

March 7, 2016

Guaranteed Asset Protection (GAP) Waiver Contracts

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Issue

Is the sale of a Guaranteed Asset Protection (GAP) waiver contract included in the sales price of a motor vehicle and subject to sales and use tax?

Conclusion

The sale of a GAP waiver contract made between the purchaser of a motor vehicle (borrower) and the retail seller of motor vehicles (creditor) is part of the sales or lease price of the motor vehicle and subject to sales and use tax.

Definitions (for purposes of determining the taxability of GAP waiver contracts)

Borrower. Borrower means a debtor, retail buyer, or lessee under a finance agreement. See [Neb. Rev. Stat. § 45-1103\(1\)](#).

Creditor. Creditor means any retail seller, including a lessor, of motor vehicles that provides credit to retail buyers of motor vehicles. See [Neb. Rev. Stat. § 45-1103\(2\)](#).

Guaranteed Asset Protection (GAP) Waiver Contract. GAP waiver contract means a contractual agreement where a creditor or the creditor's designee agrees, for a separate charge, to cancel or waive all or part of any remaining amounts due on a borrower's finance agreement if the motor vehicle purchased or leased suffers a total physical damage loss or unrecovered theft. See [Neb. Rev. Stat. § 45-1103\(7\)](#).

Motor Vehicle. Motor vehicle means self-propelled or towed vehicles designed for personal or commercial use, including, but not limited to, automobiles, trucks, motorcycles, recreational vehicles, all-terrain vehicles, snowmobiles, campers, boats, personal watercraft, and motorcycle, boat, camper, and personal watercraft trailers. See [Neb. Rev. Stat. § 45-1103\(8\)](#).

Analysis

The Guaranteed Asset Protection Waiver Act (Act) (see [Laws 2010, LB 571](#)) provides a framework for a creditor who is not an insurer or a financial institution to sell GAP waiver contracts in Nebraska. The Act defines GAP waiver contracts as contractual agreements between a creditor and

a borrower where the only benefit to the borrower is the creditor's promise to waive or cancel the amount due on a finance agreement from the sale of a motor vehicle in the event of a total physical loss or unrecovered theft of the motor vehicle. The sale of GAP waiver contracts are subject to compliance with the Act.

The Act also distinguishes these GAP waiver contracts from GAP insurance contracts and specifically exempts the GAP waiver contracts from regulation by the Nebraska Department of Insurance. While gross receipts from the sales of motor vehicles are subject to sales and use tax pursuant to [Neb. Rev. Stat. § 77-2703](#), insurance contracts and agreements subject to the premium tax under [Neb. Rev. Stat. § 77-908](#) are **not** subject to sales and use taxes.

Sales and use taxes are imposed on the total sales price of tangible personal property and not merely "upon the article sold," per [Reg-1-001.02, Nature of the Sales Tax](#). The sales price is the total amount of consideration for which personal property or services are sold, leased, or rented. The sales price includes, among other identified costs and expenses, the seller's costs and the charges by the seller for any services necessary to complete the sale. [Neb. Rev. Stat. §§ 77-2701.16, 77-2701.35](#); see also [Farmer's Cooperative v. Nebraska Dep't of Revenue](#), CI 13-2325 (District Court of Lancaster County (Mar. 5, 2014)); and [Enterprise Rent-a-Car Co. Midwest LLC v. Nebraska Dep't of Revenue](#), CI 11-3101 (District Court of Lancaster County (Nov. 5, 2012)). Sales of GAP waiver contracts are part of the sales price of the motor vehicle ([Neb. Rev. Stat. § 77-2701.35](#)) and are subject to sales and use tax.

Please contact the Department of Revenue if you have any questions regarding the taxability of a specific GAP contract.

APPROVED:



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