

March 24, 1997

Sales and Use Tax - Taxability of Warranties, Guarantees, Service and Maintenance Agreements, and Parts. THE SALE OF AN AGREEMENT COVERING ONLY FIXTURES IS NOT TAXABLE. AN AGREEMENT THAT COVERS FIXTURES AND OTHER PERSONAL PROPERTY IS TAXABLE. PARTS AND MATERIALS USED TO REPAIR A FIXTURE ARE TAXABLE.

Advice has been requested regarding the application of sales and use tax on warranties, guarantees, and service and maintenance agreements that covers fixtures and other personal property and the taxability of parts and materials used to repair a fixture covered under an agreement.

Under Sales and Use Tax Regulation 1-074 the charge for an agreement that covers personal property that is not a fixture (nonfixture) is taxable and the charge for an agreement that only covers those items that need to be annexed to real estate is not taxable.

As defined in Sales and Use Tax Regulation 1-017.01F, a fixture is "a piece of equipment that must be annexed to the building or structure in order to properly function, yet remains identifiable as a separate item." Examples of fixtures include but are not limited to:

1. Household and commercial hot water heaters, garbage disposals, central heating and air conditioning systems, central vacuum systems, and
2. The following appliances when they are built-in: ranges, dishwashers, trash compactors, and refrigerators.

If a warranty, guarantee, service or maintenance agreement covers both fixtures and nonfixtures without separate amounts being listed on the billing invoice, then the total charge for the agreement is taxable. If separate amounts are listed on the billing invoice, only those charges for the agreement covering nonfixtures are taxable.

Under Sales and Use Tax Regulation 1-074 sales and use tax does not apply to parts and materials used, and services performed in fulfilling the obligations under an agreement to repair or replace nonfixtures provided, there is not a separate charge for the parts and materials.

Persons repairing fixtures are contractors. Under option 1, option 2, or option 3 the repairperson (contractor) is required to pay sales tax or remit use tax on all parts and materials purchased or withdrawn from inventory and used to replace or repair a fixture covered under a warranty, guaranty, or service and maintenance agreement. The parts and materials that are used to replace or repair a fixture are taxable even when the agreement has been taxed.

APPROVED:



M. Berri Balka  
State Tax Commissioner

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