

## IMPORTANT NOTICE: AFFIDAVIT AVAILABLE FOR REAL PROPERTY CONTRACTORS TO CERTIFY PAYMENT OF SALES AND USE TAX

The following important information is addressed in this notice:

- A brief overview of the sales and use tax due on materials used in a real property contract.
- The purpose of the new affidavit.
- How to use the new affidavit.
- The differences between the new affidavit and Form E-589CI.

### What's New?

The Department of Revenue has made available a new affidavit, [Form-589P, Affidavit of Tax Paid by Real Property Contractor \("Form-589P"\)](#), for use by real property contractors. A real property contractor may use the form when the contractor has paid sales and use tax on the materials it purchases and installs or affixes to real property as part of a real property contract. After completing Form-589P, the real property contractor should provide the form to general contractors, owners, and lessees of real property.

### Overview

This section provides a brief overview of the sales and use tax due on materials used in a real property contract. Review [Sales and Use Tax Bulletin 72](#) for detailed guidance related to real property contracts, including how to determine and substantiate<sup>1</sup> that a transaction should be taxed as a real property contract.

**Real Property Contracts** – Generally, a real property contractor must pay sales and use tax on the sales price of materials the contractor uses to perform a real property contract.<sup>2</sup> The contractor must pay this tax unless a specific exemption applies to the sale.

*Example: A new-home builder hires a subcontractor to purchase and install cabinets in a new home. The subcontractor purchases cabinets and hardware for the new home.*

*The construction of a new home is a real property contract. The subcontractor must pay sales and use tax on the sales price of the cabinets and hardware.*

---

<sup>1</sup> "Generally, services to real property are retail sales of or the gross receipts derived from repair, maintenance, and installation services and subject to tax in accordance with G.S. 105-164.4(a)(16), unless a person substantiates that a transaction is subject to tax as a real property contract." N.C. Gen. Stat. § 105-164.4H(b).

<sup>2</sup> "A real property contractor is the consumer of the tangible personal property or certain digital property that the real property contractor purchases, installs, or applies for others to fulfill a real property contract and that becomes part of real property or used to fulfill the contract." N.C. Gen. Stat. § 105-164.4H.

**Joint and Several Liability** - When an item becomes a part of real property in the State, the following people are jointly and severally liable<sup>3</sup> for any use tax due on the item:

- real property owner
- the lessee
- the real property contractor
- the retailer-contractor
- the subcontractor.

As result, the Department can hold all the listed persons liable for any use tax due on items that a real property contractor purchases, installs, or applies to real property as part of a real property contract.

*Example: A new-home builder hires a sub-contractor to purchase and install tile in a new home. The subcontractor purchases tile and grout for the new home. The sub-contractor does not pay sales or use tax on the tile and grout.*

*The new-home builder, subcontractor, and the real property owner are all liable for the use tax due on the tile and grout because they became a part of the real property.*

**Relief from Joint and Several Liability** – A person that does not purchase an item that becomes a part of real property is relieved of use tax liability when they receive an affidavit from the purchaser certifying that the tax has been paid.<sup>4</sup>

*Example: A new-home builder hires a subcontractor to purchase and install doors in a new home. The subcontractor purchases doors and hardware for the new home. The subcontractor issues an affidavit to the builder and real property owner certifying that it paid North Carolina sales and use tax on the doors and hardware.*

*The new-home builder and real property owner are not liable for use tax on the cabinets and hardware because they received the affidavit from the subcontractor that purchased the cabinets and hardware.*

### **Purpose of Form E-589P, Affidavit of Tax Paid by Real Property Contractor**

The Department created Form E-589P to provide a form affidavit for real property contractors to complete and provide to general contractors, owners, and lessees of real property. A properly completed Form E-589P will relieve real property owners, lessees, and general contractors from joint and several use tax liability when they did not purchase the items covered by the affidavit.

A real property contractor can choose to use Form E-589P or create a similar form to certify they have paid the North Carolina sales and use tax due on materials they purchase that become a part of real property as part of a real property contract.

---

<sup>3</sup> N.C. Gen. Stat. § 105-164.6(b).

<sup>4</sup> N.C. Gen. Stat. § 105-164.6(b).

The form should be retained by the parties that did not purchase the building materials or item to satisfy their sales and use tax liability for the building materials or item, otherwise, they are subject to the sales and use tax on the building materials or item.

### **How to Use Form E-589P, Affidavit of Tax Paid by Real Property Contractor**

**Real Property Contractor** – You should complete Form E-589P at the conclusion of a real property contract that caused you to purchase materials that become a part of real property in the State. Once complete, you should provide a copy to any real property owner, lessee, general contractor, and any other contractor who hired you to perform the work.

You should keep a copy of the completed Form E-589P in your records. Your records should also include documents that identify the materials you used in the project and the sales and use tax you paid on the materials.

Refer to Form E-589P, Affidavit of Tax Paid by Real Property Contractor, for line-by-line instructions for filling out the form.

**Real Property Owner, Lessee, or General Contractor** – You should request Form E-589P, or a similar affidavit, from a real property contractor who purchases materials that become a part of the real property. When you receive a completed Form E-589P, or similar affidavit, keep the document in your records.

*Example: A property owner hires a general contractor to remodel<sup>5</sup> the owner's kitchen.<sup>6</sup> The real property contractor hires multiple subcontractors to complete the remodel. Each subcontractor purchases materials at a local home improvement store and properly pays the sales and use tax on all materials to the retailer. The subcontractors affix or install the materials to the real property.*

*At the conclusion of their work, each subcontractor should fill out Form E-589P. Once complete, the subcontractor should provide copies of the form to the general contractor and the owner of the real property and keep a copy for their own records.*

*Form E-589P satisfies the sales and use tax liability of the owner of the real property and the general contractor for the materials the subcontractors purchased and installed.*

### **Differences Between Form E-589P and Form E-589CI, Affidavit of Capital Improvement**

The Department has created two affidavits that are frequently used during a real property contract, [Form E-589P](#) and [Form E-589CI, Affidavit of Capital Improvement \("E-589CI"\)](#). It is important for you to understand the differences between the two affidavits.

Form E-589CI substantiates that a contract, or a portion of work to be performed to fulfill a contract, is to be taxed for sales and use tax purposes as a real property contract. Refer to [Sales and Use Tax Technical Bulletin 72-5](#) for additional information regarding Form E-589CI.

---

<sup>5</sup> Remodeling is defined in N.C. Gen. Stat. § 105-164.3. Remodeling is a capital improvement.

<sup>6</sup> This transaction meets the definition of a real property contract. N.C. Gen. Stat. § 105-164.3.

The following chart provides an overview of the key differences between the two affidavits:

	<b>E-589CI</b>	<b>E-589P</b>
<b>When to Issue</b>	Start of work	End of work
<b>Purpose</b>	Certifies transaction taxed as a real property contract	Certifies tax paid on materials that become a part of real property
<b>Tax Relief</b>	Allows person to tax transaction as a real property contract	Satisfies recipient's use tax liability on materials
<b>Person that Issues</b>	A property owner, lessee, or real property contractor who hires other contractors	Real property contractor who purchases materials
<b>Person that Receives</b>	Real property contractor	A property owner, lessee, or general contractor, or other real property contractor that hired subcontractors

**Assistance**

If you have questions about this notice, you may call the Department at 1-877-252-3052 (8:00 am until 4:30 pm EST, Monday through Friday).

*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, bulletin, or published guidance regarding the subject of this notice and issued prior to the date of this notice conflict with this important notice, the provisions contained in this important notice supersede the previous guidance.*