
State of South Carolina
Department of Revenue
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Website Address: <http://www.sctax.org>

SC REVENUE RULING #05-12

SUBJECT: Warranty, Maintenance and Similar Service Contracts
(Sales and Use Tax)

EFFECTIVE DATE: October 1, 2005

SUPERSEDES: SC Revenue Ruling #93-6 and all previous advisory opinions and any oral directives in conflict herewith.

REFERENCE: House Bill 3767, Section 19 (Act No, 161) of 2005

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2004)
SC Revenue Procedure #03-1

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. A Revenue Ruling does not have the force or effect of law, and is not binding on the public. It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Effective Date Notice:

This advisory opinion is effective for transactions occurring on or after October 1, 2005. SC Revenue Ruling #93-6 is still valid with respect to transactions occurring prior to October 1, 2005. (See House Bill 3767, Section 19 (Act No, 161) of 2005.)

Questions:

1. Are charges for warranty, maintenance, or similar service contracts for tangible personal property subject to the sales or use taxes?
2. Does the tax apply to the withdrawal from inventory of tangible personal property for use in replacing a defective part under a warranty contract?

Conclusions:

1. Charges for sales or renewals of warranty, maintenance, or similar service contracts (whether optional or mandatory) for tangible personal property are subject to the sales and use tax.

However, charges for motor vehicle extended service contracts and motor vehicle extended warranty contracts are exempt from the sales and use tax under Code Section 12-36-2120(53).

2. The tax does not apply to the withdrawal from inventory of tangible personal property for use in replacing defective part under a warranty contract if:
 1. tax was paid on the sale or the renewal of the warranty contract and the customer is not charged for any labor or material when the part is replaced; or,
 2. the warranty contract is given without charge at the time of the original purchase of the defective property, and the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component, and the customer is not charged for any labor or material when the part is replaced.

Note: If both conditions set forth in Item 1 are not met, or if all three conditions set forth in Item 2 are not met, then tax is due on the withdrawal from inventory of the tangible personal property for use in replacing a defective part under the warranty contract. The tax would be based on the fair market value of the property withdrawn from inventory.

Facts:

Frequently, when tangible personal property is purchased, the manufacturer warrants that the property will be free of defects for a specified period of time. The cost of this warranty is not separately stated, but is a part of the sales price of the property.

The retailer, usually in conjunction with the manufacturer, will offer the customer the opportunity to purchase an extended warranty or other maintenance or similar service contract at the time the tangible personal property is purchased. For example, a copier manufacturer may warrant that the copy machine it manufactures will be free from defects for twelve months. For an additional fee, that will be separately stated on the invoice to the customer, the customer can buy an extended warranty. The extended warranty will guarantee that the copier will be free from defects for an additional twelve months, for a total warranty period of twenty-four months. If the copier does breakdown, the manufacturer (or an authorized service center) will repair the copier, usually, free of charge.

If the customer decides not to purchase the extended warranty or other maintenance or similar service contract at the time the tangible personal property is purchased, some retailers will allow the customer to purchase such a contract after the sale. In the above example, if the customer had not purchased the extended warranty at the time of the sale, the retailer may contact the customer at any time within a specified period of time after the sale and offer the customer a second opportunity to buy the extended warranty.

Discussion:

Effective for sales or renewals on or after October 1, 2005, Code Sections 12-36-910(B) and 12-36-1310(B) impose the sales and use tax on the:

gross proceeds accruing or proceeding from the sale or renewal of warranty, maintenance, or similar service contracts for tangible personal property, whether or not such contracts are purchased in conjunction with the sale of tangible personal property.

As such, a charge for the sale or renewal of a warranty, maintenance, or similar service contract for tangible personal property is subject to the sales and use tax, whether or not such contract was purchased in conjunction with the sale of the tangible personal property.

However, Code Section 12-36-2120(53) exempts from the tax:

motor vehicle extended service contracts and motor vehicle extended warranty contracts.

Finally, it is important to be aware of an additional statutory provision as it relates to warranties. The sales tax, in addition to sales of tangible personal property, also applies to the “fair market value of tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed in connection with the business.” See Code Section 12-36-90.

As such, the sales tax is due on the withdrawal from inventory of the tangible personal property for use in replacing a defective part under the warranty contract; however, Code Section 12-36-90(1)(c)(iii) excludes from the tax:

tangible personal property replacing defective parts under written warranty contracts if:

- (A) the warranty, maintenance, service, or similar contract is given without charge, at the time of original purchase of the defective property, or the tax was paid on the sale or renewal of warranty, maintenance, or similar service contract for tangible personal property of which the defective part was a component, whether or not such contract was purchased in conjunction with the sale of tangible personal property,
- (B) in the case of a warranty, maintenance, service, or similar contract that is given without charge at the time of original purchase of the defective property, the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component, and
- (C) the warrantee is not charged for any labor or materials.

Therefore, the tax does not apply to the withdrawal from inventory of tangible personal property for use in replacing defective part under a warranty contract if:

1. tax was paid on the sale or the renewal of the warranty contract and the customer is not charged for any labor or material when the part is replaced; or,

2. the warranty contract is given without charge at the time of the original purchase of the defective property, and the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component, and the customer is not charged for any labor or material when the part is replaced.

Note: If both conditions set forth in Item 1 are not met, or if all three conditions set forth in Item 2 are not met, then tax is due on the withdrawal from inventory of the tangible personal property for use in replacing a defective part under the warranty contract. The tax would be based on the fair market value of the property withdrawn from inventory.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank III, Director

August 21 _____, 2005
Columbia, South Carolina