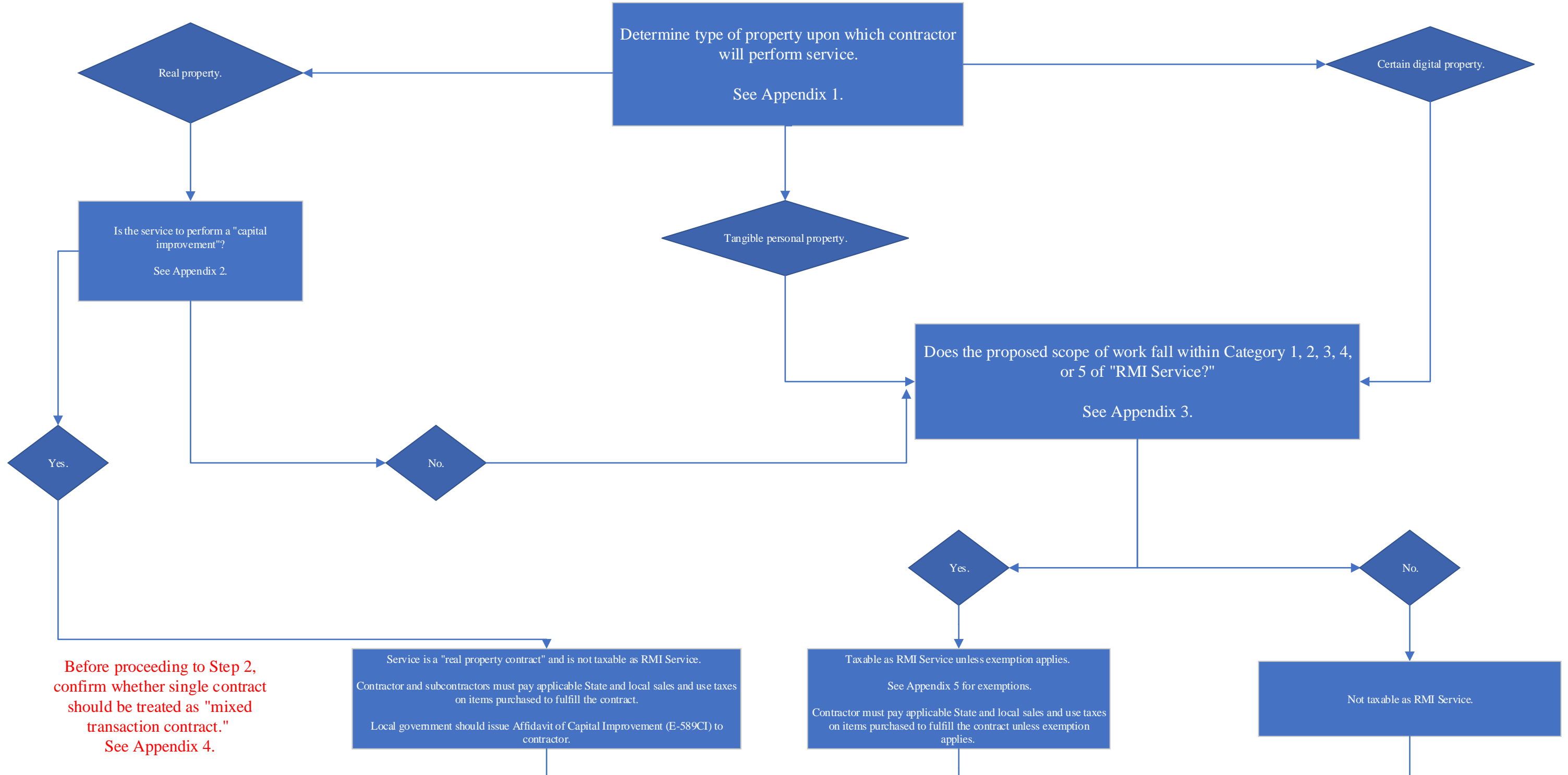
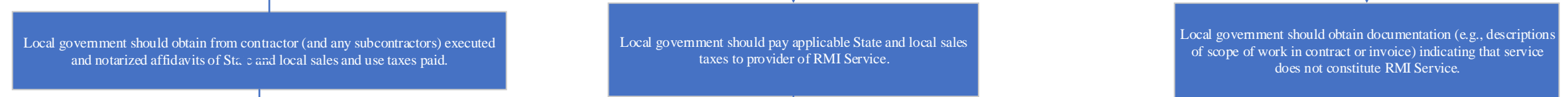


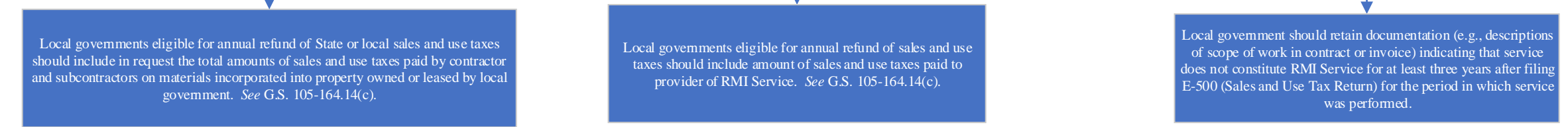
STEP #1: DETERMINE TAXABILITY PRIOR TO BIDDING AND CONTRACTING



STEP #2: PRIOR TO FINAL PAYMENT



STEP #3: AFTER COMPLETION OF TRANSACTION



Appendix 1

Determine type of property upon which contractor will perform service.

[G.S. 105-164.3](#) defines “real property,” “tangible personal property,” and “certain digital property” as set forth below. Where helpful, definitions of other defined terms are provided in **red**.

“Real property” means “[a]ny one or more of the following:

- a. Land.
- b. Building or structure on land.
- c. Permanent fixture on land.
- d. A manufactured home or a modular home on land.” G.S. 105-164.3(205).

“Tangible personal property” means: “[p]ersonal property that may be seen, weighed, measured, felt, or touched or is any other manner perceptible to the senses. The term includes electricity, water, gas, steam, and prewritten computer software.” G.S. 105-164.3(261).

“Prewritten computer software” means “[c]omputer software, including prewritten upgrades, that is not designed and developed by the author or another creator to the specifications of a specific purchaser. The term includes software designed and developed by the author or another creator.” G.S. 105-164.3(183).

“Certain digital property” means “[s]pecified digital products and additional digital goods. The term does not include an information service or an educational service.” G.S. 105-164.3(33).

“Specified digital products” means “[d]igital audio works, digital audiovisual works, and digital books.:

“Digital audio work” means “[a] work that results from the fixation of a series of musical, spoken, or other sounds, including a ringtone, that is transferred electronically.” G.S. 105-164.3(57).

“Digital audiovisual works” means “[a] series of related images, that when shown in succession, impart an impression of motion, together with accompanying sounds, if any, and that is transferred electronically.” G.S. 105-164.3(59).

“Digital book” means “[a] work that is generally recognized in the ordinary and usual sense as a book that is transferred electronically.” G.S. 105-164.3(61).

“Additional digital goods” means “[a]ll of the following if transferred electronically:

- a. A magazine, a newspaper, a newsletter, a report, or another publication.
- b. A photograph.
- c. A greeting card. G.S. 105-164.3(5).

Appendix 2

Is the service to perform a “capital improvement?”

G.S. 105-164.3(31) defines a “capital improvement” to include the items described in bolded text. Where helpful, definitions of other defined terms are provided in red.

a. New construction, reconstruction, or remodeling.

“New construction” means “[c]onstruction of or site preparation for a permanent new building, structure, or fixture on land or an increase in the square footage of an existing building, structure, or fixture on land.” G.S. 105-164.3(157).

“Reconstruction” means “rebuild or construct again a prior existing permanent building, structure, or fixture on land and may include a change in the square footage from the prior existing building, structure, or fixture on land.” G.S. 105-164.3(215).

“Remodeling” means “[a] transaction comprised of multiple services performed by one or more persons to restore, improve, alter, or update real property that may otherwise be subject to tax as repair, maintenance, and installation services if separately performed. The term includes a transaction where the internal structure or design of one or more rooms or areas within a room or building are substantially changed. The term does not include a single service that is included in repair, maintenance, and installation services. The term does not include a transaction where the true purpose is repair, maintenance, and installation services no matter that another service included in repair, maintenance, and installation services is performed that is incidental to the true purpose of the transaction; examples include repair of sheetrock that includes applying paint, replacement of cabinets that includes installation of caulk or molding, and the installation of hardwood floors that includes installation of shoe molding.” G.S. 105-164.3(219).

b. Performance of work that requires the issuance of a permit under the State Building Code, other than repair or replacement of electrical components, gas logs, water heater, and similar individual items that are not part of new construction, reconstruction, or remodeling.

c. Installation of a transmission, distribution, or other network asset on land owned by a service provider or on a right-of-way or easement in favor of a service provider, notwithstanding that any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction are included in the gross receipts derived from services subject to the combined general rate under G.S. 105-164.4. For purposes of this sub-subdivision, the term "service provider" means a person, including a governmental entity, who provides any of the services listed in this sub-subdivision, and the term "governmental entity" means a State agency, the federal government, or a governmental entity listed in G.S. 105-164.14(c). The services are:

- 1. Telecommunications service or ancillary service.**
- 2. Video programming.**
- 3. Electricity or piped natural gas.**
- 4. Water or sewer service.**

d. Installation of equipment or a fixture that is attached to real property and that meets one or more of the following conditions:

1. Is capitalized and depreciated under Generally Accepted Accounting Principles or International Financial Reporting Standards.

2. Is depreciated under the Code.

3. Is expensed under Section 179 of the Code.

e. Painting or wallpapering of real property, except where painting or wallpapering is incidental to the repair, maintenance, and installation services.

f. Replacement or installation of a septic tank system, siding, roof, plumbing, electrical, commercial refrigeration, irrigation, sprinkler, or other similar system. The term does not include the repair, replacement, or installation of electrical or plumbing components, water heaters, gutters, and similar individual items that are not part of new construction, reconstruction, or remodeling.

g. Replacement or installation of a heating or air conditioning unit or a heating, ventilation, or air conditioning system. The term does not include the repair, replacement, or installation of gas logs, water heaters, pool heaters, and similar individual items that are not part of new construction, reconstruction, or remodeling.

h. Replacement or installation of roads, driveways, parking lots, patios, decks, and sidewalks.

i. Services performed to resolve an issue that was part of a real property contract if the services are performed within six months of completion of the real property contract or, for new construction, within 12 months of the new structure being occupied for the first time.

j. Landscaping.

“Landscaping” means “[a] service that modifies the living elements of an area of land. Examples include the installation of trees, shrubs, or flowers on land; tree trimming; mowing; and the application of seed, mulch, pine straw, or fertilizer to an area of land. The term does not include services to trees, shrubs, flowers, or similar tangible personal property in pots or in buildings G.S. 105-164.3(117).

k. An addition or alteration to real property that is permanently affixed or installed to real property and is not an activity listed in subdivision (225) of this section [(defining “repair, maintenance, and installation services”)] as repair, maintenance, and installation services.

Appendix 3

Does the proposed scope of work fall within Category 1, 2, 3, 4, or 5 of “RMI Service?”

“Repair, maintenance, and installation services” include five categories of activities, each of which is detailed below.

<i>Category 1</i>	a. To keep or attempt to keep property or a motor vehicle in working order to avoid breakdown and prevent deterioration or repairs. Examples include to clean, wash, or polish property.
<i>Category 2</i>	b. To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property or a motor vehicle to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.
<i>Category 3</i>	c. To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore property or a motor vehicle to proper working order or good condition. The term includes activities that may lead to the issuance of an inspection report.
<i>Category 4</i>	d. To install, apply, connect, adjust, or set into position tangible personal property or certain digital property. The term includes floor refinishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item installed may replace a similar existing item. The replacement of more than one kind of a like-kind item, such as replacing one or more windows, is repair, maintenance, and installation services. The term does not include an installation defined as a capital improvement under subdivision (31)d. of this section and substantiated as a capital improvement under G.S. 105-164.4H(a1).
<i>Category 5</i>	e. To inspect or monitor property or install, apply, or connect tangible personal property or certain digital property on a motor vehicle or adjust a motor vehicle.

Appendix 4

Is the contract a “mixed transaction contract?”

It might be the case that a contract contains separate scopes of work, one of which includes elements of a “real property contract” (i.e., a “capital improvement”) and the other of which encompasses unrelated elements of taxable RMI Services. For example, assume that a contractor agrees under a single contract for \$40,000 to replace all of the windows in a municipal building and also paint all of the building’s doors.¹ The former scope of work would constitute RMI Services while the latter scope of work would constitute a “capital improvement” (see G.S. 105-164.3(31)e.)).

These types of contracts—labeled “mixed transaction contracts” ([G.S. 105-164.3\(105\)](#)) under state law—are taxable in accordance with [G.S. 105-164.4H](#). See [G.S. 105-164.4\(a\)\(16\)](#). If the allocated sale price of the RMI Services is less than or equal to 25% of the contract price, then the entire contract may be treated as a “real property contract.” See G.S. 105-164.4H(d)(1). But if the allocated sale price of the RMI services is greater than 25% of the contract price, then the RMI portion of the contract price is subject to tax *unless* an exemption applies. See G.S. 105-164.4H(d)(2).

If, in the example above, the portion of the work to replace the windows costs \$35,000 (i.e., 87.5% of the total cost) and the portion of the work to paint the building’s doors costs \$5,000 (i.e., 12.5% of the total cost), then the RMI Services portion would be taxable to the local government.² If, hypothetically, those numbers were reversed, the entire contract could be treated as a non-taxable real property contract.

¹ This example is based upon an example that NCDOR provided in a helpful 2018 directive discussing RMI Services and real property contracts. See [N.C. Department of Revenue, SD-18-1, Repair, Maintenance, and Installation Services 5 \(Apr. 18, 2018\)](#).

² In that case, the local government could provide NCDOR Form E-589CI for the portion of the work that constituted a capital improvement (i.e., the painting).

Appendix 5

Does state law exempt the RMI Service from taxation?

Consult [N.C. Department of Revenue, 2021 Sales and Use Tax Bulletin 75-3A and 75-3B](#). These bulletins set forth exemptions for RMI Services contained in [G.S. 105-164.13\(61a\), \(61b\), \(61c\), \(61d\), \(62a\), and \(62b\)](#).