

SECTION 31 - CONTRACTORS AND BUILDING MATERIALS

31-1 CONTRACTORS, SUBCONTRACTORS AND RETAILER-CONTRACTORS

- A. Contractors are deemed to be consumers of tangible personal property which they use in fulfilling performance contracts and, as such, are liable for payment of the general rate of State tax and any applicable local sales or use tax on such property unless the property is exempt from tax by statute. In order to establish if a transaction constitutes a performance contract, the tenor of the agreement is for the contractor to perform a job, retaining the right to control the means, the method, and the manner of accomplishing the desired result. A performance contract does not provide for a sale of specific items; rather, the contractor agrees to furnish the necessary materials, labor, and expertise to accomplish the job. With a performance contract, responsibility for the job and title to the materials purchased by the contractor remain with the contractor until the job is completed and accepted by the purchaser/owner. The contractor is liable for accidents or injury at the job site and loss or damage due to vandalism, neglect, theft, and fire.

When a contractor or a subcontractor makes taxable purchases of tangible personal property from suppliers inside or outside this State who charge the applicable State and any local sales or use tax thereon, he shall remit the tax on such purchases to his suppliers. When a contractor or subcontractor makes taxable purchases of tangible personal property for use in this State from a supplier outside this State who does not collect the applicable State tax and any local sales or use tax thereon, such contractor or subcontractor must remit the tax directly to the Department.

- B. If the property purchased becomes a part of a building or structure in this State and the purchaser is a contractor or subcontractor, the contractor, the subcontractor, and the owner of the building or structure shall be jointly and severally liable for the tax. The liability of the contractor, subcontractor, or owner who did not purchase the property is satisfied by receipt of an affidavit from the purchaser certifying that the tax has been paid.
- C. The term “**retailer-contractor**” shall mean any person who engages in the business of selling building materials, supplies, equipment and fixtures at retail and, in addition to such business, enters into contracts for constructing, building, erecting, altering or repairing buildings or other structures, and for the installation of equipment and fixtures to buildings and, in the performance of such contracts as described in Paragraph A., consumes or uses such materials or merchandise.

When a retailer-contractor as herein defined makes purchases of the above-named tangible personal property, a part of which he will use in performing contracts and a part of which he will sell at retail, the retailer-contractor shall furnish his supplier a properly executed **Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E**. This form can be obtained from the North Carolina Department of Revenue website or the Taxpayer Assistance Division. The supplier shall keep the executed Certificate of Exemption for his records as his authority for not charging tax on the transaction. The retailer-contractor then becomes liable for remitting, directly to the Department, tax on the sales price of any tangible personal property sold at retail, and tax on the purchase price of any tangible personal property used in a performance contract.

- D. Purchases by contractors and subcontractors of mill machinery or mill machinery parts or accessories for use by them in the performance of contracts as described in Paragraph A. with manufacturing industries and plants, and purchases by subcontractors of mill machinery or mill machinery parts or accessories for use by them in the performance of contracts encompassed in such contracts with manufacturing industries and plants, are subject to the 1% privilege tax with a maximum tax of \$80.00 per article where applicable. Such mill machinery or mill machinery parts or accessories must be for use by a manufacturing industry or plant in the production process, as the term “**production**” is defined in Sales and Use Tax Technical Bulletin 57-1, to qualify for the

1% privilege tax with a maximum tax of \$80.00 per article when purchased by such contractors or subcontractors. Contractors and subcontractors may obtain the Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E, from the Taxpayer Assistance Division, North Carolina Department of Revenue, to be executed by them and furnished to their vendors in connection with such purchases as the vendors' authority to exempt the transaction from the sales and use tax.

- E. For a performance contract as described in Section A. of this Bulletin, the charge for materials and labor may be shown separately in the job cost file but shall not be shown separately on the customer's invoice. The **tax shall not be added** to the agreed-upon price as a separate charge on the invoice but shall be included in the computation of the cost of the materials necessary to perform the contract. If the vendor/contractor does show the materials and installation separately and adds the sales tax as a separate item on the invoice or statement provided to the purchaser/owner, the vendor/contractor shall be deemed to be making sales and collecting sales tax for which he shall be liable for payment to the Secretary of Revenue.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;
Issued: June 1, 1996;
Revised: January 15, 2009; April 1, 2008; July 1, 2007;
July 1, 2005; February 1, 2004; June 1, 2002;
October 15, 1998.

31-2 CARPET DEALERS AND CARPET CONTRACTORS

A. General Information

The application of tax to a particular situation should be based on the specific facts, including the taxpayer's method of operation and the provisions of the contracts or agreements. The information set out in this Bulletin applies to carpet dealers and contractors as well as retailers such as department stores that sell carpet and install or have it installed for the customer.

B. Sale of Carpet

A retailer or a contractor making an across-the-counter sale and delivery of carpet without arrangements for installation has made a retail sale and is liable for charging, collecting and remitting the general rate of State tax and any applicable local sales tax on the sales price of the carpet. In the case of such sales contracts, the title to the carpet passes to the purchaser when it is delivered.

C. Sale and Installation of Carpet

If a vendor/contractor agrees to sell carpet and/or pad and arranges for the installation for an additional separate charge, whether by the vendor or a subcontractor, and the installation charge is added as a separate item on the customer's invoice, the transaction shall be considered a sale of carpet and/or pad and the general rate of State tax and any applicable local sales tax shall be added to the sales price of the materials. If the seller fails to separate the installation charge on the customer's invoice, the total charge is taxable. The seller will be liable for the collection and payment of all such taxes.

D. Performance Contract

1. If a vendor or contractor enters into a performance contract to furnish carpet and any necessary pad, supplies and labor to cover a specific area for an agreed-upon price, the transaction shall be deemed to be a performance contract and the vendor/contractor

shall be liable for the general rate of State tax and any applicable local tax on the purchase price of the carpet, pad and supplies. The charge for materials and labor may be shown separately in the job cost file but shall not be shown separately on the customer's invoice. The **tax shall not be added** to the agreed-upon price as a separate charge on the invoice but shall be included in the computation of the cost of the materials necessary to perform the contract. If the vendor/contractor does show the materials and installation separately and adds the sales tax as a separate item on the invoice or statement provided to the purchaser/owner, the vendor/contractor shall be deemed to be making sales and collecting sales tax for which he shall be liable for payment to the Secretary of Revenue.

2. In the case of a performance type contract, the whole tenor of the agreement must be that of a contract between the contractor and the purchaser/owner under which the contractor agrees to undertake to perform a job and retains the right to control the means, method and manner of accomplishing the desired result. Generally, in a performance contract involving carpet, a retailer or contractor agrees with a purchaser or owner to furnish and install wall-to-wall carpet for a specific area. The agreement does not involve the customer agreeing to purchase a certain number of yards of carpet but instead involves the installation of a sufficient quantity of floor covering to cover the desired area. In performing the contract, the responsibility for the job until it is completed, accepted and turned over to the purchaser or owner generally rests upon the contractor. Title to any materials purchased by the contractor passes to and remains with the contractor and title to any materials withdrawn from inventory by the contractor remains with the contractor until the job is complete and turned over to the purchaser/owner. The contractor generally will have the responsibility and liability for accidents or injury at the job site as well as any liability for loss or damage due to acts of vandalism, neglect, theft, and fire.

E. Both Contractors and Retailers May Make Retail Sales and/or Perform Contracts

1. Contractors must pay tax on the purchase price of the carpet; however, the tax paid on the purchase price of the carpet and any other tangible personal property which is resold at retail, as described in this Bulletin, may be deducted on the returns from the tax due on the sales price of such property.
2. Retailers entering into performance contracts, as described in this Bulletin, with customers will be considered contractors and only liable for tax on the purchase price of the carpet and other materials purchased for use in the performance of those contracts to be paid to the Secretary of Revenue on their sales and use tax returns.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;
Issued: June 1, 1996;
Revised: June 1, 2002.

31-3 PLUMBING, HEATING, AIR CONDITIONING AND ELECTRICAL CONTRACTORS

A. Purchases by Plumbing, Heating, Air Conditioning and Electrical Contractors

Contractors are deemed to be the users or consumers of building materials and other tangible personal property which they use in the performance of lump sum, cost-plus or time and material contracts to furnish and install a plumbing, heating, air conditioning or electrical system or which they use in making repairs, alterations or additions to an existing system. Contractors are therefore liable for payment of tax on their purchases of such property. The charge for materials and labor may be shown separately in the job cost file but shall not be shown separately on the

customer's invoice. The tax shall not be added to the agreed-upon price as a separate charge on the invoice but shall be included in the computation of the cost of the materials necessary to perform the contract. If the contractor does show the materials and installation separately and adds the sales tax as a separate item on the invoice or statement provided to the purchaser/owner, the contractor shall be deemed to be making sales and collecting sales tax for which he shall be liable for payment to the Secretary of Revenue. Contractors must also pay the tax on purchases of property which they resell unless such contractors have been classified by the Department of Revenue as retailer-contractors and have been authorized to use the **Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E**. The tax due on all purchases by contractors shall be paid to the suppliers unless the purchases are made from out-of-state vendors who do not collect North Carolina sales or use tax. Contractors must remit the tax on such out-of-state purchases directly to the Department of Revenue.

B. Sales by Plumbing, Heating, Air Conditioning and Electrical Contractors

1. Contractors who do not sell at retail in the regular course of business are not required to collect tax by reason of occasional or isolated retail sales. However, those contractors who have not been classified as retailer-contractors, but who regularly or consistently make retail sales are liable for collecting and remitting the tax on the sales price of the property. This includes items sold across the counter such as materials, supplies and fixtures as well as appliances such as refrigerators, ranges and water heaters which the contractors might install as a part of the sale. Contractors making sales of this nature must register with the Department and pay tax on such sales. Since contractors are not eligible to execute Certificates of Exemption, they will have to pay tax on their purchases to the suppliers; however, the tax paid on the purchase price of property which is resold may be deducted on the returns from the tax due on the sales price of such property.

When a contractor enters into a performance contract, the contractor is liable for the tax on the purchases of tangible personal property used in the performance of the contract. The tax shall not be added to the agreed-upon price as a separate charge on the invoice but shall be included in the computation of the cost of the materials necessary to perform the contract. If the contractor does show the materials and installation separately and adds the sales tax as a separate item on the invoice or statement provided to the purchaser/owner, the contractor shall be deemed to be making sales and collecting sales tax for which he shall be liable for payment to the Secretary of Revenue.

2. Any contractor required to remit tax on his sales who feels that he should be classified as a retailer-contractor should submit full particulars regarding the nature of his business to the Secretary for a determination of his classification.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;
Issued: June 1, 1996;
Revised: July 1, 2007; July 1, 2005; June 1, 2002;
October 15, 1998.

31-4 ASPHALT PLANTS, CONCRETE PLANTS AND WEIGH HOPPERS SOLD TO CONTRACTORS

Sales of asphalt plants, concrete plants, weigh hoppers or other equipment to contractors who produce concrete or asphalt for use in fulfilling their contracts are taxable at the general rate of State tax and any applicable local sales or use tax, and no maximum tax is applicable.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;
Issued: June 1, 1996;

Revised: June 1, 2002.

31-5 SAND, DIRT AND STONE SOLD TO CONTRACTORS

Sales of sand, dirt, and stone to contractors or other users or consumers or to nonregistered merchants are subject to the general rate of State tax and any applicable local sales or use tax unless such property is sold in its original or unmanufactured state by the producer in his capacity as a producer.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-264;
Issued: June 1, 1996;
Revised: June 1, 2002.

31-6 SANDBLAST SAND SOLD TO CONTRACTORS

Sales of sandblast sand to contractors for use in the performance of contracts to clean ships, buildings, etc., are subject to the general rate of State tax and any applicable local sales or use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;
Issued: June 1, 1996;
Revised: June 1, 2002.

31-7 PRE-FABRICATED BUILDINGS SOLD TO CONTRACTORS

Sales of pre-fabricated buildings to contractors, builders, or other users or consumers in this State are subject to the general rate of State tax and any applicable local sales or use tax. Manufacturers of pre-fabricated buildings entering into performance contracts for the erection of buildings are liable for payment of the general rate of State tax and any applicable local sales or use tax on the purchase price of the tangible personal property used in the performance of the contract.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;
Issued: June 1, 1996;
Revised: June 1, 2002.

31-8 BUILDING MATERIALS

- A.** All building materials, supplies, fixtures and equipment of every kind and description which become a part of or are annexed to any building or other structure are subject to the general rate of State tax and any applicable local sales or use tax, unless specifically exempt by statute. Vendors of such items shall register, collect and remit the tax on their sales to contractors and other users or consumers.
- B.** If the contractor purchases from a vendor outside the State any building materials, supplies, fixtures or equipment for use in the construction, erection, alteration or repair of a building or other structure in this State and the vendor does not collect the tax thereon, such contractor must remit the use tax directly to the Department. The Sales and Use Tax Law provides that in such cases the tax is a joint liability of the contractor and the owner. The liability of the owner will be satisfied if he obtains from the contractor before settlement an affidavit certifying that the tax due has been paid.
- C.** **The following items are exempt from tax in accordance with G.S. 105-164.13(4c):**

1. commercially manufactured facilities to be used for commercial purposes for housing, raising or feeding animals or for housing equipment necessary for these commercial activities;
2. building materials, supplies, fixtures and equipment that become a part of and are used in the construction, repair or improvement of an enclosure or structure specifically designed, constructed and used for housing, raising or feeding animals or for housing equipment necessary for one of these commercial activities;
3. commercially manufactured equipment, and parts and accessories for the equipment, used in a facility that is exempt from tax under this subdivision or in an enclosure or a structure whose building materials are exempt from tax under this subdivision.

Note: For additional information on this exemption, refer to Sales and Use Tax Technical Bulletin 8-3.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-264;
Issued: June 1, 1996;
Revised: July 1, 2007; July 1, 2005; February 1, 2004;
June 1, 2002; October 15, 1998.

31-9 LUMBER SOLD TO COMMERCIAL FISHERMEN

Sales to commercial fishermen of lumber or other boat components or parts for use by them in building or repairing boats for their use in the taking or catching commercially of shrimp, crab, oysters, clams, scallops and fish, both edible and nonedible, are exempt from sales and use taxes under the provisions of G.S. 105-164.13(9).

History Note: Authority G.S. 105-164.13; 105-264;
Issued: June 1, 1996.

31-10 CONTRACTS AWARDED PRIOR TO THE ENACTMENT OF THE ½% STATE, THE THIRD ½% LOCAL SALES AND USE TAX, AND THE ADDITIONAL ¼% LOCAL SALES AND USE TAX

A. Contracts and Bids Entered Into Prior to Enactment

1. **Effective October 16, 2001**, the general rate of State tax increased from 4% to 4½%. The additional ½% State tax does not apply to construction materials purchased to fulfill a lump sum or unit price contract entered into or awarded before October 16, 2001 or entered into or awarded pursuant to a bid made before October 16, 2001. Businesses selling "**construction materials**" to contractors who have lump sum or unit price contracts awarded prior to October 16, 2001 or awarded pursuant to bids made prior to October 16, 2001 will continue to charge the 4% State tax and any applicable local sales or use tax to such contractors and are not liable for collecting and remitting the additional ½% State tax.
2. **Effective December 1, 2002, January 1, 2003, or July 1, 2003**, the local sales and use tax increased by ½%. The provisions in Paragraph A. 1. pertaining to contracts entered into prior to the increase also apply to the increase in the local tax. For the effective date of the increase in each county, refer to the Department's website.
3. **Effective April 1, 2008**, counties have authority to levy an additional ¼% local sales and use tax upon the favorable vote by the residents of a county. The legislation provides that the additional ¼% local sales and use tax does not apply to construction materials purchased to fulfill a lump sum or unit price contract entered into or awarded before the

effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy.

- a. **Effective April 1, 2008**, the following counties have adopted resolutions to levy the additional $\frac{1}{4}$ % sales and use tax:
 - (1) Alexander;
 - (2) Catawba;
 - (3) Martin;
 - (4) Pitt;
 - (5) Sampson; and
 - (6) Surry.

- b. **Effective October 1, 2008**, the following counties have adopted resolutions to levy the additional $\frac{1}{4}$ % sales and use tax effective:
 - (1) Cumberland; and
 - (2) Haywood.

- c. **Form E-589D, Affidavit to Exempt Contractors From the $\frac{1}{4}$ % Sales and Use Tax**, is to be used by contractors that are engaged in performing such contracts or will be awarded contracts pursuant to bids submitted before April 1, 2008 or October 1, 2008 for the counties listed above, respectively.

B. Construction Materials

For the purposes of the exclusion from the additional $\frac{1}{2}$ % State and the third $\frac{1}{2}$ % local sales and use tax, the term “**construction materials**” means materials that permanently become a part of a building or structure.

1. Construction Materials Include:

- a. lumber, doors, siding, fasteners (nails and screws), plaster, gypsum board, and windows;
- b. steel beams, concrete, asphalt, rebar, stone, brick, and mortar;
- c. pipes, plumbing fixtures such as sinks, faucets, tubs, wash basins, and tile;
- d. conduit, light fixtures and switches, electrical outlets, coaxial cable, central heating and air conditioning systems, and central intercom systems;
- e. architectural millwork, cabinets, and countertop materials; and
- f. parts to fire sprinkler systems, fireplace units, and other items that become a part of a structure such as commercial range hoods, freezer lockers that are built into a building, built-in ovens, cook tops, and stoves.

2. Construction Materials Do Not Include:

- a. movable refrigerators and ranges, free-standing freezers, portable heaters or air-conditioning units, portable dishwashers, clothes washers and dryers, toaster ovens, dehumidifiers, and similar small household or commercial appliances;

- b. supply items, such as mechanical and hand tools, parts and accessories to mechanical, and hand tools;
- c. gloves, boots, harnesses, and safety equipment;
- d. scaffolding, ladders, lifts, electrical power cords, and generators; or
- e. air compressors and tanks, paint sprayers, welders, power washers, and fuels.

C. Affidavit to Exempt Contractors From the Additional $\frac{1}{2}\%$ State Tax, the Third $\frac{1}{2}\%$ Local Tax, and the $\frac{1}{4}\%$ County Sales and Use Tax

1. **Form E-589, Affidavit to Exempt Contractors From the Additional $\frac{1}{2}\%$ State Tax, effective October 16, 2001**, is to be used by contractors that are engaged in performing such contracts or will be awarded contracts pursuant to such bids submitted prior to October 16, 2001. The affidavit is to be executed by the contractors and provided to the suppliers of building materials, supplies and fixtures. A properly completed affidavit should be executed in connection with each purchase and copies thereof should be maintained in the records of the seller and purchaser for a period of not less than three years. The contractors must retain the original or a duplicate original of any lump sum or unit price contract in their files.
2. **Form E-589B, Affidavit to Exempt Contractors From the Third $\frac{1}{2}\%$ Local Government Sales and Use Tax**, is to be used by contractors that are engaged in performing such contracts or will be awarded contracts pursuant to such bids submitted prior to the date of the increase. The affidavit is to be executed by the contractors and provided to the suppliers of building materials, supplies and fixtures. A properly completed affidavit should be executed in connection with each purchase and copies thereof should be maintained in the records of the seller and purchaser for a period of not less than three years. The contractors must retain the original or a duplicate original of any lump sum or unit price contract in their files.
3. **Form E-589D, Affidavit to Exempt Contractors From the $\frac{1}{4}\%$ County Sales and Use Tax**, is to be used in connection with sales or purchases of building materials for use in the performance of lump-sum or unit price contracts entered into or awarded prior to the effective date of the levy in a county that imposes the $\frac{1}{4}\%$ county sales and use tax, or entered into or awarded pursuant to bids made prior to this date. The affidavit is to be executed by the contractors and provided to the suppliers of building materials, supplies and fixtures. A properly completed affidavit should be executed in connection with each purchase and copies thereof should be maintained in the records of the seller and purchaser for a period of not less than three years. The contractors must retain the original or a duplicate original of any lump sum or unit price contract in their files.

History Note: Authority G.S. 105-164.4; 105-264;
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