



# This Week in State Tax (TWIST)

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## South Carolina: Home Improvement Retailer Owes Sales Tax on Installed Materials

The South Carolina Court of Appeals recently affirmed an Administrative Law Court (ALC) decision holding that the taxpayer, a home improvement retailer, was properly assessed approximately \$2.6 million of retail sales tax on purchases of items that it subsequently installed in customer's homes. Under South Carolina law, contractors are the retail purchasers of materials used in the performance of construction contracts. Contractors do not purchase materials used in construction contracts for resale, and construction services are not taxable services. The taxpayer at issue purchased building materials and appliances at wholesale (using a resale certificate) and sold them at retail to customers. Some customers wished the taxpayer to install the materials/items. In these cases, after a customer selected materials for a project, or items to install (e.g., a new appliance), the taxpayer engaged a third-party subcontractor to provide a quote for the installation services, prepared a contract that separately identified the labor and material costs, and executed the contract with the homeowner. The contract included all materials and items, such as appliances to be installed, at the retail price regularly charged in the store, and the customer paid the entire contract price upon execution. No sales tax was included in the payment as it was treated as an installation contract. The taxpayer then remitted use tax on the materials/items identified in the contract based on its wholesale cost. On audit, the Department disagreed with this position, and the matter eventually came before the Administrative Law Court, which ruled in the Department's favor.

On appeal, the taxpayer asserted that it operated as a contractor when using materials in connection with installation services contracts, and the taxable sale of such materials occurred when it purchased the materials at wholesale. The court disagreed, finding that the taxpayer was making retail sales to customers when it sold materials in connection with an installation services contract. The court noted that the purchase of the materials was delineated as a separate line item in the contract, which supported the ALC's finding the purchases were retail sales, and the sale of materials to the contracting customer was the last sale in the chain of transactions. The court also rejected the taxpayer's assertion that it was a contractor.

The taxpayer provided installation services only when the materials/goods were purchased at its store, and stand-alone installation services were never provided. Further, the taxpayer's own documentation described it as a retailer and not a general contractor. Finally, the taxpayer argued that the assessment violated the Equal Protection Clause because the state was treating it differently than other similarly situated contractors that did not make retail sales. In the court's view, traditional contractors were not similarly situated because such contractors were not permitted to purchase their materials at wholesale. Please contact [Nicole Umpleby](#) at 714-335-5586 for more information on *Lowe's Home Center, LLC v. South Carolina Department of Revenue*.

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