DIRECTIVE

Subject: Real Property Contracts
Tax: Sales and Use Tax
Law: N.C. Gen. Stat. §§ 105-164.4(a)(13) & 105-164.4H
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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 taxes to real property contracts or for taxpayers that enter into or perform real property contracts. The directive is revised as a result of an amendment to N.C. Gen. Stat. § 105-164.4H(c) with a retroactive date of January 1, 2015 enacted as part of S.L. 2016-94. For additional information regarding the changes, see the Important Notice: Erroneous Collection of Sales Tax on a Real Property Contract issued by the Department October 25, 2016.

Imposition

This directive is effective for sales on or after January 1, 2015 and contracts entered into on or after January 1, 2015. N.C. Gen. Stat. § 105-164.4(a)(13) imposes the general 4.75% State rate of sales and use tax "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 G.S. 105-164.4H." Local (2.00% or 2.25%) and transit (0.50%) rates of sales and use tax currently in effect and imposed by N.C. Gen. Stat. §§ 105-466, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1 and 105-537 also apply to the sales price of such tangible personal property.

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 this State shall collect the general 4.75% State and any applicable local (2.00% or 2.25%) and transit (0.50%) rates of sales and use tax on the sales price of tangible personal property sold at retail to a real property contractor unless a statutory exemption in N.C. Gen. Stat. § 105-164.13 applies, or unless the purchaser operates as a retailer-contractor and issues a proper certificate of exemption or required data elements pursuant to N.C. Gen. Stat. § 105-164.28 to purchase items from the same retailer for resale.

Where a real property contractor purchases tangible personal property for storage, use, or consumption in this State, the provisions of N.C. Gen. Stat. § 105-164.6 apply. N.C. Gen. Stat. § 105-164.6(a) provides "[a]n excise tax at the applicable rate set in G.S. 105-164.4 is imposed on the products listed below. . . . A product is subject to tax under this section [N.C. Gen. Stat. § 105-164.6] only if it is subject to tax under G.S. 105-164.4.

(1) Tangible personal property or digital property purchased inside or outside this State for storage, use, or consumption in this State. This subdivision includes property that becomes part of a building or another structure.
(2) Tangible personal property or digital property leased or rented inside or outside this State for storage, use, or consumption in this State.
(3) Services sourced to this State."

Contractors who operated as performance contractors prior to January 1, 2015 who paid sales and use tax on the purchase price of tangible personal property for use in erecting structures, building on, or otherwise improving, altering, or repairing real property, will generally not be required to make changes for purposes of payment of sales or use taxes on or after January 1, 2015.

Definitions

The definitions for "real property contract," "real property contractor," and "retailer-contractor" are applicable to sales on or after January 1, 2015 and contracts entered into on or after January 1, 2015. The definitions for "consumer" and "retailer" are amended for sales on or after January 1, 2015 and contracts entered into on or after January 1, 2015. The definitions of "purchase price," "sales price," and "tangible personal property" remain unchanged and are consistent with the definitions in effect December 31, 2014.

A "real property contract" is a contract 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.

N.C. Gen. Stat. § 105-164.3(5) defines "consumer" as "[a] person who stores, uses, or otherwise consumes in this State tangible personal property, digital property, or a service purchased or received from a retailer or supplier either within or without this State."

N.C. Gen. Stat. § 105-164.3(33) defines "purchase price," in part, as having "the same meaning as the term 'sales price' when applied to an item subject to use tax."

N.C. Gen. Stat. § 105-164.3(33a) defines "real property contractor" as "[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 G.S. 105-164.4H."

N.C. Gen. Stat. § 105-164.3(35) defines "retailer," in part, as "[a] person engaged in business of any of the following:

a. Making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property, digital property, or services for storage, use, or consumption in this State. . . .

b. Delivering, erecting, installing, or applying tangible personal property for use in this State that does not become part of real property pursuant to the tax imposed under G.S. 105-164.4(a)(13).
c. Making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met."

N.C. Gen. Stat. § 105-164.3(35a) defines "retailer-contractor" as "[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."

N.C. Gen. Stat. § 105-164.3(37) defines "sales price," in part, as "[t]he total amount or consideration for which tangible personal property, digital property, or services are sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money." Sales price includes:

1. The retailer's cost of the property sold.
2. The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer.
3. Charges by the retailer for any services necessary to complete the sale.
4. Delivery charges.
5. Installation charges.
6. Credit for trade-in.
7. Discounts that are reimbursable by a third party and can be determined at the time of sale.

N.C. Gen. Stat. § 105-164.3(46) defines "tangible personal property," in part, as "[p]ersonal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses."

Installed or Applied to Real Property

Generally, tangible personal property is installed or applied to real property when it is attached to real property in a fixed or immovable manner that results in the tangible personal property becoming part of the real property. "Install" is defined in the Oxford Dictionary as to fix in position for use. For example, a person may install kitchen cabinets in a fixed, immovable manner by attaching them to the walls or floor of a kitchen. "Apply" is defined in the Oxford Dictionary as to put or spread onto a surface. For example, a person may apply wallpaper to the walls of a house. Once the wallpaper is applied, the wallpaper becomes part of the covering of the wall and part of real property.

Merely plugging a fixture or an appliance into an electrical outlet does not install or apply the fixture or appliance in such a manner that the fixture or appliance becomes part of real property. For example, a stand-alone refrigerator is not installed or otherwise applied to real property and does not become part of real property.

Generally, an item is not installed or applied and does not become part of real property if the purpose of the attachment is for the benefit of the tangible personal property itself, instead of for the benefit of real property. For example, the act of securing the top of a tall free-standing bookshelf to the wall to prevent the bookshelf from tipping over is merely an attachment of the bookshelf to the real property, and the bookshelf does not become part of real property. In this example, the bookshelf is secured to the wall for the purpose of stabilizing the bookshelf, which is a benefit to the bookshelf. In contrast, a sliding patio door, which is installed as an entryway

from a patio to the den of a home, is a benefit to the real property to which it is installed and becomes part of real property.

Examples:
For purposes of the following examples the total State (4.75%) and county (2.00%) sales and use tax rate is 6.75%.

- A business, that sells and installs mailboxes, invoices a customer a line item charge for a mailbox in the amount of $125.00 and a line item charge for installation of the mailbox in the amount of $100.00, for an invoice total in the amount of $225.00. The sales and installation of mailboxes by the business on or after January 1, 2015 are real property contracts. The general 4.75% State rate and 2.00% local rate of sales and use tax are due by the business on the purchase price of the mailbox and any other tangible personal property used to install the mailbox. If the purchase price of the mailbox and any other tangible personal property used to install the mailbox is $25.00, the 6.75% total rate of sales and use tax is applied to the $25.00, resulting in applicable sales or use tax of $1.69.

- A plumber enters into a contract with a customer to repair a leaking toilet. The plumber invoices the customer a line item charge for a new flapper in the amount of $4.99 and a line item charge for a separately stated service call fee in the amount of $25.00, for an invoice total in the amount of $29.99. Such a repair made on or after January 1, 2015 by the plumber is a real property contract and the general 4.75% State rate and 2.00% local rate of sales and use tax are due on the purchase price of the toilet flapper and any other tangible personal property used by the plumber to repair the toilet. If the purchase price of the flapper and any other tangible personal property used to install the flapper is $2.00, the 6.75% total rate of sales and use tax is applied to the $2.00, resulting in applicable sales or use tax of $0.14.

- A business fabricates, sells, and installs metal hand railings for a residential staircase and invoices the customer a line item charge for materials in the amount of $340.00, a line item charge for fabrication labor in the amount of $710.00, and a line item charge for installation labor in the amount of $500.00, for an invoice total in the amount of $1,550.00. For sales on or after January 1, 2015 and contracts entered into on or after January 1, 2015, such a transaction is a real property contract and the general 4.75% State rate and 2.00% local rate of sales and use tax are due on the purchase price of the materials used by the business to install the metal hand railings. If the purchase price of hand railings and materials used by the business to install the metal hand railings is $200.00, the 6.75% total rate of sales and use tax is applied to the $200.00, resulting in applicable sales or use tax of $13.50.

Retailer-Contractor Acting as a Real Property Contractor

N.C. Gen. Stat. § 105-164.4H(b) provides, in part, “[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 [emphasis added] the retailer-contractor also purchases inventory items from the seller for resale. When the tangible personal property 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.” Additionally, tangible personal property that the retailer-contractor withdraws from inventory for its own use and that does not become part of real property is subject to use tax. All items withdrawn from inventory by a retailer-contractor are subject to the general

4.75% State and applicable local and transit rates of sales and use tax unless an exemption in N.C. Gen. Stat. § 105-164.13 applies.

If a retailer-contractor subcontracts any part of the real property contract, tax is payable by the subcontractor on the subcontractor's purchase price of the tangible personal property that is installed or applied 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 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 tax has been paid.

Examples:

For purposes of the following examples the total State (4.75%) and county (2.25%) sales and use tax rate is 7.00%.

- On April 1, 2015, in a single point-of-sale transaction with a customer, a retailer-contractor makes a retail sale of a blender and also enters into a contract to install a kitchen sink. On the point-of-sale receipt given to the customer, the sales price of the blender is a line item in the amount of $100.00 and the sale and installation of the sink is another line item in the amount of $650.00. In this transaction, the point-of-sale receipt should separately state the sales tax charged in the amount of $7.00 by the retailer-contractor on the sales price of the blender in the amount of $100.00. The retailer-contractor should not reflect any amount for tax for the sale and installation of the sink in the amount of $650.00 on the point-of-sale receipt given to the customer. The retailer-contractor is liable for tax at the general 4.75% State rate and 2.25% local rate of sales and use tax on the purchase price of the sink and any other tangible personal property used to fulfill the real property contract to install the sink. If the purchase price of the sink and any other tangible personal property used to install the sink is $200.00, the 7.00% total rate of sales and use tax is applied to $200.00, resulting in applicable sales or use tax of $14.00 due.

- A retailer-contractor enters into a contract on June 1, 2015 to install wall-to-wall carpet for a customer. The contract is for $1,200.00 and includes carpet, padding, and installation. This transaction is a real property contract notwithstanding the charges for the carpet and labor are separately stated on the invoice or contract provided to the customer. The retailer-contractor is liable for the general 4.75% State rate and 2.25% local rate of sales and use tax on the purchase price of the carpet, padding, and any other tangible personal property used to fulfill the real property contract to install the wall-to-wall carpet. If the purchase price of the carpet, padding, and any other tangible personal property used to install the wall-to-wall carpet is $400.00, the 7.00% total rate of sales and use tax is applied to $400.00, resulting in applicable sales or use tax of $28.00 due.

- A retailer-contractor enters into a contract on April 1, 2015 to install kitchen cabinets for a customer. The contract is for $3,500.00 and includes cabinets, drawer pulls, and installation. This transaction is a real property contract notwithstanding amounts for the cabinets and labor may be separately stated on the invoice or contract provided to the customer. The retailer-contractor is liable for the general 4.75% State rate and 2.25% local rate of sales and use tax on the purchase price of the cabinets, drawer pulls, and any other tangible personal property used to fulfill the real property contract to install the kitchen cabinets. If the purchase price of the cabinets, drawer pulls, and any other tangible personal property used to install the kitchen cabinets is $800.00,

the 7.00% total rate of sales and use tax is applied to $800.00, resulting in applicable sales or use tax of $56.00 due.

- A retailer-contractor that sells granite countertops enters into a contract with a customer on April 30, 2015. The retailer-contractor is responsible for conducting an onsite visit of the customer's premises to measure and create a template for granite countertops. Subsequent to the onsite visit, the retailer-contractor prepares a bid in the amount of $4,000.00 for granite countertops which is accepted by the customer. The retailer-contractor cuts and prepares the granite countertops at its business location for installation on the customer's premises. The transaction is a real property contract and the retailer-contractor is liable for the general 4.75% State rate and 2.25% local rate of sales and use tax on the purchase price of the granite and any other tangible personal property used to fulfill the real property contract to install the granite countertops. If the purchase price of the granite countertops and any other tangible personal property used to install the granite countertops is $1,200.00, the 7.00% total rate of sales and use tax is applied to $1,200.00, resulting in applicable sales or use tax of $84.00 due.

Retailer-Contractor Inventory Methodology

A retailer-contractor that acts as a real property contractor when it performs real property contracts may determine and report its use tax liability due on the purchase price of tangible personal property it withdraws from inventory and uses to fulfill a real property contract based on the GAAP inventory method used to value the tangible personal property where the exact purchase price is unknown or cannot be determined by the retailer-contractor. The retailer-contractor must maintain records to substantiate the proper amount of use tax due on the purchase price of any items withdrawn from inventory and used to fulfill a real property contract.

Retailer-Contractor Making Retail Sales

A retailer-contractor engaged in business in the State that makes retail sales of tangible personal property sourced to the State should charge the general 4.75% State and applicable local and transit rates of sales and use tax on such retail sales, provided an exemption in N.C. Gen. Stat. § 105-164.13 does not apply.

Examples:

- A retailer-contractor makes a retail sale of carpet on March 31, 2015 to a customer that takes possession of the carpet at the retailer-contractor's location and the customer will arrange or handle any necessary installation. The retailer-contractor should charge the general 4.75% State and applicable local (2.00% or 2.25%) and transit (0.50%) rates of sales and use tax on the sales price of the carpet sold at retail to the customer.

- A retailer-contractor makes a retail sale of a storm door on April 20, 2015 to a customer. The customer arranges for the customer's contractor to pick up the storm door at the retailer-contractor's location. The retailer-contractor should charge the general 4.75% State and applicable local (2.00% or 2.25%) and transit (0.50%) rates of sales and use tax on the sales price of the storm door sold at retail to the customer and picked up by the customer's contractor.

Erroneous Collection of Tax if Separately Stated for a Real Property Contract

N.C. Gen. Stat. § 105-164.4H(c) provides that "[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 [emphasis added]. Any amount for 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~~." As such, if the Secretary determines that a real property contractor erroneously collected sales tax on a transaction as if it were a retail sale and is liable for use tax on a related transaction, the Secretary may ~~not~~ allow the real property contractor to offset the use tax liability with the sales tax erroneously collected. Otherwise, the real property contractor is liable for both the sales tax erroneously collected on the transaction and any sales or use tax due on the purchase price of the tangible personal property used to fulfill a real property contract.

Example:

> A real property contractor or retailer-contractor acting as a real property contractor enters into a real property contract with a customer to repair a residential central heating and air conditioning unit. The real property contractor invoices the customer for the replacement part in the amount of $20.00, installation labor in the amount of $35.00, and separately states sales tax on the invoice in the amount of $1.35, for an invoice total in the amount of $56.35. In this example, the $1.35 is an erroneous collection and must be remitted to the Department. In addition to the $1.35 sales tax collected in error, the real property contractor is liable for the 4.75% general State and applicable local (2.00% or 2.25%) and transit (0.50%) rates of sales or use tax on the purchase price of the part and any other supplies used to fulfill the real property contract to repair the central heating and air conditioning unit unless the real property contractor elects to offset the use tax liability with a portion of the sales tax collected as allowed under G.S. 105-164.4.11(a) retroactive to January 1, 2015.

Taxpayers engaged in business that perform real property contracts are encouraged to be descriptive on the contract or invoice provided to the customer at the time of sale to indicate the transaction is a real property contract as opposed to a retail sale of tangible personal property.

Bundled Transactions

A bundled transaction is a retail sale of two or more distinct and identifiable products, at least one of which is taxable and one of which is exempt, for one non-itemized price. Products are not sold for one non-itemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each product. A business, that enters into a lump-sum or unit price contract on or after January 1, 2015 that includes both an item that becomes part of real property and an item that does not become part of real property for one non-itemized price, provided such transaction meets the definition of a bundled transaction, must follow the requirements for a bundled transaction in N.C. Gen. Stat. § 105-164.4D.

Allocation of Fees or Other Charges

A business, that enters into a transaction with a single purchaser comprised of charges for the retail sale of tangible personal property that does not become part of real property and a real property contract, must allocate any miscellaneous charge or fee on an invoice that is included in the definition of "sales price" as defined in N.C. Gen. Stat. § 105-164.3(37), unless the charge or fee is specific to either the retail sale or the real property contract. A miscellaneous charge or fee, which is not specific to the retail sale of an item or to the real property contract, must be allocated between the retail sale and the real property contract to determine the proper amount of such charge or fee subject to sales and use tax.

Example:

A retailer-contractor makes a retail sale of a countertop microwave and also enters into a contract to install a kitchen sink for a customer. The retailer-contractor invoices both items on the same sales receipt. On the sales receipt, the countertop microwave is a line item in the amount of $100.00, the sink is a line item in the amount of $325.00, installation of the sink is a line item in the amount of $550.00, and a general processing fee is a line item in the amount of $25.00. The sales receipt total before application of sales tax is $1,000.00. The processing fee is not specific to either the retail sale of the countertop microwave or the contract to install the kitchen sink. Additionally, the processing fee is not an expense of the retailer-contractor, but rather, it is a charge by the retailer-contractor to its customer. In this transaction, the retailer-contractor should charge the general 4.75% State and applicable local (2.00% or 2.25%) and transit (0.50%) rates of sales and use tax on the line item in the amount of $100.00 for the countertop microwave, and the processing fee in the amount of $25.00 should be allocated as illustrated below:

Ten percent (10%) of the amount of the processing fee is applicable to the retail sale of the countertop microwave ($100.00/$1,000.00 = 10%). Sales tax is due on ten percent (10%) of the processing fee ($25.00 x 10% = $2.50). In this example, sales tax is due on the sales price of $102.50 which includes the line item charge for the countertop microwave in the amount of $100.00 and ten percent (10%) of the processing fee. Use tax is not due on ninety percent (90%) of the $25.00 processing fee. The processing fee is a general fee charged by the retailer-contractor and is not an expense of the retailer-contractor; therefore, ninety percent (90%) of the processing fee is not part of the purchase price of the tangible items used to install the kitchen sink pursuant to a real property contract. Sales or use tax is due on the purchase price of the sink and other items used to install the sink

If a charge or fee is an expense of the retailer-contractor that is passed along to the customer by the retailer-contractor, part of such charge or fee is included in the sales price of the item sold at retail and is subject to sales tax and part of the charge or fee is subject to use tax.

Example:

Using the previous example, all things are constant except the processing fee is an expense of the retailer-contractor and is passed along to the customer by the retailer-contractor. The processing fee in the amount of $25.00 should be allocated as illustrated below:

Ten percent (10%) of the amount of the processing fee is applicable to the retail sale of the countertop microwave ($100.00/$1,000.00 = 10%). Sales tax is due on ten percent (10%) of the processing fee ($25.00 x 10% = $2.50). In this example, sales tax is due on the sales price of $102.50 which includes the line item charge for the countertop microwave in the amount of $100.00 and ten percent (10%) of the processing fee. In addition to the purchase price of the sink and other items used to install the sink, use tax is due on ninety percent (90%) of the $25.00 processing fee ($25.00 x 90% = $22.50), as such is an expense of the retailer-contractor that installs the kitchen sink pursuant to a real property contract and is part of the purchase price subject to use tax.

Transition Issues, Circumstances, or Other Actions

Pursuant to Session Law 2014-3, a seller who collected and remitted sales or 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 (effective January 1, 2015, and applies to sales on or after that date and contracts entered into on or after January 1, 2015) is not liable to a purchaser for any overcollected sales or use tax that was collected in accordance with the rule, bulletin, or directive.

A real property contractor who does not meet the definition of a retailer-contractor effective January 1, 2015 and who operated as a retailer prior to January 1, 2015 should consider the following:

- Pay use tax on the purchase price of items in inventory purchased prior to January 1, 2015 and on which sales and use tax was not paid at the time of purchase. The use tax due on the purchase price of such inventory items should be remitted to the Department no later than April 20, 2015 for a taxpayer required to file a monthly sales and use tax return and no later than April 30, 2015 for a taxpayer required to file a quarterly sales and use tax return.

- Generally, rescind all certificates of exemption or other exemption information issued to vendors prior to January 1, 2015. Some exceptions may apply.

- Generally, pay sales and use tax to a vendor or supplier on the purchase price of tangible personal property and taxable services purchased on or after January 1, 2015 unless an exemption applies to a purchase of tangible personal property. Some exceptions may apply.

- Continue to remit to the Department the applicable sales and use tax on accounts receivable collections received on or after January 1, 2015 for sales transactions completed prior to January 1, 2015 for a taxpayer that reports sales and use tax on the cash basis and that had outstanding accounts receivable as of January 1, 2015.

- Submit Form NC-BN, Out-of-Business Notification, to request the sales and use tax account with the Department be placed inactive unless the real property contractor owes sales or use tax on or after January 1, 2015.

The following transition issues apply to a retail sale and installation transaction of tangible personal property entered into prior to January 1, 2015 where the tangible personal property that is installed or applied to real property occurs on or after January 1, 2015. Such transaction is considered a real property contract by definition on the date the tangible personal property is installed or applied to real property. In the following three scenarios, the taxpayer's classification was as a retailer prior to January 1, 2015, and changed to a real property contractor or retailer-contractor effective January 1, 2015. As a result, this subsection of the directive utilizes the term "taxpayer" to refer to the retailer, real property contractor, or retailer-contractor, as applicable.

- Where a taxpayer charged sales tax to the customer prior to January 1, 2015, the taxpayer is liable to report and pay the appropriate sales tax to the Department. Where sales tax was charged on the retail sales price of the tangible personal property prior to January 1, 2015, the taxpayer is not liable for use tax on the purchase price of such tangible personal property purchased and used to fulfill the contract. However, the

taxpayer is liable for sales and use tax on any other tangible personal property or supplies used to fulfill the contract that was not included in the sales price of tangible personal property on which sales tax was charged prior to January 1, 2015.

- Where a taxpayer did not charge sales tax to the customer prior to January 1, 2015 on the retail sales price of tangible personal property because the taxpayer knew that such tangible personal property would be installed or applied to real property on or after January 1, 2015 and was aware of the legislative changes, the taxpayer is liable for sales or use tax on the purchase price of the tangible personal property and any supplies used to fulfill the contract.

- Where a taxpayer did not charge sales tax to the customer prior to January 1, 2015 on the retail sales price of tangible personal property, the taxpayer is liable for sales and use tax on the purchase price of the tangible personal property and any supplies used to fulfill the contract.

Reliance on a Certificate of Exemption or Required Data Elements

N.C. Gen. Stat. § 105-164.28 provides, in part, the following requirements:

(a) Relief From Liability. – Except as provided in subsection (b) of this section, a seller is not liable for the tax otherwise applicable if the Secretary determines that a purchaser improperly claimed an exemption, or if the seller within 90 days of the sale meets the following requirements:

(1) For a sale made in person, the seller obtains a certificate of exemption or a blanket certificate of exemption from a purchaser with which the seller has a recurring business relationship. If the purchaser provides a paper certificate, the certificate must be signed by the purchaser and state the purchaser's name, address, certificate of registration number, reason for exemption, and type of business. For purposes of this subdivision, a certificate received by fax is a paper certificate. If the purchaser does not provide a paper certificate, the seller must obtain and maintain the same information required had a certificate been provided by the purchaser.

(2) . . .

(3) For a sale made over the Internet or by other remote means, the seller obtains the purchaser's name, address, certificate of registration number, reason for exemption, and type of business and maintains this information in a retrievable format in its records. If a certificate of exemption is provided electronically for a remote sale, the requirements of subdivision (1) of this subsection apply except the electronic certificate is not required to be signed by the purchaser.

A seller that relies on a properly completed certificate of exemption, signed by the purchaser for a sale made in person, or receives and maintains the required data elements for a remote sale provided to the seller by a purchaser claiming an exemption, is not liable for any tax due on a sale to such purchaser pursuant to N.C. Gen. Stat. §§ 105-164.28 and 105-164.28A.

If the purchaser fails to give proper notice that the exemption information should no longer be relied upon or where a purchaser claims an invalid exemption, the purchaser is liable for any tax, penalty, and interest due on such purchase unless the seller is involved in any of the fraud activities listed in N.C. Gen. Stat. § 105-164.28(c).

Sourcing

N.C. Gen. Stat. § 105-164.4B provides, in part, the following general sourcing principles:

(a) General Principles. - The following principles apply in determining where to source the sale of a product. These principles apply regardless of the nature of the product, except as otherwise noted in this section:

(1) When a purchaser receives a product at a business location of the seller, the sale is sourced to that business location.

(2) When a purchaser or purchaser's donee receives a product at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser or the purchaser's donee receives the product.

(3) When subdivisions (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(4) When subdivisions (1), (2), and (3) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(5) When subdivisions (1), (2), (3), and (4) of this subsection do not apply, including the circumstance in which the seller is without sufficient information to apply the rules, the location will be determined based on the following:

a. Address from which tangible personal property was shipped,

b. Address from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or

c. Address from which the service was provided.

Real Property Contractor Sourcing Examples:

- A real property contractor purchases tangible personal property from a supplier outside this State who is not required to register and collect the general 4.75% State and applicable local and transit rates of sales and use tax. The tangible personal property is shipped via common carrier to the real property contractor's business location in Buncombe County for use by the real property contractor to fulfill a real property contract in Caldwell County. The real property contractor must remit the general 4.75% State and Buncombe County rates of sales and use tax to the Department for the sales and use tax filing period during which the tangible personal property is received at the real property contractor's business location. On the date this directive is published, the total sales and use tax rates in effect for Buncombe and Caldwell Counties are 7.00% and 6.75%, respectively; therefore, the real property contractor is allowed credit for the 2.25% Buncombe County use tax paid against the 2.00% Caldwell County local use tax. However, the real property contractor is not due a refund of the additional 0.25% Buncombe County local tax.

- A real property contractor enters into a real property contract to install a residential garage door in Mecklenburg County and purchases the garage door and other tangible personal property for use to fulfill the contract from a retailer in Gaston County and pays the general 4.75% State and 2.00% Gaston County rates of sales and use tax. The real property contractor is liable for the additional 0.50% Mecklenburg County transit sales and use tax on the purchase price of the garage door and other tangible personal property used to fulfill the contract in Mecklenburg County. The additional 0.50% transit sales and use tax must be reported and remitted to the Department for

the sales and use tax reporting period for which the garage door and other tangible personal property was installed in Mecklenburg County and becomes part of real property.

- A real property contractor enters into a real property contract with a customer to install a residential water heater in Lee County. The real property contractor purchased the residential water heater in Wake County and paid the general 4.75% State and 2.00% Wake County rates of sales and use tax. At the time of purchase, the real property contractor knows it will use the water heater to fulfill the real property contract in Lee County. At the time the tangible personal property becomes part of real property, the Lee County rate of sales and use tax is 2.25%. The real property contractor is liable for the additional 0.25% Lee County sales and use tax on the purchase price of the tangible personal property purchased in Wake County and used to fulfill the real property contract in Lee County. The additional 0.25% Lee County tax must be reported and remitted to the Department for the sales and use tax reporting period for which the tangible personal property was installed and becomes part of real property.

Retailer-Contractor Sourcing Examples:

- A retailer-contractor withdraws a storm door from inventory held for sale at its Pitt County location on April 10, 2015 and uses the storm door to fulfill a real property contract in Craven County that was entered into with a customer on March 27, 2015. Since the retailer-contractor knows at the time of withdrawal from inventory the location where the storm door will become part of real property, the retailer-contractor is liable to report and remit the applicable use tax on the purchase price of the storm door for Craven County (location of the real property) at the 2.00% rate of tax, as opposed to the 2.25% rate of tax for Pitt County.

- A retailer-contractor in Ashe County makes an over-the-counter retail sale of gas logs to a customer. The sale by the retailer-contractor is sourced to Ashe County as the customer takes possession of the gas logs in Ashe County.

- A retailer-contractor in Pamlico County makes a retail sale of a refrigerator and delivers the refrigerator to the purchaser in Carteret County. The sale of the refrigerator is sourced to Carteret County, the location where the purchaser receives the refrigerator from the retailer-contractor.

Registration & Reporting

A retailer, retailer-contractor, real property contractor, or other person who is not registered with the Department and is required to collect and/or remit State and applicable local and transit sales and use tax, must complete NC-BR, Business Registration Application for Income Tax Withholding, Sales and Use Tax, and Machinery and Equipment Tax. Both an online business registration portal and a web-fill version of Form NC-BR are available on the Department's website, www.dornc.com. There is no fee required to register and obtain a certificate of registration.

Additionally, any retailer, retailer-contractor, real property contractor, or other person that must remit tax for more than one county, must complete Form E-536, Schedule of County Sales and Use Taxes, and submit it along with Form E-500, Sales and Use Tax Return, or enter the applicable amounts by county during the online filing process. Form E-536 or the amounts entered during the online filing process must reflect the amount of local and transit tax due for each county by a retailer, retailer-contractor, real property contractor, or other person.

Rate of Tax

As of January 1, 2015, the total general State, local, and transit, as applicable, rates of sales and use tax are 6.75% in seventy-two (72) 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. Effective April 1, 2015, the total general State and local rate of sales and use tax in effect for Anson and Ashe Counties is 7.00%. The Department maintains current and historical sales and use tax rates on the Department's website at, http://www.dornc.com/taxes/sales/taxrates.html.

Additional Information and Assistance

For additional information concerning the application of sales and use taxes to real property contracts, refer to Important Notice: Real Property Contracts published November 11, 2014 and Important Notice: Real Property Contract List and Tangible Personal Property List published December 19, 2014, available on the Department's website, www.dornc.com. General questions regarding this directive should be directed to the Taxpayer Assistance and Collection Center at telephone number 1-877-252-3052 (toll-free).

Disclaimer:

To the extent that there is any change in statute or regulation, or new case law subsequent to this directive, the provisions in this directive 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 issued prior to the date of this directive conflicts with this directive, the provisions contained in this directive supersede.