

NCDOR

NORTH
CAROLINA
DEPARTMENT
OF REVENUE



Sales and Use Taxes

Real Property and Services to Real Property

*Janice Davidson, Sales & Use Tax Assistant Director
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- ▶ Presentation is for general information only.
- ▶ Presentation content should not be interpreted as specific tax advice for a specific tax situation.
- ▶ Some questions may require additional facts before a response may be given.
- ▶ Some questions may require responses from other Departmental employees or employees in other agencies.
- ▶ The presentation does not take into consideration draft or future legislation.

NCDOR Recently Published Important Guidance

<u>Issue Date</u>	<u>Subject</u>
▶ 05-18-17	Letter Highlighting Guidance Published on Real Property Contracts and Repair, Maintenance and Installation Services
▶ 03-17-17	Additional Information Regarding Real Property Contracts and Retail Sales of Repair, Maintenance, and Installation Services to Real Property
▶ 01-20-17	Wake County Transit Sales and Use Tax
▶ 12-22-16	Transition Issues Relative to Sales and Use Tax Law Changes with Respect to Real Property Contracts; Repair, Maintenance, and Installation Services to Real Property, and Other Items
▶ 02-08-16	Form E-589CI, Affidavit of Capital Improvement
▶ 11-23-16	Additional Guidance to Supplement Form E-505
▶ 11-15-16	Service Contracts
▶ 11-15-16	SD-16-3 Real Property Contracts
▶ 11-15-16	SD-16-4 Repair, Maintenance, and Installation Services
▶ 09-21-16	Sales and Use Tax Law Changes Form E-505
▶ 08-01-16	Additional 0.25% Local Sales and Use Tax (Cherokee, Jackson)

A contract where the obligor under the contract agrees to maintain, **monitor, inspect**, repair, or provide another service included in the definition of repair, maintenance, and installation service to **digital property**, tangible personal property, or real property **for a period of time or some other defined measure**.

- ▶ The term **includes a service contract for a pool, fish tank, or similar aquatic feature and a home warranty**.
- ▶ **Exemptions (Not All-Inclusive)**: Items exempt from sales and use tax; Certain fees and inspections; Pest control service. [Located in G.S. 105-164.13(61a) pursuant to SB 628.]

* Reflects retroactive changes to be effective January 1, 2017 pursuant to SB 628 which was ratified on August 3, 2017.



A service contract for real property that includes two or more services, one of which is subject to sales and use tax and one of which is not subject to sales and use tax.

Tax applies to the sales price of or gross receipts derived from a mixed service contract unless one of the following applies:

- Allocation – The person determines an allocated price for the taxable portion of the service contract based on a reasonable allocation of revenue that is supported by the person’s business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of the taxable portion of the service contract.
- Ten Percent (10%) Test – The allocated price of the taxable portion of the service contract does not exceed ten percent (10%) of the price of the contract.

* To be retroactively effective to January 1, 2017 and will apply to purchases made on or after that date (per SB 628; Ratified August 3, 2017).



RMI applies to:

- ▶ Tangible personal property
- ▶ A motor vehicle
- ▶ Digital property
- ▶ Real property

* As amended effective January 1, 2017 and applies to sales on or after such date.

RMI* as Defined Includes:

- ▶ 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.**
- ▶ 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.
- ▶ 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.
- ▶ To install, apply, **connect, adjust, or set into position** tangible personal property, **digital property**, or a motor vehicle. The term includes floor finishing 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 under G.S. 105-164.3(2c)d.
- ▶ **To inspect or monitor property or a motor vehicle, but does not include security or similar monitoring services for real property.**

* Reflects retroactive changes to be effective January 1, 2017 pursuant to SB 628 which was ratified on August 3, 2017.

- ▶ An item exempt from sales and use tax.
- ▶ The following inspections:
 - An inspection performed where the results are included in a report for the sale or financing of real property.
 - An inspection of the structural integrity of real property, provided the charge for the inspection is separately stated.
 - An inspection to a system that is a capital improvement under G.S.105-164.3(2c)f, provided the inspection is to fulfill a safety requirement and provided the charge for the inspection is separately stated.
- ▶ Services performed for a person by a related member as defined by N.C. Gen. Stat. § 105-130.7A.
- ▶ **Cleaning of real property, except . . . for a pool, fish tank, or other similar aquatic feature.**
- ▶ Pest control service.
- ▶ **Self-service car washes and vacuums.**
- ▶ **Funeral related services.**
- ▶ Moving services.
- ▶ **Services performed on an animal.**

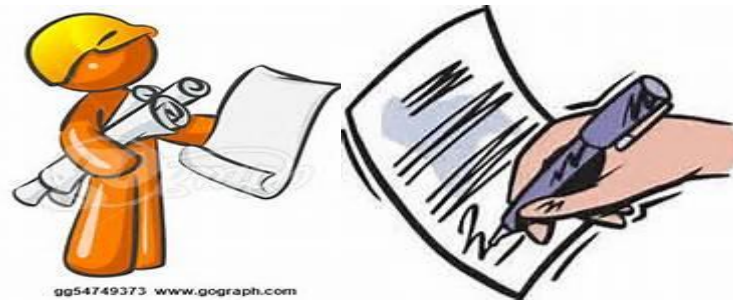
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A contract between a real property contractor and another person to perform *a capital improvement* to real property.

- Form E-589CI, Affidavit of Capital Improvement, generally required.
(more info to come)

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- ▶ A person that contracts to perform a real property contract.
- ▶ The term includes:
 - ▶ a general contractor,
 - ▶ a subcontractor,
 - ▶ or a builder.
- ▶ A real property contractor is the consumer of the tangible personal property or 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.
- ▶ Services to real property are generally retail sales of repair, maintenance, and installation services and subject to sales and use tax unless...



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Generally, the service is taxable RMI unless the person substantiates that the transaction is:

- Subject to tax as a real property contract (e.g. obtains Form E-589CI, or maintains other records that establish it is a real property contract).
- Subject to tax as a mixed transaction (e.g. obtains Form E-589CI, or maintains other records that establish it is a real property contract).
- Not subject to tax (e.g. RMI for resale where Form E-595E, Certificate of Exemption, is on file, or another service that is not subject to tax).

* See G.S. 105-164.4H(a1) in section 2.4.(b) of SB 628, ratified August 3, 2017.

New Construction - Construction of or site preparation for a permanent new building, structure, or fixture on land or an increase in the square footage of an existing building, structure, or fixture on land.

Reconstruction - Rebuild or construct again a prior existing permanent building, structure, or fixture on land and may include a change in the square footage from the prior existing building, structure, or fixture on land.

Remodeling – See next slide.

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Remodeling - A transaction comprised of multiple services performed by one or more persons to restore, improve, alter, or update real property that may otherwise be subject to tax as repair, maintenance, and installation services if separately performed. The term includes a transaction where the internal structure or design of one or more rooms or areas within a room or building are substantially changed. The term does not include a single repair, maintenance, and installation service. The term does not include a transaction where the true purpose is a repair, maintenance, and installation service no matter that another repair, maintenance, and installation service is performed that is incidental to the true purpose of the transaction; examples include repair of sheetrock that includes applying paint; replacement of cabinets that includes installation of caulk or molding; and the installation of hardwood floors that includes installation of shoe molding.

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Performance of work that requires the issuance of a permit under the State Building Code, other than repair or replacement of electrical components, gas logs, water heater, and similar individual items that are not part of new construction, reconstruction, or remodeling.

- ▶ Items underlined are taxable as repair, maintenance, and installation services

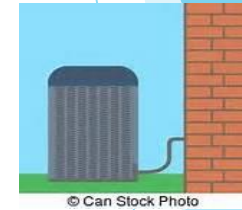
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- ▶ Installation of **utilities on utility owned land, right of way, or easement**, notwithstanding that charges for such may be included in the gross receipts derived from services subject to the combined general rate under G.S. 105-164.4.
- ▶ **Installation of equipment or fixture** that is attached to real property and that meets **one or more** of the following conditions:
 - Is capitalized and depreciated under Generally Accepted Accounting Principles or International Financial Reporting Standards.
 - Is depreciated under the Code.
 - Is expensed under Section 179 of the Code.

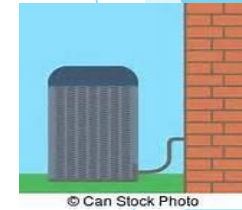
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- ▶ **Painting** or **wallpapering** of real property, except where painting or wallpapering is incidental to the repair, maintenance, and installation service.
- ▶ Replacement or installation of a **septic tank system, siding, roof, plumbing, electrical, commercial refrigeration, irrigation, sprinkler or other similar system**. The term does not include the repair, replacement, or installation of electrical or plumbing components, water heaters, gutters, and similar individual items that are not part of new construction, reconstruction, or remodeling.
- ▶ Replacement or installation of a **heating or air conditioning unit or a heating, ventilation, and air conditioning system**. The term does not include the repair, replacement, or installation of gas logs, water heaters, pool heaters, and similar individual items that are not part of new construction, reconstruction, or remodeling.
- ▶ Replacement or installation of **roads, driveways, parking lots, patios, decks, and sidewalks**.



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- ▶ Services performed to resolve an issue that was part of a real property contract if the services are performed **within six months of completion** of the real property contract or, **for new construction, within 12 months** of the new structure being occupied for the first time.
- ▶ **Landscaping** – A service that modifies the living elements of an area of land. Examples include the installation of trees, shrubs, or flowers on land; tree trimming; mowing; and the application of seed, mulch, pine straw, or fertilizer to an area of land. The term does not include services to trees, shrubs, flowers, and similar items in pots or in buildings.
- ▶ Addition or alteration to real property that is permanently affixed or installed to real property and is not an activity listed in the definition of repair, maintenance, and installation services.



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Contracts that include both a real property contract for a capital improvement and repair, maintenance, and installation services.

- ▶ **25% Rule** - Does the allocated price of RMI exceed 25% of the contract?
 - ▶ If no, the entire transaction is treated as a real property contract.
 - ▶ **If yes, the allocated amount for RMI is taxable.**

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Relevant Forms

NCDOR Form E-589CI, Certificate of Capital Improvement

NCDOR
Web-Fill
1-17

E-589CI Affidavit of Capital Improvement



Form E-589CI, Affidavit of Capital Improvement, is generally required to substantiate 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 with respect to a capital improvement to real property.

- This affidavit may not be used to purchase building materials, other tangible personal property, or digital property to fulfill a real property contract exempt from sales and use tax.
- A person who willfully attempts, or a person who aids or abets a person to attempt in any manner, to evade or defeat a tax imposed by the Sales and Use Tax Laws, or the payment thereof, shall be guilty of a Class H felony. If there is a deficiency or delinquency in payment of any tax due to fraud with intent to evade the tax, there shall be assessed a penalty equal to 50% of the total deficiency.

Section I. Single Use (Complete this section to issue the affidavit for a single capital improvement.)

A Owner, Tenant, or Real Property Contractor
Address
City State Zip Code

B Real Property Contractor (General Contractor or Subcontractor)
Address
City State Zip Code

Describe capital improvement to be performed:

Project Name

Project Address (where the work is to be performed) City State Zip Code

I certify that, to the best of my knowledge, this affidavit is accurate and complete and that the transaction described to be performed by the Real Property Contractor (General Contractor or Subcontractor identified in box "B") shall be treated as a real property contract with respect to a capital improvement to real property for sales and use tax purposes.

Signature of Authorized Person: _____ Title: _____ Date: _____

Section II. Blanket Use (Complete this section to execute a blanket affidavit.)

C Real Property Contractor
Address
City State Zip Code

D Real Property Contractor or Subcontractor
Address
City State Zip Code

To be completed by the Real Property Contractor identified in Box C.

I certify that I am a Real Property Contractor who performs capital improvements to real property and all transactions with the real property contractor (subcontractor) identified in box "D" shall be treated as real property contracts with respect to capital improvements for real property for sales and use tax purposes.

Signature of Authorized Person: _____ Title: _____ Date: _____

Who issues Form E-589CI?

- ▶ A builder, general contractor, or subcontractor will issue the form to their subcontractors (who may be providing a service that would usually be considered taxable RMI).
- ▶ A homeowner can issue the form to contractors if the homeowner is acting as a general contractor and overseeing the real property contract.
- ▶ Some exceptions apply.

The Form must be kept on file by any person to whom it is issued as it is their authority to not charge sales tax on an otherwise taxable transaction. This includes any contractor who is performing services to real property that would usually be considered taxable RMI, but the service is part of a real property contract.

Additional References:

- ▶ Important Notice: Form E-589CI, Affidavit of Capital Improvement, issued by the Department on December 8, 2016.
- ▶ The instructions for Form E-589CI, Affidavit of Capital Improvement.



E-595E Streamlined Sales and Use Tax Agreement Certificate of Exemption



This is a multi-state form. Not all states allow all exemptions listed on this form. Purchasers are responsible for knowing if they qualify to claim exemption from tax in the state that would otherwise be due tax on this sale. The seller may be required to provide this exemption certificate (or data elements required on the form) to a state that would otherwise be due tax on this sale.

The purchaser will be held liable for any tax and interest, and possibly civil and criminal penalties imposed by the member state, if the purchaser is not eligible to claim this exemption. A seller may not accept a certificate of exemption for an entity-based exemption on a sale made at a location operated by the seller within the designated state if the state does not allow such an entity-based exemption.

1 Check if you are attaching the Multistate Supplemental form.
 If not, enter the two-letter postal abbreviation for the state under whose laws you are claiming exemption.

2 Check if this certificate is for a single purchase and enter the related invoice/purchase order #

3 **Please print**
 Name of purchaser

Business address City State Zip code

Purchaser's tax ID number State of issue Country of issue

If no tax ID number, enter one of the following: PEIN Driver's license number/state issued ID number Foreign diplomat number

Name of seller from whom you are purchasing, leasing, or renting

Seller's address City State Zip code

4 **Type of business.** Check the number that describes your business.

<input type="checkbox"/> 01 Accommodation and food services	<input type="checkbox"/> 11 Transportation and warehousing
<input type="checkbox"/> 02 Agricultural, forestry, fishing, and hunting	<input type="checkbox"/> 12 Utilities
<input type="checkbox"/> 03 Construction	<input type="checkbox"/> 13 Wholesale trade
<input type="checkbox"/> 04 Finance and insurance	<input type="checkbox"/> 14 Business services
<input type="checkbox"/> 05 Information, publishing, and communications	<input type="checkbox"/> 15 Professional services
<input type="checkbox"/> 06 Manufacturing	<input type="checkbox"/> 16 Education and health-care services
<input type="checkbox"/> 07 Mining	<input type="checkbox"/> 17 Nonprofit organization
<input type="checkbox"/> 08 Real estate	<input type="checkbox"/> 18 Government
<input type="checkbox"/> 09 Rental and leasing	<input type="checkbox"/> 19 Not a business
<input type="checkbox"/> 10 Retail trade	<input type="checkbox"/> 20 Other (explain) <input type="text"/>

5 **Reason for exemption.** Check the letter that identifies the reason for the exemption.

<input type="checkbox"/> A Federal government (department) <input type="text"/>	<input type="checkbox"/> H Agricultural production # <input type="text"/>
<input type="checkbox"/> B State government (name) <input type="text"/>	<input type="checkbox"/> I Industrial production/manufacturing # <input type="text"/>
<input type="checkbox"/> C Tribal government (name) <input type="text"/>	<input type="checkbox"/> J Direct pay permit # <input type="text"/>
<input type="checkbox"/> D Foreign diplomat # <input type="text"/>	<input type="checkbox"/> K Direct mail # <input type="text"/>
<input type="checkbox"/> E Resale # <input type="text"/>	<input type="checkbox"/> L Other (explain) <input type="text"/>

6 **Sign here.** I declare that the information on this certificate is correct and complete to the best of my knowledge and belief.

Signature of authorized purchaser Print name here Title Date

Who issues Form E-595E?

- ▶ Persons making purchases for resale. This includes making purchases that will be transferred as part of taxable RMI. Generally, if the item is transferred as part of taxable RMI, the item should be purchased exempt from tax. If the item is transferred as part of exempt RMI, sales or use tax must be paid on the purchase price of the item. (Note: Sales or use tax is due on items transferred as part of a real property contract.)
- ▶ Manufacturers making purchases of items to be incorporated into a product or when purchasing machinery and equipment subject to the 1% privilege tax.
- ▶ Other persons making purchases exempt from sales and use tax.

Generally, Form E-595E must be kept on file for any exempt sale by a person. This includes sales for resale (including RMI sold for resale), certain items sold to manufacturers, and any other sale that would be exempt from sales and use tax. Maintaining **all** the required data elements also satisfies the requirement of appropriate documentation for an exempt sale. Those elements are: the purchaser's name, address, certificate of exemption number, reason for exemption, and the type of the purchaser's business.

Questions

- 1) Is dirt (sand, topsoil, clay) that is mined off of your private property taxable if sold to the general public? **Products of forests or mines in their original unmanufactured state are exempt from sales and use tax when such sales are made by the producer in the capacity of producer. (G.S. 105-164.13(3))**
- 2) Is labor taxed if I spread a load of dirt and/or rock with a tractor or plant plants and/or trees in a customer's yard whether or not I have sold the materials to that customer. **Generally, this would be a landscaping and classified as a real property contract. Therefore, it is treated as a real property contract.**
- 3) If I prune shrubbery and haul off the debris, is this taxable? **This is "landscaping" and is a capital improvement. Therefore, it is treated as a real property contract.**
- 4) If I pick up materials that the customer has paid for, is my delivery charge taxable? **All freight, delivery or other transportation charges in any way connected with or arising by reason of any taxable sale or purchase of tangible personal property are subject to sales or use tax, regardless if separately stated. Generally, if the person did not arrange for the sale of the tangible personal property and is not the seller of the item, but is merely hired for delivery of the item, the charge is not subject to sales and use tax.**

Visit the Department's website for information on Letters of General Applicability and Written Determinations.

- 1) There is an artist that does some contract work and some free lance. Is contract work excluded and free lance are liable? **Is the artist performing a taxable service? Taxability may depend the contract. Not enough information is given to provide a general answer.**
- 2) A gunsmith has been notified he has to pay sales tax. Service work mostly? **I am unsure what is being asked. Most likely the gunsmith is providing taxable RMI.**
- 3) On a different area, I had an issue with identity theft. All was resolved on federal over a year ago but federal does notify the state. Have to work with both independently. I was told the federal notifies the state only if income goes up. If income goes down, it falls on the taxpayer to resolve. Why doesn't info flow in both cases between fed and state? **Contact the Office of Taxpayer advocate for information at (919) 715-2080.**

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