



# TAX BULLETIN 17-8

## *Virginia Department of Taxation*

June 29, 2017

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### IMPORTANT INFORMATION REGARDING THE SALES TAX TREATMENT OF RETAILERS AND CONTRACTORS SELLING AND INSTALLING TANGIBLE PERSONAL PROPERTY

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The General Assembly enacted [House Bill 1890](#) and [Senate Bill 1308](#) (2017 Acts of Assembly, Chapters 436 and 449) effective July 1, 2017, which change the Retail Sales and Use Tax treatment of sales of certain tangible personal property that is installed by the seller onto real property. This Tax Bulletin is intended to provide guidance regarding this law change.

#### Generally

Beginning July 1, 2017, the legislation repeals the portions of the Retail Sales and Use Tax requiring dealers that both make retail sales and also install fences, venetian blinds, window shades, awnings, storm windows and doors, floor coverings, cabinets, countertops, kitchen equipment, window air conditioning units or other like or comparable items (“the listed items”) to collect the tax from their customers on such sales. In the same manner as other real property contractors, these retailers will be required to pay the tax on their purchase or use of the listed items. As a result of this law change, subsection G of 23 *Virginia Administrative Code* § 10-210-410, the Department’s regulation provision regarding the repealed law, is no longer valid.

#### **CURRENT LAW AND POLICY**

Virginia law generally treats businesses that sell and install tangible personal property that becomes real property upon installation as contractors. As contractors, such businesses must pay the tax on the purchase price of the materials and not charge sales tax to their customers. Current law makes an exception for retailers who sell and install certain specified items, including fences, locks and locking devices, venetian blinds, window shades, awnings, storm windows and doors, floor coverings, cabinets, countertops, kitchen equipment, window air conditioning units, or other like or comparable items (“the listed items”). Provided these businesses maintain a retail or wholesale place of business and an inventory of the listed items, and provided they perform installation as part of or incidental to the sale of the listed items, they are deemed retailers, and are authorized to collect sales tax from their customers on the sale of the listed items. Separately stated installation charges are exempt from the tax.

If a business does not meet the requirements of a retailer, as set forth above, it is deemed a consuming contractor and must pay the sales tax on the listed items at the time of purchase or accrue use tax, even if he is making sales of the listed items separately identified above. This policy applies regardless of whether the seller and installer is also a fabricator of the listed items.

While retailers are generally treated differently from contractors with respect to the tax, both retailers and contractors are deemed the users or consumers of supplies used in installing tangible personal property that becomes real property after installation. Therefore, retailers and contractors must pay tax on their purchases of installation supplies, including tacks, stripping, glue, cement, and other materials they purchase.

### **CHANGE IN LAW EFFECTIVE JULY 1, 2017**

#### In General

For sales occurring on or after July 1, 2017, dealers who sell at retail but also sell and offer installation of fences, venetian blinds, window shades, awnings, storm windows and doors, floor coverings (as distinguished from the floors themselves), cabinets, countertops, kitchen equipment, window air conditioning units or other like or comparable items (the "listed items") will be treated as consuming contractors for Retail Sales and Use Tax purposes.

Consuming contractors are considered to be the consumers of all tangible personal property that they install for their customers. Therefore, under the new law, dealers who sell but also install the listed items will be required to either pay the sales tax on all items they are installing at the time they purchase those items from their supplier or vendor or they must accrue use tax on such items instead if the dealer was not or could not be certain whether the item would be sold with or without installation at the time the item was purchased from a vendor or supplier.

Whether a dealer installs the items itself or contracts the installation work to another entity does not change the fact that the items sold were sold along with installation services. The use of an outside installer alone would not reclassify an installation transaction as a retail transaction for the purposes of the new law.

Under current law, *Va. Code* § 58.1-610 (F) deems persons engaged in the business of furnishing and installing locks and locking devices to be retailers of such items and not using or consuming contractors with respect to those items. This provision is unchanged by the new law and therefore persons engaged in the business of furnishing and installing locks and locking devices are still deemed to be retailers of such items.

### Retail Merchants

A business that is primarily a retail merchant, that also makes some installation sales, should use its resale exemption certificate to purchase items for resale. The business should collect sales tax from its customers on the selling price of items it does not install. With regard to any item purchased with a resale exemption certificate that the business subsequently makes an installation sale, the business should report and remit use tax on its purchase price of the item at the time it withdraws the item from inventory. With respect to any item the business knows that it will install for a customer, however, the business should pay sales tax to its vendor on its purchase price. The business should not charge its customers sales tax on items that it sells and installs. The business should pay sales tax on any items purchased to perform installations and it should remit use tax on any items removed from inventory to perform installations.

### Contractors

A business that is primarily a contractor that also makes some retail sales should pay sales tax to its vendors on any items it will install. The business should also pay sales tax on any items used to perform installations. The business should not collect sales tax from its customers on installation sales.

With respect to any item the business knows that it will resell to a customer without installation, however, it should purchase the item on an exempt basis by presenting its resale exemption certificate to its vendor. The business should subsequently collect sales tax from its customer on the transaction.

If the business pays sales tax to its vendor on its purchase of an item and subsequently makes a retail sale of the item without installation, it must collect sales tax from its customer. On its Retail Sales and Use Tax return for the month of the sale, it must report the amount of the sale. The business should not seek a refund from its vendor for the amount of sales tax previously paid. In order to recover the amount of sales tax it previously paid to its vendor, it should report the item's purchase price as a deduction on Line 3 of its monthly return and worksheet. As a result, the business will only remit the difference between the amount of sales tax it collected from its customer and the amount of sales tax the business previously paid to its vendor. The business is required to maintain supporting documentation regarding the transaction along with the return worksheet in its records.

Transaction	Current Law	New Law
Business sells countertops, no installation services offered	Business purchases countertops tax-exempt from vendor and collects sales tax from customer at time of sale	Business purchases countertops tax-exempt from vendor and collects sales tax from customer at time of sale
Business sells and installs countertops	Business purchases countertops tax-exempt from vendor and collects sales tax from retail customer on total price (less any separately stated installation charges) at time of sale	Business DOES NOT collect sales tax from customer. Instead, business must either: <ol style="list-style-type: none"> <li>1. Pay sales tax on the countertops when purchased from vendor; OR</li> <li>2. If the business does not know whether the countertops will be sold at retail or installed, it may purchase countertops tax-exempt and accrue and pay use tax on countertops when sold with installation.</li> </ol>

Example 1

A business sells storm windows to a Virginia customer without installation. Under current law, the business would purchase the storm window exempt from the tax using its resale exemption certificate and would collect sales tax from the customer on the sales price at the time of the sale. The change in law would not affect this scenario as the customer is purchasing tangible personal property from the business without any installation services.

Example 2

A business sells storm windows to a customer and offers to install the storm windows on the customer's home. The customer enlists the business' installation services. Under current law, the business would purchase the storm windows using its resale exemption certificate and collect sales tax from the customer on the sales price (excluding the separately stated installation charges) at the time of the sale. Under the new law, if the business is primarily retail in nature, it should purchase the storm windows using its resale exemption certificate and collect sales tax from its customer at the time of sale. If the business is primarily a contractor, it should pay sales tax on the storm windows when purchased from

its vendor. If the business does not know whether it will sell the storm windows at retail or install them, it may purchase them tax-exempt and either collect sales tax if it sells them at retail or it should accrue use tax on them once installed.

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