



Sales and Use Tax Division
North Carolina Department of Revenue
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UPDATED IMPORTANT NOTICE: SALES TAX BASE EXPANSION PROTECTION ACT

This important notice is updated to provide amendments to the Sales Tax Base Expansion Protection Act.

The Governor signed into law S.L. 2017-204 that amended Article 9 of Chapter 105 of the General Statutes by adding a new section, N.C. Gen. Stat. § 105-244.3, Sales tax base expansion protection act. N.C. Gen. Stat. § 105-244.3 provides the following:

Effective June 12, 2018, N.C. Gen. Stat. § 105-244.3 is amended by Session Law 2018-5 to add additional provisions to the Sales Tax Base Expansion Protection Act and to extend the time of the grace period for an additional year. Impacted retailers that meet any of the conditions listed below are provided a grace period under which the North Carolina Department of Revenue will take no action to assess any tax due provided the retailer demonstrates a good faith effort to comply. As amended, N.C. Gen. Stat. § 105-244.3 provides the following:

(a) **Grace Period.** – The Department shall take no action to assess any tax due for a **filing period beginning on or after March 1, 2016, and ending before prior to January 1, 2018 2019**, if one or more of the conditions of this subsection apply and the retailer did not receive specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable periods. **Except as otherwise provided, this subsection also applies to use tax liability imposed on a purchaser under [N.C. Gen. Stat. §] 105-164.6.** The conditions are as follows:

- (1) A retailer failed to charge sales tax due on separately stated installation charges that are part of the sales price of tangible personal property or digital property sold at retail for a filing period beginning on or after March 1, 2016, and ending **before prior to** January 1, 2018 2019.
- (2) A person failed to properly classify themselves as a retailer in retail trade for the filing period beginning on or after March 1, 2016, and ending **before prior to** January 1, 2017, and did not charge sales tax on all retail transactions but rather treated some transactions as real property contracts in error for sales and use tax purposes. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a transaction erroneously treated as a real property contract.
- (3) A person treated a transaction as a real property contract in error and did not collect sales tax on the transaction as a retail sale for a filing period beginning on or after March 1, 2016, and ending **before prior to** January 1, 2018–2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a transaction erroneously treated as a real property contract.
- (4) A person failed to collect sales tax on the sales price of a service contract for one or more components, systems, or accessories for a motor vehicle for a filing period beginning on or after March 1, 2016, and ending **before prior to** January 1, 2017, where the contract was sold by a motor vehicle dealer, a motor vehicle service agreement company, or a motor vehicle dealer on behalf of a motor vehicle service agreement company.
- (5) A person failed to collect sales tax on the retail sale of a service contract for tangible personal property that becomes a part of or is affixed to real property for a filing period beginning on or after March 1, 2016, and ending **before prior to** January 1, 2018 2019.

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- (6) A person failed to collect sales tax on the retail sale of a service contract for a pool, a fish tank, or similar aquatic feature for a filing period beginning on or after January 1, 2017, and ~~ending before~~ **prior to** January 1, ~~2018~~ **2019**, provided the person paid tax on any purchases used to fulfill the service contract.
 - (7) A person failed to collect sales tax on the sales price of or the gross receipts derived from the retail sale of a home warranty for a filing period beginning on or after January 1, 2017, and ~~ending before~~ **prior to** January 1, ~~2018~~ **2019**, provided the warranty includes coverage for real property.
 - (8) A person failed to collect sales tax on the **taxable** portion of a mixed **service** contract ~~for repair, maintenance, and installation services~~ that exceeds ten percent (10%) for a transaction for a filing period beginning on or after ~~March 1, 2016~~ **January 1, 2017**, and ~~ending before~~ **prior to** January 1, ~~2017~~ **2019**. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed contract.
 - (8a) **A person failed to collect sales tax on the taxable portion of a mixed transaction contract that exceeds twenty-five percent (25%) for a transaction for a filing period beginning on or after January 1, 2017, and ending prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed transaction contract.**
 - (8b) **A person failed to collect sales tax on the taxable portion of a bundled transaction that included a contract for two more services, one of which was subject to tax and one of which was not subject to tax, for a transaction on or after March 1, 2016, and prior to January 1, 2017.**
 - (9) A person treats a transaction as a real property contract for remodeling instead of the retail sale of repair, maintenance, and installation services sold at retail prior to January 1, ~~2018~~ **2019**. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill the transaction.
 - (10) **A person failed to collect sales tax on repair, maintenance, and installation services for tangible personal property or a motor vehicle for a filing period beginning on or after March 1, 2016, and ending prior to January 1, 2019. A person failed to collect sales tax on repair, maintenance, and installation services for digital property for a filing period beginning on or after January 1, 2017, and ending prior to January 1, 2019.**
- (b) **Limitations.** – This section does not prohibit the following assessments:
- (1) The assessment of tax collected by a person and not remitted to the Department.
 - (2) The assessment of tax due on an amount included in the definition of sales price where a retailer failed to charge or remit the tax, except as allowed under subsection (a) of this section.
 - (3) The assessment of use tax on purchases as provided in subsection (a) of this section.

Additional Information

~~Various sales and use tax law changes were enacted during the 2017 General Assembly Session applicable to repair, maintenance, and installation services; real property contracts; service contracts; and other topics. The Department will publish additional information regarding the changes in the near future.~~

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