

§ 105-244.3. Sales tax base expansion protection act.

(a) Grace Period. – The Department shall take no action to assess any tax due for a filing period beginning on or after March 1, 2016, and ending prior to January 1, 2019, if one or more of the conditions of this subsection apply and the retailer did not receive specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable periods. Except as otherwise provided, this subsection also applies to use tax liability imposed on a purchaser under G.S. 105-164.6. The conditions are as follows:

- (1) A retailer failed to charge sales tax due on separately stated installation charges that are part of the sales price of tangible personal property or certain digital property sold at retail.
- (2) A person failed to properly classify themselves as a retailer in retail trade for the period beginning March 1, 2016, and ending December 31, 2016, and did not charge sales tax on all retail transactions but rather treated some transactions as real property contracts in error for sales and use tax purposes. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a transaction erroneously treated as a real property contract.
- (3) A person treated a transaction as a real property contract in error and did not collect sales tax on the transaction as a retail sale. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a transaction erroneously treated as a real property contract.
- (4) A person failed to collect sales tax on the sales price of a service contract for one or more components, systems, or accessories for a motor vehicle on or after March 1, 2016, and prior to January 1, 2017, where the contract was sold by a motor vehicle dealer, a motor vehicle service agreement company, or a motor vehicle dealer on behalf of a motor vehicle service agreement company.
- (5) A person failed to collect sales tax on the retail sale of a service contract for tangible personal property that becomes a part of or is affixed to real property.
- (6) A person failed to collect sales tax on the retail sale of a service contract for a pool, a fish tank, or similar aquatic feature on or after January 1, 2017, and prior to January 1, 2019, provided the person paid tax on any purchases used to fulfill the service contract.
- (7) A person failed to collect sales tax on the sales price of or the gross receipts derived from the retail sale of a home warranty on or after January 1, 2017, and prior to January 1, 2019, provided the warranty includes coverage for real property.
- (8) A person failed to collect sales tax on the taxable portion of a mixed service contract that exceeds ten percent (10%) for a transaction on or after January 1, 2017, and prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed service contract.
- (8a) A person failed to collect sales tax on the taxable portion of a mixed transaction contract that exceeds twenty-five percent (25%) for a transaction on or after January 1, 2017, and prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed transaction contract.
- (8b) A person failed to collect sales tax on the taxable portion of a bundled transaction that included a contract for two or more services, one of which was subject to tax and one of which was not subject to tax, for a transaction on or after March 1, 2016, and prior to January 1, 2017.

- (9) A person treats a transaction as a real property contract for remodeling instead of the retail sale of repair, maintenance, and installation services sold at retail prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill the transaction.
- (10) A person failed to collect sales tax on repair, maintenance, and installation services for tangible personal property, motor vehicles, or certain digital property.
- (b) Limitations. – This section does not prohibit the following assessments:
 - (1) The assessment of tax collected by a person and not remitted to the Department.
 - (2) The assessment of tax due on an amount included in the definition of sales price where a retailer failed to charge or remit the tax, except as allowed under subsection (a) of this section.
 - (3) Repealed by Session Laws 2019-169, s. 3.6, effective July 26, 2019. (2017-204, s. 2.8(c); 2018-5, s. 38.5(q); 2019-6, s. 5.8; 2019-169, s. 3.6.)