

NORTH CAROLINA SALES TAX UPDATE 2016

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New sales tax law goes into effect.

Imposes sales tax to "service contracts" and "repair, installation and maintenance services."

For purposes of construction industry, the change made the sale of service contracts (other than warranties) subject to sales tax, and potentially made some aspects of repair, installation, and maintenance services taxable as well.

The statutes and regulations were acknowledged to be **ambiguous and confusing**. As a result, retailers will not be liable for undercollecting new tax in 2016 if retailer made good faith effort to collect the right amount of tax.

HB 1030

“An Act to Modify the Current Operations and Capital Improvements Appropriations Act of 2015 and to Make Other Changes in the Budget Operations of the State”

As part of HB 1030 the General Assembly passed further revisions and clarifications in 2016 to “repair, installation and maintenance services” tax laws, which will become effective **Jan. 1, 2017**.

The most significant changes are...

HB 1030

The law has been clarified that the sales tax requirements exclude "capital improvements" to real property.

A "capital improvement" is an "addition or alteration to real property" that becomes a permanent part of the property "so that removal would cause material damage to the property or article itself." N.C. Gen. Stat. 105-164.4H(e)(1).

The term includes, among other items, removals, work requiring most permits, installation of underground utilities, painting and wallpapering, installation or replacement of roofing, plumbing, electrical, and irrigation systems, installation or replacement of HVAC units, and landscaping service.

HB 1030

The changes in the law have exempted certain **"RMI" services** as well. Those include services performed by a **"related member,"** services performed to **resolve an issue** that was part of a **real property contract** within six months of completion, or within 12 months of a new structure being occupied, cleaning of real property, services on roads, driveways, parking lots and sidewalks, removal of waste, trash, debris and snow from real property, landscaping services, pest control services, moving services, and home inspections relating to preparation for or sale of real property.

HB 1030

The law now includes a “**mixed transaction contract**,” which includes both a real property contract for a capital improvement, and RMI services.

If the price of the taxable RMI services **does not exceed 10%** of the contract price, then the RMI services portion of the contract are taxable as a real property contract. (This means the service itself is exempt, although personal property sold to the real property contractor is taxed.)

If the price of the taxable RMI services **equals or exceeds 10%** of the contract price, then the sales and use tax applies to those taxable RMI services in the contract.

HB 1030

The distinction of a “**retailer-contractor**” has also been simplified under the new law.

Previously, a company would have to determine whether it was engaged in the “retail trade” to evaluate whether and how much sales or use tax a “retailer-contractor” was obligated to charge.

Under the new law, all RMI services by a retailer-contractor are **exempt when they are performed under a real property contract**. The retailer-contractor is only obligated to collect and pay the tax when acting as a retailer in making a sale at retail.