



**HOUSE BILL 97:
2015 Appropriations Act, Sec. 32.18: Sales Tax
Base Expansion**

2015-2016 General Assembly

Committee:
Introduced by:
Analysis of: Sec. 32.18 of S.L. 2015-241

Date:
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SUMMARY: *Sec. 32.18 of S.L. 2015-241, as amended by Sec. 10.1 of S.L. 2015-241, expands the sales tax base to include repair, maintenance, and installation of tangible personal property, effective March 1, 2016, as follows:*

- *Repeals the sales and use tax exemption applicable to installation charges when those charges are stated separately on the billing document.*
- *Imposes sales and use tax on the gross receipts derived from repair, maintenance, and installation services.*
- *Amends the definition of a "service contract" to include a contract where the obligor agrees to maintain or repair tangible personal property, regardless of whether the property is part of or becomes affixed to real property.*

CURRENT LAW:

A retailer collects sales tax on the sales price of tangible personal property, digital property, or services for storage, use, or consumption in this State.

A retailer is defined as (i) a person engaged in the business of making, offering or soliciting retail sales of tangible personal property, digital property, or services, and (ii) a person engaged in the business of delivering, erecting, installing, or applying tangible personal property for use in this State that does not become part of real property pursuant to the tax imposed under G.S. 105-164.4(a)(13).¹

The sales price is the total amount or consideration for which tangible personal property, digital property, or services are sold, leased, or rented. That amount specifically includes the cost of labor or service costs. However, prior to March 1, 2016, installation charges are exempt from tax if the charges are separately stated on the billing document.

The State began imposing sales tax on the gross receipts derived from a service contract on January 1, 2014.² A service contract is a contract where the obligor under the contract agrees to maintain or repair tangible personal property. Tangible personal property that is a part of or becomes affixed to real property is not considered tangible personal property for purposes of the sales tax on service contracts.

BILL ANALYSIS: Section 32.18 of S.L. 2015-241, as amended by Section 10.1(g) of S.L. 2015-268, expands the State and local sales tax base to include repair, maintenance, and installation services, effective March 1, 2016. The expansion of the sales and use tax base to include the gross receipts

¹ Real property contractors, G.S. 105-164.4H. The change in the definition, as explained in this text, was made by S.L. 2014-3. The statute amended in this act does not reflect the changes made in 2014 and will need to be corrected in 2016.

² S.L. 2013-316.

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derived from the repair, maintenance, and installation of tangible personal property is a progression of the 2013 legislative change that imposed sales and use tax on a service contract.³

First, the act repeals the sales tax exemption for installation charges that are separately stated on the billing document. Second, the act imposes sales and use tax on the gross receipts derived from repair, maintenance, and installation services. Third, the act amends the definition of "service contract" so that it includes the repair or maintenance of tangible personal property, regardless of whether the property is part of or affixed to real property.

The tax will apply to all of the following activities:

- Keeping or attempting to keep tangible personal property in working order to avoid breakdown and prevent repairs
- Calibrating, restoring, or attempting to calibrate or restore tangible personal property to proper working order or good condition.
- Troubleshooting, identifying, or attempting to troubleshoot or identify the source of a problem for the purpose of determining what is needed to restore the tangible personal property to proper working order or good condition.
- Installing or applying tangible personal property.

The inclusion of installation services in the sales tax base ensures that the installation of tangible personal property will be taxed the same regardless of whether the installation is provided as part of the sale of the property being installed or as a separate transaction. However, the act creates a distinction between a person who installs tangible personal property and is also engaged in retail trade and a person whose only business activity is providing maintenance, repair, and installation services. The purpose of the exception is to avoid creating retailers from professions that are not currently perceived as retailers. The exception does create a difference in the taxation of similar transactions, depending upon who provides the service. The following transactions are not subject to sales and use tax if the person providing the service meets one or more of the following:

- The installation of tangible personal property by a real property contractor pursuant to a real property contract.
- The installation of tangible personal property by a person that solely acts as a real property contractor.
- The installation of tangible personal property by 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. A retail trade is a trade in which the majority of revenue is from retailing tangible personal property, digital property, or services to consumers.

The sales and use tax exemptions applicable to service contracts will also be applicable to repair, maintenance, and installation services. A service contract on the following items is exempt from sales and use tax; therefore the gross receipts derived from repair, maintenance, and installation services on the following items is exempt from sales and use tax:

- The underlying tangible personal property subject to the service contract is exempt from sales tax. Examples of items exempt from sales tax include farm equipment purchased by a qualifying farmer.

³ Effective January 1, 2014.

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- Items subject to the excise tax under Article 5F. Examples of items taxable under Article 5F include mill machinery and equipment.
- A transmission, distribution, or other network asset contained on utility-owned land, right-of-way, or easement.
- A transmission, an engine, rear-end gears, and any other item purchased by a professional motorsports racing team or a related member of a team for which the team may receive a sales tax refund under G.S. 105-164.14A(a)(5).⁴
- A qualified aircraft or a qualified jet engine.⁵

EFFECTIVE DATE:

This section becomes effective March 1, 2016, and applies to sales occurring on or after that date and to gross receipts derived from repair, maintenance, and installation services provided on or after that date.

⁴ Section 6 of S.L. 2015-259 clarified the items exempt from tax under G.S. 105-164.4I. S.L. 2015-259 also provided a specific sales tax exemption under G.S. 105-164.13 for an engine provided with an operator to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series. A service contract on a race engine exempt from sales tax, as well as repair, maintenance, and installation services on a race engine exempt from sales tax, will also be exempt from sales tax. The sales tax preferences for items purchased by a professional motorsports racing team or a related member of a team expire January 1, 2020. When the sales tax preferences for the underlying tangible personal property expire, so will the sales tax exemptions for the service contract and repair, maintenance, and installation service on that tangible personal property.

⁵ Section 4.2 of S.L. 2015-259 expanded the exemptions to include these items.