

**Information Bulletin #2
Sales Tax
March 2013**
(Replaces Bulletin #2 Dated January 2013)
Effective Date: March 1, 2013

SUBJECT: Original Manufacturer Warranties, Optional Maintenance Contracts, and Optional Warranty Contracts

REFERENCE: [IC 6-2.5-1-5](#); [IC 6-2.5-1-11.5](#); [IC 6-2.5-1-14.5](#); [IC 6-2.5-2-1](#); [IC 6-2.5-3-2](#); [IC 6-2.5-4-1](#); [IC 6-2.5-4-15](#); [IC 6-2.5-4-17](#); [45 IAC 2.2-4-2](#)

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SUMMARY OF CHANGES

This bulletin has been changed from the previous version to clarify that, similar to optional maintenance contracts, where sales tax was collected and remitted on the sale of optional warranty contracts prior to the publishing of the January 2013 version of this bulletin, a retail merchant will not be required to self-assess use tax on any parts used to fulfill the terms of the contracts. This version of the bulletin also has been changed to clarify that the service provider under an optional warranty contract issued by the service provider must pay sales or use tax on the cost of all taxable items used under the contract, based on the acquisition cost of the service provider. Additionally, this version of the bulletin has been changed to clarify that in situations where a dealer or service provider uses or installs items pursuant to a warranty sold by a third-party warrantor, the dealer or service provider is responsible for all sales tax that is attributable to all taxable items used under the contract. The fact that a leased vehicle is the subject of the warranty does not change the general treatment under this bulletin.

I. ORIGINAL MANUFACTURER WARRANTIES OR DEALER WARRANTIES

Original manufacturer warranties or dealer warranties guaranteeing the condition of a product and providing that maintenance or replacement parts will be provided at either no charge or a flat charge are subject to sales tax. The amount subject to tax includes any subsequent payments made by the purchaser, such as deductibles or other fees. Original manufacturer warranties and dealer warranties not offered as an option when the product is sold are considered part of the selling price of the product. Any parts transferred to a buyer under the terms of an original manufacturer warranty or dealer warranty are not subject to sales tax because the parts and or property are considered to have been sold with the product as a part of the retail transaction on which sales tax was collected.

Examples: An automobile dealer sells an automobile for \$20,000. Included in the selling price is a warranty that will cover any repairs for two years or 20,000 miles. This warranty is an original manufacturer or dealer warranty. Tax is collected on the full \$20,000.

If the automobile needs a new engine after 5,000 miles and six months of driving, the same warranty as in the example above shall apply. The dealer must provide and install the engine under the terms of the warranty. No sales tax is due on the price of the engine because tax was collected on the warranty when the automobile was purchased. NOTE: if the dealer charges the vehicle owner a deductible or other fee under the terms of the warranty, that amount is subject to sales tax.

Providing the warranty explicitly states that a replacement vehicle will be provided while warranty work is being performed, the rental transaction is considered to be part of the original warranty and is exempt from the sales or use tax. However, if the warranty does NOT explicitly provide for a replacement vehicle, then the furnishing of the vehicle is not considered to be part of the repair or the replacement parts and the charge for the provided vehicle is subject to the sales or use tax. The exemption must be supported by written documentation of payment from the warranty provider.

NOTE: The fee charged for a rental vehicle provided for warranty work is NOT exempt from the auto rental excise

tax under [IC 6-6-9](#), but it is exempt from the Marion County supplemental auto rental excise tax under [IC 6-6-9.7-8](#).

II. OPTIONAL MAINTENANCE CONTRACTS

Maintenance contracts generally meet the definition of bundled transactions under [IC 6-2.5-1-11.5](#) and are subject to sales tax on that basis. The determination as to whether a contract is a maintenance contract is not necessarily based on the particular title of or language used in the contract. Instead, the determination is based on the substantive provisions contained in the contract. An explicit guarantee that tangible personal property will be provided under the contract is not required. What is important is that both the customer and the service provider are aware at the time the contract is executed that consumable items will be provided under the contract. However, the amount of tangible personal property supplied under the contract must be more than a de minimis amount. As a rule, the seller's purchase price or the sales price of the taxable items provided under the contracts must exceed 10% of the total purchase price or the total sales price of the bundled products.

For purposes of this bulletin, these contracts include the retail sales of two or more distinct and identifiable products for one non-itemized price and include repair labor as well as replacement parts, consumable items, and general services such as cleaning and inspecting that are provided on a periodic basis. These contracts include scenarios in which the specific repair and replacement parts and consumable items needed to maintain the equipment are provided at no additional cost or with a small deductible. For purposes of this bulletin, the term "consumable items" includes items that are depletable, are disposable, are consumable, or need to be replaced after they have been used for a period of time. An example of consumable items can be found where a service provider sells a maintenance contract for a copy machine. Under the contract, parts and consumable items that require regular replacement for the copier to perform its function (such as drums, toner, fuser, developer, etc.) are replaced at no additional cost along with incidental repair parts that may need to be replaced due to unforeseen circumstances.

Example: An office supply company sells a photocopy machine to a customer. The customer also purchases an optional maintenance contract from the company. The maintenance contract entitles the customer to service and parts at no charge in the event of a breakdown of the photocopy machine. The contract also provides for quarterly inspections; replacement of the drum after 100,000 copies have been made; and toner to be provided on an as-needed basis. The office supply company calculates that the price charged for the tangible personal property is 15% compared with the service charge. The sale of the maintenance contract is a bundled transaction subject to the collection of sales tax on the unitary price of the maintenance contract.

III. OPTIONAL WARRANTY CONTRACTS

For purposes of this bulletin, a "warranty contract" means a contract that acts like insurance against future potential repair costs, including extended service contracts. As with maintenance contracts discussed previously, the determination as to whether a contract is a warranty contract is not necessarily based on the particular title of the contract or language used therein. Instead, the determination is based on the substantive provisions contained in the contract. Under a warranty contract, neither the seller nor the purchaser is certain at the time the contract is signed whether any tangible personal property will be provided under the terms of the contract. Unlike a maintenance contract, the replacement of consumable items is not included under a warranty contract.

Optional warranty contracts are not implicated by the bundled transaction provisions in [IC 6-2.5-1-11.5](#) because the warranty contracts do not meet the definition of a bundled transaction. The sale does not include the sale of two or more products because, under the warranty contract, there may never be any parts or services provided to the customer. Accordingly, the sales of optional warranty contracts are exempt from sales tax. However, the provider of the service must pay sales or use tax on the cost of all taxable items used under the contract, based on the acquisition cost of the service provider, which does not include a deductible collected from the customer. If the service provider charges a separate amount for parts or other taxable items, the provider should purchase the items exempt for resale and charge sales tax to the customer. If the service provider charges one non-itemized amount for the service and any tangible personal property transferred under the contract, the provider must self-assess and remit use tax on its purchase price of the property.

Example: A home warranty service company sells a warranty to a customer. The warranty contract entitles the customer to service and parts at no charge or in conjunction with a deductible in the event of a breakdown of covered items. The sale of the warranty contract is not subject to sales tax. However, the service provider must pay sales or use tax on the cost of all taxable items used under the contract.

NOTE: in situations where a dealer or service provider uses or installs items pursuant to a warranty sold by a third-party warrantor, the dealer/service provider is responsible for all sales tax that is attributable to all taxable items used under the contract.

Example: A third-party warrantor sells a warranty to a customer that entitles the customer to repair work at any authorized dealer or service provider. All claims under the warranty are paid by the third-party warrantor. A covered repair takes place and the dealer/service provider supplies parts and labor at a negotiated charge of \$1000. Under the contract, the dealer/service provider charges the third-party warrantor \$500 for labor and \$500 for the parts. The customer has a deductible of \$100 that the dealer/service provider keeps under the terms of its contract with the third-party warrantor. In this scenario, the dealer/service provider is selling the items to the third-party warrantor and then using the items on behalf of the third-party warrantor to fulfill the terms of the agreement. Thus, the dealer/service provider must collect and remit sales tax that is attributable to all taxable items used under the contract, which does not include installation charges that are separately stated on the invoice, bill of sale, or similar document given to the third-party warrantor. Accordingly, the dealer/service provider must collect and remit sales tax on \$500, which reflects the amount received from the third-party warrantor for the parts (\$500), but does not include the amount received as a deductible from the customer (\$100).

The fact that a leased vehicle is the subject of the warranty does not change the general treatment under this bulletin.

Example: A customer negotiates the lease of a vehicle for 36 months at \$500 per month. Under the lease, the customer is obligated to make any repairs not covered by the manufacturer's original warranty. The dealer offers the customer the same third-party warranty as above. The customer may pay the full cost of the warranty at execution of the lease, or monthly with each lease payment. The customer opts for the latter option and the monthly payment is now \$560 (which includes the monthly lease payment and the monthly charge for the warranty). Provided that the charge for the warranty is separately stated from the charge for the lease, the charge for the warranty is not subject to tax.

IV. APPLICATION TO SALES OF OPTIONAL MAINTENANCE CONTRACTS AND OPTIONAL WARRANTY CONTRACTS MADE PRIOR TO JANUARY 1, 2013

For transactions where sales tax was collected and remitted on the sale of optional maintenance contracts or optional warranty contracts prior to the publishing of the January 2013 version of this bulletin, a retail merchant will not be required to collect sales tax or self-assess use tax on any parts used to fulfill the terms of the contracts. Correspondingly, a claim for refund based on this bulletin for a transaction subjected to tax prior to Jan. 1, 2013, will be denied.

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Commissioner

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