



**Sales and Use Tax Division
North Carolina Department of Revenue
Post Office Box 25000
Raleigh, North Carolina 27640-0001
www.dornc.com**

**IMPORTANT NOTICE: A REAL PROPERTY CONTRACT AND
CERTAIN MACHINERY AND EQUIPMENT TAX**

This important notice is issued under the authority granted the Secretary of Revenue pursuant to N.C. Gen. Stat. § 105-264. The notice addresses the application of tax to certain machinery and equipment under Article 5F ("Certain Machinery and Equipment") of the N.C. General Statutes relative to a real property contract or for a taxpayer that enters into or performs a real property contract. For purposes of this notice, the tax on Certain Machinery and Equipment is referred to as "1% privilege tax" or "1% privilege tax with a maximum tax of \$80.00 per article." Additionally, the definitions in N.C. Gen. Stat. § 105-164.3 apply to this important notice and to the application of tax to Certain Machinery and Equipment.

Mill Machinery or Mill Machinery Parts or Accessories

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 Section 57-1](#), to qualify for the 1% privilege tax with a maximum tax of \$80.00 per article when purchased by a real property contractor. A real property contractor, as defined in N.C. Gen. Stat. § 105-164.3, is the consumer of mill machinery or mill machinery parts or accessories that the real property contractor installs or applies for a manufacturing industry or plant and that become part of real property. As such, a real property contractor is liable for payment of the 1% privilege tax with a maximum tax of \$80.00 per article on the purchase price of a qualifying purchase, and such real property contractor must remit the tax directly to the Department. When tangible personal property is purchased by a real property contractor that is not mill machinery or mill machinery parts or accessories for use in the production process by a manufacturing industry or plant, the real property contractor is liable for the general 4.75% State and applicable local and transit rates of tax on such purchase. The term "real property contractor" includes a general contractor, a subcontractor, or a builder.

If a real property contractor subcontracts any part of the real property contract, the 1% privilege tax is payable by the subcontractor on the subcontractor's purchase price of a qualifying purchase of mill machinery or mill machinery parts or accessories to be installed or applied to real property in fulfilling the real property contract, provided the item is for use by a manufacturing industry or plant in the production process. The real property contractor, the subcontractor, and the owner of the real property are jointly and severally liable for the 1% privilege tax. The liability of a real property contractor, a subcontractor, or an owner, who did not purchase the mill machinery or mill machinery parts or accessories, is satisfied by receipt of an affidavit from the purchaser certifying that the tax has been paid. A real property contractor can obtain [Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption](#), on the Department's website to execute and furnish to its vendor in connection with a qualifying purchase as the vendor's authority to exempt the sale of such item from sales and use tax. Alternatively, the data elements as required by N.C. Gen. Stat. § 105-164.28(a) to substantiate an exemption can be provided to a vendor.

Datacenters

A real property contractor, that purchases qualifying datacenter machinery and equipment prior to July 1, 2015 for use at a datacenter for a qualifying purpose by the owner of a datacenter that meets the requirements of N.C. Gen. Stat. § 105-187.51C(a1) or (a2), is the consumer of the datacenter machinery and equipment that become part of real property. The real property contractor is liable for payment of the 1% privilege tax with a maximum tax of \$80.00 per article on such qualifying purchase, and the real property contractor must remit the tax directly to the Department. The 1% privilege tax rate applicable to a purchase of qualifying datacenter machinery and equipment discussed herein is set to expire for purchases on or after July 1, 2015. A real property contractor is liable for the general 4.75% State and applicable local and transit rates of tax on a purchase of datacenter machinery and

equipment for use at a datacenter by the owner of a datacenter on or after July 1, 2015, unless legislation is enacted by the General Assembly to extend the sunset or unless the real property contractor purchases qualifying datacenter machinery and equipment on or after July 1, 2015 to fulfill a lump-sum or unit-price contract entered into, awarded, or entered into or awarded pursuant to a bid made prior to July 1, 2015 for use at a datacenter by the owner of the datacenter that received a certification pursuant to N.C. Gen. Stat. § 105-187.51C(a1) or (a2) prior to July 1, 2015. If a real property contractor subcontracts any part of the real property contract, the 1% privilege tax is payable by the subcontractor on the subcontractor's purchase price of qualifying datacenter machinery and equipment to be installed or applied to real property in fulfilling the real property contract, provided the qualifying datacenter machinery and equipment is for use at a datacenter by the owner of the datacenter. The real property contractor, the subcontractor, and the owner of the real property are jointly and severally liable for the privilege tax. The liability of a real property contractor, a subcontractor, or an owner, who did not purchase the datacenter machinery and equipment, is satisfied by receipt of an affidavit from the purchaser certifying that the tax has been paid.

A real property contractor can obtain [Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption](#), on the Department's website to execute and furnish to its vendor in connection with a qualifying purchase as the vendor's authority to exempt the sale of such item from sales and use tax. Alternatively, the data elements as required by N.C. Gen. Stat. § 105-164.28(a) to substantiate an exemption can be provided to the vendor.

Certain Recyclers, Research and Development Companies, Industrial Machinery Refurbishing Companies, Companies Located at Ports Facilities, and Large Manufacturing and Distribution Facilities

A real property contractor, that purchases items for use in performing a real property contract with certain recyclers, research and development companies, industrial machinery refurbishing companies, and companies located at ports facilities, is liable for the general 4.75% State and applicable local and transit rates of tax on its purchases. Purchases by a real property contractor for use in conjunction with a real property contract with companies listed in N.C. Gen. Stat. § 105-187.51B(a) are subject to the general 4.75% State and applicable local and transit rates of sales and use tax. The statute does not afford the 1% privilege tax with a maximum tax of \$80.00 per article to a real property contractor who enters into or performs a contract with companies listed in N.C. Gen. Stat. § 105-187.51B(a) no matter that such items may be for ultimate use by such companies.

Additionally, a real property contractor that purchases items for use in a real property contract with a large manufacturing and distribution facility as defined in N.C. Gen. Stat. § 105-187.51D is liable for the general 4.75% State and applicable local and transit rates of tax. While large manufacturing and distribution facilities are afforded the 1% privilege tax with a maximum tax of \$80.00 per article, as applicable, and must make a direct purchase of the mill machinery, distribution machinery, or parts or accessories for mill machinery or distribution machinery to qualify for the 1% privilege tax, such preferential rate of tax does not extend to a purchase by a real property contractor no matter that such item may be for a qualifying use by a large manufacturing and distribution facility.

Registration & Reporting

A real property contractor, who is not registered with the Department and is required to remit the 1% privilege tax, should 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 at the Department's website, www.dorn.com. There is no fee required to register and obtain a certificate of registration. The privilege tax is reported to the Department on [Form E-500J, Machinery and Equipment Tax Return](#), and should be submitted with payment of the tax, as applicable. For a reporting period in which there is \$0.00 privilege tax due, a return reflecting \$0.00 tax due should be submitted to the Department for the period.

Assistance

For additional information about Certain Machinery and Equipment tax applicable to a manufacturing facility or industry, refer to [Sales and Use Tax Technical Bulletin Section 56-1](#). Questions regarding this notice should be directed to the Taxpayer Assistance and Collection Center at telephone number 1-877-252-3052 (toll-free).

To the extent that there is any change in statute or regulation, or new case law subsequent to the date of this notice, the provisions in this important notice may be superseded or voided. To the extent that any provisions in any other notice, directive, technical bulletin, or published guidance regarding sales and use tax or the privilege tax on Certain Machinery and Equipment issued prior to the date of this notice conflicts with this important notice, the provisions contained in this important notice supersede.