

§ 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 Article 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:

- (1) To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore the real property to working order or good condition.
- (2) To inspect or monitor the real property, including the normal operation of all systems that are part of the real property.

(c) Substantiation. – Generally, repair, maintenance, and installation services are subject to tax in accordance with G.S. 105-164.4(a)(16), unless a person substantiates that the services are not taxable as real property management services provided under a property management contract in accordance with subsection (a)(3) of this section, excluded from tax in accordance with subsection (b) of this section, or not subject to tax. A real property manager may substantiate that no 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 substantiation must be based on a reasonable approximation of the real property management services provided and supported by the person's business records kept in the ordinary course of business. The substantiation must be contemporaneously provided for each billing or invoice period and maintained in the business records.

(d) Real Property Management Services. – This subsection applies when repair, maintenance, and installation services otherwise taxable under this Article are not subject to sales and use tax. A real property manager is the consumer of the items that the real property manager purchases, installs, applies, or otherwise uses to fulfill a property management contract. A retailer engaged in business in the State shall collect tax on the sales price of an item sold at retail to a real property manager unless a statutory exemption in G.S. 105-164.13 applies.

(e) Real Property Manager Acting as Retailer. – This subsection applies when repair, maintenance, and installation services provided by a real property manager are subject to sales G.S. 105-164.4K

and use tax under this section. A real property manager acts as a retailer and makes a sale at retail when it provides repair, maintenance, and installation services taxable under this section unless a statutory exemption in G.S. 105-164.13 applies.

(f) Grace Period. – The Department shall take no action to assess any tax due for a filing period beginning on or after January 1, 2019, and ending prior to January 1, 2021, if the retailer failed to collect sales tax on repair, maintenance, and installation services taxable under this section. This subsection does not apply if the retailer received specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable period. The limitations in G.S. 105-244.3 apply to this subsection. (2019-169, s. 3.9(e); 2019-246, s. 7(a).)