

North Carolina Construction Sales and Use Tax

TAX SECTION



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In 2017, North Carolina sales and use tax related to construction changed, creating a binary system. Although the Department of Revenue released Directive SD-18-1 to explain the new rules, they remain confusing to many service providers.

Construction projects can be taxed under North Carolina sales and use tax in one of two ways: (a) as a real property contract (“RPC”) or (b) as a repair, maintenance, and installation service (“RMI”). An RPC is defined by G.S. § 105-164.3(207) as “a contract between a real property contractor and another person to perform a capital improvement to real property.” Capital improvement means, in part, “a new construction, reconstruction, or remodeling.” G.S. § 105-164.3(31).

In contrast, an RMI service is a service to customers that does not qualify as an RPC. It is generally a smaller construction job such as updating countertops, repairing fixtures, or other general maintenance contracting work.

The tax treatments of an RPC and RMI are different. Under an RPC, services are provided to the general contractor or homeowner. The service provider pays sales tax to its supplier for materials purchased for the job. However, because sales tax on materials need be paid only once, RPCs are exempt from the sales tax on services. The service provider does not invoice the general contractor or homeowner for any tax. To ensure a job qualifies as an RPC, the service provider should request a Form E-589CI (affidavit of capital improvement) from the general contractor or homeowner. Receipt of this form absolves the service provider from responsibility for collecting taxes and, in the event of a sales tax audit, shows reasonable reliance that sales tax was not due.

As to an RMI, the end client is responsible for paying tax on both the services provided and the cost of the goods incident to such service. Because sales tax need be paid only once, RMIs use Form E-595E resale exemptions to defer tax on the purchase of goods to be used in the RMI until the services are provided to the final customer. In such case, sales tax should be charged on the total cost of the service and goods provided to the customer unless the customer provides a Form E-595E indicating an exemption.

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