

City and County of Denver, Colorado

TAX GUIDE

Topic No. 54

MAINTENANCE, WARRANTY, and SERVICE AGREEMENTS

Agreements or contracts to furnish labor and/or parts to maintain a specific piece of equipment, including those that extend beyond the manufacturer's original warranty are often referred to as maintenance contracts, extended warranties, or service contracts or agreements (collectively referred to as “maintenance agreements”).

TAXABILITY

Mandatory Maintenance Agreements

For maintenance agreements which are mandatory and part of the purchase price of the item, the vendor must collect sales tax on the total purchase price paid. No additional sales or use tax is due on the materials being used in performing the maintenance agreement.

Optional Maintenance Agreements That Do Not Include Consumable Supplies

If the maintenance agreement is optional, and sold to the customer as a separate item, and does not include consumable supplies (*see* below for a further discussion of consumable supplies) the vendor has the option of how to satisfy the tax.

1. The vendor may opt to charge sales tax on the full purchase price of the maintenance agreement (with no separation allowed for the *estimate* of replacement parts, materials, and supplies) at the time of sale. If the vendor does this, it is not required to charge tax on the purchase price of the parts, materials, and supplies used to fulfill the maintenance agreement or to accrue a use tax on such parts, materials, and supplies.
2. If the vendor does not opt to charge sales tax on the full purchase price of the maintenance agreement at the time of sale, the vendor must either:
 - a. Separately price and charge (must be separately stated and itemized on an invoice) its customer for all tangible personal property (i.e. replacement parts, materials and supplies) consumed or used to fulfill the maintenance agreement. In this case the vendor must charge, collect and remit sales tax on the price charged for the tangible personal property at the time it is sold. The sales tax is based on the location of where the service is performed (i.e., Denver sales tax must be charged for work performed in Denver. Aurora sales tax must be charged for work performed in Aurora.).
 - b. Pay Denver use tax on the purchase price of the tangible personal property used to fulfill the maintenance agreement. If the tangible personal property is stored in Denver, then all the tangible personal property used to perform the maintenance agreement are subject to Denver use tax, regardless of where they are later installed or used.

Optional Maintenance Agreements that Include Consumable Supplies

If the optional maintenance agreement *includes* consumable supplies as part of the overall price of the maintenance agreement the vendor must charge Denver sales tax on the full purchase price of the maintenance agreement. Examples of consumable supplies include, but are not limited to, paper, toner, staples, motor oil, oil filters, antifreeze, and window washer fluid (these types of supplies are typically consumed as part of the operation of the equipment).

EXAMPLES

1. A vendor of home appliances has a repair facility in connection with its retail business. At the time of the sale, the vendor offers an extended maintenance contract beyond the manufacturer's warranty. The agreement covers parts and labor. An annual charge is made to keep the agreement in force. At the time of performing repairs, there is no charge to the customer. The vendor is responsible to report and pay use tax based on the cost of the parts and materials used to perform the service. Any withdrawals from the retail inventory of parts stored within Denver used to fulfill these maintenance contracts are subject to use tax, whether used in or out of Denver.
2. A vendor/repair facility which represents several manufacturers of copier equipment offers a preventive maintenance program for the copiers. This program includes periodic inspection, cleaning, and adjusting of the copiers. If any parts are needed, a separate charge is made. The vendor/repair facility must collect and remit sales tax on the sale of the parts. There is no tax on the charge for the maintenance program.
3. A manufacturer of computer systems enters into a leasing agreement with its customer. A maintenance contract is required as part of the lease agreement. This mandatory charge is considered part of the lease payment and is subject to sales/use tax.
4. An automobile dealer offers an extended warranty on new vehicles sold which includes the right to oil and filter changes at their Denver shop every 5,000 miles for the first 7 years or 70,000 miles. The actual purchase price of the oil and filters is never separately stated. Even though this is an optional extended warranty, the full warranty charge would be subject to sales tax since a future sale of oil and filters (consumable supplies that are not separately stated and taxed) is being made. Even if the customer never takes advantage of the free oil and filter changes, the customer, at the time of purchase, has the right to obtain the future oil and filter changes, so the warranty is taxable. Since the performance of the sale/service is to be performed in Denver, Denver tax would be due even though a specific vehicle may be properly registered outside of Denver.
5. An office equipment retailer offers an optional variable-rate maintenance agreement on its copy machines. The retailer charges a "click charge" (a charge per each copy made) that covers basic maintenance, repairs, and toner. Since the maintenance agreement does provide a consumable supply (that is not separately stated and charged and taxed) the full "click charge" amount would be taxable when charged to the customer.
6. An office equipment retailer offers an optional maintenance agreement on equipment that covers basic maintenance and repairs, but does not include any consumable supplies. Typically, the transaction would not be subject to sales tax and, instead, the retailer would owe use tax on the cost of parts, materials, and supplies (if not charged separately to the customer) stored or consumed to perform any repairs. However, the retailer instead chooses to charge sales tax on the full price of the optional maintenance agreement, and, as a result, any parts, materials, and supplies not charged separately to the customer on any repairs made would not be subject to use tax, as the tax on these items has already been satisfied. Any parts, materials, and supplies separately charged to the customer over and above the maintenance agreement would continue to be subject to sales tax.

RELATED TAX GUIDE TOPIC

Software

Exempt Purchases Converted to Taxable Use

* DRMC Section 53-25(1). Imposition of tax.

* DRMC Section 53-96(1). Imposition of tax.

THE ABOVE INFORMATION IS A SUMMARY IN LAYMAN'S TERMS OF THE RELEVANT DENVER TAX LAW FOR THIS INDUSTRY OR BUSINESS SEGMENT. IT IS NOT INTENDED FOR LEGAL PURPOSES TO BE SUBSTITUTED FOR THE FULL TEXT OF THE DRMC AND APPLICABLE RULES AND REGULATIONS.