North Carolina Sales Tax Changes Effective March 1, 2016

At the end of the 2015 Legislative Session, a policy decision was made to expand sales tax to the services of maintenance, repair and installation of tangible personal property. This change becomes effective March 1, 2016, and it will require that the combined state and local sales tax rate be applied for these services just as it is to the products themselves.

The North Carolina Department of Revenue (NCDOL) has issued a series of Directives to interpret the law and the following question and answer is intended to provide additional clarification. A large majority of the information for this Q&A is pulled directly from the Directives prepared by the NC DOR. The NC DOR should be provided full credit for the great deal of work that it has done on these Directives. This Q&A is not intended to serve as legal advice and any additional questions should be addressed with your CPA or the NC Department of Revenue.

Q & A

1) What is a general overview of the new sales tax that goes into effect on March 1, 2016?

The North Carolina General Assembly sought to expand the sales tax base without expanding the universe of businesses that had to collect sales tax. While it is not the case 100% of the time, under this premise:

- If a business was not collecting sales tax previously - that business will not be required to collect sales tax on installations, repairs or maintenance on March 1, 2016.
- Businesses that already collect sales tax prior to March 1, 2016, will now begin collecting sales tax on these additional services.

2) How do I determine whether or not I have to collect sales tax and what I have to collect sales tax on beginning March 1, 2016?

In its simplest form, ask yourself two questions?

1) Is your business in the “Retail Trade?”
2) Is the service you are providing a repair, maintenance or installation of tangible personal property?

If you answer “yes” to both questions, you must begin charging sales tax for installations, repairs and maintenance of tangible personal property on March 1, 2016.

3) Who has to charge sales and use tax on installations, repairs and maintenance?

Businesses that are in the “retail trade” are required to charge sales tax on repair, maintenance or installation services they provide. According to the NC DOR, “A person that meets the definition of “retail trade,” is a retailer liable for the applicable rate of sales and use tax on retail sales, unless the retailer maintains proper records to establish a sale is exempt. A person properly classified in the North American Industry Classification System (NAICS) – Retail Trade Sector 44-45, who is engaged in business in the State, is presumed to meet the definition of “retail trade.”
trade.” In other words, if your business classifies itself as being in the Retail Trade in its tax filings, it is in the “Retail Trade.”

If your business is a partnership, sole proprietor, or other type of entity where the income tax return filed with the State of North Carolina does not request a NAICS code, the business should utilize the business activity code or professional activity code identified on its federal income tax return for income tax purposes, in lieu of a NAICS code. If the person has a principal business or professional activity code that begins with “44” or “45,” the business is in the Retail Trade Sector.

The definition of a retailer also specifically excludes “a person that solely operates as a real property contractor and a person whose only business activity is providing repair, maintenance and installation services where the person’s activities do not otherwise meet the definition of retail trade.” (See N.C.G.S. 105-164.3(35).

4) How do I determine if I am in NAICS – Retail Trade Sector 44-45?

The NC DOR has pointed to a series of examples to help make this determination -

Store retailers’ activities may include the following:
- Operate fixed point-of-sale locations, located and designed to attract a high volume of walk-in customers.
- Have displays of merchandise.
- Sell merchandise to the general public for personal or household consumption, but some also serve business and institutional clients.
- Catalog showrooms.
- Engage in the provision of after-sales services, such as repair and installation.
- Process activities incidental to retailing.

Nonstore retailers’ activities may include the following:
- Organize to serve the general public.
- Retailing methods differ from store retailers.
- Reach customers by methods such as infomercials, the publishing of paper and electronic catalogs, door-to-door solicitation, in-home demonstration, selling from portable stalls and distribution through vending machines.

5) What if my business is classified by a NAICS Code other than Retail Trade?

If your business is classified in a different NAICS Code, you may still have to collect sales tax on the services of installations, repairs and maintenance. If this is the case, you should apply the “majority revenue” test. A person who is not in the Retail Trade Sector but in another NAICS sector may meet the definition of “retail trade” for purposes of the Sales and Use Tax Act, provided the majority of the revenue is from retailing tangible personal property, digital property, or services to consumers in the State of North Carolina.
6) Is there anyone that performs the services of maintenance, repair or installation that does not have to collect sales tax on these services?

Yes, in two instances:
   a) If a business is a real-property contractor (and not in the Retail Trade) that is performing these services pursuant to a real property contract then the real-property contractor is not required to charge sales tax on these services; or
   b) A person whose only business activity is providing repair, maintenance, and installation services, where the person's activities do not otherwise meet the definition of "retail trade," is not a retailer and is not liable for sales or use tax on the sales price of or gross receipts derived from repair, maintenance, and installations services on or after March 1, 2016.

The NC DOR also uses the following example: “A person who only receives gross receipts from sharpening knives owned by customers and does not make other retail sales is not a retailer for sales and use tax purposes and is not liable for tax on receipts from sharpening knives on or after March 1, 2016, no matter that such charge meets the definition of "repair, maintenance, and installation services."

However, a business that only receives gross receipts for shining shoes would not have to collect sales tax on the maintenance of the shoes, but would have to collect sales tax for this service if the company also sold shoes.

7) My business is in the Retail-Trade but we also offer installation services of real property on items like paint and carpet. Do we qualify as a real-property contractor and therefore do not have to collect sales tax on these services?

No. The General Assembly specifically excluded retail-contractors from the definition of a real-property contractor. This means that businesses in the retail trade that also install tangible personal property are treated differently than real property contractors. According to the NC DOR, below are some examples of businesses in the retail trade that would need to collect sales tax on installation of tangible personal property to real property.

- Building Material and Supplies Dealers
- Electronic and Appliance Stores
- Floor Covering Stores
- Hardware Stores
- Home Centers
- Household Appliance Stores
- Lawn and Garden Equipment and Supplies Stores
- Nursery, Garden Center, and Farm Supply Stores
- Other Building Material Dealers
- Paint and Wallpaper Stores
- Window Treatment Stores
8) **What does the term “repair, maintenance and installation services” mean?**

The North Carolina General Statute § 105-164.3(33g) defines the phrase as including the following activities:

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

b) To calibrate, restore, or attempt to calibrate or restore tangible personal 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.

c) To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore tangible personal property or a motor vehicle to proper working order or good condition.

d) To install or apply tangible personal property except tangible personal property installed or applied by a real property contractor pursuant to a real property contract.”

9) **My business doesn’t install anything, so what kind of services fall into the category of repairs and maintenance that I would have to start collecting sales tax on?**

The NC DOR has attempted to provide a list of services that the NC DOR will consider to be repair, maintenance, and installation services based on the definition enacted by the North Carolina General Assembly and therefore subject to sales tax. Please note that this is not an all-inclusive list.

- Perform a service or tune-up on the following: motor vehicle; lawnmower, trimmer, edger, leaf blower, pressure washer, generator, chainsaw, tiller, auger, or other similar small engine; boat; aircraft; ATV or dirt bike; moped; golf cart; or bicycle.
- Calibrate any of the following: watch; scale; gun or scope; medical equipment; Lasik surgery equipment; thermometer; instruments (musical or otherwise); battery; meter; or camera.
- Clean jewelry, copy machine, printer, or other tangible personal property or a motor vehicle.
- Remove dents, dings, and scratches from tangible personal property or a motor vehicle.
- Restore or reupholster furniture.
- Patch or mend clothing, tires, or any type of inflatable.
- Sharpen blades.
- Polish shoes, jewelry, or silver.
- Troubleshoot a fluid leak or attempt to identify an unusual noise coming from a motor vehicle or other tangible personal property, whether or not the source of the leak or noise is located, determined, or resolved.
- Troubleshoot prewritten computer software to determine how to restore to proper working order.
- Reupholster boats.
- Re-string or re-grip tennis rackets, golf clubs, or musical instruments.
- Tune pianos or other musical instruments.
- Repair laptops, cell phones, remove viruses/malware, conduct diagnostic tests, or adjust computer settings.
• Install or apply tangible personal property may include: clothing alterations; painting tangible personal property; embroidery; screen-printing; window tinting for motor vehicles.

10) Are there specific areas to observe with regards to motor vehicles?

Examples - Repair, Maintenance, and Installation Services
According to the NC DOR, the examples below are motor vehicle services generally considered repair, maintenance, and installation services. This list is not all-inclusive.

• Fluid exchanges: oil, engine coolant/antifreeze, refrigerant, brake, power steering, windshield washer, transmission, differential.
• Fuel system: clean or inspect fuel injectors, visual inspection of fuel lines, adjust throttle, fuel treatment.
• Electrical: battery test, charge, or jump service; apply protective coat to battery terminals; visually inspect wiring and wiring components; test fuse; clean battery terminals or receptacles.
• Tires: rotate, mount, balance, align, patch or plug; measure or adjust pressure.
• Suspension: inspect steering and suspension; grease joints or bearings; pack bearings.
• Inspections: preventative maintenance, multi-points, brake system, visual (belts, hoses, wiring, brakes, engine components, air conditioning components, lines, windshield wipers, etc.).
• Adjust or calibrate: belt tension, speedometer, tachometer, throttle, and set or adjust spark plug gap.
• Exterior: wash, wax, or detail services; paint; remove scratches, dents, or dings; apply protective coatings (spray on bed liners, clear coat, waxes, moisture/rain protection), window tinting.
• Interior: reupholster, clean (upholstery, carpet, windows), and apply protective coatings.
• Troubleshoot a fluid leak or attempt to diagnose an unusual noise coming from a motor vehicle, whether or not the source of the leak or noise is found or remedied.
• Restore: headlights, moldings, trims, etc.
• Roadside service fees where the intent of the service call is to troubleshoot.

11) Are there any services concerning motor vehicles that are specifically exempt from sales tax?

The NC DOR has provided a non-inclusive list of services that will not be subject to sales tax:

• State safety or emission inspections for motor vehicles.
• Self-service cleaning of motor vehicles (drive-thru or coin-operated).
• Towing solely for transportation and that is not part of the sales price of tangible personal property or repair, maintenance, and installation services (wrecker service company).
• Storage fees by a storage facility.
12) My business has to start collecting this new sales tax on repairs, installations and maintenance on March 1, 2016. What rate do I charge the customer?

Repairs, maintenance and installations that are subject to sales tax are subject to the general 4.75% State, applicable local, and applicable transit rates of sales and use tax, regardless if such installation charges are separately stated on the invoice or other documentation given to the customer at the time of the sale. (i.e. Wake County 6.75% (4.75% State + 2.0% Local, Mecklenburg County 7.25% (4.75% State + 2% Local + .5% Transit, etc.)

13) How do I figure out what the sales price is that I apply the new sale tax to at the time of purchase?

The term “sales price” is defined as “[t]he total amount or consideration for which tangible personal property, digital property, or services are sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.” The term includes the retailer's cost of the property sold; the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer; charges by the retailer for any services necessary to complete the sale; delivery charges; installation charges; credit for trade-in; and certain discounts that are reimbursable by a third party and can be determined at the time of sale in the manner required by the statute. (N.C. Gen. Stat. § 105-164.3(37)).

14) I understand that there are some specific changes around jewelry services such as cleaning and repair – what are the changes in the jewelry sector?

One hundred percent (100%) of the sales price of or the gross receipts derived from repair charges sold at retail for watch, clock, jewelry, or other items by a watch, clock, or jewelry repairman or other retailer on or after March 1, 2016, are subject to the 4.75% general State, applicable local, and applicable transit rates of sales and use tax. This is the case even if the jewelry store received the item prior to March 1, 2016.

Purchases of tangible personal property to repair a watch, clock, jewelry, or other item, and that will become a part of the customer’s repaired item, should be purchased by the retailer or wholesale merchant exempt from sales and use tax by issuing a properly completed Form E-595 to the seller of the replacement piece. Items commonly purchased for repairs include watch crystals, clasps, clock hands, and watchband pins.

If the person performing these jewelry repair services is not in the retail trade, they are not required to collect sales tax on jewelry repair services.

15) Are the rules for engraving jewelry the same as with cleaning jewelry?

Not exactly. A jewelry retailer than performs the service of engraving must start collecting sales tax for this service beginning May 1, 2017, rather than March 1, 2016, if the engraving is performed at the time the item is sold. If the engraving is performed at a later time, the engraving would not be subject to sales tax because it would be a charge by the retailer for a service that is necessary to complete the sale of the item.
16) I own a shoe store. Are shoe repairs and shining shoes subject to sales tax?

One hundred percent (100%) of the sales price of or the gross receipts derived from charges for shoe repair on or after March 1, 2016, are subject to the general 4.75% State, applicable local, and applicable transit rates of sales and use tax. A retailer who repairs shoes must collect the tax on the entire charges to customers for shoe repair services on or after March 1, 2016, even if the shoes that are repaired were received by the retailer prior to March 1, 2016.

Leather, rubber or like products, cement, thread, and other items of a similar nature that ordinarily become a part of or attached to shoes that are repaired and are sold to and delivered with the repaired shoes to customers, including bags for delivery of the shoes, should be purchased for resale exempt from sales and use tax by issuing a properly completed Form E-595 to the seller of the repair items.

If the business doing the shoe repair is not otherwise in the retail trade, then the business does not have to charge sales tax for this service.

Gross receipts received for shining shoes are also now subject to sales tax effective March 1, 2016, even if the shoes were received by the retailer prior to March 1, 2016.

A person who solely provides shoe polishing services and does not have other sales transactions is not a retailer as of March 1, 2016, and is not required to collect and remit sales tax for shining shoes.

17) Has anything changed with regards to service contracts?

If the service contract is for a motor vehicle, then the service contract is no longer subject to sales tax effective March 1, 2016, but repairs, maintenance and installations performed pursuant to that service contract are subject to sales tax.

If the service contract is sold on an item other than a motor vehicle, the service contract remains subject to sales tax but the repairs, maintenance and installation performed pursuant to that service contract is no longer subject to sales tax.

18) I sell bridal gowns and men’s suits and also provide alterations on these items. Do I charge sales tax on the alterations?

Yes. Because you are a retailer, if you charge for alterations at the time of the sale of the bridal gown or suit then the alteration is subject to tax. Also, if you are a retailer and complete the alteration after the sale of the bridal gown or suit then this service would also be subject to sales tax as this would be a “Repair, Maintenance or Installation” of tangible personal property by a retailer.

If the alteration is by a person or business that only performs alternations prior to March 1, 2016, provided the person continues to operate in the same manner (does not sell other items subject to tax under the Sales Tax Act), this person or business would not be a retailer and would not have to charge sales tax for these “Repair, Maintenance or Installation” services.

For questions regarding the changes, call NCRMA staff at (919) 832-0811 or the NC Department of Revenue at 1-877-252-3052 (toll-free).