



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 523*

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S523-ARB-44 [v.2]

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Amends Title [NO]
CSSVxf-21

Date _____, 2019

Senator _____

moves to amend the bill on on page 23, lines 17-25, by rewriting the lines to read:

"() Property management contract. – A written contract obligating a person to provide five or more real property management services.";

and on page 24, lines 6 through page 25, line 24, by rewriting the lines to read:

"§ 105-164.4K. **Property management contracts.**

(a) Taxability of Services under a Property Management Contract. – Repair, maintenance, and installation services taxable under this Article and provided by a real property manager under a property management contract are subject to sales and use tax in the following circumstances:

- (1) Repair, maintenance, installation services provided by the real property manager for an additional charge.
(2) The real property manager arranges for a third party to provide the repair, maintenance, and installation services and the real property manager imposes an additional contract amount or charge for the arranging of these services.
(3) More than twenty-five percent (25%) of the time spent managing the real property for a billing or invoice period is attributable to repair, maintenance, and installation services taxable under this Article and not excluded by subsection (b) of this section. The tax applies to the sales price of or the gross receipts derived from the taxable repair, maintenance, and installation services portion of the property management contract. The real property manager must determine an allocated sales price for the repair, maintenance, and installation services portion of the property management contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. The charges for the taxable repair, maintenance, and installation services must be separately stated on the invoice or similar billing document given to the customer at the time of the sale.

(b) Exclusions. – The tax imposed by this section does not apply to the following repair, maintenance, and installation services if the services are provided by the real property manager pursuant to a property management contract and payable as part of the specified contract amount:



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1 (1) To troubleshoot, identify, or attempt to identify the source of a problem for
2 the purpose of determining what is needed to restore the real property to
3 working order or good condition.

4 (2) To inspect or monitor the real property, including the normal operation of all
5 systems that are part of the real property.

6 (c) Substantiation. – Generally, repair, maintenance, and installation services are subject
7 to tax in accordance with G.S. 105-164.4(a)(16), unless a person substantiates that the services
8 are not taxable as real property management services provided under a property management
9 contract in accordance with subsection (a)(3) of this section, excluded from tax in accordance
10 with subsection (b) of this section, or not subject to tax. A real property manager may substantiate
11 that no more than twenty-five percent (25%) of the time spent managing the real property for a
12 billing or invoice period is attributable to repair, maintenance, and installation services taxable
13 under this Article and not excluded by subsection (b) of this section. The substantiation must be
14 based on a reasonable approximation of the real property management services provided and
15 supported by the person's business records kept in the ordinary course of business. The
16 substantiation must be contemporaneously provided for each billing or invoice period and
17 maintained in the business records.

18 (d) Real Property Management Services. – This subsection applies when repair,
19 maintenance, and installation services otherwise taxable under this Article are excluded from
20 sales and use tax. A real property manager is the consumer of the items that the real property
21 manager purchases, installs, applies, or otherwise uses to fulfill a property management contract.
22 A retailer engaged in business in the State shall collect tax on the sales price of an item sold at
23 retail to a real property manager unless a statutory exemption in G.S. 105-164.13 applies.

24 (e) Real Property Manager Acting as Retailer. – This subsection applies when repair,
25 maintenance, and installation services provided by a real property manager are subject to sales
26 and use tax under this section. A real property manager acts as a retailer and makes a sale at retail
27 when it provides repair, maintenance, and installation services taxable under this section unless
28 a statutory exemption in G.S. 105-164.13 applies.

29 (f) Grace Period. – The Department shall take no action to assess any tax due for a filing
30 period beginning on or after January 1, 2019, and ending prior to January 1, 2021, if the retailer
31 failed to collect sales tax on repair, maintenance, and installation services taxable under this
32 section. This subsection does not apply if the retailer received specific written advice from the
33 Secretary for the transactions at issue for the laws in effect for the applicable period. The
34 limitations in G.S. 105-244.3 apply to this subsection."

35 **SECTION 3.9.(f)** G.S. 105-237.1(a) reads as rewritten:

36 **§ 105-237.1. Compromise of liability.**

37 (a) Authority. – The Secretary may compromise a taxpayer's liability for a tax that is
38 collectible under G.S. 105-241.22 when the Secretary determines that the compromise is in the
39 best interest of the State and makes one or more of the following findings:

40 ...
41 (8) The assessment is for sales tax the taxpayer failed to collect or use tax the
42 taxpayer failed to pay on repair, maintenance, and installation services
43 provided by a real property manager under a property management contract.

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1 The Secretary must determine that the taxpayer made a good-faith effort to
2 comply with the sales and use tax laws. Absent fraud or other egregious
3 activities, a taxpayer that substantiated the time spent managing real property
4 for a billing or invoice period as provided under G.S. 105-164.4K(c) will be
5 determined to have made a good-faith effort to comply with the sales and use
6 tax laws."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____