

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

FILED SENATE
May 10, 2016
S.B 870
PRINCIPAL CLERK

S

D

SENATE BILL DRS15357-RBx-54 (03/31)

Short Title: Refine Sales & Use Tax on RMI. (Public)

Sponsors: Senators Rucho, Rabon, and Tillman (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A GRACE PERIOD FOR UNDERCOLLECTION OF SALES AND USE TAX ON REPAIR, MAINTENANCE, AND INSTALLATION SERVICES AND TO REFINER THE APPLICATION OF SALES AND USE TAX ON REPAIR, MAINTENANCE, AND INSTALLATION SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) A retailer is not liable for an undercollection of sales or use tax if the retailer made a good-faith effort to comply with the law and collect the proper amount of tax on the repair, maintenance, and installation services as a result of the change under Section 32.18 of S.L. 2015-241. This applies only to the period beginning March 1, 2016, and ending December 31, 2016.

SECTION 1.(b) G.S. 105-237.1(a) is amended by adding a new subdivision to read:

"(a) Authority. – The Secretary may compromise a taxpayer's liability for a tax that is collectible under G.S. 105-241.22 when the Secretary determines that the compromise is in the best interest of the State and makes one or more of the following findings:

...

(7) The taxpayer is a retailer or a person under Article 5 of this Chapter, the assessment is for sales or use tax the retailer failed to collect or the person failed to pay on the sales price of or the gross receipts derived from repair, maintenance, and installation services taxable under G.S. 105-164.4(a)(16), (17), or (18) and the retailer or person made a good-faith effort to comply with the sales and use tax laws. This subdivision applies to assessments issued for the period March 1, 2016, through January 1, 2023."

SECTION 1.(c) G.S. 105-164.4H(c) reads as rewritten:

"(c) Erroneous Collection if Separately Stated. – An invoice or other documentation issued to a consumer at the time of the sale by a real property contractor shall not separately state any amount for tax. Any amount for tax separately stated on an invoice or other documentation given to a consumer by a real property contractor is an erroneous collection and must be remitted to the Secretary, and the provisions of G.S. 105-164.11(a)(2) do not apply. Secretary."

SECTION 2. G.S. 105-164.3 reads as rewritten:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

...

(1a) Alteration service. – A modification or change to tangible personal property that is otherwise properly functioning or suitable for use. Examples include clothing alterations, monogramming, shoe dyeing, and furniture upholstery.



* D R S 1 5 3 5 7 - R B X - 5 4 *

1 ~~(1a)~~(1b) Analytical services. – Testing laboratories that are included in national
2 industry 541380 of NAICS or medical laboratories that are included in national
3 industry 621511 of NAICS.

4 ~~(1b)~~(1c) Ancillary service. – A service associated with or incidental to the provision
5 of a telecommunications service. The term includes detailed communications
6 billing, directory assistance, vertical service, and voice mail service. A vertical
7 service is a service, such as call forwarding, caller ID, three-way calling, and
8 conference bridging, that allows a customer to identify a caller or manage
9 multiple calls and call connections.

10 ...
11 (12a) House cleaning and janitorial services. – The interior cleaning of buildings or
12 homes by a housekeeping service, maid service, janitorial service, or similar
13 cleaning service.

14 ...
15 (14b) Installation service. – The term includes the following activities:
16 a. To install or apply tangible personal property.
17 b. To set tangible personal property into position.
18 c. To connect, adjust, or program tangible personal property for use.
19 The term does not include alteration services, landscaping services, or the
20 installation of tangible personal property necessary to complete a repair or
21 maintenance service where the value of the property installed is insignificant
22 compared to the total consideration and no separate charge is made for the
23 property.

24 ...
25 (16e) Landscaping service. – A service to maintain or improve lawns, yards, or
26 ornamental plants and trees, such as tree trimming, lawn mowing, or the
27 application of see or fertilizer, and the installation of trees, shrubs, or flowers.

28 ...
29 (18d) Maintenance service. – Scheduled, periodic work on property that is not broken
30 and that is necessary to keep the property in good working order and to prevent
31 deterioration or repairs. The term includes cleaning, washing, or polishing
32 property, including through the use of a coin-operated machine operated by the
33 customer or other automated self-service device, but the term does not include
34 house cleaning and janitorial services or landscaping services. Examples
35 include pest control, gutter cleaning, pressure washing, window washing,
36 furnace cleaning, chimney cleaning, swimming pool maintenance and cleaning,
37 floor or carpet cleaning or waxing but does not include stripping, sanding,
38 refinishing, or staining hardwood floors.

39 ...
40 (23a) Motor vehicle service contract. – A contract or agreement sold by a motor
41 vehicle dealer or by a motor vehicle service agreement company where the
42 obligor under the contract agrees to maintain, repair, or replace one or more
43 components, systems, or accessories for a motor vehicle. For purposes of this
44 subdivision, the term "motor vehicle dealer" has the same meaning as defined
45 in G.S. 20-286 and the term "motor vehicle service agreement company" has
46 the same meaning as defined in G.S. 66-370.

47 ~~(23a)~~(23c) NAICS. – Defined in G.S. 105-228.90.

48 ...
49 (33d) Real property contractor. – A person that contracts to perform construction,
50 reconstruction, installation, repair, or any other service with respect to real
51 property and to furnish tangible personal property to be installed or applied to

1 real property in connection with the contract and the labor to install or apply the
2 tangible personal property that becomes part of real property. The term includes
3 a general contractor, a subcontractor, or a builder for purposes of
4 G.S. 105-164.4H. ~~The term does not include a person engaged in retail trade.~~

5 ...

6 ~~(33g) Repair, maintenance, and installation services. — The term includes the~~
7 ~~activities listed in this subdivision:~~

8 a. ~~To keep or attempt to keep tangible personal property or a motor vehicle~~
9 ~~in working order to avoid breakdown and prevent repairs.~~

10 b. ~~To calibrate, restore, or attempt to calibrate or restore tangible personal~~
11 ~~property or a motor vehicle to proper working order or good condition.~~
12 ~~This activity may include replacing or putting together what is torn or~~
13 ~~broken.~~

14 e. ~~To troubleshoot, identify, or attempt to identify the source of a problem~~
15 ~~for the purpose of determining what is needed to restore tangible~~
16 ~~personal property or a motor vehicle to proper working order or good~~
17 ~~condition.~~

18 d. ~~To install or apply tangible personal property except tangible personal~~
19 ~~property installed or applied by a real property contractor pursuant to a~~
20 ~~real property contract.~~

21 (33h) Repair service. – To restore or attempt to restore property to working condition
22 so that it can be used for its original purpose. This activity may include any of
23 the following:

24 a. Replacing or putting together what is torn or broken.

25 b. Troubleshooting or identifying, or attempting to identify, the source of a
26 problem for the purpose of determining what is needed to restore the
27 property to working condition.

28 c. Installing tangible personal property necessary to complete a repair
29 service where the value of the property transferred is insignificant
30 compared to the total consideration and no separate charge is made for
31 the property.

32 ...

33 ~~(34a) Retail trade. — A trade in which the majority of revenue is from retailing~~
34 ~~tangible personal property, digital property, or services to consumers. The term~~
35 ~~includes activities of a person properly classified in NAICS sector 44-45,~~
36 ~~buying goods for resale, and rendering services incidental to the sale of~~
37 ~~merchandise. The term typically includes maintaining an inventory and may~~
38 ~~include the provision of repair, maintenance, and installation services. Not all~~
39 ~~activities provided in this subdivision are required for a trade to be considered~~
40 ~~retail trade.~~

41 (35) Retailer. – Any of the following persons:

42 a. A person engaged in business of making sales at retail, offering to make
43 sales at retail, or soliciting sales at retail of tangible personal property,
44 digital property, or services for storage, use, or consumption in this
45 State. When the Secretary finds it necessary for the efficient
46 administration of this Article to regard any sales representatives,
47 solicitors, representatives, consignees, peddlers, or truckers as agents of
48 the dealers, distributors, consignors, supervisors, employers, or persons
49 under whom they operate or from whom they obtain the items sold by
50 them regardless of whether they are making sales on their own behalf or
51 on behalf of these dealers, distributors, consignors, supervisors,

- 1 employers, or persons, the Secretary may so regard them and may
 2 regard the dealers, distributors, consignors, supervisors, employers, or
 3 persons as "retailers" for the purpose of this Article.
- 4 b. ~~A person engaged in business of delivering, erecting, installing, or~~
 5 ~~applying tangible personal property for use in this State that does not~~
 6 ~~become part of real property pursuant to the tax imposed under~~
 7 ~~G.S. 105-164.4(a)(13). property unless the person is one or more of the~~
 8 ~~following:~~
- 9 1. ~~A person that solely operates as a real property contractor.~~
 - 10 2. ~~A person whose only business activity is providing repair,~~
 11 ~~maintenance, and installation services where the person's~~
 12 ~~activities do not otherwise meet the definition of a retail trade.~~
- 13 c. A person engaged in business of making a remote sale, if one of the
 14 conditions listed in G.S. 105-164.8(b) is met.
- 15 d. A person, other than a facilitator, required to collect the tax levied under
 16 G.S. 105-164.4(a).
- 17 ...
- 18 (36) Sale or selling. – The transfer for consideration of title, license to use or
 19 consume, or possession of tangible personal property or digital property or the
 20 performance for consideration of a ~~service~~service, or an accommodation, an
 21 entertainment activity, a service contract, or any other item subject to sales tax
 22 under G.S. 105-164.4. The transfer or performance may be conditional or in
 23 any manner or by any means. The term includes the following:
- 24 a. Fabrication of tangible personal property for consumers by persons
 25 engaged in business who furnish either directly or indirectly the
 26 materials used in the fabrication work.
 - 27 b. Furnishing or preparing tangible personal property consumed on the
 28 premises of the person furnishing or preparing the property or consumed
 29 at the place at which the property is furnished or prepared.
 - 30 c. A transaction in which the possession of the property is transferred but
 31 the seller retains title or security for the payment of the consideration.
 - 32 d. A lease or rental.
 - 33 e. Transfer of a digital code.
- 34 (37) Sales price. – The total amount or consideration for which tangible personal
 35 property, digital property, or services are sold, leased, or rented. The
 36 consideration may be in the form of cash, credit, property, or services. The sales
 37 price must be valued in money, regardless of whether it is received in money.
- 38 ...
- 39 b. The term does not include any of the following:
- 40 1. Discounts that are not reimbursable by a third party, are allowed
 41 by the retailer, and are taken by a consumer on a sale.
 - 42 2. Interest, financing, and carrying charges from credit extended on
 43 the sale, if the amount is separately stated on the invoice, bill of
 44 sale, or a similar document given to the consumer.
 - 45 3. Any taxes imposed directly on the consumer that are separately
 46 stated on the invoice, bill of sale, or similar document given to
 47 the consumer.
 - 48 4. A fee for an inspection required by law, regardless of whether
 49 the fee is paid to a public or private entity.
- 50 ...

(38b) Service contract. – A contract where the obligor under the contract agrees to maintain or repair tangible personal ~~property, property for a period of time or some other defined measure,~~ regardless of whether the property becomes a part of or is affixed to real ~~property, or a motor vehicle.~~ property. The term does not include a motor vehicle service contract or a contract for a single repair transaction. Examples of a service contract include a warranty agreement other than a manufacturer's warranty or dealer's warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair contract, or a similar agreement or contract.

...."

SECTION 2. G.S. 105-164.4 reads as rewritten:

"§ 105-164.4. Tax imposed on retailers.

(a) A privilege tax is imposed on a retailer engaged in business in the State at the percentage rates of the retailer's net taxable sales or gross receipts, listed in this subsection. The general rate of tax is four and three-quarters percent (4.75%). The percentage rates are as follows:

...

(16) The general rate applies to the sales price of or the gross receipts derived from ~~repair, maintenance, and installation services.~~ repair and maintenance services. These services are taxed in accordance with G.S. 105-164.4J.

(17) The general rate applies to the sales price of or the gross receipts derived from installation services. These services are taxed in accordance with G.S. 105-16.4K.

(18) The general rate applies to the sales price of or the gross receipts derived from alteration services."

SECTION 3. Part 2 of Article V of Chapter 105 of the General Statutes is amended by adding two new sections to read:

"§ 105-164.4J. Repair and maintenance services.

(a) Tax. – The sales price of or the gross receipts derived from any of the following is subject to the general rate of tax set in G.S. 105-164.4(a)(16) unless an exemption under subsection (b) of this section applies:

(1) Repair or maintenance services to tangible personal property.

(2) Repair or maintenance services to real property. Repair or maintenance services to real property do not include house cleaning and janitorial services, landscaping services, or additions, alterations, or improvements to real property that constitute a capital improvement.

(b) Exemptions. – The following activities are exempt from the tax imposed by G.S. 105-164.4(a)(16):

(1) Painting or repainting new or existing buildings, structures, or parts thereof.

(2) The removal of items such as debris, construction materials, snow, asbestos, or excavation activities.

"§ 105-164.4K. Installation services.

(a) Tax. – The sales price of or the gross receipts derived from the installation of tangible personal property is subject to the general rate of tax set in G.S. 105-164.4(a)(17) unless an exemption under subsection (b) of this section applies.

(b) Exemptions. – The installation of tangible personal property that meets any of the following conditions is exempt from the tax imposed under G.S. 105-164.4(a)(17):

(1) The installation is part of new construction.

(2) The installation is a capital improvement as provided in subsection (c) of this section.

- 1 (3) The installation is part of a nontaxable real property contract and the sales price
 2 of the otherwise taxable installation service does not exceed ten percent (10%)
 3 of the total contract.
- 4 (c) Capital Improvement. – The following provisions apply with regard to a capital
 5 improvement:
- 6 (1) Definition. – An addition or alteration to real property that occurs more than six
 7 months after a certificate of occupancy has been issued for the real property and
 8 that meets all of the following conditions:
- 9 a. Substantially adds to the value of the real property or appreciably
 10 prolongs the useful life of the real property.
- 11 b. Becomes part of the real property or is permanently affixed to the real
 12 property so that removal would cause material damage to the property
 13 or article itself.
- 14 c. Is intended to become a permanent installation.
- 15 (2) Examples. – Examples of a capital improvement include the following:
- 16 a. The installation of tangible personal property that requires the issuance
 17 of a permit under the State Building Code.
- 18 b. The complete remodel of a kitchen or bathroom.
- 19 c. The original installation or complete replacement of a central air
 20 conditioning or electric heating unit or system, a plumbing system, an
 21 electrical system, fencing, windows and doors, roofing, and gutters.
- 22 (d) Third-Party Installations. – The charge for an installation service performed by a
 23 person other than the seller, or a person arranged for by the seller, is taxable if the installation
 24 would be taxable when performed by or arranged by the seller of the taxable item."

25 **SECTION 4.** G.S. 105-164.4H reads as rewritten:

26 **"§ 105-164.4H. Real property contractors.**

27 (a) Applicability. – A real property contractor is the consumer of the tangible personal
 28 property that the real property contractor installs or applies for others and that becomes part of real
 29 property. A retailer engaged in business in the State shall collect tax on the sales price of the
 30 tangible personal property sold at retail to a real property contractor unless a statutory exemption
 31 in G.S. 105-164.13 or G.S. 105-164.13E applies. Where a real property contractor purchases
 32 tangible personal property for storage, use, or consumption in this State and the tax due is not paid
 33 at the time of purchase, the provisions of G.S. 105-164.6 apply except as provided in subsection
 34 (b) of this section.

35 (b) Retailer-Contractor. – This subsection applies to retailer-contractors with regard to the
 36 installation of tangible personal property that becomes part of real property.

37 (1) ~~This section applies to a retailer-contractor when the retailer-contractor acts as a~~
 38 ~~real property contractor. A retailer-contractor that~~ Acting as a real property
 39 ~~contractor. – A retailer-contractor is acting as a real property contractor when it~~
 40 ~~performs an installation service for a consumer that is exempt from tax under~~
 41 ~~G.S. 105-164.4K. When a retailer-contractor is acting as a real property~~
 42 ~~contractor, the retailer-contractor may purchases–purchase~~ tangible personal
 43 ~~property to be installed or affixed to real property may purchase items–exempt~~
 44 ~~from tax under a certificate of exemption pursuant to G.S. 105-164.28 provided~~
 45 ~~the retailer-contractor also purchases inventory items from the seller for resale.~~
 46 ~~When the tangible personal property is withdrawn from inventory and installed~~
 47 ~~or affixed to real property, use tax must be accrued and paid on the~~
 48 ~~retailer-contractor's purchase price of the tangible personal property. Tangible~~
 49 ~~personal property that the retailer-contractor withdraws from inventory for use~~
 50 ~~that does not become part of real property is also subject to the tax imposed by~~
 51 ~~this Article.~~

1 (2) Acting as a retailer. – A retailer-contractor is acting as a retailer when it
 2 performs an installation service incidental to the retail sale of tangible personal
 3 property that is subject to tax under G.S. 105-164.4K.

4 (b1) Joint and Several Liability. – If a retailer-contractor subcontracts any part of the real
 5 property contract, tax is payable by the subcontractor on the subcontractor's purchase of the
 6 tangible personal property that is installed or affixed to real property in fulfilling the contract. The
 7 retailer-contractor, the subcontractor, and the owner of the real property are jointly and severally
 8 liable for the tax. The liability of a retailer-contractor, a subcontractor, or an owner who did not
 9 purchase the property is satisfied by receipt of an affidavit from the purchaser certifying that the
 10 tax has been paid.

11 (c) Erroneous Collection if Separately Stated. – An invoice or other documentation issued
 12 to a consumer at the time of the sale by a real property contractor shall not separately state any
 13 amount for tax. Any amount for tax separately stated on an invoice or other documentation given
 14 to a consumer by a real property contractor is an erroneous collection and must be remitted to the
 15 Secretary, and the provisions of G.S. 105-164.11(a)(2) do not apply. Secretary."

16 **SECTION 5.** G.S. 105-164.4I(b) reads as rewritten:

17 "**§ 105-164.4I. Service contracts.**

18 ...

19 (b) Exemptions. – The tax imposed by this section does not apply to the sales price of or
 20 the gross receipts derived from a service contract applicable to any of the following items:

21 ...

22 (6) Real property, including tangible personal property that has become real
 23 property, unless repair or maintenance services on the item of property is
 24 taxable under G.S. 105-164.4J(a)(2). If repair or maintenance services on the
 25 item are taxable under G.S. 105-164.4J(a)(2), then the service contract
 26 applicable to that item is taxable."

27 **SECTION 6.** G.S. 105-164.13 reads as rewritten:

28 "**§ 105-164.13. Retail sales and use tax.**

29 The sale at retail and the use, storage, or consumption in this State of the following tangible
 30 personal property, digital property, and services are specifically exempted from the tax imposed
 31 by this Article:

32 ...

33 (32a) Towing service, regardless of whether the service is necessary to complete the
 34 sale.

35 ...

36 (61b) ~~Repair, maintenance, and installation services~~ Tangible personal property,
 37 digital property, and services purchased for resale-resale under an exemption
 38 certificate in accordance with G.S. 105-164.28 or under a direct pay certificate
 39 in accordance with G.S. 105-164.27A.

40 (62) An item or repair, maintenance, and installation services used to maintain or
 41 repair tangible personal property pursuant to a service contract taxable under
 42 this Article if the purchaser of the contract is not charged for the item or
 43 services. ~~This exemption does not apply to an item or repair, maintenance, and~~
 44 ~~installation services provided for a motor vehicle pursuant to a service contract~~
 45 ~~exempt from tax under this Article unless the purchaser of the contract is not~~
 46 ~~charged for the item or services.~~ For purposes of this exemption, the term
 47 "item" does not include a tool, equipment, supply, or similar tangible personal
 48 property used to complete the maintenance or repair and that is not deemed to
 49 be a component or repair part of the tangible personal property for which a
 50 service contract is sold to a purchaser."

51 **SECTION 7.** G.S. 105-187.5(a) reads as rewritten:

1 "(a) Election. – A retailer may elect not to pay the tax imposed by this Article at the rate set
2 in G.S. 105-187.3 when applying for a certificate of title for a motor vehicle purchased by the
3 retailer for lease or rental. A retailer who makes this election shall pay a tax on the gross receipts
4 of the lease or rental of the vehicle. The portion of a lease or rental billing or payment that
5 represents any amount applicable to the sales price of a service contract as defined in
6 G.S. 105-164.3 should not be included in the gross receipts subject to the tax imposed by this
7 Article. The charge ~~should~~must be separately stated on documentation given to the purchaser at
8 the time the lease or rental agreement goes into effect, or on the monthly billing statement or other
9 documentation given to the purchaser. When a lease or rental contract is sold to another retailer,
10 the seller of the lease or rental contract should provide to the purchaser of the lease or rental
11 contract the documentation showing that the service contract and applicable sales taxes were
12 separated stated at the time the lease or rental went into effect. ~~Where a retailer fails to separately~~
13 ~~state any portion of a lease or rental billing or payment that represents an amount applicable to the~~
14 ~~sale price of a service contract, the amount is deemed to be part of the gross receipts of a lease or~~
15 ~~rental of a vehicle.~~ Like the tax imposed by G.S. 105-187.3, this alternate tax is a tax on the
16 privilege of using the highways of this State. The tax is imposed on a retailer, but is to be added to
17 the lease or rental price of a motor vehicle and thereby be paid by the person who leases or rents
18 the vehicle."

19 **SECTION 8.** Sections 2 through 7 of this act become effective January 1, 2017, and
20 apply to sales made on or after that date. The remainder of this act is effective when it becomes
21 law, and Section 1(c) of this act applies retroactively January 1, 2015.