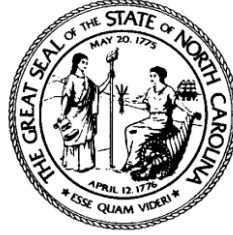

North Carolina Department of Revenue



DIRECTIVE

Subject: Charges for Shop Supplies
Tax: Sales and Use Tax
Law: N.C. Gen. Stat. §§ 105-164.3(37), 105-164.4(a)(1), and 105-164.4(a)(16)
Issued By: Sales and Use Tax Division
Date: May 25, 2018
Number: SD-18-4

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 tax to charges for shop supplies. This directive hereby disavows the Secretary's Final Decision in Docket No. 2003-553, for transactions on or after September 1, 2018, as it relates to the taxation of shop supplies for sales and use tax purposes. For purposes of this directive, shop supplies do not include tangible personal property that becomes a part of, attached to, or transferred as part of a service to a customer's property.

Changes of Interpretation

Pursuant to the authority granted in N.C. Gen. Stat. § 105-264(c), the Department changes its interpretation of the taxability of a separately stated charge made by a retailer for shop supplies in conjunction with the retail sale of tangible personal property. **Effective September 1, 2018**, separately stated charges for shop supplies are part of the sales price of tangible personal property sold at retail to repair a motor vehicle, tangible personal property, a boat, or other tangible item subject to the sales and use taxes imposed under N.C. Gen. Stat. §§ 105-164.4(a) and 105-164.6.

Additionally, this directive gives notice that **effective September 1, 2018**, any charge for shop supplies in conjunction with taxable repair, maintenance, and installation services is part of the sales price of or gross receipts derived from repair, maintenance, and installation services sold at retail.

Therefore, **effective September 1, 2018**, any charge for shop supplies, whether separately stated or not, in connection with a retail sale of tangible personal property or repair, maintenance, and installation services is subject to the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax. The term "sales price" is defined, in part, to include "[t]he cost of materials used," "any other expense of the retailer," and "[c]harges by the retailer for any services necessary to complete the sale." Thus, any charges to recoup or recover costs of shop supplies are part of the sales price subject to tax.

North Carolina Department of Revenue

Impositions

The sales price of each item or article of tangible personal property sold at retail, that is not subject to tax under another subdivision of N.C. Gen. Stat. § 105-164.4(a), is subject to the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax.¹ If the tax due is not paid at the time of purchase, an excise tax is applicable, at the same rate, to the purchase price of the tangible property for storage, use, or consumption in the State.²

The sales price of or the gross receipts derived from repair, maintenance, and installation services sold at retail are subject to the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax.³ If the tax due is not paid at the time of purchase, an excise tax is applicable, at the same rate, to the repair, maintenance, and installation services sourced to this State.

Definitions

The definitions contained in this section are defined in N.C. Gen. Stat. § 105-164.3, unless otherwise noted herein.

“Repair, maintenance, and installation services” – The term includes the activities listed below and applies to tangible personal property, a motor vehicle, digital property, and real property except for services used and tangible personal property or digital property installed or applied by a real property contractor pursuant to a real property contract taxed in accordance with N.C. Gen. Stat. § 105-164.4H:

- a. To keep or attempt to keep property or a motor vehicle in working order to avoid breakdown and prevent deterioration or repairs. Examples include to clean, wash, or polish property.
- b. To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property or a motor vehicle to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.
- c. To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore property or a motor vehicle to proper working order or good condition. The term includes activities that may lead to the issuance of an inspection report.
- d. To install, apply, connect, adjust, or set into position tangible personal property, digital property, or a motor vehicle. The term includes floor refinishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like-kind item, such as replacing one or more windows, is a single repair, maintenance, and installation service. The term does not include an installation defined as a capital improvement pursuant to N.C. Gen. Stat. § 105-164.3(2c)d.
- e. To inspect or monitor property or a motor vehicle, but does not include security or similar monitoring services for real property.

¹ N.C. Gen. Stat. §§ 105-164.3(34), (37), (46) and 105-164.4; Subchapter VIII of Chapter 105 of the North Carolina General Statutes; and Chapter 1096 of the 1967 Session Laws

² N.C. Gen. Stat. § 105-164.6; Subchapter VIII of Chapter 105 of the North Carolina General Statutes; and Chapter 1096 of the 1967 Session Laws.

³ N.C. Gen. Stat. §§ 105-164.3.(33), 105-164.4(a)(16), 105-164.6, Subchapter VIII of Chapter 105 of the North Carolina General Statutes; and Chapter 1096 of the 1967 Session Laws.

North Carolina Department of Revenue

“Tangible Personal Property” – Personal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses. The term includes electricity, water, gas, steam, and prewritten computer software.

“Sales Price” – The 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. The term includes the retailer's cost of the property sold; 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; charges by the retailer for any services necessary to complete the sale; delivery charges; installation charges; credit for trade-in; and certain discounts that are reimbursable by a third party and can be determined at the time of sale in the manner required by the statute.

“Purchase Price” – The term has the same meaning as the term “sales price” when applied to an item subject to use tax.

“Person”⁴ – An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of Chapter 105, of N.C. Gen. Stat. § 55-16-22, of Article 81 of Chapter 106 of the General Statutes, or of Article 3 of Chapter 119 of the General Statutes.

“Motor Vehicle” – A vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:

- a. A moped.
- b. Special mobile equipment.
- c. A tow dolly that is exempt from motor vehicle title and registration requirements under N.C. Gen. Stat. §§ 20-51(10) or (11).
- d. A farm tractor or other implement of husbandry.
- e. A manufactured home, a mobile office, or a mobile classroom.
- f. Road construction or road maintenance machinery or equipment.

Other References

N.C. Gen. Stat. § 20-354.2 defines the term “motor vehicle repair,” in part, as “all maintenance of and modification and repairs to motor vehicles, including, but not limited to, . . . shop supply fees.” N.C. Gen. Stat. § 20-354.6(2) provides, in part, a motor vehicle repair shop shall provide each customer an invoice for each repair which shall include “[a]n itemized description of all labor, parts, and merchandise supplied and the costs of all labor, parts, and merchandise supplied.”

Additionally, **effective January 1, 2018**, N.C. Gen. Stat. § 20-101.3 provides, in part, “[a] motor vehicle dealer shall not charge shop fees in conjunction with service work performed by the dealer, or other discretionary fees relating to environmental or regulatory compliance, record retention, or other costs incurred by the dealer in conjunction with service work performed by the dealer, whether or not the fees are attributable to or include the dealer’s internal overhead or profit, unless the dealer complies with both of the following requirements:

⁴ N.C. Gen. Stat. §105-228.90.

North Carolina Department of Revenue

- (1) The dealer shall post a conspicuous notice in the service area of the dealership measuring at least 24 inches on each side informing customers that fees regulated by this section may or will be charged and that customers should inquire of dealership personnel if they would like to know the type and amount or basis of the fees charged by the dealer.
- (2) The total amount of all fees regulated by this section shall be disclosed on the customer's repair order or repair invoice."

Examples

- Mr. Smith drove into a tree resulting in damage to the right rear fender of his car. Ze Body Shoppe replaces and paints the fender. Tangible personal property that became part of or attached to Mr. Smith's car as part of the repair include: automotive pins, bolts, a fender, nuts, paint, polishes, primer, sealer, solder, and washers. Items of tangible personal property used or consumed during the repair process that did not become part of or attached to the customer's repaired car include buffing pads, chamois, detergent, paint thinner, penetrating oil, masking paper, masking tape, rags, and sandpaper and were labeled on the invoice as "shop supplies." On the invoice to Mr. Smith, the repair, maintenance, and installation services are listed as "labor" in the amount of \$500.00, the fender and parts are listed in the amount of \$200.00, and a charge for "shop supplies fee" is listed in the amount of \$50.00 for a total billing of \$750.00. Ze Body Shoppe is liable for sales tax at the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax on the total taxable sale of \$750.00, including the \$50.00 charge for shop supplies. Additionally, Ze Body Shoppe is liable for the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax on the purchase price of the "shop supplies" used in the process of repairing the car no matter that such amount is also included in the sales price.
- Mrs. Bradshaw's motor vehicle is not starting properly, so she contacts her mechanic, Mr. Gray, to repair her car. Mr. Gray removes and cleans the EGR valve, replaces the gaskets, and a vacuum line. Tangible personal property that became part of or attached to Mrs. Bradshaw's repaired car include the vacuum line and the gaskets. During the repair process, Mr. Gray uses or consumes the following items of tangible personal property ("shop supplies") that do not become part of or attached to Mrs. Bradshaw's car: carburetor cleaner, other solvents, and rags. On the invoice to Mrs. Bradshaw, Mr. Gray charges \$20.00 for the gaskets and the vacuum line and \$80.00 for the repair, maintenance, and installation services, for a total invoice amount of \$100.00. Mr. Gray is liable for sales tax at the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax on the \$100.00 sales price of the repair, maintenance, and installation services sold at retail to Mrs. Bradshaw. Mr. Gray is also liable for the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax on the purchase price of the "shop supplies" used in the repair of Mrs. Bradshaw's car no matter that such amount is also included in the sales price of the repair, maintenance, and installation services.

Purchases of Tangible Personal Property, Digital Property, and Services for Resale

A person may purchase tangible personal property, digital property, or a service for resale exempt from tax under a certificate of exemption pursuant to N.C. Gen. Stat. § 105-164.28. To purchase such property or services **for resale** exempt from sales and use tax, a person should issue to a seller [Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption](#), as the seller's authority to exempt the sale from sales and use tax. Alternatively, the data elements, as required by N.C. Gen. Stat. § 105-164.28(a) to substantiate an exemption, may be provided to a

North Carolina Department of Revenue

seller. A person who does not collect the applicable sales or use tax on the sales price or gross receipts derived from an item or service subject to tax pursuant N.C. Gen. Stat. § 105-164.4 remains liable for the tax due, unless the person maintains proper records to establish a sale is exempt from sales or use tax.

Purchases by repair shops, tire dealers, retreaders, and similar types of businesses of tangible personal property, digital property, or services that are not resold, but are for storage, use or consumption by the purchaser to repair or service the consumer's property continue to be subject to the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax, notwithstanding that such charges may be included in the sales price or gross receipts derived from a retail sale to the consumer. Additionally, tangible personal property that the retailer or other person withdraws from inventory for its own storage, use, or consumption is subject to use tax and is generally subject to the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax, unless an exemption in N.C. Gen. Stat. §§ 105-164.13 or 105-164.13E applies.

Additional Information and Assistance

Information regarding repair, maintenance, and installation services can be found on the Department's overview page for Repair, Maintenance, and Installation Services; and Other Repair Information, <https://www.ncdor.gov/taxes/sales-and-use-tax/repair-maintenance-and-installation-services-and-other-repair-information>.

To the extent that there is any change in the rate or amount of tax, change to a 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 issued prior to the date of this directive conflicts with this directive, the provisions contained in this directive supersede.