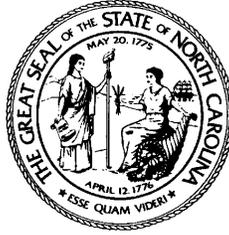


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# North Carolina Department of Revenue

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## **DIRECTIVE**

**Subject:** Optional Service Contracts for Portable Toilets  
**Tax:** Sales and Use Tax  
**Law:** N.C. Gen. Stat. § 105-164.4(a)(11)  
**Issued By:** Sales and Use Tax Division  
**Date:** January 17, 2014  
**Number:** SD-14-1

**Effective January 1, 2014**, N.C. Gen. Stat. § 105-164.4(a)(11) imposes the 4.75% general State and applicable local (2.00% and 2.25%) and transit (0.50%) rates of sales and use tax “to the sales price of a service contract” sold at retail by a retailer on or after January 1, 2014 and sourced to this State. Effective January 1, 2014, N.C. Gen. Stat. § 105-164.3(38b) defines “[s]ervice contract” as “[a] warranty agreement, a maintenance agreement, a repair contract, or a similar agreement or contract by which the seller agrees to maintain or repair tangible personal property.” N.C. Gen. Stat. § 105-164.3(46) defines “[t]angible personal property” as “[p]ersonal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses. The term includes electricity, water, gas, steam, and prewritten computer software.” Sales Tax Directive SD-13-5, issued by the Department on December 23, 2013, provides additional information regarding the application of sales and use tax to sales of “service contract[s].”

### **Sales Price of Optional “Service Contract” for a Portable Toilet**

Effective January 1, 2014, the sales price of an optional “service contract” sold to maintain or repair a portable toilet is subject to sales and use tax. It does not matter if the optional “service contract” is offered by the lessor of the portable toilet or if the portable toilet is owned by the purchaser of the optional “service contract.” Sales and Use Tax Technical Bulletin Section 34-17 provides the application of sales and use taxes to an optional “service contract” or agreement for a portable toilet **prior to** January 1, 2014.

N.C. Gen. Stat. § 105-164.3(37) defines “[s]ales price,” in part, as “[t]he total amount or consideration for which tangible personal property . . . [is] sold. . . . 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 “sales price” includes the retailer’s cost of property sold,

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the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, 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 discounts that are reimbursable by a third party and can be determined at the time of sale and documented in the manner required by N.C. Gen. Stat. § 105-164.3(37).

### **Receipts for Certain “Service Contracts” for Portable Toilets Entered Into Prior to January 1, 2014**

A billing period for a “service contract,” billed on a monthly or other periodic basis that begins on or after January 1, 2014, is subject to sales and use tax no matter that the contract was entered into or executed prior to January 1, 2014. N.C. Gen. Stat. § 105-164.15A, as amended effective January 1, 2014, provides that “[t]he effective date of a tax change for tangible personal property, digital property, or services taxable under [the Sales and Use Tax Article] is administered as follows:

- (1) For a taxable item that is provided and billed on a monthly or other periodic basis:  
. . . A new tax . . . applies to the first billing period that is at least 30 days after enactment and that starts on or after the effective date. . . .
- (2) For a taxable item that is not billed on a monthly or other periodic basis, a tax change applies to amounts received for items provided on or after the effective date. . . .”

For example, a retailer sells a “service contract” for a portable toilet that provides for toilet paper, pumping, and cleaning for a three-year period. The retailer invoices the customer on a monthly basis on the fifteenth of each month. The 4.75% general State and applicable local and transit rates of sales and use tax apply to the retailer’s gross receipts for the “service contract” for billing periods that begin on or after January 1, 2014.

A “service contract” entered into on or after January 1, 2014 for an annual basis is subject to sales and use tax. For example, a “service contract” is sold on February 1, 2014 to maintain portable toilets owned by a ball field. The sales price of the “service contract” is subject to tax.

### **Items Purchased to Maintain or Repair Portable Toilets Pursuant to an Optional “Service Contract”**

Effective for sales made on or after January 1, 2014, N.C. Gen. Stat. § 105-164.13(62) provides an exemption from sales and use tax for the sale at retail and the use, storage, or consumption in this State of “[a]n item used to maintain or repair tangible personal property pursuant to a service contract if the purchaser of the contract is not charged for the item.” Purchases of tangible personal property such as tools, brushes and similar items are not exempt from sales or use tax.

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The sale, purchase, or withdrawal from inventory of an item on or after January 1, 2014, and used for a "service contract" entered into before, on, or after January 1, 2014 is exempt from sales and use tax provided the purchaser of the "service contract" is not charged for such item. The retailer of the optional "service contract" for a portable toilet should issue Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, at the time of purchase of an item to be used to maintain or repair a portable toilet pursuant to an optional "service contract" if the purchaser of the contract is not to be charged for the item.

### **Tax Rates and Sourcing of Local Taxes**

The general State, local and transit rates of sales and use tax applicable to the sales price of a service contract is 6.75% in seventy-four (74) counties; 7.00% in Alexander, Buncombe, Cabarrus, Catawba, Cumberland, Duplin, Edgecombe, Greene, Halifax, Haywood, Hertford, Lee, Martin, Montgomery, New Hanover, Onslow, Pitt, Randolph, Robeson, Rowan, Sampson, Surry, and Wilkes Counties; 7.25% in Mecklenburg County; and 7.50% in Durham and Orange Counties.

The sale of an optional "service contract" for the maintenance or repair of a portable toilet is sourced to the location where the purchaser can potentially first make use of the service, which typically is the location of the portable toilet. If the purchaser of the "service contract" cannot potentially make first use at the location where the "service contract" is sold or where the portable toilet is located, the sale is sourced in accordance with N.C. Gen. Stat. § 105-164.4B (3), (4) or (5) based on the hierarchy and available address.

Additionally, for any retailer that collects tax for more than one county, such retailer must complete Form E-536, Schedule of County Sales and Use Taxes, and submit it along with the Form E-500, Sales and Use Tax Return, or enter the tax due for each county at the time of filing an electronic return. Form E-536 or the electronic information must reflect the amount of local and transit tax collected for each county by a retailer.

### **Registration**

A retailer engaged in business in the State that sells "service contract[s]" sourced to the State and that is not registered to collect and remit sales and use tax must complete NC-BR, Business Registration Application for Income Tax Withholding, Sales and Use Tax, and Machinery and Equipment Tax. Both an online business registration portal and a web-fill version of Form NC-BR are available at the Department's website, [www.dornc.com](http://www.dornc.com). There is no fee required to register and obtain a certificate of registration.

### **Assistance**

Questions about this directive can be directed to the Taxpayer Assistance and Collection Center at telephone number 1-877-252-3052 (toll-free).