



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

IMPORTANT NOTICE: FORM E-589J AFFIDAVIT TO EXEMPT CERTAIN QUALIFYING PURCHASES OR CHARGES ON OR AFTER MARCH 1, 2016

[Form E-589J](#), Affidavit to Exempt from Sales and Use Tax Certain Qualifying Purchases or Charges On or After March 1, 2016, is to be executed only for a purchase in connection with a lump-sum or unit-price contract entered into or awarded prior to March 1, 2016, or entered into or awarded pursuant to a bid made prior to March 1, 2016 ("Qualifying Contract"). The document was formerly titled E-589J, Affidavit to Exempt from Sales and Use Tax Installation Charges for Certain Purchases of Tangible Personal Property by Contractors to Fulfill a Lump-Sum or Unit-Price Contract. The document is renamed and the permitted use expanded as a result of changes in the imposition of sales and use tax due to legislation enacted effective March 1, 2016.

N.C. Gen. Stat. § 105-164.15A(a)(2) provides, in part, the effective date of a tax change for tangible personal property, digital property, or taxable services "applies to amounts received for items provided on or after the effective date, except amounts received for items provided under a lump-sum or unit-price contract entered into or awarded before the effective date or entered into or awarded pursuant to a bid made before the effective date."

A person may issue the affidavit for the following purchases or charges to fulfill a Qualifying Contract without payment of sales or use tax based on the sales and use tax laws in effect prior to March 1, 2016:

1. Installation Charges

Effective March 1, 2016, installation charges by a retailer to a purchaser as part of the retail sale of tangible personal property, certain digital property, and taxable services are subject to the applicable rate of sales and use tax for the item as set forth in N.C. Gen. Stat. § 105-164.4(a), no matter that the installation charges may be separately stated by the retailer on the invoice or similar billing document given to the purchaser at the time of sale.

A purchaser may obtain an item to fulfill a Qualifying Contract without payment of the sales or use tax on installation charges on or after March 1, 2016 provided the retailer separately identified the installation charges on the invoice or similar document given to the purchaser at the time of the sale. The retailer should not honor an affidavit provided by a purchaser where the retailer has not separately identified the installation charges on the invoice or similar document given to the purchaser at the time of the sale. For more detailed information on the repeal of the exemption for installation charges, refer to [Important Notice: Repeal of Installation Charges Exemption](#), published on January 11, 2016.

2. Repair, Maintenance, and Installation Services

Effective March 1, 2016, N.C. Gen. Stat. § 105-164.4(a)(16) imposes the general 4.75% State rate of sales and use tax "to the sales price of or the gross receipts derived from repair, maintenance, and installation services" sold at retail and sourced to the State. The applicable local (2.00% or 2.25%) and applicable transit (0.50%) rates of sales and use tax also apply to the sales price of or the gross receipts derived from such services. The excise tax per N.C.

Gen. Stat. § 105-164.6 is applicable to the purchase of repair, maintenance, and installation services sourced to the State.

A purchaser may obtain repair, maintenance, and installation services to fulfill a Qualifying Contract without payment of sales or use tax on the services on or after March 1, 2016. The seller of the repair, maintenance, and installation services is liable for the sales or use tax on the purchase price of any tangible personal property used to provide the repair, maintenance, and installation services. Where tangible property becomes a part of a building or other structure in the State and the purchaser is a contractor or subcontractor, the contractor, the subcontractor, and the owner of the building are jointly and severally liable for the tax. The liability of a 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. Where tangible personal property does not become a part of a building or other structure, the retailer is liable for sales and use tax due on the purchase price of tangible personal property used to provide the repair, maintenance, and installation services. For more detailed information on repair, maintenance, and installation services, refer to [Directive SD-16-2: Repair, Maintenance, and Installation Services](#), published February 5, 2016.

3. **Retail Trade**

Effective March 1, 2016, N.C. Gen. Stat. § 105-164.3(34a) defines “**retail trade**” as “[a] trade in which the majority of revenue is from retailing tangible personal property, digital property, or services to consumers. The term includes activities of a person properly classified in NAICS sector 44-45, buying goods for resale, and rendering services incidental to the sale of merchandise. The term typically includes maintaining an inventory and may include the provision of repair, maintenance, and installation services. Not all activities provided in this subdivision are required for a trade to be considered retail trade.” For more detailed information on “retail trade,” refer to [Directive SD-16-1: Retail Trade](#), published February 5, 2016.

A person who meets the definition of “real property contractor” or “retailer-contractor” in N.C. Gen. Stat. § 105-164.3 prior to March 1, 2016, can obtain **certain** purchases of tangible personal property **or certain services** without payment of sales tax to fulfill a Qualifying Contract. To obtain tangible personal property or services without payment of sales tax on the sales price from a person who is a retailer in retail trade on or after March 1, 2016, who was either a “real property contractor” or a “retailer-contractor” by definition prior to March 1, 2016, the purchaser may issue Form E-589J. In such instance, the sales and use tax laws in effect prior to March 1, 2016 would continue to apply to tangible personal property purchased to fulfill a real property contract to fulfill a Qualifying Contract. In such instance, the retailer in retail trade may treat the transaction to fulfill a Qualifying Contract as a real property contract, and the contractor, subcontractor, and the owner are jointly and severally liable for the sales or use tax. The retailer should not honor an affidavit provided by the purchaser where the retailer is unable to accommodate the request to properly determine the retailer’s tax liability under the laws in effect prior to March 1, 2016.

Use Tax Liability

When a person who is a retailer in retail trade on or after March 1, 2016 withdraws tangible personal property from inventory on or after March 1, 2016 to fulfill a Qualifying Contract, the retailer is liable for use tax on the purchase price of such tangible personal property. The retailer must retain a copy of the Qualifying Contract and other records to substantiate that sales and use tax is due based on the sales and use tax laws in effect prior to March 1, 2016 for a real property contract. Otherwise, the transaction by the retailer is a retail sale and the retailer is liable for sales and use tax on the sales price of the tangible personal property no matter that the retailer installs or applies the tangible personal property to real property.

When a retailer-contractor, as a contractor or subcontractor for a Qualifying Contract, withdraws tangible personal property from inventory on or after March 1, 2016 and installs or applies the tangible

personal property to real property, use tax must be accrued and paid only on the retailer-contractor's purchase price of the tangible personal property, unless an exemption for tangible personal property in effect prior to March 1, 2016 applies to the Qualifying Contract. The retailer-contractor must retain a copy of Form E-589J issued by the purchaser or must retain a copy of the Qualifying Contract and other records to substantiate that sales and use tax is due based on the sales and use tax laws in effect prior to March 1, 2016 for a real property contract.

A retailer-contractor who acts as a contractor or subcontractor on or after March 1, 2016 for purposes of a Qualifying Contract, may issue a Form E-589J to a seller on or after March 1, 2016.

Assistance

General 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 issued prior to the date of this notice conflicts with this important notice, the provisions contained in this important notice supersede.