that are not part of new construction, reconstruction, or remodeling.
- Replacement or installation of roads, driveways, parking lots, patios, decks, and sidewalks.

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Capital Improvement* Definition (cont'd)

- Services performed to resolve an issue that was part of a real property contract if the services are performed **within six months of completion** of the real property contract or, **for new construction, within 12 months** of the new structure being occupied for the first time.
- **Landscaping** – A service that modifies the living elements of an area of land.
 - Installation of trees, shrubs, or flowers on land.
 - Tree trimming.
 - Mowing.
 - The application of seed, mulch, pine straw, or fertilizer to an area of land.
 - Does not include services to trees, shrubs, flowers, and similar items in pots or in buildings.
- **Addition or alteration to real property that is permanently affixed or installed to real property and is not an activity listed in the definition of RMI services.**

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Substantiation

- **Acceptable Substantiation**
 - Form E-589CI
 - Other Documentation
- **Liability**
 - Person that issues Form E-589CI for any additional tax.
 - Recipient of Form E-589CI, no additional liability unless egregious activity or fraud.

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NCDOR Form E-589CI, Affidavit of CI

NCDOR
Web-Fill
5-18

E-589CI Affidavit of Capital Improvement

Form E-589CI, Affidavit of Capital Improvement, may be used to substantiate that a contract, or a portion of work to be performed to fulfill a contract, is to be taxed for sales and use tax purposes, as a real property contract for a capital improvement to real property.

The receipt of an affidavit of capital improvement for services to real property, absent fraud or other egregious activities, establishes that the subcontractor or other person receiving the affidavit should treat the transaction as a real property contract for sales and use tax purposes.

A real property contract is a contract between a real property contractor and another person to perform a capital improvement to real property.

Section I. Single Use (Complete this section to issue the affidavit for a single capital improvement.)

<p>A Owner, Lessee/Tenant, or Real Property Contractor</p> <p>Address</p> <p>City State Zip Code</p>	<p>B Real Property Contractor (General Contractor or Subcontractor) <small>Must perform capital improvement</small></p> <p>Address</p> <p>City State Zip Code</p>
<p>Describe capital improvement to be performed:</p>	

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NCDOR Substantiation (cont'd)

- Are State agencies and other entities required to issue Form E-589CI?
 - **No!**
- Benefits
 - Assists the contractor or subcontractor with the proper treatment of the transaction
 - Provides the contractor or subcontractor with documentation to substantiate a real property contract

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Substantiation (cont'd)

- In lieu of issuing a Form E-589CI, may the contractor otherwise document that a transaction is a capital improvement?
 - Yes!
 - A person should obtain a certified statement from the contractor for taxes paid by the contractor in order to file a refund claim
 - May need to address receipt of indirect tax paid at the time of negotiation of any contract

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Mixed Transaction Contract*

Contract that includes both a real property contract for a capital improvement and an RMI service that is not related to the capital improvement.

- **25% Rule** - Does the allocated price of RMI exceed 25% of the contract?
 - If no, the entire transaction is treated as a real property contract.
 - **If yes, the allocated amount for RMI is taxable.**

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State Agency Definition

A unit of the executive, legislative, or judicial branch of State government, such as a department, a commission, a board, a council, or The University of North Carolina. The term does not include a local board of education.

- Individual community colleges are not State agencies.

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Exemption for State Agency's Direct Purchases

Items subject to sales and use tax under G.S. 105-164.4, other than electricity, telecommunications service, and ancillary service qualify for an exemption if all of the following conditions are met:

- The items are purchased by a State agency for its own use and in accordance with G.S. 105-164.29A.
- The items are purchased pursuant to a valid purchase order issued by the State agency that contains the exemption number of the agency and a description of the property purchased, or the items purchased are paid for with a State-issued check, electronic deposit, credit card, procurement card, or credit account of the State agency.
- For all purchases other than by an agency-issued purchase order, the agency must provide to or have on file with the retailer the agency's exemption number.

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Exemption for State Agency's Direct Purchases (cont'd)

- The following State agencies do not qualify for the exemption:
 - An occupational licensing board, as defined in G.S. 93B-1.
 - An entity listed in G.S. 105-164.14(c).
- The exemption for a State agency is not applicable to real property contracts. A State agency cannot issue the State agency exemption number to a real property contractor for a real property contract or for a mixed transaction contract, where the taxable repair, maintenance, and installation services are twenty-five (25%) or less of the total contract price.
- A State agency that does not use the items purchased with its exemption number must pay the tax that should have been paid on the items purchased, plus interest calculated from the date the tax would otherwise have been paid.

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State Agency Refund Claims

State agencies can file quarterly refund claims for indirect tax paid by contractors using Form E-585E, State Agency Claim for Refund County and Transit Sales and Use Taxes.

- State agencies should obtain a certified statement from the contractors for taxes paid by the contractor in order to substantiate a refund claim.

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NCDOR State Agency Refund Claims (cont'd)

E-585E
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**State Agency Claim for Refund
County and Transit Sales and Use Taxes**
North Carolina Department of Revenue

Complete all of the information in this section.

State Agency Name (Print or Checkmark <i>USE CAPITAL LETTERS FOR FIRST NAME AND ADDRESS</i>)		Account ID
Mailing Address		Federal Employer ID Number
Description or Courier Mailing Address		Quarter Beginning (MM/YY) (1)
City	State	Quarter Ending (MM/YY) (1)
State of Person We Should Contact if We Have Questions About This Claim	Contact Telephone	

1. Name of Tasting County
(If more than one county, see instructions on reverse and attach Form E-530RF.)

County & Transit Tax

2. Amount of County & Transit Sales and Use Tax Paid Indirectly on Building Materials and Supplies as Shown on Contractors' Statements

3. Allocation of County & Transit Tax on Line 2 (Enter the county and transit tax paid at each applicable rate. If you paid more than one county's tax, see the instructions on reverse and attach Form E-530RF.)

County 2.00% Tax	County 2.25% Tax	Transit 0.50% Tax
▶ _____	▶ _____	▶ _____

Signature: _____ Date: _____
(Sign as Taxpayer. To the best of my knowledge, this claim is accurate and complete.)

Title: _____ Telephone: _____

MAIL TO: NC Department of Revenue, P.O. Box 235200, Raleigh, NC 27640-0201

For Departmental Use Only

Refund Approved: County Tax Transit Tax

All Filed All Corrected

By: _____ Date: _____

NCDOR Exemption for Certain Schools and Nonprofits

Food, prepared food, soft drinks, candy, and other items of tangible personal property sold not for profit for or at an event that is sponsored by an elementary or secondary school when the net proceeds of the sales will be given or contributed to the school or to a nonprofit charitable organization, one of whose purposes is to serve as a conduit through which the net proceeds will flow to the school. For purposes of this exemption, the term "school" is an entity regulated under Chapter 115C of the General Statutes.

The following technical resources are available on the Department's website:

- Form E-505, Sales and Use Tax Legislative Changes
- Sales and Use Tax Law Changes by Year
- Sales and Use Tax Directives
- Important Notices Issued by the Sales and Use Tax Division
- Sales and Use Tax Administrative Code

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Questions

